A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836-1900.

WITH AN INDEX OF CASES

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,

OF THE MIDDLE TEMPLE BARRISTER AT LAW AND ADVOCATE OF THE HIGH COURT CALCUTTA

IN SIX VOLUMES

VOLUME I A—C

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PREFACE TO THE FIRST EDITION

THE object of this work is to furnish a comprehensive Index to the case law of India as laid down in the reported decisions of the High Courts and Privy Council, analogous to that already compiled of the statute-law It would perhaps be too much to hope that this object has been fully attained, but I can at least claim for it that it goes further towards success in that attainment than any previous work of the kind in India I shall be satisfied with this attempt towards such an end if it be found in some degree useful to the Government in its legislation, to the judicial officers of Government, and last, but by no means least, to the members of all the branches of the profession to which I have the honour to belong

The work contains the gist of the cases reported in 166 volumes of Reports extending over a period of fifty years,—viz, from 1836 to 1886 Besides the reports published in India, it contains the cases in Moore's Indian Appeals, without which, of course, no digest of Indian cases would be complete, and also such cases from the Law Reports, Indian Appeals, as are not reported in the Indian reports The names of the reports are set out in the annexed list showing the periods over which they extend, the decisions of what Court they contain, and the abbreviations used for them in the references throughout the Digest

With respect to a few of those volumes which have been reprinted, and in the later editions of which the paging is different from that in the original edition, I have given, wherever I could do so, both pagings I think this difference of paging will be found with respect only to the first and second volumes of the Bombay Reports, the first volume of the N-W Provinces Reports, and the Agra Full Bench volume

In some of the volumes—instances chiefly, however, confined to the Agra Reports—the paging is in some places manifestly incorrect, some pages having the same numbers In these cases I have generally given the page which would have been correct had the paging been correctly continued

In cases where it is not otherwise apparent that the case is a Privy Council or Full Bench decision, I have added in the reference the letters P C or F B, as the case may be, to indicate this It should be noticed that *all* the cases in the Supplemental Volume of the Bengal Law Reports are Full Bench cases This is not the case, however, with the Full Bench volume of the Weekly Reporter, containing cases

decided in 1862-63, the letters W. R., F. B., therefore merely represent the abbreviation of the name of that volume, and do not necessarily imply that the case to which they are appended is a Full Bench case. In fact, as all the Full Bench cases in that volume are reported elsewhere, cases to which the letters W. R., F. B., alone are appended are probably not Full Bench cases, though some of them may be decided by more than two Judges.

With the names of the cases I have had great difficulty,—a difficulty which, from the character of Indian names, is, it seems to me, almost impossible to overcome. The general rule I have followed has been to cut out from the commencement of the names all prefixes and titles. The principal of these are Shahzada, Shah, Maharajah, Maharani, Rajah, Rani, Nawab, Sahib, Sri, Sreemutty, Mussamat, Bibi, Thakoor, Syed, Moulvie, Moonshee, Mir, Mirza, Hadji, Sheikh, Baboo, Coomar, Cowar or Kooer and perhaps a few others. I have omitted these as far as possible with the object in view not only of greater brevity in the names, but also in order that, in the Index of Cases, names that are similar may come together, and not as they sometimes do in an index of names, some *with* the prefix or title and under one letter, and the same name *without* it under another letter. I have made exceptions to this rule only in cases where the name is given in the following form:—"Maharajah of Vizianagram," "Rajah of Shivagunga," "Nawab Nazim of Bengal," etc.

As to the spelling of the names, I found it hopeless to attempt any consistency, for the various volumes of reports go through all the possible variations in the manner of spelling any particular Indian name, and I came to the conclusion that it was best to spell the cases as they appear in the reports. Had I adhered in all cases to any one mode of spelling, the result would have been that any cases spelt in the report in a different way would probably never be found by looking in the Index of Cases, or, if discovered at all, only after much more expenditure of time and trouble than would be desirable, and such a method would, it seemed to me, lead in other ways to difficulty and confusion.

I at first intended to issue the work in not more than two volumes, but owing to the material having taken up more space in print than I imagined it would do and it being desirable not to have the volumes of a bulk inconvenient for ready use and reference, it has been decided to issue it in five volumes to be published successively, and, if possible, within the present year. To each volume will be appended a table of the headings contained in it, and the last volume will contain a list of all the cases contained in the five volumes. The pages will be continuous throughout the work.

CALCUTTA, J. V. WOODMAN.
15th September 1887.

PREFACE TO THE PRESENT EDITION

SINCE the issue of the first Digest, which included the decisions of the High Courts and Privy Council down to 1886 the Author brought out three separate volumes containing the cases from 1887—1889, 1890—1893 and 1894—1897, respectively The present edition is a consolidation of the previous Digests, with the addition of the rulings from 1898—1900 inclusive Its bulk has consequently increased to a very considerable extent A reference to the Table of Reports will show that the number of volumes of Reports digested is 241 as compared with 166 volumes digested in the first edition The first four numbers of the Calcutta Weekly Notes have also been incorporated as frequent reference is made to them in the Calcutta High Court An idea of the increase of the size of this edition may be gained from a comparison of the number of volumes and columns of the two editions Whereas the first Digest comprised five volumes including the Table of Cases, the present one is made up of five volumes of the Digest alone and has a separate volume for the Table of Cases In the former publication Volume I contained the letters A—D and consisted of 1,562 columns, the present Volume I contains A—C only, and runs into 2,054 columns In order to keep down the size of the volumes, the Author has been obliged in several places to omit lists of cases from cross references, thereby avoiding repetition, without, however impairing the value of the work The scheme and arrangement of the Digest remains the same but Act XXVI of 1867, which was put under the Stamp Acts, has been transposed to Court Fees, and Bombay Act I of 1865 now appears under the heading "Bombay Survey and Settlement Act I of 1865" Many separate minor headings have been brought under more general headings, and several sub headings have been somewhat verbally altered The vernacular terms and expressions which are scattered throughout the Reports are now printed in roman letters instead of italics, and some uniformity in their spelling has been observed

CALCUTTA,
15th July 1901

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2 ——— Diluvion—*Act X of 1859 s 18 (Bengal Act VIII of 1869 s 19)—Deduction in suit for arrears of rent*—Rent of a talukh may be abated if a portion of the talukh be washed away Independently of s 18 Act X of 1859 a suit for abatement of rent will lie by a talukhdar on the ground that part of the talukh has been washed away A deduction may be made on such ground in a suit for arrears of rent AFFECK-DODEEN v SHOROOSHEE BALA DABEE Marsh., 564
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7 ———————— *Waiver of right to deduction*—In a suit for arrears of rent of land adjacent to a river where defendant claims deduction on a count of diluvion and it is found that the agreement under which he holds requires t easure ent to be mad once in three years no account bei g taken of accretion or decretion occurring within that period if the tenant has waived his right of n easurement and has hel over it must be presumed that he elects to continue to hold at the same jun ma as before and his claim to deduction c nnot be llowed KRISTO KINKUR I UDAMANICK v RAMDHUN CHETTANGIA
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9 ———————— *Transferee of tenant Right of to abatement*—A tenant has a right to and can claim an abatement of rent where the area of the land *the subje t of his* tenure has been dim n shed by diluvion and such right passes to a purchaser on a *sale of the tenure* *Prosunno Moyee Dossee* v *Doja Moyee Dossee* 2 W R 275 distinguished KALI PRASANNA RAI v DHANANJAI GHOSE I. L. R 11 Calc 625

10 ———————— *Bengal Act VIII of 1869 s 18*—A raiyat cannot sue for abatement of rent simply because the lands which he holds ar rated higl r than those of the same descripti n and with similar advantages held by raiyats of the same class in the vicinity Bengal Act VIII cf 1869 s 18, ref rs to an alteration of area owing to a porti n of the lar l having gone away by diluvion or otherwise—not to some differ ence in the len th of the measuring p le in use at different periods BARUN MUNDLE v SHIB KOOMAREE BURMONEE 21 W R., 401
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16 ——————— Misrepresentation as to quantity of land.—In a suit by a patnidar to recover rent in accordance with the terms of a dar patni lease the defendant claimed an abatement of his patni rent on the ground that his predecessor had obtained such abatement in a previous rent suit in which it appeared that the lessor's share was slightly less than what was described in the lease *Held* that unless the defendant could show that he had been damaged by the plaintiff's misrepresentation as to the extent of his share he could not be relieved from his contract in this form of suit at least GOUR MOHUN ROY v RADHA KOMUN SINGH 21 W R 372

17 ——————— *Delay in suing* —In 1859 G entered into negotiations with respect to the purchase of a certain talukh at a premium of R42 411 and an annual rent of R480 0 and in January 1860 he signed a sale bond which contained an enumeration of the mouzahs purchased the actual sale being completed on the 2nd June following Until his death in December 1861 he paid the stipulated rent according to the terms of the deed. Subsequently his widow brought a suit for abatement of the rent on the ground that her husband had been misled as to the amount of rent payable by the under tenants *Held* (affirming the decision of the High Court of Calcutta) that under the circumstances the suit could not be maintained. DABIMBYA DEBBYA v NILMONEY SINGH DEO 5 C L R 465

18 ——————— *Act X of 1859 ss 18 and 23 cl 3* —S 18 Act X of 1859 is not applicable to a case in which a plaintiff patnidar sues for an abatement of rent on the ground of fraud caused by the concealment from him of the existence of an intermediate tenure created by the zemindar Cl 3 s 23 of that Act is wide enough to admit of such a suit being tried by the Revenue Courts SHOKOOR ALI v UMOLA AHALYA [8 W R 504

19 ——————— *Denial of right to assess lands in tenure* —A suit in which the plaintiff alleges that rent was wrongly assessed on him for lands not covered by his pottah and contends that in assessing his rent these lands should be included is not in the nature of a suit for abatement of rent ODHOY GOBIND CHOWDHRY v KENNY 8 W R, 518

20 ——————— Breach of Contract—*Jurisdiction of Civil Court* —In a suit for damages by a lessee where the plaint shows a distinct prayer for abatement of rent and also sets forth as the main ground of the suit a fraudulent breach of contract by misrepresentation and refusal of deduction and refund stipulated for so much of the claim as refers to abatement is by cl 3 s 23 Act X of 1859 beyond the jurisdiction of the Civil Court but the rest of the suit is properly cognizable by such Court NILMONY SINGH v ISSUR CHUNDER GHOSAL 9 W R 92

21 ——————— Reduction of rent payable by landlord to Government—*Act X of 1859 ss 17 and 18* —Ss 17 and 18 were passed for the benefit of the raiyat and not for the protection of the zemindar S 18 was intended to give the raiyat a right to abatement in certain cases but not to protect the zemindar from liability to make abatement in any other case In a suit for abatement of rent on the ground that the jumma payable to Government had been reduced upon condition that the rents of the raiyats should be reduced in a like proportion —*Held* that the right to abatement applies only to the case of rents of which the amount had been fixed before the jumma was reduced by Government and not to rents fixed by pottahs or kabuliats entered into subsequently SUKHAWATOOLLAH v PUTHOO GOLDAR 1 Ind. Jur O S 7

22 ——————— Loss of portion of land—*Suit for declaration of liability to pay less rent—Equitable relief*—A suit by a tenant against his original lessors for a declaration that he is not liable to pay them the whole rent payable under his pottah in consequence of a third person having subsequently to the grant of such pottah by suit established a right to a share of the rent is not a suit for abatement of rent But where under such circumstances, the tenant is holding more land than is covered by his pottah it is not necessary that his landlords if desirous of enhancing the rent should be referred to a separate suit for that purpose The suit of the tenant being for equitable relief the claim of the landlords must be taken into consideration in determining what relief the plaintiff is

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23. ——— Land taken for public purposes—*Suit to recover share of money taken as compensation for land*.—In a suit to recover the proportion of money paid into Court as compensation for land taken for a railway to which the plaintiff, a dar-patnidar, may be entitled and in which suit the zemindar and patnidar are defendants, the plaintiff cannot claim abatement of rent under Act X of 1859, s. 18, since such a claim is cognizable only in a suit instituted under that Act. GORDON STUART & CO. v. MOHATAB CHAND [Marsh. 490

24. ——— *Claim to deduction from rent*.—A claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year any right which he had to a deduction or abatement notwithstanding that he has paid full rent for several previous years. When land is taken away for railway purposes and compensation made which is divided between the zemindar and those holding under him, any deduction of rent claimed from the zemindar must be reckoned with reference not to the gross amount of compensation but to the proportion which passed into his hands. MOHATAB CHAND v. CHITTRO COOMAREE BIBEE 16 W. R., 201

25. ——— In a suit for rent by a zemindar against a patnidar, the latter claimed abatement of the rent on the ground that part of the land included in the patni tenure had been acquired by the Government for public purposes. The kabuliat executed by the patnidar contained a provision to the effect that if any of the land settled should be taken up by Government for public purposes, the zemindar and the patnidar should divide and take in equal shares the compensation money, and a further provision to the effect that the patnidar should make no objection *on the score of diluvion* or any other cause to pay the rent fixed or reserved by this kabuliat. *Held* that the patnidar was entitled to abatement of the rent. UMA SUNKUR SIRKAR v. TARINI CHUNDER

[I. L. R. 9 Calc. 571: 11 C. L. R. 366

26. ——— *Ijara Settlement*—*Deduction from Rent*.—An ijaradar took on lease certain lands, giving a kabuliat which contained the following clause:— In regard to the *aforesaid* rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim a reduction in the rent, nor will it *be open to* you to demand more on account of alluvion, etc. During the lease part of these lands were taken up by Government for the *purpose* of a railway, and compensation was paid to the lessor *therefor*. The ijaradar claimed to make a deduction from his *rent* for the land taken away from him. *Held that such* a claim did not come under the meaning of the word "abatement" as used in the rent law, nor was it intended by the parties to be within the clause of the lease, but the land having been taken from

ABATEMENT OF RENT—*continued*

the whole area demised, not by natural causes, but by *vis major*, the ijaradar was entitled to a deduction from the rent on his showing that there were tenants of his on the land who, before the land was taken by Government, paid rent to him which they had now ceased to pay. WATSON & CO. v. NISTARINI GUPTA I. L. R., 10 Calc. 544

27. ——— In a suit for arrears of rent a claim for abatement may be made by way of set-off in respect of land taken up by Government for the purposes of a road. DEEN DYAL LALL v. THUKROO KOONWAR 6 W. R., Act X, 24

28. ——— *Proceedings under Land Acquisition Act, 1870*—*Purchase at sale for arrears of rent*—*Beng. Reg. VIII of 1819*.—Portion of certain land held under a patni having been taken up by the Government for public purposes under the Land Acquisition Act, the zemindar declared his intention of granting no abatement of rent, and acting upon this declaration the patnidar was allowed to appropriate the whole of the compensation. The patni was subsequently sold under Regulation VIII of 1819, with notice of the amount of the original rent, and the purchaser now sued for abatement of that rent. He did not allege that he had no notice of the proceedings under the Land Acquisition Act. *Held* that the plaintiff must be presumed to have had notice of these proceedings, and that it was therefore incumbent upon him to have made inquiry regarding the position of the patni, and that under the circumstances he was not entitled to the abatement sought for. PEARI MOHUN MUKERJEE v. AUDHIRAJ AFTAB CHAND [10 C. L. R., 526

29. ——— Previous suit for abatement, effect of—*Onus probandi*.—There is no provision in the Rent Law prescribing that suits for enhancement or abatement shall not be brought within a certain period after the determination of a similar suit on the same grounds. And there is no provision throwing upon a plaintiff in a suit for abatement of rent the burden of proof that there has been some change in circumstances since a decision in a previous similar suit was passed. CHEDA v. NUNHOO BEG 2 N. W., 348

30. ——— Claim to abatement—*Otherwise vary the rent*.—The words *otherwise vary* in s. 153, Act X of 1859, are meant to include abatement claimable by the ryot, and this reservation is made in respect of questions of right to vary the rent, whether raised by the landlord or by the tenant. ANUND CHUNDER DEOGHUR v. NUBOCOOMAR CHATTERJEE [8 W. R. 192

31. ——— Right to sue—Patnidar.—A patnidar can sue for abatement of rent under the Rent Act 1859. PROSUNOMOYEE DOSSEE v. SOONDUR COOMAREE DEBIA 2 W. R., Act X, 30

MAN GUROBINDE DASSEA v. KHETTUR CHUNDER GHOSE 2 W. R., Act X, 47

ABATEMENT OF RENT—*continued*

32 ——————————— *Lessee—Act X of 1859 s 23*—A patnidar or any other lease-holder may bring a suit against the zemindar for abatement of rent under s. 23 Act X of 1859 PAMNARAYAN BANERJEE *v* JAYAKRISHNA MOOKERJEE B L R Sup Vol 70 HOROKISHEN BANERJEE *v* JOYKISHEN MOOKERJEE [1 W R., 290

33 ——————————— Howladar—A howladar has a right to sue for abatement of rent KOMLAKANT DOSS *v* POGOSE 2 W R., Act X, 65

34. ——————————— Tenant without right of occupancy—*Act X of 1859 s 18*—A tenant not having a right of occupancy is not entitled to an abatement of rent under Act X of 1859 s 18 NOBODEEP CHUNDER SIRCAR *v* LALLA SEED LOLL Marsh. 325

35 ——————————— Under tenants—*Act X of 1859 s 23 cl 2—Illegal exaction of rent*—Cl 2 s. 23 Act X of 1859 relating to the illegal exaction of rent was not limited to suits at the instance of the raiyat but applied to any under tenant. GOPAL PAUL CHOWDRY *v* GRISH CHUNDER PANDEY 14 W R., 269

36 ——————— Form of Suit—*Act X of 1859 s 23—Jurisdiction of Civil Court*—*A* obtained from *B* a patni lease whereby it was agreed that *A* should prepare a hustabad (rent roll) that if it should appear that there was any deficiency in the jumma stated in the pottah the correct jumma should be ascertained as therein provided and that the rent should be made up to *A* by *B* and *B* should return a proportionate amount of the consideration money *A* sued *B* for an abatement of rent for a refund of rent paid in excess and for a proportionate refund of the consideration money *Held* the suit was not a suit for abatement of rent within s 23 of Act X of 1859 and the Civil Court had jurisdiction to try the different questions together in the same suit NILMONI SINGH *v* ANNADAPRASAUD MOOKERJEA 1 B L R F B 93 [10 W R F B 41

37 ——————————— *Suit for apportionment of rent—Bengal Act VIII of 1869 s 19*—In 1877 certain batwara proceedings were terminated and the amount of land held by the plaintiff in the portion of the estate allotted to the defendant was ascertained. The rent payable was admitted to be at the rate of Rs 4 per bigha In 1881 the defendants sued the plaintiff for rent of a larger amount than the plaintiff admitted to be due and obtained a decree on the 31st May 1881 On the 20th September 1881 the plaintiff instituted a suit nominally under the provisions of s 19 of Bengal Act VIII of 1869 for abatement of rent upon the ground that the defendants were seeking to charge him rent upon a larger amount of land than he actually held. The Court found that the amount of land held by the plaintiff was the amount

ABATEMENT OF RENT—*concluded*

stated by him in his plaint and not that alleged by the defendants *Held* that the suit was rather one for the apportionment of rent after the batwara proceedings and not one for abatement of rent DURGA PERSHAD *v* GHOSITA GORIA [I L R, 11 Calc 284

38 ——————— Rate of deduction—*Jurisdiction of Revenue Court*—*A* granted a patni to *B* to which a certain mehal appertained. The Government to which the mehal belonged in reversion upon an ijara held by *A* sold it to *C* *Held* that *B* was entitled to abatement of rent from *A* and that a suit for abatement under the circumstances was cognizable by the Revenue Court *Semble*—Where there is no specification in the original contract of the amount of rent payable for the portion of land for which abatement is claimed such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased. BEIJANATH LAL CHOWDRY *v* HIRALAL LAL [1 B L R A C, 87 10 W R., 120

39 ——————— Procedure—*Suit for arrears of rent*—A claim by defendant for abatement of rent under remission granted to plaintiff by Government may be tried in a suit for arrears BOIKUNTO PARAKI *v* SURENDRONATH ROY 1 W R., 84

40 ——————————— *Plea of abatement in suit for arrears of rent*—In a suit to recover arrears of rent it is competent to a Court to adjudicate upon a plea of abatement. GOUR KISHORE CHUNDER *v* BONOMALEE CHOWDHRY [22 W R 117

41 ——————— Effect of decision of Civil Court on decree of Revenue Court—*Suit for excess payments of rent after decree for abatement*—A patnidar sued his zemindar and obtained a decree for abatement of the patni rent on the ground that the assets of the patni fell short of the amount stated in the lease While this suit was pending in the Civil Court the zemindar brought a suit for the rent of two years upon the full jumma and though the patnidar objected that his suit for abatement was pending the Collector decreed the rent suit in full In execution the zemindar recovered the full rent and the patnidar then sued for a refund of excess payments and of the interest realized by the zemindar thereon *Held* that the decree of the Revenue Court was superseded and modified by the decree of the Civil Court which was subsequently affirmed in appeal *Held* that the plaintiff's cause of action accrued on the date on which the zemindar recovered from him rent in excess of what he was justly liable for and also interest on such excess *Held* (on reference to the decree) that the abatement was to take effect from the commencement of the patni lease NILMONEY SINGH DEO *v* SHARODA PERSHAD MOOKERJEE 18 W R., 434

ABATEMENT OF SUIT

See APPEAL—ORDERS [I L R 18 Mad., 406 I L R 17 All. 172 286

See INSOLVENT ACT s 36 [6 B. L. R 119 10 Bom 58

See CASES UNDER RIGHT OF SUIT—SURVIVAL OF RIGHT

(1) SUITS

1. ———— Lands washed away—*Suit for possession and mesne profits*—A suit for possession with mesne profits does not abate by reason of the lands having since been washed away UNNA POORNA DEBIA v RAM LOCHAN GHOSE [5 W R., 227

2 ———— Death of sole plaintiff *Revivor—Civil Procedure Code (Act X of 1877) ss 363 365 366 371—Limitation Act (XV of 1877) sch ii arts 171 178*—Upon the death of a sole plaintiff if no application to revive is made within sixty days from the date of the plaintiff's death the suit abates But the Court may under s 371 of the Code of Civil Procedure revive the suit on the application of the legal representative of the plaintiff *within three* years from the time when the right to apply accrues if he can show that he was prevented by sufficient cause from continuing the suit BHOYRUB DASS JOHURRY v DOMAN THAKOOR [I L R., 5 Calc., 139 4 C L R 374

3 ———— *Civil Procedure Code (1859) s. 102 (1877) s 371—Institution of fresh suit*—Where a suit was declared abated in 1868 under s 102 of Act VIII of 1859 for non prosecution by the representative of deceased plaintiff—*Held* that the Civil Procedure Code s 371 was no bar to a fresh suit instituted in 1880 on the same cause of action PALLIKUNATH PAMEN MENON v MULLANKAJI SRI KUMARAN NAMBUDRI [I. L. R., 3 Mad. 31

4. ———— *Civil Procedure Code (1882) ss 365 366 371—Revival of suit*—The plaintiff died on the 28th August 1883 and in December 1884 letters of administration to his estate were granted to the Administrator General The defendant died in June 1884 leaving a widow and one son him surviving By his will he appointed two executors On the 3rd February 1885 the Administrator General took out a summons to revive the suit *Held* that notwithstanding the provisions of s 365 of the Civil Procedure Code (XIV of 1882) and of the Limitation Act (XV of 1877) it was competent for a Judge in chambers to revive the suit by making an order for abatement under s 366 of the Code coupled with an order under s 371 setting aside the order for abatement FULVAHU v GOCULDAS VALLABHDAS I L R 9 Bom. 275

5 ———— Insolvency of plaintiff—*Civil Procedure Code (1859) s 106 (1882) s 370*—*Order for security for costs by Official Assignee when made a party*—S 106 of the Civil Procedure Code means that a suit abates by the insolvency of the plaintiff but that the defendant shall not plead the abatement without giving the Official Assignee an opportunity of presenting the suit Where therefore the plaintiff after the institution of a suit became insolvent and the defendant thereupon obtained an order that the Official Assignee should give security for the costs of the defendant within fourteen days and should be made a party to the suit within one month and that in default of such security the suit should be set down for dismissal within eight days after the expiration of the time so limited. *Held* that such order was irregular *Held* also that the Official Assignee having notice of the order was not entitled to further notice of the setting down of the suit for dismissal he not having given the security required and that the giving of such security was a condition precedent to his being made a party to the suit. IBRAHIM BIN MAHASIN v ABDUR RAHIMAN BIN ALLI GAMBLE v ABDUR RAHIMAN BIN ALLI 12 Bom., 257

6 ———— *Civil Procedure Code (1859) s 106 (1882) s 370*—If an assignee who has been substituted for the plaintiff under s 106 Act VIII of 1859 declines to furnish security for costs within such reasonable time as the Court may order the defendant may within eight days after such neglect and refusal plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit HEERA LALL SEAL v CARAPIET [13 W R 431

7 ———— Survival of cause of action. —During the pendency of a suit by a Hindu widow to recover possession of her husband's estate the widow died *Held* the cause of action was one which from its very nature survived on the death of the plaintiff and therefore the suit did not abate LABBUTTY v HIGGINS 17 W R 475 LABBUTTY v BHIKUN 8 B L R Ap 98

8 ———— *Suit by son to set aside father's alienation of ancestral property—Death of son—Hindu mother*—Where a Hindu minor governed by the law of the Mitakshara on whose behalf a suit to set aside his father's alienation of ancestral property had been instituted died—*Held* that no right to sue survived in favour of his mother but the suit abated LADARATH SINGH v RAJA RAM I. L. R 4 All 235

9 ———— *Personal cause of action.*—*Held* that under the circumstances the suit which had arisen on account of some illegal act of the widow had abated on her death pending the suit and that the question as to the plaintiff's reversionary right which was raised by an intervenor must be decided in a separate suit. RAMJUN v LACHEE [1 Agra 49

10 ———— *Act VIII of 1859 s 100 (1882) s 362*—*A* and *B* as joint owners of

ABATEMENT OF SUIT—*continued*

(1) SUITS—*continued*

certain land, brought an action for damages on account of trespass. *B* died after action was brought *Held* that the cause of action survived to *A* *Semble*—The words "cause of action" in s 100 of Act VIII of 1859 mean right to bring an action. CHUNDERMOHUN DUTT *v* BISWAMBHUR LAHA [1 B L R O C 42

11. ———— In a suit to recover possession of timber the first defendant had ceased to have any interest and after the settlement of issues he died. *Held* that the cause of action against the other defendants survived and that the first defendant having no interest in the subject of the suit it was not necessary that the suit should be revived against his representatives. MOUNG KHINE *v* BURN [6 W R Civ Ref 2

12. ———— *Act X of 1859 s 20 (Beng Act VIII of 1869 s 21)*—A cause of action accruing against an agent for money received and accounts kept falling within the class mentioned in s. 20 Act X of 1859 survives the death of the agent. HILLS *v* SHOKHEE MONEE DOSSEE [10 W R., 59

13. ———— *Suit by original mortgagor against mortgagee and sub mortgagee—Death of mortgagee pending suit—Civil Procedure Code (1882) s 368*—Plaintiff sued to redeem a mortgage passed by his deceased father to defendant No 1 and joined defendant No 2 as being the sub mortgagee of defendant No 1 and in possession of the property. After suit defendant No 1 died, and no steps were taken by the plaintiff within time to make his legal representatives parties. The suit was however allowed to be continued against defendant No 2 and a redemption decree was passed in plaintiff's favour —*Held* on second appeal that defendant No 2 being the sub mortgagee and not the assignee of defendant No 1 on the death of the latter no cause of action survived to the plaintiff against defendant No 2 and the suit abated under s 368 of the Civil Procedure Code. PADGAYA *v* BAJI BABAJI MOHOLKAR [I L R 20 Bom 549

14. ———— *Interest of mother on partition—Civil Procedure Code (Act XIV of 1882) s 361 cl (c)*—Upon a partition *D* was allotted a one-third share of certain premises as a Hindu mother. A suit brought by her to restrain the defendant from encroaching upon her share was compromised by the defendant agreeing to purchase her share and the question of the value of her share was referred to arbitration. After the award of the arbitrators but before decree thereon *D* died leaving two sons. The sons obtained an *ex parte* order reviving the suit in their names. On an application by the defendant to set aside the *ex parte* order on the ground that the suit abated on the death of *D*—*Held* that the suit did not abate by the death of *D* and the right of action on the award survived to the sons. DENOMOYEE DASSEE *v* CHOONEY MONEY DASSEE 4 C W N 280

Affirmed on appeal in CHOONEY MONEY DASSEE *v* RAM KINKUR DUTT I. L R. 28 Calc 155 [5 C W N 242

ABATEMENT OF SUIT—*continued*

(1) SUITS—*concluded*

15. ———— *As against heir of a deceased wrong-doer—Civil Procedure Code s 361 Tort—Malicious prosecution Suit for—Act XII of 1855—"Actio personalis moritur cum persona" Applicat*[illegible]—The plaintiff sued to recover damages from the defendant as father *I* for wrongful arrest and malicious prosecution. During the pendency of the suit *I* died, and the plaintiff substituted the defendant as his heir and representative. The defendant contended that the suit abated. Both the lower Courts disallowed the defendant's contention and awarded damages to the plaintiff to be recovered from the estate of the deceased. On appeal by the defendant to the High Court,—*Held* reversing the decree of the lower Courts that the suit abated on the death of *I* his estate having derived no benefit but on the other hand suffered loss in consequence of the wrong doing. It was contended for the plaintiff that Act XII of 1855 gave the plaintiff a right to [illegible] his suit against the heir of *R*. *Held* that Act XII of 1855 did not apply to a suit such as this [illegible] originally against the wrong-doer himself [illegible] subsequently sought to be continued against [illegible] *Phillips v Homfray L R 24 Ch D* [illegible] HARIDAS RAMDAS *v* RAMDAS MATHURADAS [I. L R., 13 Bom [illegible]

(2) APPEALS

16. ———— Death of appellant [illegible] death of an appellant was held to be no [illegible] abatement or postponement of a case which [illegible] conducted by an agent of the deceased [illegible] and was not in any way prej[illegible] SINGH *v* DABEE PERSHAD [W R [illegible]

17. ———— [illegible] ing died and no application having been [illegible] fore the lapse of two months [illegible] behalf of the representatives [illegible] have abated. KHETTRONATH DUTT [illegible] DEY [illegible]

BHAGIAN *v* PALMER [illegible]

18. ———— [illegible] *Code ss 102 (1882 ss* [illegible] *s 561) and Act XXIII* [illegible] *1882 s 592)—Issue* [illegible] *ent*—Where the [illegible] High Court had [illegible] below an issue [illegible] respondent under [illegible] *Held* that the [illegible] with s 10[illegible] of Act XXIII [illegible] could not [illegible] that he might [illegible] tions to the [illegible] respondent [illegible] a decision [illegible] appeal [illegible]

[illegible]

ABATEMENT OF SUIT—*continued*

(2) APPEALS—*continued*

19 ——— Death of appellant during pendency of appeal—*Only one of three legal representatives brought upon the record—Civil Procedure Code (1882) s 365—Representative of deceased person.*—The words "the legal representative" in s 365 of the Code of Civil Procedure must where there are more than one legal representative be read in the plural Hence where a sole appellant died during the pendency of his appeal having three legal representatives and only one of such legal representatives was brought upon the record in the place of the deceased appellant within the prescribed period of limitation —*Held* that the appeal must abate Either all the legal representatives of the deceased appellant should have been brought upon the record as appellants or if any had refused to be joined as appellants they should have been brought on as respondents GHAMANDI LAL *v* AMIR BEGAM

[I L R 16 All, 211

20 ——— *Appeal—Civil Procedure Code 1882 s 366—Application by legal representative to carry on appeal*—The appellant's father having died during the pendency of an appeal lodged by him a notice was served upon the appellant's two adult brothers but they having failed to apply within sixty days the appellant who was a minor applied several months afterwards to be put on the record in his deceased father's place as his legal representative which was done The Assistant Judge who heard the appeal was of opinion that in consequence of the omission on the part of the brothers of the appellant to apply the appeal abated and he passed an order accordingly *Held* that the application having been made by the minor son within the time limited by law the order of abatement made by the Judge was wrong Although the complete legal representation vested in the minor son and his two brothers s 366 of the Civil Procedure Code only required an application to be made by a person claiming to be the legal representative in order to prevent an order of abatement being made If neither of the brothers was willing to have his name placed on the record the respondent was entitled to have them made defendants so that they might be bound by the decree The minor son could then proceed alone with the appeal BHIKAJI RAMCHANDRA *v* PURSHOTAM I L R 10 Bom 220

21 ——— *Civil Procedure Code (1882) ss 365 366—Application by representatives to be brought on record—Legal representative —Effect of application being made by some only of several legal representatives*—During the pendency of an appeal two persons applied under s 365 of the Code of Civil Procedure to be brought on the record as legal representatives of the appellant who had died In their petition they stated that there were two other persons having interests equal to their own in the representation, who did not join in the application and were not made parties by the applicants for reasons that were given The applicants were duly placed on the record as representatives of the deceased appellant within the time limited by art 175A of sch II of the Limitation Act After the period of limitation had elapsed the respondents applied under ss 366 and 582 of the Code of Civil Procedure for an order that the appeal had abated on the ground that the former petitioners had not added all the persons who had interests equal to their own in the representation The Subordinate Judge held that the representation of the two applicants was sufficient to prevent the abatement of the appeal but he made the other two representatives respondents on the record. He subsequently heard and allowed the appeal On its being contended on second appeal that the appeal to the Subordinate Court had abated and should have been dismissed by reason of the non-joinder of the other two representatives —*Held* that though in art 175A of sch II of the Limitation Act the application is expressed to be an application under s 365 of the Code of Civil Procedure and s 366 is not mentioned yet for the purpose of considering the question of abatement the two sections must be read together When there are more than one legal representative of a deceased appellant all those representatives must so far as it is possible for this to be done join in an application under s 365 and the words "legal representative" in s 365 of the Code of Civil Procedure (and similarly the words "any person" and "the legal representative" in s 366) strictly construed must in such a case be read in the plural and as including all the legal representatives But where all the representatives cannot be joined as applicants ss 365 and 366 should not be construed so as to have the effect of rendering the application no application by "the legal representative" within the meaning of the sections so that the appeal must be held to have abated *Bhikaji Ramchandra v Purshotam I L R 10 Bom 220* and *Ghamandi Lal v Amir Begam I L R 16 All 211*, considered MUSALA REDDI *v* RAMAYYA I L R., 23 Mad., 125

22 ——— *Claim to guardianship based on a will* —One K applied to be the guardian of the person and property of her minor son Her application was opposed by G the grandmother of the minor who alleged that she had been appointed guardian by the will of the minor's father The Judge found the will not proved and he appointed K to be guardian G appealed and pending the appeal she died G's brother one M thereupon applied for leave to prosecute the appeal as G's representative *Held* refusing the application that the appeal must abate by reason of G's death Her appointment alleged to have been made under the will was a matter of personal preference and trust A claim based on personal trust could not survive to her representative GANGABAI *v* KHASHABAI

[I L R, 23 Bom, 719

ABATEMENT OF SUIT—*continued*

(2) APPEALS—*continued*

23 ———— **Death of one of two joint decree-holders**—*Appeal by decree holders—Civil Procedure Code 1882 s 231*—A suit was instituted against two joint decree-holders under s. 283 of the Code of Civil Procedure for a declaration that certain property which had been attached by them belonged to the plaintiffs and was not liable to be taken in execution of the decree The suit was dismissed by the Court of first instance but decreed by the Lower Appellate Court The decree-holders appealed, but during the pendency of the appeal one of them died and no steps were taken to bring his representatives on the record within the prescribed period. *Held* that the appeal abated. *Ghamandi Lal* v *Amir Begam I L R 16 All 211* referred to KAMLAPAT v BALDEO [I L R 22 All. 222

24. ———— **Death of principal pending appeal**—*Principal and agent*—The plea of abatement on account of the death of the principal pending the suit in appeal before the Lower Appellate Court was disallowed it being shown from the circumstances of the case that appellant though an agent intended himself to be the plaintiff Had he acted as an agent the whole authority was determined on the death of the principal and the appeal must have abated until resumed by substituting the heir of the deceased principal as a party to the suit THORNHILL v TAYLOR 1 Agra 215

25 ———— **Death of respondent**—*Civil Procedure Code 1882 ss 368 582 591—Order or decree—Order as to abatement of appeal embodied in the judgment and decree—Rules of the Court rule 9*—Where one of four respondents (plaintiffs) in the Lower Appellate Court died and no application was made within six months to put the legal representative on the record and in the application that eventually was made the wrong person was named as legal representative—*Held* the appeal was one where the right to appeal did not survive against the surviving respondents but against them and the representatives of the respondent who had died. Under the circumstances s 368 read with s 582 of the Code applied and the proper order was to have directed the suit to abate *Held* further that where the order of the lower Court as to abatement was embodied in the judgment and decree objection was properly taken thereto by way of second appeal against the decree *Sheo Nath Singh* v *Ram Din Singh I L R 18 All 19 Sher Singh* v *Diwan Singh I L R 22 All 366 Dhari Upadhia* v *Raushan Chaudhri Weekly Notes All 1899 p 136 Sant Lal* v *Sri Kishen I L R 14 All 221* and *Chandarsang* v *Khimabhai I L R 22 Bom 718* referred to HEM KUNWAR v AMBA PRASAD [I L R., 22 All 430

26 ———— *Civil Procedure Code 1882 ss 368 371—Change of procedure pending suit*—An appeal having been declared to have abated on the 12th December 1881 under s 368 of the Code of Civil Procedure 1877 because the appellant had not applied within sixty days of the date of the death of the respondent to bring in his representative an application was made in January 1882 to set aside the order and was heard after the Code of Civil Procedure 1882 came into force—*Held* that the application must be disposed of under the Code of Procedure as it stood at the date of the application and therefore that it was not open to the appellant to satisfy the Court that he had sufficient cause for not making the application within the prescribed period S 371 of the Code of Civil Procedure does not apply to the case in which a defendant or respondent dies SUBI BHATTA v SITA RAMA BHATTA I. L. R 7 Mad. 195

27 ———— *Civil Procedure Code ss 365 582—Substitution of second applicant as respondent*—A respondent having died a conditional order was on the application of the appellant made substituting the name of his alleged representative on the record That order was cancelled upon the application of another person who satisfied the Court that he and not the person whose name had been conditionally substituted was the real representative and who asked to have his name put on the record—*Held* that the Court had no power to substitute the name of the second applicant upon the record and no further application having been made by the appellant to complete the record the appeal was ordered to abate SADHU SARUN SINGH v DWARKA SINGH 12 C L. R., 45

28 ———— *No application for substitution of deceased's representative—Civil Procedure Code ss 368 582—Act XV of 1877 (Limitation Act) sch II art 171B*—*Held* by the Full Bench (MAHMOOD J dissenting) that s 582 of the Civil Procedure Code does not make the provisions of chapter XXI relating to the death of a defendant in a suit applicable to the death of a plaintiff respondent in an appeal so as to render it obligatory on the defendant appellant to make an application to the Court praying that the legal representatives of the deceased be made parties to the appeal and that where there has been no such application the appeal does not abate *Per* PETHERAM *C J*—The words so far as may be in the second clause of the first paragraph of s 582 must be construed as meaning so far as may be necessary to carry into effect the remedies contemplated by chapter XXI *Per* MAHMOOD *J contra* that the object of s 582 of the Civil Procedure Code is to obviate the necessity of repeating the provisions of chapter XXI so as to make them applicable to appeals and the words appellant and respondent as used in the section include both plaintiffs and defendants in an appeal that the whole Code maintains the analogy between the position of a respondent and that of a defendant for the purposes of being impleaded and brought before the Court that chapter XXI applies to cases where a plaintiff respondent has died and that in such a case and where no application has been made within the period prescribed therefor,

ABATEMENT OF SUIT—*continued*

(2) APPEALS—*continued*

praying that the legal representatives of the deceased be made parties in his place the appeal abates Also per MAHMOOD J—The word defendant as used in art 171B of the Limitation Act (XV of 1877) must be taken to include a respondent whether plaintiff or defendant in the suit *Lakshmibai v Balkrishna I L R 4 Bom 654 Rajmonee Dibee v Chunder Kant Sandel I L R 8 Calc 410* and *Bai Javer v Hathising Kersing I L R 9 Bom 56* referred to NARAIN DAS v LAJJA RAM I L R 7 All 693

29 ——— *Application for declaration of insolvency—Appeal from order rejecting application—Death of decree holder respondent—No application by appellant for substitution of deceased s representative—Act XV of 1877 (Limitation Act) s h II art 171B—Civil Procedure Code ss 344—348 350 351 368 583 582 590*—The decree holder respondent in an appeal from an order refusing an application by the judgment debtor for declaration of insolvency under s 344 of the Civil Procedure Code died and the judgment debtor appellant took no steps to have the legal representative of the deceased substituted as respondent in his place—*Held* that art 171B sch II of the Limitation Act applied to the case and that as no one had been brought on the record to represent the deceased respondent within the period prescribed the appeal must abate—*Per* MAHMOOD J that whatever the position of the parties might have been in the regular suit in the insolvency proceedings the judgment debtor occupied a position analogous to that of a plaintiff and the decree holder occupied the position of a defendant *Narain Das v Lajja Ram I L R 7 All 693* distinguished RAMESHAR SINGH v BISHESHAR SINGH I L R 7 All 734

30 ——— *Suit to recover share of joint family property sold in execution of decree—Death of plaintiff respondent—Survival of right to sue*—In a suit for the recovery of a share of ancestral family property which had been sold in execution of a money decree for a debt contracted by the plaintiff s grandfather the plaintiff obtained a decree in the Lower Appellate Court from which the defendant appealed to the High Court While the appeal was pending the plaintiff died, and on her application his widow was made respondent in his place At the hearing of the appeal the appellant contended that upon the plaintiff s death the right to sue did not survive and the appeal should therefore be decreed by the suit being dismissed—*Held* by the Full Bench that judgment having been obtained before the plaintiff s death the benefit of the judgment or the right to sue would survive to his legal representative though whether the deceased plaintiff s representative could enforce the whole of the judgment in this case was a different matter *Phillips v Homfray L R 24 Ch D 439* and *Padarath Singh v Raja Ram I L R 4 All 235* referred to When a person desires to be added as such representative upon the death of a plaintiff after judgment he must satisfy the Court that he is the proper person to be so added MUHAMMAD HUSAIN v KHUSHALO I L R 9 All 131

ABATEMENT OF SUIT—*concluded*

(2) APPEALS—*concluded*

31 ——— *Civil Procedure Code ss 368 582—Death of plaintiff respondent—Application by defendants appellants for substitution—Application presented after the 1st July 1888—Civil Procedure Code Amendment Act (VII of 1888) ss 53 66—Limitation Act (XV of 1877) s h II art 175C*—The plaintiff respondent in an appeal pending before the High Court died on the 14th September 1885 Subsequently D applied to the High Court to be brought on the record as legal representative of the deceased On the 15th April 1886 he was referred to a regular suit to establish his title as such representative and on the 25th February 1887 such suit was dismissed On the 8th February 1886 the defendants appellants applied to the High Court for judgment but the application was dismissed under the decision of the Full Bench in *Chajmal Das v Jaglamba Prasad I L R 10 All 260* On 24th July 1888 they applied to the High Court to bring certain persons upon the record as the legal representatives of the deceased plaintiff respondent *Held* that the application having been made subsequent to the 1st July 1888 when the Civil Procedure Code Amendment Act (VII of 1888) came into force and being an entirely fresh application not in continuation of any former proceedings between the same parties must be dealt with under that Act and not under the Civil Procedure Code as it stood before the amendment and that as it was made more than six months after the death of the deceased plaintiff respondent the appeal abated with reference to s 368 of the Code and art 175C of the Limitation Act *Held* also that the petitioners had not shown sufficient cause within the meaning of s. 368 of the Code for not making the application within the prescribed period *Ram Jiwan Mal v Chand Mal I L R 10 All 587* referred to CHAJMAL DAS v JAGDAMBA PRASAD I L R 11 All 408

32 ——— *Defendant*—The word defendant in art 171B of the Limitation Act 1877 does not include a respondent UDIT NARAIN SINGH v HAROGOURI PROSAD [I L R 12 Calc, 590

ABETMENT

See JURISDICTION OF CRIMINAL COURTS—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT

1. ——— **Omission to give information of offence**—*Penal Code s 107*—An omission to give information that a crime has been committed does not under s 107 of the Penal Code amount to abetment unless such omission involves a breach of a legal obligation A private individual is not bound by any law to give information of any offence which he has seen committed QUEEN v KHADIM SHEIK 4 B L R A Cr, 7

ABETMENT—*continued*

2. ——————— *Penal Code s 107* — *Illegal omission* —To prove abetment under s. 107 Penal Code by illegal omission it would be necessary to show that the accused intentionally aided the commission of the offence by his non interference NOURUL HOSSAIN *alias* WAHEED JAN v FABRE TONNERRE 24 W R Cr 26

3. ——————— *Penal Code (Act XLV of 1860) ss. 107 143—Wilful absence—Abetment of the offence of being members of an unlawful assembly—Sympathy with unlawful object—Instigation* —The Court below being of opinion that persons of influence being aware of the objects of the members of an unlawful assembly and deliberately absenting themselves from the locality where such assembly was formed shewed such sympathy as amounted to instigation *Held* that such conduct did not amount to instigation within the meaning of s. 107 Penal Code or abetment of an offence under s. 143 KERIM ALI MAJUMDAR v EMPRESS [4 C W N 600

4. ——————— *Penal Code (Act XLV of 1860) s 107—Instigation by means of letter—Place where offence may be tried—Jurisdiction of Criminal Court* —Where one person instigates another to the commission of an offence by means of a letter sent through the post the offence of abetment by instigation is completed so soon as the contents of such letter become known to the addressee and such offence is triable at the place where such letter is received. QUEEN EMPRESS v SHEO DIAL MAL [I L R 16 All 380

5 ——————— *Bombay Police Act (Bombay Act IV of 1890) ss 51 and 52—Duty of a Police-officer to shelter a person in custody—Penal Code (Act XLV of 1860) s 330 Using violence for the purpose of extorting a confession—Abetment of causing hurt—Illegal omission to act—Maxim Respondeat superior* —A policeman who stands by acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession is guilty of abetment of an offence under s 330 of the Penal Code Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior The maxim *respondeat superior* has no application in such a case Under the Bombay Police Act (Bombay Act IV of 1890) every Police-officer is bound to shelter a person in custody and to arrest persons committing assaults likely to cause grievous bodily injury If he omits to perform this duty he is guilty of abetment When the law imposes a duty to act on a person his illegal omission to act renders him liable to punishment QUEEN EMPRESS v LATIFKHAN I. L. R 20 Bom 394

6 ——————— Non commission of offence abetted.—It is not necessary to constitute the offence of abetment that the act abetted should be committed. IN THE MATTER OF DINO NATH BUROOA [18 W R Cr., 32

7 ——————— *Abetment of abetment of offence—Penal Code s 108 Exp 2 and 4* —It is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed EMPRESS v TROYLUCKHO NATH CHOWDHRY I L R 4 Calc 366 [3 C L R 525

8 ——————— *Acquittal of principal—Conviction of abettor*—The offence of abetment under the Indian Penal Code is a substantive offence The conviction of an abettor is therefore in no way dependent on the conviction of the principal REG v MARUTI DADA I L R 1 Bom. 15

9 ——————— *Penal Code s 109* —S 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment QUEEN v RAJCOOMAR BANERJEE [1 Ind. Jur O S 105

10 ——————— Supplying food to person about to commit a crime—*Facilitating commission of crime* —The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime the supplying of food would be in order to facilitate the commission of the crime and might facilitate it EMPRESS v LINGAM PAMANNA I L R 2 Mad 137

11. ——————— Penal Code s 114.—According to s 114 of the Penal Code if the nature of the act constitutes abetment the abettor if present is to be deemed to have committed the offence though in point of fact another actually committed it ANONYMOUS 4 Mad. Ap 37

12 ——————— In order to bring a prisoner within s 114 of the Penal Code it is necessary first to make out the circumstances which constitute abetment so that if absent he would have been liable to be punished as an abettor and then to show that he was also present when the offence was committed. QUEEN v NIRUNI [7 W R., Cr 49

13 ——————— When a person abets the commission of an offence and is present at the time when it is committed he should be tried under s 114 of the Penal Code for the same offence as the principal REG v CHIMA [8 Bom, Cr, 164

14. ——————— *Presence of person at commission of offence Proof necessary to abetment* —The mere presence as an abettor of any person would not under the terms of s 114 of the Penal Code render him liable for the offence committed *Empress* v *Chatradhari Ojha 2 Calc W N 49* explained In order to bring a person within s 114 of the Penal Code it is necessary first to make out the circumstances which constitute abetment so that if absent he would have been liable to be punished as an abettor and then to show that he was also present when the

ABETMENT—*continued*

offence was committed *Queen v Nirum 7 W R Cr 49* relied on ABHI MISSER v LACHMI NARAIN [I L R 27 Calc 566 4 C W N 546

15 ———— *Continuing abetment —Withdrawal before offence is committed —* If an abettor of a crime is on account of his offence at its commission to be charged under s 114 of the Penal Code as principal his abetment must continue down to the time of the commission of the offence If he distinctly withdraws at any moment before the final act is done the offence is not committed with his continuing abetment REG v AMBITA GOVINDA 10 Bom., 497

16 ———— Abetment by Instigation—*Intention of abettor* —The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is actually done by the person whom he abets QUEEN v IMAMDI BHOOYAH 21 W R Cr, 8

17 ———— Assault —Where of several persons constituting an unlawful assembly some only are armed with sticks and *A* one of them is not so armed but picks up a stick and uses it *B* (the master of *A*) who gives a general order to beat is guilty of abetting the assault made by *A* QUEEN v RASOO KOOLLAH 12 W R Cr 51

18 ———— Bigamy—*Illegal Marriage* —Mere consent of persons to be present at an illegal marriage or their presence in pursuance of such consent or the grant of accommodation in a house for the marriage does not necessarily constitute abetment of such marriage EMPRESS v UMI [I L R, 6 Bom. 126

QUEEN v KUDUM W R, 1864 Cr 13

19 ———— *Penal Code ss 109 494* —A Mahomedan guardian of a married female infant who while her husband is living causes a marriage ceremony to be gone through in her name with another man but without her taking any part in the transaction does not commit the offence of abetment under ss 109 and 494 of the Penal Code The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned IN THE MATTER OF THE EMPRESS v ABDOOL KUREEEM [I L R, 4 Calc 10 3 C L R 81

20 ———— Conspiracy—*Penal Code s 109 expl 5* —Under expl 5 s 108 Penal Code it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed QUEEN v GOBIND DOBEY 21 W R Cr 35

21. ———— Conspiracy what must be proved to establish—*Evidence Act (I of 1872), s 10—Hearsay evidence—Penal Code (Act XLV of 1860) ss 363 109* —A little child was kidnapped by persons some of whom were servants of *T* *N* was for many years *T*'s mistress *N* was fond of the child and she used to send for her The child was missed after a visit to her The child was found with the assistance of *T* *N* was thereupon charged with abetment of kidnapping but no charge was brought against *T* There was no evidence to shew that the persons who kidnapped the child acted under the orders of *N* or carried out any wish expressed by her *Held* that the evidence was insufficient to establish the charge of abetment or that, if there was any conspiracy the accused was a party to it; that s 10 of the Evidence Act could not be properly applied so as to convict *N* by the admission of evidence of what had been said done or written by others and that a conspiracy within the terms of s 10 of the Evidence Act contemplates more than the joint action of two or more persons to commit an offence NOGENDRABALA DEBEE v EMPRESS [4 C W N., 528

22. ———— Criminal breach of trust—*Penal Code (Act XLV of 1860) ss 408 114—Abetment of criminal breach of trust by servant —Want of knowledge of the commission of the breach of trust—Evidence of an accomplice* —To support a conviction for abetment of criminal breach of trust by a servant it must be proved that the transaction was a dishonest transaction; that the accused knew that in respect of such transaction the servant was acting dishonestly and was committing a breach of trust and that the accused abetted the servant in effecting it BALGOBIND SHAHA v EMPRESS 4 C W N., 309

23 ———— Execution of unstamped Document—*Receipt of unstamped Document* —The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of such an instrument EMPRESS v JANKI [I. L. R 7 Bom., 82

24. ———— *Penal Code s 107—Act I of 1879 (Stamp Act) s 61 —Abetment of making an unstamped receipt* —A debtor having paid a sum of money to his creditor accepted from the latter an unstamped receipt promising to affix a stamp thereto *Held* that this did not constitute abetment within the meaning of s. 107 of the Penal Code of the offence of making an unstamped receipt *Empress v Bahadur Singh Weekly Notes All 1885 p 30* distinguished *Empress v Janki I L R 7 Bom 82* and *Empress v Bhairon Weekly Notes All 1884 p 37* referred to QUEEN EMPRESS v MITTHU LAL I L R 8 All., 18

25 ———— Extortion—*Village Chowkidar—Penal Code (Act XLV of 1860) s 384* —The mere fact that the offence of extortion under s 384 of the Penal Code is committed in the presence of the village chowkidar without eliciting any disapproval on his part will not render him liable as an abettor of the offence IN THE MATTER OF THE PETITION OF GOPAL CHUNDER SIRDAR GOPAL CHUNDER SIRDAR v FOOLMONI BEWA

[I L R 8 Calc 728
11 C L R., 223

ABETMENT—*continued*

26. ——— False Charge—*Giving false evidence* —There being no abetment of an offence after it has been committed a person cannot be convicted of abetting the offence of instituting a false charge on evidence which shows only that he gave evidence in support of a charge found to be false IN THE MATTER OF JUGUT MOHINI DASSEE *v* MADHU SUDAN DATTA 10 C L R., 4

27 ——— *Giving evidence in support of false charge—Penal Code ss 109 and 211* —A person cannot be convicted of abetment of a false charge solely on the ground of his having given evidence in support of such charge QUEEN *v* LAM PANDA 9 B L R., Ap 16
QUEEN *v* PAUN PANDAH 18 W R Cr., 28

28 ——— False Evidence—*Intention* —In order to convict a person of abetting the commission of a crime it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of abetment of giving false evidence unless the person charged with abetment intended not only that the statement should be made but intended that the statement should be made falsely QUEEN *v* NIM CHAND MOOKERJEE [20 W R Cr 41

29 ——— *Asking witness to suppress evidence* —The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation —*Held* that this was abetment of giving false evidence in a stage of a judicial proceeding and was triable before a Court of Session only IN RE ANDY CHETTY 2 Mad. 438

30 ——— Grievous Hurt.—Where *A* ordered *B* and *C* to seize and forcibly take *D* in the contemplation of an assault upon *D* and *D* was so beaten and tortured as to have died in consequence —*Held* that *A* was guilty at least of abetting the commission of voluntarily causing grievous hurt QUEEN *v* DOORGESSUR SURMAH 7 W R Cr 97

31. ——— Where *A* gave a dao to *B* who had given out his intention to coerce the party against whom he was acting and who inflicted grievous hurt on such party with the dao *A* was guilty of abetment within the 2nd head of cl 3 of s 107 Penal Code QUEEN *v* ESHAN MEAH 12 W R Cr 52

32 ——— Murder—*Proof of offence* —There can be no conviction for abetment of murder without proof of murder QUEEN *v* ASKUR [W R., 1864 Cr., 12

33 ——— *Murder by impossible means* —*Quære* —Whether abetment to murder by sorcery or other impossible means is an offence under the Penal Code REG *v* PESTANJI DINSHA 10 Bom. 75

34. ——— *Penal Code s 111—Knowledge of abettor—Probable consequences of abetment* —*M* and *C* were proved to have connived at a robbery in which excessive violence was used resulting in the death of the persons robbed. The Sessions Judge convicted *M* and *C* of abetment of murder on the ground that the death was a probable consequence of the intention known and abetted by them *Held* that the test of guilt in charges of abetment must always be whether having regard to the immediate object of the instigation or conspiracy the act done by the principal is one which according to ordinary experience and common sense the abettor must have foreseen as probable; and that having regard both to the strictness of the tests which should be applied to the interpretation of a penal statute and specially of a section such as s 111 of the Penal Code and also to the necessary difficulty of questions as to the state of a man's mind at a particular moment it could not in the present case be said that because the accused knew of and connived at the intended robbery they must be presumed to have foreseen that such excessive violence as was used was probable QUEEN EMPRESS *v* MATHURA DAS I. L R 6 All 491

35 ——— *Penal Code ss 114 and 302—Constructive murder—Standing by and doing nothing to prevent murder* —Where the actual commission of the murder was by some other person and the accused were present standing near without doing anything and there was no evidence to shew that when the accused left the place they started from with the actual perpetrator of the deed they shared with him the common object of causing the death of the deceased or knew that his death was likely to be caused or that the number of assailants with a common object was five or more but it was proved that they were armed with lathis and did nothing to prevent the murder they cannot be convicted of constructive murder under s 302 read with s 149 Penal Code but they ought to be convicted of constructive murder under s 302 read with s 114 QUEEN EMPRESS *v* CHATRADHARI GOALA 2 C W N 49

36 ——— Suicide—*Assisting Leper in sacrificial act* —*Held* (PEARSON *J* dissenting) that where certain persons assisted a leper in the ceremonies connected with the performance by the leper of the sacrificial act, they were rightly found guilty of abetment of suicide GOVERNMENT *v* GOPAL SINGH 1 Agra Cr., 21

37 ——— *Assisting in Suttee* —Evidence that a woman prepared herself to commit suicide in the presence of the accused that they followed her to the pyre and stood by her her stepsons crying Ram Ram and one of the accused admitting that he told the woman to say Ram Ram and she would become suttee proves active connivance and unequivocal countenance of the suicide by the accused and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee QUEEN *v* MOHIT PANDEY [3 N W 316

38 ——— Theft—*Penal Code s 107 expl 1* —A person can be convicted of abetment of theft under the first explanation of s. 107 of the

ABETMENT—*concluded*

Penal Code nly if he either procure or attempts to procure the commission of the theft Mere subsequent knowledge of the offence is insufficient QUEEN v SHUMEERUDDEEN [2 W R, Cr., 40

39 ——— *Penal Code ss 107 cls 2 and 3 and 109* —A prisoner who consented to form one of a party who c mmitted theft and resiled from his agreement but was present at the commission of the theft does not come within cl 2 s 10 Penal Code and ought not to have been convicted of the theft but of the ab tment thereof under cl 3 s 107 and s 109 Penal Code read together QUEEN v BODHUN BOOSHUR [8 W R Cr 78

40 ——— The carrying off of certain buffal es bel nging to the complainant by order of the accused and the retention of them in the custody f the latter's servant were held to be an abetment of theft as defined in the Penal Code IN THE MATTER OF THE PETITION OF TARINEE PERSAD BANERJEE 18 W R Cr 8

41 ——— Torture—*Common object* —Where several prisoners were all concerned in a case of torture and were pr secuting a common object each was held guilty as a principal and not as an abettor of others QUEEN v TARINEE CHURN CHUTTOPADHYA 7 W R Cr 3

42 ——— *Penal Code s 107 expl 2—Keeping out of the way with knowledge that offence is to be committed* —Where a head constable who knew that certain persons were likely to be tortured for the purpose of extorting confess on purposely kept out of the way it was held that he was guilty f abetment under the words of s 107 of the Penal Code expl 2 QUEEN v K LI CHURN GANGOOLY 21 W R Cr 11

43 ——— Act XIV of 1866 (Post Office Act)—*Penal Code s 109* —Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act Under s 109 of the Penal Code the abetment must be of an offence punishable under that Act and not of an offence punishable under a d stinct and special law QUEEN v RAMLUGUN LALL 7 W R Cr 54

44 ——— Excise Act XXI of 1856 —The Excise Act of 1856 contained no provision for the punishment of abetment QUEEN v KULLIMOODEEN [7 W R Cr 53

ABKARI LAWS

See BENGAL EXCISE ACTS

See LORD S DAY ACT

[1 B L R A. Cr 17

See CASES UNDER BOMBAY ABKARI ACT

See CASES UNDER MADRAS ABKARI ACT

ABSCONDING OFFENDER

See PENAL CODE s 172

[5 W R Cr 71
7 N W., 302
I L R 4 Mad 393
9 W R Cr, 70

ABSCONDING OFFENDER—*continued*

1 ——— Evidence of Guilt —A prisoner s absconding is but a small item in evidence of his guilt QUEEN v SAROB I OY 5 W R Cr., 28

2 ——— Evidence of absconding is some evidence of guilt but where it is shewn that the accused may have run away to avoid the consequence of being charged with an offence different from that for which he was being tried no effect should be given to his running away RAKHAL NIKARI v QUEEN EMPRESS 2 C W N, 81

3 ——— Proclamation—*Forfeiture of property—Criminal Procedure Code (1861) s 183 (1872) s 171* —Before the passing of an order declaring the property of an accused person who cannot be found to be at the disposal of the Government there must be a proclamation under s 183 Code of Criminal Procedure specifying a time within which such person is required to appear But before a Magistrate can is ue such a proclamation he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant SHEODYAL SINGH v GIRBAN SINGH 6 W R., Cr., 73 79

4. ——— *Criminal Procedure Code (1861) ss 183 181 (1872) ss 171 172 —Issue of proclamation for appearance—Forfeiture of property* —In order to lay a sufficient foundation for the issue of a proclamation under s 183 Act XXV of 1861 and the accompanying order of attachment under s 184 the Magistrate must on some sufficient materials find judicially that the person a ain st whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding the service of the warrant of arrest previously issued against him *Semble —Per* INFAR *J* The period of th rty days which is prescribed in s 183 as the minimum period within which the person is to be required by the proclamation to appear runs from the date on which the publication in the mode prescribed by the same section should be effected not from the date of the issue of the proclamation The declaration of forfeiture directed to be made in s 184 was intended to be in furtherance of a matter of procedure and not simply as a mode of punishment for contempt of process; therefore where it is not made before the person affected by the proclamation has come in or has been brought in it ought not to be made at all IN THE MATTER OF THE PETITION OF RAMEE HAR SEIN 10 B L R Ap 14 [19 W R Cr 12

5 ——— *Procedure—Forfeiture of property* —Ss 183 and 184 of the Code of Criminal Procedure 1861 (proclamation and attachment of property of absconding parties) do not apply to offences punishable with imprisonment extending to six months only There is no rule which requires a Magistrate to satisfy himself that a party has absconded before issuing a proclamation but the party on suing to recover his property may prove by evidence that he had not absconded Before a Magistrate proceeds to declare attached property forfeited he should take evidence to prove compliance with

ABSCONDING OFFENDER—*continued*

the formalities laid down by law with regard to proclamation. QUEEN v MUDDUN MOHUN LODAH [3 W R., Cr 34

6 ———— *Criminal Procedure Code (1882) ss 87 88 89 and 537—Proclamation for person absconding—Attachment of his property—Irregularity in publication of proclamation*—An accused person for whose arrest a warrant had been issued and having absconded a proclamation was issued and affixed to the Court house on the 6th of November requiring him to appear on the 11th of December 1893 and his property was attached The proclamation was not published at the village where the accused resided until the 15th of November The accused surrendered on the 25th of June 1894, and applied for restoration of the property under the Criminal Procedure Code s. 89 and an order was made by which the restoration of his property was refused The accused preferred a petition to the High Court for the revision of that order —*Held* that there had been no legal proclamation under the Criminal Procedure Code s. 87 and that the order should be set aside and the attachment declared void. QUEEN EMPRESS v SUBBARAYAR [I L R., 19 Mad. 3

7 ———— **Proclamation effect of**—*Contempt—Application on behalf of accused person absconding*—An accused person against whom a proclamation has been issued must until he has surrendered be regarded as in contempt and the Court will not entertain any application on his behalf QUEEN v BISESSUR PERSHAD 2 N W 441 [Agra F B Ed. 1874 236

8 ———— *Striking off of case effect of on Contempt order for absconding*—An order striking off a case on account of the little prospect of bringing the guilty parties to trial cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice QUEEN v MADHOOSUDUN 7 W R Cr 40

9 ———— **Proclamation proof of**—*Criminal Procedure Code ss 87 88—Penal Code s 176—Presumption—Omnia præsumuntur rite esse acta* Where A was convicted under s 176 Penal Code of having intentionally omitted to inform the police of the presence of V a proclaimed offender at a certain village —*Held* it could not be presumed by the Court that V was a proclaimed offender because it was proved that his property had been attached under the provisions of s 88 of the Criminal Procedure Code 1882 *Held* the prosecutor was bound to prove the fact of proclamation IN THE MATTER OF THE PETITION OF PANDYA NAYAK [I L R, 7 Mad 436

10 ———— **Attachment of property**—*Criminal Procedure Code 1861 s 184 Forfeiture of property*—The words order the attachment of any moveable or immoveable property in s 184 of the Criminal Procedure Code are enabling and not restrictive and the Magistrate may attach both kinds of property But he must issue his warrant of attachment simultaneously with the proclamation if he resorts to attachment at all ANONYMOUS CASE 4 Mad Ap 48

11 ———— **Reason for absconding** *Forfeiture of property*—The forfeiture of the property of an absconding offender who appears within two years from the attachment of his property should not be carried into effect until after a regular inquiry into the causes of the offender's absence IN THE MATTER OF BISHONATH SIRCAR 3 W R Cr 63

12 ———— **Power to make order as to property**—*Penal Code s 174*—Where property of an absconding offender had been attached and declared to be at the disposal of Government under s 184 of the Criminal Procedure Code and the offender was subsequently convicted under s 174 of the Penal Code and such conviction was upheld on appeal —*Held* the High Court had no power to make any order with respect to such property IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL 9 B L R 342

GOVERNMENT OF BENGAL v SURWAR JAN [18 W R Cr 33

13 ———— **Power to try claim of third parties**—*Criminal Procedure Code 1861 ss 184 185*—A Magistrate has no power under ss 184 185 of the Criminal Procedure Code 1861 to investigate the claims of third persons to property which has been attached as that of absconding offenders QUEEN v CHUMROO ROY [7 W R Cr 35

IN RE CHUNDER BHOY SINGH 17 W R Cr 10

14 ———— **Power to try claims of third parties**—*Criminal Procedure Code 1882 ss 88 89—Proceedings of Magistrate—Judicial proceedings* – There is no provision of law requiring a Magistrate who has attached property under s 88 of the Criminal Procedure Code to investigate the claims of third persons to the ownership of such property *Queen v Chumroo Roy 7 W R Cr 35* followed The proceedings of a Magistrate under s 88 of the Criminal Procedure Code are therefore not judicial proceedings in the sense of s 4 (d) of that Code QUEEN EMPRESS v SHEODIHAL RAI I L R 6 All 487

15 ———— *Criminal Procedure Code (1882) s 88—Attachment of property as of an absconding person—Claim to property attached—Procedure—Right of suit—Revision*—When a claim is made to property attached under s 88 of the Code of Criminal Procedure the Magistrate should stay the sale to give the claimant time to establish his right If the Magistrate errs the remedy of the aggrieved party is by civil suit, and not by criminal revision petition. QUEEN EMPRESS v KANDAPPA GOUNDAN I L R 20 Mad. 88

16 ———— **Title given by Magistrate s sale**—*Sale in execution of decree—Sale by Magistrate—Code of Criminal Procedure*

ABSCONDING OFFENDER—*concluded*

(Act X of 1872) s 172—*A* having been accused of an offence under the Penal Code absconded and his property was on the 7th of August 1878 attached by the Magistrate under s 172 of the Code of Criminal Procedure Act X of 1872 While the property was so under attachment it was attached by *B* in execution of a money decree against *A* and sold on the 15th of January 1879 *B* being the purchaser On the 21st of April 1880 the Magistrate sold the property to *C* It did not appear whether the time fixed by the Magistrate s proclamation for *A* s appearance had expired at the date of the sale to *B* *Held* in a suit for possession by *B* against *C* that the title obtained by *C* under the Magistrate s sale was superior to the title (if any) obtained by *B* at the sale in execution of the money decree—*Semble* that after the date of the attachment by the Magistrate under s 172 of the Code of Criminal Procedure and during its continuance no title could be conferred by an attachment and sale subsequently made in execution of a money decree GOLAM ABED *v* TOOLSEERAM BERA I L R 9 Calc 861 [12 C L R., 411

17 ———— *Criminal Procedure Code 1882 ss 87 88 89—Proclamation and attachment—Sale of attached property—Title of purchaser*—Where property was attached and sold as property of a proclaimed offender under ss 87 and 88 of the Code of Criminal Procedure it was *held* that although the proclamation was irregular yet the property having vested in third parties, strangers to the proceedings in which the proclamation was made the sale could not be set aside ABDULLAH *v* JITU I L R, 22 All 216

ABSENCE FROM BRITISH INDIA.

See LIMITATION ACT 1877 s 7 [1 B L R S N 25

See CASES UNDER LIMITATION ACT 1877, s 13

ABUSE SUIT FOR DAMAGES FOR—

See CASES UNDER JURISDICTION OF CIVIL COURT—ABUSE DEFAMATION AND SLANDER SUITS FOR

See CASES UNDER SLANDER

ABWABS

See CASES UNDER CESS

ACCESSORY

———— *Accessory after the fact*—Under the Indian law no one is liable for being an accessory after the fact PAKHAL MIKASI *v* QUEEN EMPRESS 2 C W N 81

ACCIDENT LOSS BY—

See CASES UNDER CARRIERS

See CASES UNDER RAILWAY COMPANY

ACCOMMODATION ACCEPTOR

See BILL OF EXCHANGE [I L R., 3 Calc, 174

ACCOMMODATION DRAWER

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY

[7 B L R, 535
I L R., 4 Calc 132
I L R., 6 Calc., 241
I L R, 13 Mad. 172

ACCOMPLICE

See CASES UNDER APPROVER

See CHARGE TO JURY—MISDIRECTION

[6 W R Cr 17 44
6 Bom. Cr., 57
8 W R., 19
I L R., 12 Mad., 196
I L R., 17 Calc., 642

1. ———— **Corroboration necessity for**—*Setting aside conviction for error in law*—The uncorroborated testimony of one or more accomplice or accomplices is sufficient in law to support a conviction The evidence of accomplices should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require pointing out to them the danger of trusting to such evidence when it is not corroborated by other evidence The omission to do so is an error in law in the summing up by the Judge and is on appeal a ground for setting aside the conviction when the Appellate Court thinks that the prisoner has been prejudiced by such omission and that there has been a failure of justice The nature and extent of the corroboration requisite explained and illustrated QUEEN *v* ELAHI BAX

[B L R Sup Vol, 459
5 W R., Cr., 80

QUEEN *v* BAKANTHANATH BANERJEE [3 B L R F B 2 note

QUEEN *v* CHUTTERDHAREE SING [5 W R Cr 59

2 ———— *Evidence of accomplices*—Observations on the necessity of requiring corroboration in material particulars of the evidence of an accomplice *Queen Empress v Ram Saran I L R 8 All 306* referred to QUEEN EMPRESS *v* IMDAD KHAN I L R 8 All 120

3 ———— A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after a pardon was granted to him QUEEN *v* NUNHOO 9 W R., Cr 28

4. ———— The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused and the evidence of two or more accomplices requires confirmation equally with the testimony of one QUEEN *v* DWARKA 5 W R Cr 18 [1 Ind Jur N S., 100

ACCOMPLICE—*continued*

5 ——————— *Charge to assessors*—There is no rule of law that the uncorroborated evidence of an accomplice is sufficient for a conviction. The proper form of the charge to the assessors in such cases stated. ANONYMOUS
[4 Mad Ap 7

6 ——————— *Evidence Act (II of 1855) s 28*—A jury may convict upon the evidence of an accomplice though not corroborated so as to show the prisoner's actual participation in the offence S 28 Act II of 1855 applied only to the old Supreme Courts and the rules and practice prevailing in them and does not show that in the Courts of the mofussil corroborative evidence is legally requisite to support the testimony of an accomplice QUEEN v CODAI LAOUT
[5 W R Cr., 11

7 ——————— *English practice*—The English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice which is that when he speaks to two or more persons as having been concerned in the same offence his testimony should be confirmed not only as to the circumstances of the case but also as to the identity of the prisoners and that any prisoner as to whom his testimony is not supported should be acquitted. REG v IMAM VALAD BABAU
[3 Bom Cr 57

See REG v GANU BIN DHAROJI
[6 Bom. Cr 57

8 ——————— *Witness erroneously treated as accomplice*—Where the Magistrate erroneously treated a witness as an accomplice and granted him a conditional pardon,—*Held* that the evidence did not require corroboration REG v FATTECHAND VASTACHAND 5 Bom. Cr 85

9 ——————— *Evidence of accomplice*—The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source and previous statements made by the accomplice himself though consistent with the evidence given by him at the trial are insufficient for such corroboration The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others tainted evidence not being made better by being corroborated by other tainted evidence REG v MALAPA BIN KAPANA 11 Bom., 196

QUEEN v BAIJOO CHOWDHRY
[25 W R Cr, 43

10 ——————— *Evidence of accomplices*—It is an established rule of practice that an accomplice must be corroborated by independent evidence as to the identity of every person whom he impeaches *Reg v Malapa 11 Bom 196* and *Reg v Banku I L R 1 Bom 475* followed QUEEN EMPRESS v KRISHNABHAT
[I L R 10 Bom. 319

11. ——————— *Evidence Act 1872 s 114*—*Held* on a consideration of the Evidence Act 1872 s 114, that the Legislature intended to lay down as a maxim or rule of evidence that the testimony of an accomplice is unworthy of credit so far as it implicates an accused person unless it is corroborated in material particulars in respect to that person and it is the duty of a Court which has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not and in a case tried by jury to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony QUEEN v SADHU MUNDAL
[21 W R Cr 69

12 ——————— *Evidence Act 1872 ss 114 and 133*—S 133 of the Evidence Act (I of 1872) in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice and to hold that corroboration is necessary is to refuse to give effect to this provision The rule in s 114 of the Evidence Act coincides with the rule observed in England that though the evidence of an accomplice should be carefully scanned and received with caution and may be treated as unworthy of credit yet if the jury or the Court credits the evidence a conviction proceeding upon it is not illegal REG v RAMASAMI PADAYACHI I L R 1 Mad 394

QUEEN v KOA 19 W R Cr 48

13 ——————— *Evidence Act 1872 ss 114 and 133*—*Evidence unworthy of credit*—Although under s 133 of the Indian Evidence Act the conviction of a prisoner on the uncorroborated testimony of an accomplice is not illegal the Court having reference to illustration (*b*) s 114 of that Act considered in this case that the accomplice was unworthy of credit QUEEN v LUCHMEE PERSHAD 19 W R Cr 43

14 ——————— Although by s 133 Act I of 1872 an accomplice is a competent witness against an accused person and a conviction would not be illegal merely because it proceeded upon the uncorroborated testimony of an accomplice yet it would be unsafe where the testimony of the accomplice is not corroborated in any material point except by the confession of a fellow prisoner whose testimony likewise requires corroboration to convict the accused QUEEN v UDHAN BIND
[19 W R., Cr., 68

15 ——————— *Evidence Act 1872 s 133*—*Per* EDGE C J—Although as a general rule it would be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice such evidence must like that of any other witness be considered and weighed by the Judge who in doing so should not overlook the position in which the accomplice at the time of giving his evidence may stand and the motives which he may have for stating what is false If the Judge after making due allowance for these considerations and the probabilities of the story comes to the conclusion that the evidence of the accomplice although uncorroborated, is true and the evidence if

ACCOMPLICE—*continued*

believed establishes the guilt of the prisoner it is his duty to convict *Reg* v *Ramasami Padayachi* *I L R 1 Mad 394 Empress* v *Hardeo Dass Weekly Notes, All., 1884 p 256* and *Queen Empress* v *Ram Saran I L R 8 All 306* referred to *Queen Empress* v *Ram Saran I L R 8 All 306* explained and distinguished by STRAIGHT J *Per* BRODHURST J *contra* —Observations as to the necessity of corroboration in material particulars of the evidence of accomplice witnesses *Queen Empress* v *Ram Saran I L R 8 All 306* *Queen* v *Ramsaday Chuckerbutty 20 W R Cr 19* and *Reg* v *Budhu Nanku I L R 1 Bom 475* referred to *Per* EDGE C J and STRAIGHT J —Every case as it arises must be decided on its own facts and not on supposed analogies to other cases QUEEN EMPRESS v GOBARDHAN I L R., 9 All., 528

16 ——————— *Evidence of accomplices—Act I of 1872 ss 114 (b) 133* —The law in India, as expressed in s 133 and s 114 of the Evidence Act and which is in no respect different from the law of England on the subject is that a conviction based on the uncorroborated testimony of an accomplice is not illegal that is it is not unlawful but experience shows that it is unsafe and hence it is the practice of the Judges both in England and in India when sitting alone to guard their minds carefully against acting upon such evidence when uncorroborated and when trying a case with a jury to warn the jury that such a course is unsafe There must be some corroboration independent of the accomplice or of a co confessing prisoner to show that the party accused was actually engaged directly in the commission of the crime charged against him. A second accomplice does not improve the position of the first and if there are two it is necessary that both should be corroborated. The accomplice must be corroborated not only as to one but as to all of the persons affected by the evidence and corroboration of his evidence as to one prisoner does not entitle his evidence against another to be accepted without corroboration *R* v *Well 6 C & P 595* *R* v *Dyke 8 C & P 261* *R* v *Addis 6 C & P 388* and *R* v *Wilkes 7 C & P 272* referred to The possession of property taken from a murdered person is not adequate corroboration of the evidence of an accomplice charging such person in possession with participation in the murder though it would no doubt be corroboration of evidence that the prisoner participated in a robbery or that he had dishonestly received stolen property In the trial of R S and M upon a charge of murder the evidence for the prosecution consisted of (i) the confession of P who was jointly tried with them for the same offence (ii) the evidence of an accomplice (iii) the evidence of witnesses who deposed to the discovery in P s house of property belonging to the deceased and (iv) the evidence of witnesses who deposed that on the day when the deceased was last seen alive all

ACCOMPLICE—*continued*

statements of the accomplice or of the co-c[...] prisoner P QUEEN EMPRESS v RAM BARA[...] [I. L. R., 8 [...]

17 ——————— *Eviden[...] of 1872) s 133* —A Magistrate should n[...] a person upon the evidence of witnesses w[...] better than accomplices and whose evide[...] corroborated in material respects by other [...] ent evidence in the case JOGENDRA NAT[...] MIA v SANGAR GARO 2 C [...]

18 ——————— *Compu[...] excuse for crime—Pretence as evidence [...] intention—Fear of instant death—Penal [...] Act of 1860) ss 34 and 94—Evidence [...] 1872), s 133—Power of High Court in [...]* The accused who were classers employ[...] Revenue Survey Department were charge[...] 161 of the Penal Code with taking bribe[...] raiyats of certain villages The only evide[...] the accused was that of persons who had [...] scribed to the bribes or collected subscript[...] the money to the accused They stated [...] had offered the bribes because the [...] threatened to raise the assessment cut [...] hedges and erect new boundary marks [...] this evidence the trying Magistrate re[...] even if all the witnesses for the prose[...] treated as accomplices it was open to him [...] on their uncorroborated testimony as [...] inherent truth in their statements and c[...] existed which negatived the presumption [...] spiracy and evidenced signs of truthful[...] Magistrate was also of opinion that [...] distinction between accomplices who vo[...] assist in the receipt of illegal gratification [...] who assisted under compulsion In th[...] the Magistrate the witnesses in the [...] belonged to the latter class and there wa[...] to disbelieve their evidence He therefor[...] the accused under s 161 of the Pena[...] sentenced them to rigorous imprisonment [...] *Held* (SCOTT J dissenting) that the [...] were illegal there being no evidence to [...] the witnesses for the prosecution all o[...] accomplices *Held* also (SCOTT J diss[...] there was such error in the considera[...] Magistrate of the evidence as to p[...] accused and such a failure of justice as [...] Court in revision in setting aside the [...] *Per* CURIAM —The limits of the applic[...] doctrine of necessity as an excuse for an [...] criminal are those prescribed in s 94 [...] Code Therefore witnesses who in or[...] pecuniary injury or personal molestation [...] or given bribes to a public servant wer[...] the offence of taking an illegal gratificat[...] evidence should be treated as that of [...] By the law both of India and England [...] of an accomplice is admissible and a co[...] illegal because it proceeds upon the [...]

ACCOMPLICE—*continued*

in material particulars has become a rule of practice of almost universal application. *Per* SCOTT J—There may be however cases of an exceptional character in which the accomplice evidence alone convinces a Judge and if he acts on that conviction with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. *Per* JARDINE J—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s 34 of the Penal Code applicable *Reg* v *Farler 8 C & P., 106* Where the Magistrate on that ground did make that presumption against an accused person and applied the provisions of s 34 he committed an error in law and the High Court as a Court of Revision might acquit the accused QUEEN EMPRESS v MAGANLAL

[I L R, 14 Bom 115

19 ——————— The Court (MITTER and PONTIFEX JJ GLOVER J dissenting) refused to convict in this case on the uncorroborated evidence of an accomplice who had previously been convicted of the same offence on her own confession QUEEN v RAM JODOY CHUCKERBUTTY

[20 W R Cr 19

20 ——————— *Accused acquitted but under arrest pending appeal under s 272 Criminal Procedure Code*—K and B were accused of being concerned in the same offence K was first apprehended and the Magistrate inquired into the charge against him and committed him for trial but the Court of Session acquitted K The Local Government preferred an appeal against his acquittal and the Magistrate arrested him with a view to his detention in custody until such appeal was determined While K was so detained the Magistrate inquired into the charge against B who had meanwhile been arrested and made K a witness for the prosecution and committed B for trial K's evidence was taken on B's trial *Held per* STUART C J (SPANKIE J doubting) that K's arrest was lawful and that his evidence was admissible against B *Held per* SPANKIE J that assuming that the Magistrate looked on K as an accused person and his arrest was lawful the Magistrate should not have examined him as a witness against B and that assuming that K's arrest was unlawful and that when he made his statements he was a free man his evidence if admissible was not evidence on which a Court should place much reliance EMPRESS OF INDIA v KARIM BAKHSH I L R 2 All 386

21 ——————— *Person charged with offence and discharged for want of evidence*—There is no law or principle which prevents a person who has been suspected and charged with an offence but discharged by the Magistrate for want of evidence being afterwards admitted as a witness for the prosecution on the ground that he is an accomplice QUEEN v BEHARY LALL BOSE 7 W R Cr 44

22 ——————— *Person cognizant of crime taking no means to prevent it*—An accused person cannot be convicted solely upon the evidence of persons who are more or less participators in the crime of which he is accused Where a witness admits that he was cognizant of the crime as to which he testifies and took no means to prevent or disclose it his evidence must be considered as no better than that of an accomplice QUEEN v CHANDO CHANDALINEE 24 W R Cr 55

23 ——————— *Informer cognizant of offence—Omission to disclose commission of offence*—Where an informer was upon his own statement cognizant of the commission of an offence and omitted to disclose it for six days the Court was not prepared to say that he was an accomplice but held that his testimony was not such as to justify a conviction except where it was corroborated ISHAN CHANDRA CHANDRA v QUEEN EMPRESS I L R 21 Calc 328

24 ——————— *Witnesses who have acted as accomplices*—Where witnesses appeared to have taken an active part in carrying away a person after he had been grievously assaulted and was in a helpless condition and then leaving him in a field where he was subsequently found dead—*Held* that their evidence was no better than that of accomplices at any rate it would be most unsafe for the Court to rely upon their evidence unless corroborated in material respects in convicting the accused ALIMUDDIN v QUEEN EMPRESS

[I L R 23 Calc 361

25 ——————— *Spy—Distinction between a spy and an accomplice—Detective officer*—The action of a spy and informer in suggesting and initiating a criminal offence is itself an offence the act not being excused or justified by any exception in the Penal Code or by the doctrine which distinguishes the spy from the accomplice But the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice Distinction between a spy and an accomplice pointed out *Rex* v *Despard 28 State Trials 489 Reg* v *Mullins 3 Cox C C 526 Queen Empress* v *Mona Puna I L R 16 Bom 661* referred to and followed QUEEN EMPRESS v JAVECHARAM I L R 19 Bom 363

26 ——————— *Evidence Act (I of 1872) ss 114 and 133—Public Officer offer of bribe to—Corroboration*—A person who offers a bribe to a public officer is an accomplice *Per* BIRDWOOD J—A conviction is not illegal merely because it proceeds on the uncorroborated evidence of an accomplice Such evidence being admissible furnishes as legal a basis for a conviction as any other evidence which is admissible The omission to follow the established rule of practice as to the corroboration of such evidence does not constitute an error in law but where the evidence of an accomplice is not of a character to warrant the refusal of a Court to apply to it the maxim enunciated in illustration (b) of s 114 of the Evidence Act a conviction based on such evidence alone would

ACCOMPLICE—*continued*

be of questionable propriety *Per* JARDINE *J*—Ss 114 and 133 of the Evidence Act are to be read together and neither section is to be ignored in the exercise of judicial discretion The illustration (*b*) of s 114—'that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars —is however the rule and when it is departed from the Court should show or it should appear that the circumstances justify such departure Accordingly where a conviction was based solely on the evidence of accomplices and the circumstances connected with the preparation and conduct of the case as disclosed by the record and portions also of the evidence adduced at the trial showed that it would not be proper to act on that evidence the Court set aside the conviction QUEEN EMPRESS *v* CHAGAN DAYARAM **I L R., 14 Bom 331**

27 ——————— *Witness present on occasion of giving a bribe—Penal Code (Act XLV of 1860) ss 114 161—Illegal gratification* —*D* a Sub Inspector and *F* a Head Constable were charged under s 161 (giving a bribe) and s 161 read with s 114 (abetment of the offence of giving a bribe) of the Penal Code respectively and it was contended that these charges were not sustainable because they rested entirely on the testimony of persons alleged to have been accomplices who had not been corroborated in material particulars *Held* the mere presence of a person on the occasion of the giving of a bribe and his omission to promptly inform the authorities do not constitute him an accomplice unless it can be shown that he somehow co operated in the payment of the bribe or was instrumental in the negotiations for the payment *Queen* v *Chundo Chundalinee 24 W R Cr 5 Queen Empress* v *Maganlal I L R 14 Bom 115 Queen Empress* v *Chagan Dayaram I L R 14 Bom 331 Queen Empress* v *O Hara I L R 17 Calc 642 Ishan Chundra* v *Queen Empress I L R 21 Calc 328 Jogendra Nath Bhaumik* v *Sangap Garo 2 C W N 55 Rajoni Kant Bose* v *Asan Mullick 2 C W N 672* and *Alimuddin* v *Queen Empress I L R 23 Calc 361* distinguished QUEEN EMPRESS *v* DEODHAR SINGH **I L R 27 Calc 144**

28 ——————— *Evidence Act (I of 1872) s 133—Person accompanying another to witness payment of a bribe—Nature of accomplice evidence* —Where certain persons accompanied another who was entrusted with and carried the money intended to be given as a bribe to the head constable, with knowledge that it was to be so paid and in order to witness and assist in such payment —*Held* that they were accomplices. Accomplices are not like ordinary witnesses in respect of credibility but their evidence is tainted and should be carefully scrutinized before being accepted. When the only evidence of the payment of a bribe to the accused apart from hearsay statements which were not admissible consisted of the uncorroborated evidence of an accomplice which was further in itself improbable and to some extent inconsistent with the story of the other accomplices the High Court set aside the conviction RAJONI KANT BOSE *v* ASAN MULLICK **2 C W N., 672**

ACCOMPLICE—*concluded*

29 ——————— *Wrongful confinement—Extortion—Money lent in ordinary course of business to pay amount extorted—Lender—Penal Code (Act XLV of 1860) ss 213 342 and 384* —The accused a Sub-Inspector of Police arrested one *J* wrongfully confined him and extorted from him Rs 200 under a threat that he the accused would not release *J* unless the money were paid This money was paid on this account by *P* a money lender who lent *J* the money for this purpose Accused was convicted under ss 342 and 384 of the Penal Code In appeal the Sessions Judge held that *P* was not an accomplice and having considered his evidence accordingly dismissed the appeal *Held* that *P* paying such money under the circumstances could not be regarded as an accomplice of the Sub-Inspector in such misconduct AKHOY KUMAR CHUCKERBUTTY *v* JAGAT CHUNDER CHUCKERBUTTY
[I L R., 27 Calc., 925
4 C W N, 755

ACCOUNT

See COPYRIGHT **I L R 13 Bom 358**

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—ACCOUNT

See DECREE—FORM OF DECREE—ACCOUNT

See CASES UNDER MORTGAGE—ACCOUNTS

See ONUS OF PROOF—ACCOUNT

See PLEDGOR AND PLEDGEE.
[I L R 19 Calc., 322

See PRINCIPAL AND AGENT—DUTY OF AGENTS TO ACCOUNT

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—ACCOUNT
[Agra F B 47 Ed 1874 35
1 N W 28 Ed. 1873 26
15 W R., 24

——————— Right to an—
See CASES UNDER HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION

1 ——————— **Power of Court to order Account instead of referring party to separate suit** —In a suit by the heirs of a deceased Mahomedan to recover from his widow landed property of which she claims to be in possession as absolute owner under a mokurari deed alleged to have been executed in lieu of her dower where she wholly fails to prove execution of the deed it is competent to the Court instead of referring the plaintiffs to a separate suit to direct an account to be taken of the mesne profits received by the widow and of the amount due to her on account of dower with a view to the settlement of the claims of both parties ASLOO *v* UMDUTOONISSA UMDUTOONISSA *v* ASLOO **20 W R., 297**

ACCOUNT ADJUSTMENT OF—

See CASES UNDER LIMITATION ACT 1877 ART 64 (1859 s 1 CL 9)

See CASES UNDER PARTNERSHIP—SUITS RESPECTING PARTNERSHIP

1. ———— Contract to purchase land—*Necessity to sell land for arrears*—Where an estate was sold under a contract at 10½ years purchase of the net annual rent collections and various sums of money were left in deposit with the vendee to meet various charges which were expected to arise and the amount of these charges was regulated by the vendor's expectations and formed portions of the stipulations of which the contract was composed but the net annual collections eventually fell short of those expectations—*Held* that the agreement at the root of the contract *viz* that the property was taken at 10½ years purchase should govern the whole transaction and that the accounts between the parties should be adjusted accordingly In a suit to have an account taken of what was payable and had been paid by either of the two parties in pursuance of the contract and to have a decree for any balance found to be due to either—the contract distinctly providing for an adjustment after the net annual collection and containing a stipulation that any injury accruing to the interests of one party by any laches in the payment of rent by the other should form a ground for compensation—*Held* that it was not necessary that the land should be sold up for arrears in default of payment before the account could be adjusted and that even a decree taken out by the zemindars against defendant for the rents of the land in suit did not affect plaintiff's claim to the money owing under the contract OPENDER NARAIN MOOKERJEE *v* GUDADHUR DEY 25 W R 472 476

2 ———— Proof of adjustment—*Parol evidence*—The adjustment of an account may be proved by verbal evidence and need not necessarily be in writing signed by the party to be bound PURNIMA CHOWDRAIN *v* NITTANAND SHAH [B L R Sup Vol 3 W R F B 82

ACCOUNT STATED

See CASES UNDER LIMITATION ACT 1877 s 19—ACKNOWLEDGMENT OF DEBT

See CASES UNDER LIMITATION ACT 1877 ART 64

1 ———— Suit on account stated—*Hypothecation bond for the amount due—Obligor presenting registration of bond by denying execution*—The plaintiff sued (i) for registration of a hypothecation bond executed by the defendant (ii) in the alternative for recovery of the amount of the bond upon an account stated The defendant denied execution of the bond and that she had had any dealings or stated any account with the plaintiff The Courts below disallowed the first claim as barred by limitation and disallowed the second on the ground that the bond had effected a novation of the contract implied by the statement of accounts:—*Held* that this decision was wrong and that the plaintiff was entitled to sue upon the account stated *Sardar*

ACCOUNT STATED—*concluded*

Kuar v Chandrawati I L R 4 All 30 distinguished NIAM UD DIN *v* RAJJO [I L R, 11 All, 13

2 ———— Cause of action—*Evidence of the existing debt—Fresh contract—Interest—Damdupat*—In June 1883 the plaintiff's father advanced a loan to the defendant at compound interest The account of this debt with interest was adjusted and signed from time to time In June 1893 it was adjusted and signed the amount found due being R28 8 0 In February 1896 the plaintiff sued to recover this amount *Held* that the account (ruzukhata) was merely an acknowledgment of the debt and of the correctness of the calculation of interest upon it *Held* also that the plaintiff was not entitled to treat the amount so found due as principal and to claim interest upon it The debt to be sued on was the amount originally advanced and the interest recoverable was limited by that amount according to the rule of damdupat By English law an account stated could be sued on as implying a promise to pay Formerly this was the rule also in Bombay (as shown by the earlier cases) where the account was signed If however it was not signed it could not be sued on as a new contract The Indian Limitation Act required an acknowledgment or admission of a debt to be signed and an admission not made in the manner prescribed by law (*i e* signed) for the purpose of preventing a debt from becoming barred does not imply a promise to pay it if it should become barred According however to the later authorities an account stated or adjusted (ruzukhata) cannot be sued on as a fresh contract The suit must be brought in respect of the original transaction and the subsequent stated or adjusted accounts are only evidence of the debt arising from them and serve to prevent the operation of the Act of Limitation SHANKAR *v* MUKTA [I L R, 22 Bom, 513

ACCOUNT, SUIT FOR—

See BENGAL RENT ACT (VIII OF 1869) s 30 I L R 5 Calc 303 314
[I L R 7 Calc 89
8 C L R 285
16 W R 149
3 C L R 444
I L R 20 Calc., 425

See DEKHAN AGRICULTURISTS RELIEF ACT s 15D I. L. R., 16 Bom 351
[I. L. R., 20 Bom, 469

See GUARDIANS AND WARDS ACT s 41 [I L R., 22 All., 332

See CASES UNDER MORTGAGE—ACCOUNTS

See CASES UNDER PARTNERSHIP—SUITS RESPECTING PARTNERSHIP

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT—FRAME OF SUITS GENERALLY

ACCOMPLICE—*continued*

be of questionable propriety *Per* JARDINE *J* —Ss 114 and 133 of the Evidence Act are to be read together and neither section is to be ignored in the exercise of judicial discretion The illustration (*b*) of s 114— that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars' —is however the rule and when it is departed from the Court should show or it should appear that the circumstances justify such departure Accordingly where a conviction was based solely on the evidence of accomplices and the circumstances connected with the preparation and conduct of the case as disclosed by the record and portions also of the evidence adduced at the trial showed that it would not be proper to act on that evidence the Court set aside the conviction QUEEN EMPRESS *v* CHAGAN DAYARAM

I L R 14 Bom 331

27 ———— *Witness present on occasion of giving a bribe—Penal Code (Act XLV of 1860) ss 114 161—Illegal gratification* —*D* a Sub Inspector and *F* a Head Constable were charged under s 161 (giving a bribe) and s 161 read with s 114 (abetment of the offence of giving a bribe) of the Penal Code respectively and it was contended that these charges were not sustainable because they rested entirely on the testimony of persons alleged to have been accomplices who had not been corroborated in material particulars *Held* the mere presence of a person on the occasion of the giving of a bribe and his omission to promptly inform the authorities do not constitute him an accomplice unless it can be shown that he somehow co operated in the payment of the bribe or was instrumental in the negotiations for the payment *Queen v Chundo Chundalinee 24 W R Cr 55 Queen Empress v Maganlal I L R 14 Bom 115 Queen Empress v Chagan Dayaram I L R 14 Bom 331 Queen Empress v O Hara I L R 17 Calc 642 Ishan Chundra v Queen Empress I L R 21 Calc 328 Jogendra Nath Bhaumik v Sangap Garo 2 C W N 55 Rajoni Kant Bose v Asan Mullick 2 C W N 672* and *Al muddin v Queen Empress I L R 23 Calc 361* distinguished QUEEN EMPRESS *v* DEODHAR SINGH

I L R 27 Calc 144

28 ———— *Evidence Act (I of 1872) s 133—Person accompanying another to witness payment of a bribe—Nature of accomplice evidence* —Where certain persons accompanied another who was entrusted with and carried the money intended to be given as a bribe to the head constable with knowledge that it was to be so paid and in order to witness and assist in such payment —*Held* that they were accomplices Accomplices are not like ordinary witnesses in respect of credibility but their evidence is tainted and should be carefully scrutinized before being accepted Where the only evidence of the payment of a bribe to the accused apart from hearsay statements which were not admissible consisted of the uncorroborated evidence of an accomplice which was further in itself improbable and to some extent inconsistent with the story of the other accomplices the High Court set

ACCOMPLICE—*concluded*

aside the conviction RAJONI KANT BOSE *v* ASAN MULLICK

2 C W N., 672

29 ———— *Wrongful confinement—Extortion—Money lent in ordinary course of business to pay amount extorted —Lender—Penal Code (Act XLV of 1860) ss 213 342 and 381*—The accused a Sub-Inspector of Police arrested one *J* wrongfully confined him and extorted from him Rs 200 under a threat that he the accused would not release *J* unless the money were paid This money was paid on this account by *P* a money lender who lent *J* the money for this purpose Accused was convicted under ss 342 and 384 of the Penal Code In appeal the Sessions Judge held that *P* was not an accomplice and having considered his evidence accordingly dismissed the appeal *Held* that *P* paying such money under the circumstances could not be regarded as an accomplice of the Sub-Inspector in such misconduct AKHOY KUMAR CHUCKERBUTTY *v* JAGAT CHUNDER CHUCKERBUTTY

[I L R., 27 Calc 925
4 C W N., 755

ACCOUNT

See COPYRIGHT I L R 13 Bom., 358

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—ACCOUNT

See DECREE—FORM OF DECREE—ACCOUNT

See CASES UNDER MORTGAGE—ACCOUNTS

See ONUS OF PROOF—ACCOUNT

See PLEDGOR AND PLEDGEE.

[I. L. R., 19 Calc., 322

See PRINCIPAL AND AGENT—DUTY OF AGENTS TO ACCOUNT

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—ACCOUNT

[Agra F B 47 Ed. 1874 35
1 N W 28 Ed. 1873 26
15 W R 24

———— **Right to an—**

See CASES UNDER HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION

1 ———— **Power of Court to order Account instead of referring party to separate suit** —In a suit by the heirs of a deceased Mahomedan to recover from his widow landed property of which she claims to be in possession as absolute owner under a mokurari deed alleged to have been executed in lieu of her dower where she wholly fails to prove execution of the deed it is competent to the Court instead of referring the plaintiffs to a separate suit to direct an account to be taken of the mesne profits received by the widow and of the amount due to her on account of dower with a view to the settlement of the claims of both parties. ASLOO *v* UMDUTOONISSA
UMDUTOONISSA *v* ASLOO 20 W R., 297

ACCOUNT SUIT FOR—*continued*

he had sustained a loss of R5 000 and prayed for a decree for this sum *Held* that no decree could be made for the sums mentioned or any other sum until an account had been taken and the amount due from the defendant ascertained Method to be followed on taking accounts in the mofussil stated If the taking of accounts by the Judge would occasion a waste of public time he should resort to the provisions of ss. 394 and 395 of the Civil Procedure Code and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary ANNODA PERSAD ROY *v* DWARKA NATH GANOOPADHYA
[I L R 6 Calc., 754
8 C L R 321

9 ———— *Suit by principal for an account—Object of a decree for an account as distinguished from a decree made upon the hearing—Costs*—A continued agency or employment as dewan for the purpose of drawing and expending the money of a principal resulted in a suit by the latter who alleged that more had been drawn than expended for him and that a specific sum or balance stood against the defendant having been misappropriated by him The principal claimed also any further sum that might be proved to be payable The dewan having denied the receipt of the money and any kind of accountability it was found against him that the relation of agency existed between the parties But on the ground that it was impossible to decide upon the evidence adduced at the hearing how much of the principal s money was unaccounted for though the attempt had been made to prove a balance due the Appellate Court dismissed the suit —*Held* that such a suit was essentially one for an account and that the Courts below should have followed the regular course *viz* to order an account to be taken of the defendant s dealings with plaintiff s money This was without any expression of opinion that in a suit for an account an issue may not be raised at the outset so clearly as to be ready for decision But the general rule being the other way this suit was an example of it HURRINATH RAI *v* KRISHNA KUMAR BAKSHI
[I L R 14 Calc 147 L R, 13 I A 123

10 ———— *Form of suit for account—Procedure on taking accounts—Civil Procedure Code (Act X of 1877) ss 250 395 and 396 sch IV form 157—Form of keeping accounts of joint property in mofussil*—In a suit for an account by a principal against his agent the plaintiff should ask in his plaint that a proper account may be taken If the defendant is found liable to render such account for a certain period the Court should make an interlocutory decree declaring that he is so liable and direct him to file an account in Court within a fixed period This decree may be enforced under s 260 of the Civil Procedure Code After an account has been filed the plaintiff should be allowed reasonable time to examine it If the objections are numerous the procedure prescribed by ss 394 and 395 and form

ACCOUNT, SUIT FOR—*continued*.

157 of sch IV to the Code should be followed When the accounts have been taken the Court must determine the amount due and the final decree should be for the payment of this amount and also if necessary for the delivery of any papers vouchers or other documents which have come into the hands of the agent in the course of his employment Form of keeping accounts of joint property in the mofussil considered DEGAMBER MOZUMDAR *v* KALLYNATH ROY I L R, 7 Calc 654
[9 C L R 265

11.———— *Fraud or specific error in account Allegation of*—*M* sued for an account of all moneys received and paid on his behalf by *T* deceased (represented by his widow) and *F* as his agents from 1st August 1859 to 30th April 1865 It was alleged in the plaint that *M* left India in 1858 and has since resided in Scotland that at the time he left he was and still is possessed of extensive property in the Province of Bengal chiefly landed property that *T* and afterwards *T* and *F* were his agents and managers In his written statement *M* stated that in the month of June 1861 the deceased rendered an account to the plaintiff showing that all moneys due to him by the plaintiff in respect of his salary and commissions up to the 31st January 1861 being the whole of deceased s claim against him up to that date under their above mentioned arrangements had been duly paid by the plaintiff In the month of April 1865 deceased transmitted to the plaintiff the agency accounts of himself and his firm with the plaintiff in continuation of the accounts rendered by him as mentioned in the preceding paragraph brought down to the end of February 1865 and again in May 1865 the deceased transmitted the continuation of the said account brought down to the 30th April preceding being the date of the termination of the agency The said accounts rendered have been examined by the plaintiff who verily believes that the true balance now due to him thereon exceeds R1 00 000 without including interest. There was no allegation in the plaint written statement or opening of counsel of fraud or specific error *Held* that *M* in his plaint and written statement had not disclosed any cause of action MACKINTOSH *v* TEMPLE 2 Ind. Jur., N S., 333

12 ———— *Suit against gomasta—Duty of Court to look into accounts*—In a suit against a gomasta to obtain accounts of moneys which had come into his hands it was held that it was not enough for the lower Courts to make a decree ordering the defendant to render nikash papers to the plaintiff it was the business of the Court to have these papers brought before it and examined, and to determine whether they were correct and fair accounts between the parties SHU HEE SHEKHUR AUDHIKAREE *v* SULEEM BISWAS 22 W R., 191

13 ————*Decree for account against agent*—Where a decree requires an agent to render accounts he can only discharge himself by accounting for all the moneys that have come into his hands, and it is always open to the decree-holder

ACCOUNT SUIT FOR—*continued*

to show that this has not been done WOOMA NATH ROY CHOWDHRY v SREENATH SINGH
[15 W R, 260

14. ——— Refusal to account—*Destruction of account books*—Where a defendant refused to render accounts and there was evidence of spoliation of the banking books the Court charged him with the principal sum for which he was accountable with interest at 12 *per cent per mensem* in lieu of the profits he failed to account for RAMPERSHAD TEWARRY v SHEO CHURN DOSS; THOOKRA v RAMPERSHAD TEWARRY
[10 Moore's I A 490

15 ——— Right to re open settled account—*Principles of Court of Equity in re opening accounts—Principles which regulate a Court of Equity in opening stated and settled accounts*—Accounts of long standing and great complication of a mercantile firm at Calcutta one of the partners of which afterwards acted as agent in England involving charges for agency and partnership transactions were mutually agreed to be investigated and closed After long negotiations and discussion respecting some of the charges an agreement was come to the parties agreeing to strike the general balance at a given sum reserving one item of the account amounting to a considerable sum for future investigation This reserved item was subsequently settled by the acceptance of a bill of exchange for a lesser amount as such reserved item if re opened would have disarranged the settled general account The bill of exchange was dishonoured and an action brought to recover the amount A bill was then filed for an injunction for the cancelment of the bill of exchange and praying that the accounts so settled might be opened The Supreme Court at Calcutta held that the reserved item being left open was evidence that the account was not finally closed and decreed the accounts to be opened referring the cause to the Master On appeal held by the Judicial Committee (reversing such decree and dismissing the bill with costs) that the transaction amounted to an adjustment of the general account between the parties subject to the reserved item which was subsequently settled and that the accounts so settled and closed could not in the absence of fraud, be re opened MCKELLER v WALLACE 5 Moore's I A 372

16 ——— *Impeachment of accounts on ground of fraud—Mode of proof—Re opening of accounts*—Where accounts are impeached on the ground of fraud two or three instances of particular items which can be taken as false and fraudulent must be brought to the notice of the Court before it can be called upon to order the accounts to be re open d from the first *Williamson v Barbour L R 9 Ch D 529* followed BOO JINATBOO v SHA NAGAR VALAB KANJI
[I L R, 11 Bom. 78

17 ——— Running account for portion of which hundis are given—*Obligation to sue on hundis*—Where there is a running account between the parties a portion of which relates to an amount due upon dishonoured hundis plaintiff is not bound to sue upon the hundis but may base his claim upon the running account RAM CHAND v PUNNA LAL 3 N W, 323

18 ——— Necessity to go into accounts in suit for profits—The mere fact that in a suit for profits by a co-sharer it is necessary to go into the accounts will not alter the character of the suit and make it one for settlement of accounts DABEE DEEN v DOORGA PERSHAD
[3 N W, 49

ACCOUNT BOOKS ENTRIES IN—

See BANKERS' BOOKS EVIDENCE ACT
[4 C W N 433

See CASES UNDER EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS

ACCOUNT SALES

See EVIDENCE—CIVIL CASES—ACCOUNT SALES 5 B L R 619
[2 Ind. Jur., N S 5
6 Bom. O C 39

See PRINCIPAL AND AGENT—COMMISSION AGENTS I L R 18 Mad., 238

ACCOUNTANT

See BANKERS I L R, 16 All. 88

ACCOUNTS

See DECREE—CONSTRUCTION OF DECREE—ACCOUNT

See DECREE—FORM OF DECREE—ACCOUNT

See CASES UNDER MORTGAGE—ACCOUNTS

——— Keeping two sets of—

See BOMBAY TOLLS ACT s 7
[I L R., 20 Bom. 668

——— Mutual Accounts—

See CASES UNDER LIMITATION ACT 1877 ART 85

——— Procedure—Procedure to be observed in a judicial enquiry into accounts laid down ALAIAHMAD *alias* BOOLAKI v NUSIBUN
[24 W R, 70

ACCRETION Col

ACCRETION—*continued* Col

See EVIDENCE—CIVIL CASES—MAPS

[I L R 27 Calc 336
4 C W N 113

See CASES UNDER LANDLORD AND TENANT—ACCRETION TO TENURE

——— Assessment of to Revenue—

See CASES UNDER ACT IX OF 1847

1 NEW FORMATION OF ALLUVIAL LAND

(*a*) GENERALLY

1. ——— Beng Reg XI of 1825 —Bengal Regulation XI of 1825 regards accreted land as the right of that party to whose estate the land is an accretion and does not divide the accreted land according to the extent of each party's loss by diluvion The mere fact of a lessee having received a malikana allowance from the Collector during the period of his temporary lease will not bar the right to a permanent settlement of any party who under the law of alluvion is entitled to settlement CALLY CHUNDER CHOWDHRY *v* MONIKURNIKA CHOWDHRAIN

[W R., 1864 149

BISSESUREE DOSSEE *v* KALEE KOOMAR ROY

[18 W R 198

2 ——— Beng Reg XI of 1825 s 4 application of—Cl 1 s 4 Regulation XI of 1825 applies only to lands gained by alluvion either gradually or suddenly and not to lands existing as waste land subject to inundation and in one year rendered culturable by a deposit of earth by the action of the river LAMJEEAWAN RAI *v* DEEP NARAIN RAI Agra F B 78 Ed. 1874 60

3 ——————— Regulation XI of 1825 applies only to land gained by gradual accession from the recession of a river or sea and has no application to land formed by the drying up of a bhil or marsh *Suroop Chunder Mozoomdar v Jardine Skinner & Co Marsh 334* relied on KHONDEKAR ABDUL HAMID *v* MOHINI KANT SAHA

[4 C W N 508

4. ——————— s 4 cl 1—*Alluvion—Title to land acquired by gradual accretion—Limitation*—Cl 1 of s 4 of Regulation XI of 1825 does not depend for its operation on the capability of identification of the accreted lands Whether the accreted lands are capable of identification or not the clause applies where the lands have been gained by gradual accession by the recession of a river In the case of gradual accretions the ordinary rule of acquisition by prescription does not apply but each accretion as it occurs comes under the same title as that

ACCRETION—*continued*

1 NEW FORMATION OF ALLUVIAL LAND—*continued*

upon which the land to which it is made is held DEBI BAKHSH SINGH *v* TIRBHAWAN SINGH

[I L R 19 All 238

5 ——————— *Suit for accreted land*—In a suit for possession of alluvial land which plaintiffs claimed by right of accretion under the provisions of Regulation XI of 1825 and in which the question of accretion was put in issue the lower Court's judgment was held not to be good in law because it contained no clear finding as to whether the lands in dispute had re-formed on the original site of diluviated lands of plaintiff's estate or whether they were accretions to that estate by recession of the river WISE *v* JUGGOBUNDOO BOSE

[12 W R 229

Affirmed on review JUGGOBUNDOO BOSE *v* WISE

[12 W R 409

6 ——————— cls 1 and 3—In a suit for possession where certain lands were decreed to plaintiff on the ground that having formed opposite to his villages they subsequently became contiguous thereto by the gradual silting up of the bed of the river which had previously flowed between —*Held* that the decision was not in conformity with cl 1 or cl 3 s 4 Regulation XI of 1825 and that it was necessary to determine how the land formed whether it was thrown up as an island in the bed of the river or was formed by gradual accretion to an estate and if by gradual accretion to what lands it so accreted UNNOPOORNA DEBIA *v* SREEMUTTY DASSEE 14 W R 254

7 ——————— *Proprietor of resumed mehal*—The Government when it holds a resumed mehal on its rent roll as its khas property holds it as and with all the rights and liabilities of a private zamindar and is therefore entitled under Regulation XI of 1825 to claim accretions to the khas estate COLLECTOR OF PUBNA *v* SURNO MOYEE 17 W R 163

8 ——— Suit for possession of chur lands —The plaintiff sued for possession of a chur which he alleged had accreted to the remnant of the plaintiff's original estate which had been left when all the rest of his estate was washed away —*Held* that the Court must decide what particular parcel (if any) was the remnant of the original estate and must also decide whether the chur claimed was formed by accretion to that remnant RASHMOYEE DOSSEE *v* BHUBONATH BHUTTACHARJEE 12 W R, 252

9 ——— Land forming bed of canal —*Beng Reg XI of 1825 s 4 cl 4*—Land forming the dry bed of a canal belongs to the estate in which the canal itself was included In cl 4 s 4 Regulation XI of 1825 the words subject to the provisions stated in the first clause of the present section do not apply to the formation and position of the newly accreted land but to the owner's rights in them in relation to the Government SYOOLLAM *v* BHUTTON *alias* BUTTESUR

[10 W R., 68

ACCRETION—*continued*

1 NEW FORMATION OF ALLUVIAL LAND—*continued*

in virtue of any known principle There was no proof of a custom giving this land to him on account of contiguity and there had been no gain to him from the river by alluvion within the meaning of the Regulation JAGGOT SINGH v BEIJ NATH KUNWAR I L R 27 Calc 768 [L R 27 I A 81 4 C W N 555

(c) CHURS OR ISLANDS IN NAVIGABLE RIVERS

31 ———— Accretion to chur—*Fordable channel* — An accretion to a chur belongs to the owner of the chur whether the channel between the main land and the chur is fordable or not KALLY NATH ROY CHOWDHRY v LAWRIE 3 W R 122

32 ———— Under Reg XI of 1825 chur land belongs to the proprietor of the estate to which it accretes provided it is not separated from such estate by an unfordable stream SHIBCHUNDER GHUTTUCK v COLLECTOR OF TIPPERAH [5 W R, 139

33 ———— *Formation of churs—Beng Reg XI of 1825 s 5 cls 1 and 4—Right of fishery* — According to cl 4 s 4 Regulation XI of 1825 churs thrown up in small and shallow rivers the beds of which are private property belong to the proprietor of the bed of the river but by cl 1 of the same section churs thrown up in rivers not small and shallow the ownership of the beds of which remains in the public are an increment to the tenure of the riparian owner to whose land or estate they are annexed The fact of the right of fishery being in another person does not take the case out of the operation of the former clause CHUNDERMONEE CHOWDHRAIN v CHOWDHRAIN 4 W R 54

34 ———— *Diluvion—Reformation—Title—Beng Reg XI of 1825 s 4* — Where a chur formed in the middle of a river and was settled with *A* and by the recession of the river new land appeared which was really a deposit on the ancient site of B's land though adhering to the chur it was held to be *B*s land The first rule established by s 4 Regulation XI of 1825 does not apparently contemplate land other than that commonly known as alluvion i e land gained by gradual and imperceptible accretion the *incrementum latens* of the civil law There is no express provision in the Regulation for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river and which after diluviation re appears on the recession of the sea or river and there is nothing to take away or destroy the original proprietor's right such a case is to be determined by the general principles of equity and justice under the 5th rule contained in s 4 A title founded on the original ownership and identification of land re-appearing is to be confined *primâ facie* to the re formation on that site The cases of *Imam Bandi v Hurgobind Ghose 4 Moore's I A 403 Lopez v Maddan Mohan Thakur 5 B L R 121* and *Eckowri Singh v Heeralal Seal 2 B L R P*

C 5 commented on NOGENDER CHUNDER GHOSE v MAHOMED ESOF [10 B L R 406 18 W R, 113

35 ———— *Beng Reg XI of 1825 s 4 cl 3* —If alluvial land be surrounded by water fordable at any point, the owner of the land to which the chur adjoins has a *primâ facie* title to it under cl 3 s 4 Regulation XI of 1825 WISE v AMEERUNNISSA KHATOON 2 W R, 34

WISE v ABDOOL ALI 2 W R 127

PORESH NARAIN RAI v WATSON 5 W R 283

36 ———— Formation of chur—*Alluvion—Beng Reg XI of 1825 s 4—Re formation on old site* —Under Regulation XI of 1825 a right of property in land gained by alluvion from a river (the bed of which is not the property of an individual) is acquired in two modes first where the land is gained by gradual accession by the recess of the river in which case it becomes the property of the person in possession of the estate to which the land is an increment and secondly when a chur or island is thrown up in a large navigable river and the channel between such chur or island is fordable at any season of the year the accession is an accession to the land or tenure most contiguous MOHINI MOHUN DOSS v JUGGOBUNDOO BOSE 9 W R 312

37 ———— *Gradual accretion—Land most contiguous '—Beng Reg XI of 1825 s 4 cl 3* —The land most contiguous to a chur as that phrase is used in Regulation XI of 1825 s 4 cl 3 is intended only to comprise the estate or estates with which the chur comes into contact along the length of the fordable part of a channel and the whole chur becomes an accession to the land and part of the tenure of the party to whom such estate belongs and no portion of it will cease to belong to him merely by reason of the deep water between it and the estate of another becoming shallow and fordable *Held* also that after the chur had by the first occurrence of the fordable channel become part of *A*s property all further accretions to it if gained by gradual accession would also belong to *A* even though the result would in the aggregate be a prolongation of the chur in front of estates on the river bank not belonging to him GOLAM ALI CHOWDHRY v GOPAL LALL TAGORE [9 W R 401

38 ———— *Navigable river —Rights of riparian proprietors* —Where a chur or island is thrown up in a large navigable river originally surrounded by deep unfordable water but between which and the estate of the zemindar a fordable channel has since been created the criterion for deciding whether the Government has the right of disposing of that island or whether the owner of the land to which it is most contiguous has that right is to consider the state of circumstances at the time of the formation of the island —that is at the time when it was thrown up and not the state of things at any subsequent or fluctuating period such as the subsequent silting up of the bed of the river between

ACCRETION—*continued*

1 NEW FORMATION OF ALLUVIAL LAND—*continued*

the island and the contiguous estate so as to form a fordable passage BUDRUNISSA CHOWDHRAIN v PROSUNNO KUMAR BOSE [6 B L R 255 14 W R F B 25

CANNON v BISSONATH ADHICAREE [5 C L R 154

39 ——— Fordable river—*Beng Reg XI s 4 cl 3—Island in navigable river—Right of riparian proprietor to* —Under cl 3 s 4 Regulation XI of 1825 a riparian proprietor has no right to an island thrown up in a large navigable river when the channel which intervenes between his land and the i land is, under ordinary circumstances and at the most favourable seasons unfordable for sixteen out of twenty four hours NOBIN KISHOR ROY v JAGES PRA AD GANGOPADYA [6 B L R 343 14 W R 352

40 ——— *Beng Reg XI of 1825 s 4 cl 3*—A river that can be crossed from one side zigzag in the dry season only when the water is breast high and the main stream of which is indubitably on the other side is not a fordable stream within the meaning of cl 3 s 4 Regulation XI of 1825 I UKCHUNDER SEIN v KALEE DOSS HAJRAH 3 W R 95

41 ——— *Formation of chur*—The fact that under certain circumstances a river is in some places and at extreme time of low water fordable does not warrant the presumption that the river was a fordable stream at the time of the formation of the chur WISE v AMEERONISSA KHATOON 3 W R 219

42 ——— When the Government sues for alluvial land as an ordinary riparian zamindar it is bound to prove under the latter part of cl 3 s 3 Regulation XI of 1825 that the stream between the chur and the main land is fordable at some time of the year and that it was fordable when the alluvium formed TABIRA v GOVERNMENT 6 W R 123

Affirmed on review GOVERNMENT v TABIRA [7 W R 513

43 ——— Re formation on old site—*Beng Reg XI s 4 cl 3—Island in navigable river—Right of Government* —Under cl 3 s 4 Regulation XI of 18 5 Government has no right to land thrown up as an island in the bed of a navigable river when such island is formed on the site of land which had been washed away MANI LALL SAHU v COLLECTOR OF SARUN [6 B L R Ap 93 14 W R 424

44. ——— The Government is not entitled under cl 3 s 4 Regulation XI of 1825 to take possession of land which has re formed on an old site of land belonging to another although the re formation forms an island and is surrounded by a channel which is not fordable COLLECTOR OF RAJSHAHYE v SHAMASOONDREE DEBEA [14 B L R 219 22 W R, 324

45 ——— Navigable river—*Beng Reg XI of 1825 s 4 cl 3* —The words a large navigable river in cl 3 s 4 Regulation XI of 1825 are not applicable to the Goomti but to such rivers as the Ganges and the Megna upon which navigation can always be carried on MOHINEE MOHUN DOSS v ASSANOOLLAH 17 W R 73

46 ——— Unfordable stream—Land cannot be legally proved to be an accretion to a talukh or a re formation of diluviated land of that talukh on its original site where the stream between the land in question and the talukh is found to be an unfordable stream nor can possession under such circumstances give a plaintiff a right to a declaration of his title NOBEEN KISHORE ROY v JOGESH PROKASH GANGOOLY 10 W R 272

47 ——— Formation of island in river adjacent to zamindari—*Zamindars Right of —Waste lands*—Where an island was formed in a river the lands adjacent to the banks of which were part of zamindari —*Held* that the island was not the waste land of any village or a portion of the holdings of any raiyats in the zamindari but that the zamindar possessed in it all the incidents of ownership including the power of making leases SUBBAYA v YARLAGADDA ANKINIDU 1 Mad 255

48 ——— Land forming in river and gradually accreting to land on bank—*Beng Reg XI of 1825—Right of Government*—Where land came up originally from the river as a small island and gradually joined on to the plaintiff s estate after having been taken possession of by the defendant —*Held* by TREVOR J that the Government alone was entitled to the land and not the plaintiff to whose estate the land had joined *Held contra* by GLOVER J that as the land was an accretion to the plaintiff s estate he was entitled to take possession of it under Regulation XI of 1825 the defendant s possession notwithstanding MOHINEEMOHUN DOSS v JUGGOBUNDOO BOSE 7 W R 103

49 ——— Formation of land in navigable river—*Proof of title* —The re formation of land in the bed of a navigable river is not *primâ facie* to be ascribed to a loss from any particular riparian estate nor is the land which has been removed from an estate by sudden avulsion reclaimable unless the circumstances supply evidences of identity A title by accretion is not established by mere proof of general inclusive boundaries at a time preceding the formation of the chur but there must be proof of the nucleus of accretion The land gained will follow the title of the particular land forming the nucleus FKOWRI SINGH v HIRALALL SEAL [2 B L R P C 5 11 W R P C 2 12 Moore s I A 136

SHAM CHAND BYSACK v KISHEN PERSAUD SURMA [18 W R 4 14 Moore s I A 595

50 ——— Island in large river -*Proprietorship of alluvial land—Beng Reg XI of 1825 s 4*—Though an island or land thrown up and

A CC ETION—*continued*

1 NEW FORMATION OF ALLUVIAL LAND—*continued*

surrounded by a river may become vested in Government under the provisions of Regulation XI of 1825 s 4 cl. 4 it does not follow that if the river which separates the island from the main land dries up after the island has been resumed by Government the bed of the river becomes the property of Government in cases in which the bed of the river is not gained as an accretion to the island by gradual accession within the meaning of cl 1 SURNOMOYEE v JARDINE SKINNER & Co SURNOMOYEE v WATSON & Co 20 W R 276

51 ———————— *Formation of lands —Beng Reg XI of 1825* —In a suit brought on the 11th March 1872 to recover certain plots of land (a) as re-formations after diluviation of lands which had belonged to the plaintiffs and as accretions thereto (b) under a title by prescription it appeared that the lands had formed in the bed of a river in 1839 and that the plaintiffs took possession thereof as of re formed lands and had been maintained in possession under awards under Act IV of 1840 but that in 1868 they were ousted by the Collector who assessed the same under Regulation XI of 1825 and settled them with his co defendants —*Held* that whether or not in consequence of Act IX of 1847 the Government were entitled to assess the lands they were entitled to oust the plaintiffs and to take possession of the lands as lands which had originally formed as an island and were at their first formation surrounded by water which was not fordable WISE v AMEERUNNISSA KHATOON WISE v COLLECTOR OF BACKERGUNGE L R 7 I A 73

52. ———————— *Formation and attachment to estate of island char formed in river* —Defendants were owners by purchase from Government of a property called Oojan Chur which in its origin was an island thrown up in the bed of the river Plaintiff was owner of the original estate of K of which a great part was cut off by a stream channel of the river but afterwards re appeared and for some time lay in contiguity with defendant s chur and separated from plaintiff s estate by the said channel By the gradual filling up of the sota re formation became more and more extensive until the land again lay in contact with the plaintiff s estate As it had been clearly ascertained by boundary marks and measurements that the re formation took place on the original site of the plaintiff's land the right of the plaintiff as by re formation was held to be preferable to that of the defendants which rested upon accretion BUDDUN CHUNDER SHAHA v BEPIN BEHAREE ROY 23 W R 110

53 ———————— *Gradual accretion to a formation of dry land already existing and appropriated to an owner of land on a river's bank—Ownership of the bed of the river not the subject of contest below —Variation of claim disallowed* —Although there is not in Madras, as there is in Bengal an express law embodying the principle that gradual alluvion enures to the land to which the accretion is made following the ownership of that land the rule is equally well established in both those provinces Both parties were riparian proprietors of adjoining estates on both banks of the river Godavari The plaintiff claimed the right to newly formed land in mid stream which she alleged to have been formed by accretion upon an already existing lanka or alluvial island which belonged to her On that point there were concurrent findings against her The accretion had taken place upon a lanka owned not by her but by the Government and higher up stream than hers —*Held* that the plaintiff must abide by the ground of claim which she had presented below that being that the new land was formed by gradual accretions to definite and visible portions of a lanka previously belonging to her This she could not now vary to a claim founded on an ownership of the river bed on the strength of her being zamindar and owner of the land on both banks of the river without either issue or evidence directed to such subaqueous ownership BALUSU RAMALAKSHMAMMA v COLLECTOR OF THE GODAVARI DISTRICT I L R 22 Mad. 464 [L R 26 I A 107 3 C W N 777

2 RE FORMATION AFTER DILUVIATION

54 ———— **Ownership in re-formed land.**—Ownership in soil is not lost because the subject of it becomes submerged the owner of the *site or sub soil remains owner of the surface* and on re formation of the surface soil takes whatever falls within his known boundaries Ordinarily there can be no right of accretion when the new formation is on the site of what was formerly held by an individual as his private property DWARKANATH ROY v DINOBUNDHOO SINGH CHOWDHRY [15 W R, 461

55 ———————— *Beng Reg XI of 1825 s 4 cl 1* —Where new land is formed whether it be a re formation on an old site or whether it is formed where no land ever previously existed, ownership is determined by the ownership of the adjacent land to which it has accreted To defeat or prevent the right by accretion the person who claims the land as a re-formation of his old land is required to prove some continuing right of property in himself it is not enough for him to rely merely on identity of site KATTEMONEE DOSSEE v MONMOHINEE DABEE [B L R Sup Vol 353 3 W R 51

LYON v GRAY 11 W R 189

56 ———————— *Land inundated and re formed* The owner of land before it is inundated remains the owner of it when it is covered with water and after it becomes dry IMAM BANDI v HUR GOBIND GHOSE [7 W R P C 67 4 Moore s I A 403

57 ———————— *Beng Reg XI of 1825 s 4 cls 1 2 3* – Claims to alluvial lands under cl 2 s 4 Regulation XI of 1825 (i e to lands as *re formed lands*) are not superior to claims under cls 1 and 3 of s 4 or under s 5 of that Regulation i e to lands as newly alluviated WISE v AMEERUNNISSA KHATOON 2 W R, 132

ACCRETION—*continued*

2. RE-FORMATION AFTER DILUVIATION—*continued*

58. —— *Beng Reg XI of 1825 s 4 cls 1 and 3—Re-formation on old site* —Proof of re-formation on an old site will not suffice to establish a claim under Regulation XI of 1825 Re formations are governed by cl 1 and 3 s 4 Regulation XI of 1825 A claim to hold the land under cl 2 can only be maintained by the old proprietor when the land has not been diluviated but cut off by a change of the stream Kerry v Sumeeroonissa 3 W R 68

Kalee Monee Debia v Collector of Mymensingh 5 W R 55

59 —— *Land diluviated by river—Riparian proprietors* —Where property is wholly submerged by a river la d forming afterwards on the site will when the ownership of that site is proved to exist in the former owner remain in him and the accretion will not belong to the adjacent proprietor The decision in *Kattemonee v Monmohinee Dabee B L R Sup Vol 353* is erroneous in not regarding the site of the increment Lopez v Maddan Mohan Thakoor 5 B L R 521 [14 W R P C 11 13 Moore s I A 467

60 —— *Quære* —To whom lands diluviated and afterwards re formed belong Kirtee Narain Chowdhry v Protab Chunder Burooah W R., F B 129

61. —— *Re formation of lands washed away—Beng Reg XI of 1825 s 4* —Lands washed away and afterwards re formed upon the old site, which can be clearly recognised are not lands gained within the meaning of s 4 Regulation XI of 1825 they do not become the property of the adjoining owner but remain the property of the original owner Romanath Thakoor v Chundernarain Chowdhry Marsh 136 [W R F B 45 1 Ind. Jur O S 44

Collector of Tipperah v Doorga Persad Paray W R 1864 302

Collector of Dacca v Kishen Kishore Chatterjee W R 1864 273

62. —— *Diluviated lands —Beng Reg XI of 1825 s 4 cl 2* —Cl 2 s 4 Regulation XI of 1825 does not apply to the case of an estate entirely lost by diluvion Keshublall Chowdhry v Watson & Co W R 1864, 64

63 —— *Diluviated lands re forming on old site—Title by long possession—Adverse possession*—The doctrine in *Lopez v Maddan Mohan Thakoor 5 B L R 521* that diluviated lands re-forming on their old site remain the property of their original owner does not apply to lands in which after their re formation an indefeasible title has been acquired by long adverse possession or otherwise Where a plaintiff relies on an alleged adverse possession of lands for more than twelve years after their re formation the question to be decided is whether he has had such possession for twelve years Padha Proshad Singh v Ram Coomar Singh

[I. L. R 3 Calc 796 1 C L R 259

varying on appeal Court of Wards v Padha Prosad Singh 22 W R 238

64. —— *Land re formed on site that can be identified* —Where land re forms by alluvion on a site capable of identification the right of the owner of the original site to the chur is indisputable Sarat Sundari Debi v Soorjya Kant Acharjya 25 W R 242

65 —— *Lands temporarily or permanently settled* —Where lands submerged by a river re-form and can be identified as having formed a part of a particular estate they belong to the owner of that estate whether his estate consists wholly of permanently settled lands or whether it has been partly acquired as an alluvial accretion under temporary settlements made by Government with him as owner of permanently settled lands Hursahai Singh v Lootf Ali Khan 14 B L R 268 [23 W R 8 L R, 2 I A 28

66 —— *Land re formed on old sites* —When land is gradually re formed on two old sites identity of site can give no title to the former owners of the two old sites to the land re formed on such old sites respectively nor can identity of site give any title to land gradually re formed when it is formed by gradual accession partly to one estate and partly to another A person in possession of land is *primâ facie* entitled to it and to all increments to it Muthooranath Muzoomdar v Tarinee Churn Singh 8 W R., 164

67 —— *Submersion of land—Riparian rights—Identification of site of land* —In a suit for possession where it was found that a rivulet had come in from a river and formed a disjunction between the disputed land and plaintiff s property but that the rivulet was closed up and the river had returned to its proper channel and on the surface of the disputed land there still remained marks of its having belonged to the plaintiff —*Held* that the finding sufficiently identified the land in suit as the property of the plaintiff within the meaning of the Full Bench ruling in *Kattemonee Dossee v Monmohinee Dabee B L R Sup Vol 353 3 W R 51* *Held* also that as the last person found to have had the land in occupation was the plaintiff and as his possession had never been disturbed (the lands having ever since been submerged) there was a sufficient finding of possession to entitle plaintiff to a decree in confirmation of title Indurjeet Kooer v Jumna Doss 14 W R., 164

68 —— *Condition of land when re formed—Beng Reg XI of 1825 s 4—Right to possession* —The rule where a question arises as to the right to the possession of land either gained by gradual accession or re-formation or thrown up in a river or the sea is that the condition of the land where it was originally gained by alluvion or thrown up and became the subject of property and capable

ACCRETION—*continued*

1 NEW FORMATION OF ALLUVIAL LAND—*continued*

surrounded by a river may become vested in Government under the provisions of Regulation XI of 1825 s. 4 cl. 4 it does not follow that if the river which separates the island from the main land dries up after the island has been resumed by Government the bed of the river becomes the property of Government in cases in which the bed of the river is not gained as an accretion to the island by gradual accession within the meaning of cl 1 SURNOMOYEE v JARDINE SKINNER & Co SURNOMOYEE v WATSON & Co 20 W R 276

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53 ——— *Gradual accretion to a formation of dry land already existing and appropriated to an owner of land on a river's bank—Ownership of the bed of the river not the subject of contest below —Variation of claim disallowed* —Although there is not in Madras, as there is in Bengal an express law embodying the principle that gradual alluvion enures to the land to which the accretion is made following the ownership of that land, the rule is equally well established in both those provinces Both parties were riparian proprietors of adjoining estates on both banks of the river Godavari The plaintiff claimed the right to newly formed land in mid stream which she alleged to have been formed by accretion upon an already existing lanka or alluvial island which belonged to her On that point there were concurrent findings against her The accretion had taken place upon a lanka owned not by her but by the Government and higher up stream than hers —*Held* that the plaintiff must abide by the ground of claim which she had presented below that being that the new land was formed by gradual accretions to definite and visible portions of a lanka previously belonging to her This she could not now vary to a claim founded on an ownership of the river bed on the strength of her being zamindar and owner of the land on both banks of the river without either issue or evidence directed to such subaqueous ownership BALUSU RAMALAKSHMAMMA v COLLECTOR OF THE GODAVARI DISTRICT I L R 22 Mad. 464 [L R. 26 I A 107 3 C W N 777

2 RE FORMATION AFTER DILUVIATION

54 ——— Ownership in re-formed land.—Ownership in soil is not lost because the subject of it becomes submerged the owner of the site or sub soil remains owner of the surface and on re formation of the surface soil takes whatever falls within his known boundaries Ordinarily there can be no right of accretion when the new formation is on the site of what was formerly held by an individual as his private property DWARKANATH POY v DINOBUNDHOO SINGH CHOWDHRY [15 W R, 461

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56 ——— *Land inundated and re formed* —The owner of land before it is inundated remains the owner of it when it is covered with water and after it becomes dry IMAM BANDI v HUR GOBIND GHOSE [7 W R P C 67 4 Moore s I A 403

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ACCRETION—*continued*

2 RE FORMATION AFTER DILUVIATION —*continued*

58. ———————— *Beng Reg XI of 1825 s 4 cls 1 and 3—Re-formation on old site* —Proof of re-formation on an old site will not suffice to establish a claim under Regulation XI of 1825 Re-formations are governed by cl 1 and 3 s 4 Regulation XI of 1825 A claim to hold the land under cl 2 can only be maintained by the old proprietor when the land has not been diluviated but cut off by a change of the stream KENNY *v* SUMLEBOONISSA 3 W R 68

KALEE MONEE DEBIA *v* COLLECTOR OF MYMENSINGH 5 W R 55

59 ———————— *Land diluviated by river—Riparian proprietors* —Where property is wholly submerged by a river land forming afterwards on the site will when the ownership of that site is proved to exist in the former owner remain in him and the accretion will not belong to the adjacent proprietor The decision in *Kattemonee v Monmohinee Dabee B L R Sup Vol 3o3* is erroneous in not regarding the site of the increment LOPEZ *v* MADDAN MOHAN THAKOOR 5 B L R 521
[14 W R P C 11
13 Moore s I A 467

60 ———————— *Quære* —To whom lands diluviated and afterwards re formed belong KIRTEE NARAIN CHOWDHRY *v* PROTAB CHUNDER BUROOAH W R F B 129

61. ———————— *Re formation of lands washed away—Beng Reg XI of 1825 s 4* —Lands washed away and afterwards re formed upon the old site, which can be clearly recognized are not lands "gained" within the meaning of s 4 Regulation XI of 1825 they do not become the property of the adjoining owner but remain the property of the original owner ROMANATH THAKOOR *v* CHUNDERNARAIN CHOWDHRY Marsh 136
[W R F B 45
1 Ind Jur O S 44

COLLECTOR OF TIPPERAH *v* DOORGA PERSAD PARAY W R 1864, 302

COLLECTOR OF DACCA *v* KISHEN KISHORE CHATTERJEE W R 1864 273

62 ———————— *Diluviated lands —Beng Reg XI of 1825 s 4 cl 2* —Cl 2 s 4 Regulation XI of 1825 does not apply to the case of an estate entirely lost by diluvion KESHUBLALL CHOWDHRY *v* WATSON & Co W R 1864 64

63 ———————— *Diluviated lands re forming on old site—Title by long possession—Adverse possession*—The doctrine in *Lopez v Maddan Mohan Thakoor 5 B L R 521* that diluviated lands re forming on their old site remain the property of their original owner does not apply to lands in which after their re formation an indefeasible title has been acquired by long adverse possession or otherwise Where a plaintiff relies on an alleged adverse possession of lands for more than twelve years after their re-formation the question to be decided is whether he has had such possession for twelve years PADHA PROSHAD SINGH *v* RAM COOMAR SINGH
[I. L R 3 Calc 796 1 C L R 259
varying on appeal COURT OF WARDS *v* PADHA PROSHAD SINGH 22 W R 238

64. ———————— *Land re formed on site that can be identified* —Where land re forms by alluvion on a site capable of identification the right of the owner of the original site to the chur is indisputable SARAT SUNDARI DEBY *v* SOORJYA KANT ACHARJYA 25 W R 242

65 ———————— *Lands temporarily or permanently settled* —Where lands submerged by a river re form and can be identified as having formed a part of a particular estate they belong to the owner of that estate whether his estate consists wholly of permanently settled lands or whether it has been partly acquired as an alluvial accretion under temporary settlements made by Government with him as owner of permanently settled lands HURSAHAI SINGH *v* LOOTF ALI KHAN 14 B L R 268
[23 W R, 8 L R 2 I A 28

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67 ———————— *Submersion of land—Riparian rights—Identification of site of land* —In a suit for possession where it was found that a rivulet had come in from a river and formed a disjunction between the disputed land and plaintiff's property but that the rivulet was closed up and the river had returned to its proper channel and on the surface of the disputed land there still remained marks of its having belonged to the plaintiff —*Held* that the finding sufficiently identified the land in suit as the property of the plaintiff within the meaning of the Full Bench ruling in *Kattemonee Dossee v Monmohinee Dabee B L R Sup Vol 853, 8 W R 51* *Held* also that as the last person found to have had the land in occupation was the plaintiff and as his possession had never been disturbed (the land having ever since been submerged) there was a sufficient finding of possession to entitle plaintiff to a decree in confirmation of title INDURJEET KOOER *v* JUMNA Doss 14 W R, 164

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ACCRETION—*continued*

2 RE FORMATION AFTER DILUVIATION —*concluded*

of cultivation or occupation as such must be looked to If after the land comes into existence and is capable of cultivation it is taken into possession and occupied the subsequent drying up of the channel between such land and the shore does not affect the occupier s right to possession as against every one except the Government or one who can show a better title S 4 Regulation XI of 1825 is not against this view KALIPRASAD MAZUMDAR v COLLECTOR OF MYMENSINGH

[6 B L R 261 note 13 W R, 366

69 ——— *Beng Reg XI of 1825 s 4 Construction of— At the disposal of Government* —The words at the disposal of the Government in cl 3 s 4 Regulation XI of 1825 mean that the property in and absolute right of disposal of the land is vested in the Government and not that the Government has merely a right to the revenue KHELLUT CHUNDER GHOSE v COLLECTOR OF LHAUGULPORE W R 1864 73

3 PROCEDURE

70 ——— **Procedure where rules under Beng Reg XI of 1825 are inapplicable**—Where the special rules laid down in Regulation XI of 1825 for the adjudication of questions of title to alluvial land are inapplicable and no special custom exists the decision of the case ought to proceed on general principles of equity and justice SHEOGOLAM TEWAREE v FAQUERA MISSER 3 Agra 400

71 — **Chur lands re formation on old site**—*Beng Reg XI of 1825 s 4 cls 3 § 5—Held* that cl 3 s 4 Regulation XI of 1825 is applicable when the chur land is thrown up for the first time and is not capable of being identified but where the land thrown up forms a portion of the old mouzah and can be identified cl 5 s 4 of the said enactment would be applicable and in the absence of any particular local custom the claim in respect of such land must be decided according to the principles of equity TODEE SINGH v GARD ER

[2 Agra 342

72 ——— **Suit for alluvial lands**—*Beng Reg XI of 1825 s 5 cl 5*—In a suit for alluvial lands if the defendant pleads and can establish his plea that the lands in question were gradual accessions to his estate neither the ground of re formation on the old site nor that of prior possession for a short period can avail the plaintiff If however the plea be found against the defendant the matter must be disposed of according to cl 5 s 5 Regulation XI of 1825 GOVIND NATH SANDYAL v NUBO COOMAR BANERJEE 8 W R., 206

73 ——— *Beng Reg XI of 1825 s 4 cl 5*—Where plaintiff alleges that his and the defendant s villages were washed away and have re formed on the same site and no third party claims the new formation as an increment to his estate the question of title will have to be determined by cl 5 s 4 of Regulation XI of 1825 JANNODEE CHOWDHRAIN v COLLECTOR OF MYMENSINGH

[8 W R 287

ACCRETION—*continued*

4 RIGHT OF PURCHASERS TO ACCRETIONS

74 ——— **Re formation since purchase**—The purchaser of an estate found by actual measurement the year before to consist of a certain number of bighas with a specified rental can have no claim to re formations of land belonging to the mehal as it originally stood JUGOBUNDHOO BOSE v KOOMOODINEE KANT BANERJEE CHOWDHRY

[19 W R 89

75 ——— **Increments not mentioned in certificate of sale**—Where a mehal which has been diminished by diluvion is sold at auction by the Collector who apprizes the public of the existing area his specification of such area in no way limits the terms of the certificate of sale or restricts the right of the purchaser to claim thereafter any accretion to the estate the increment being always a contingent right which the zamindar has GUNGA NARAIN CHOWDHRY v RADHIKA MOHUN ROY

RADHIKA MOHUN ROY v GUNGA NARAIN CHOWDHRY 21 W R 115

Affirmed on review RADHIKA MOHUN ROY v GUNGA NARAIN CHOWDHRY 22 W R 23

See IDAN v NUND KISHORE 25 W R 390

76 ——— **Lands taken on settlement from Government**—Parties settling with Government are entitled to all the proprietary rights of the Government including the re formed lands unless they take the estate at a reduced jumma from that fixed at the original settlement in which case they are in the position of a proprietor who has accepted a remission of revenue in consideration of the loss of area of the land a situation which disentitles them to the lands re formed KRISHTO MOHUN BYSACK v COLLECTOR OF DACCA 24 W R 91

77 ——— **Purchase of land from Government—Right to increments**—Plaintiff bought a certain chur situated between two branches of a river from the Government the sale notification stating that the chur contained a certain area and was subject to a certain jumma It appeared that at a former time the chur had been much larger and extended over a site afterwards covered with deep water but on which and before the plaintiff s purchase new land had formed by accretion to the opposite side of the channel In a suit for possession of the newly formed land on the ground that it was re formation on an old site—*Held* that what the Government sold and what plaintiff bought was the chur as it existed at the date of the purchase *Gunga Narain Chowdhry v Radhika Mohun Roy 21 W R 115* cited and distinguished GHOLAM ALI CHOWDHRY v COLLECTOR OF BACKERGUNGE

[2 C L R, 39

78 ——— **Property not attached because submerged**—*Submersion of contiguous estate—Sale in execution of decree—Right of purchaser*—F owned a share in a village M which in 1875 was divided into two separate mahals K and U and Government revenue was separately assessed on each mehal In 1876 K was entirely submerged by the Ganges On the 20th September 1877 F's

ACCRETION—concluded

4. RIGHT OF PURCHASERS TO ACCRETIONS—concluded

share was s ll in executi n cf a d cr c and the auc tion purchaser was put in pos ession In the sale certificate the village M was named without specific mention of either cf the two mehals, and the Govern ment revenue r f rre l to was the amount asse sed on U only Subsequently the river receded and part cf K was agam l ft dry and it was treated by the revenue authorities as having accreted by alluvion to U in the proprietary po ion of the auction pur chaser *Held* that this view was erroneous inasmuch as before the auction sale of 20th September 1877 the two properties were separate being separately asses ed with revenue and th incidents of the owner ship of one could not affect the ownership of the other an l since there was no such rule of law as would justify the proposition that simply becau e two mehals are contiguous, and one of them is liable to be submerged therefore it is nothing more or less than an accretion to the other *Held* also that inasmuch as the mehal K being at the time under water was not attached in execution of the decree against *F* and was not advertized for sale and the revenue assessed thereon was not referred to in the sale pro ceedings and the sale certificate contained no refer ence to it as the property sold the sale of the 20th September 1877 did not convey any ri hts to the auction purchaser in respect of K *Mahadeo Dubey v Bhola Nath Dichit I L R 5 All 86* referred t FIDA HUSAIN r KUTUB HUSAIN

[I L R 7 All 38

ACCUMULATIONS

See HINDU LAW—ALIENATION—ALIEN ATION BY WIDOW—INCOME AND AC CUMULATIONS

See HINDU LAW—JOINT FAMILY—NATURE OF AND INTEREST IN JOINT PROPERTY—ANCESTRAL PROPERTY

[I L R 20 Bom 316
I L R 21 Bom 349

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY IN HERITANCE

[I L R 10 Bom 478
I L R 14 Calc 861

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION

[I L R 14 Calc 861
I L R 16 Calc 574

See HINDU LAW—WILL—CONSTRUC TION OF WILLS

[9 W R P C 1
12 Moore s I A 41
I L R 7 Calc 269
I L R 11 Calc 684
L R 12 I A 103
I L R 20 Bom 571
I L R 24 Calc 589
I L R 25 Calc., 662
2 C W N 389

ACCUMULATIONS—continued

1 ———— Income—*Hindu widow*—Accu mulations are not income and cannot be dealt with by a Hindu widow as such they should be treated in the same way as the *corpus* of the e tate GROSE r AMIRTAMAYI DASI

[4 B L R O C 3 12 W R, O C 13

2 ———— But income and accumulations are not the same thing therefore *quære* whether she can deal with accumulations as she can with income IN THE GOODS OF HAREN DRANARAYAN KAILASNATH GHOSE r BISWANATH BISWAS 4 B L R O C 41

3 ———— Right of Hindu widow—*Accumulations of income from her husband s estate* — A Hindu widow is entitled to the accumulations of income from her husband s estate PANNALAL SEAL r BAMASUNDARI DASI 6 B L R 732

4 ———— *Immoveable pro perty purchased with accumulations* —Immoveable property purchased by a Hindu widow with the pro fits of her husband s estate there being no proof of any distinct intention on her part to sever such pur chases from the estate and appropriate it to herself *held* to form part of her husband s estate GONDA KOOER v KOOER OODEY SINGH 14 B L R 159
See CHOWDHRY BHOLANATH THAKOOR r BHAGABATTI DEVI 7 B L R 93

In that case it was held that though a Hindu widow cannot alienate property acquired by her out of funds derived from her husband yet where she held under a deed which conveyed the property to her to enjoy for her lifetime and to incur all needful ex penses she was entitled to invest sums out of the in come for the benefit of her daughter and grand daughter in the purchase of immoveable property for their maintenance But this decision was on the construction of the deed reversed by the Privy Coun cil BHAGABATTI DEVI r BHOLANATH THAKOOR

[I L R 1 Calc 104

ACCUSED PERSON

See BAIL 1 B L R A Cr 7
[10 W R Cr 16
I L R 1 All 151

1 ———— *Definition of ac cused person* —An accused person is a person over whom a Magistrate or other Court is exercising juris diction QUEEN EMPRESS r MONA PUNA

[I L R 16 Bom 661

JHOJA SINGH r QUEEN EMPRESS

[I L R., 23 Calc 493

2 ———— *Accused person —Criminal Procedure Code 1882 s 437 —Held* that a person against whom proceedings under Ch XIII of the Code of Criminal Procedure are being taken is an accused person within the meaning of s 437 of the Code *Queen Empress v Mona Puna I L R 16 Bom 661* and *Jhojha Singh v Queen Empress I L R 23 Calc 493* followed QUEEN EMPRESS r MUTASADDI LAL

[I L R 21 All., 107

ACCUSED PERSON, RIGHT OF—

See CASES UNDER PRISONER PRIVILEGES OF

See CASES UNDER WITNESS—CRIMINAL CASES

1 ———————— *Notice and specification of offence—Criminal Process* —An accused person is entitled to have conveyed to him by the process whether summons or warrant the same amount of information relative to the accusation made against him which should specify not only the technical designation of the offence but the acts for which the accused would have to answer RAMZAN ALI *v* DURPO KOMILLA 24 W R Cr 58

2 ———————— *Application by accused for copy of Police charge sheet—Police diaries—Criminal Procedure Code (1882) ss 161 and 172 Revision* —At the beginning of a trial in the Court of a Presidency Magistrate an application was made on behalf of the accused for a copy of the Police charge sheet which contained the whole of the prosecution evidence as set forth by the Police and extracts from if not copies of the Police diary The application was rejected by the Magistrate *Held* that the High Court should not on revision interfere with the order of the Magistrate QUEEN EMPRESS *v* VENKATARATNAM PANTULU

[I L R 10 Mad 14

3. ———————— *Right of an accused to copies of Police reports before trial—Criminal Procedure Code (1882) ss 157 168 and 173—Public documents—Right of accused to inspect and have copies*—*Held* by the Full Bench (SUBRAMANIA AYYAR J dissentiente)—Reports made by a Police officer in compliance with ss 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of s 74 of the Indian Evidence Act and consequently an accused person is not entitled before trial to have copies of such reports *Held* by COLLINS C J and BENSON J—The same rule applies to reports made by a Police-officer in compliance with s 173 of the Criminal Procedure Code *Held* by SHEPHARD and SUBRAMANIA AYYAR JJ—Reports made by a Police-officer in compliance with s 173 of the Criminal Procedure Code are public documents within the meaning of s 74 of the Evidence Act and consequently an accused person having a proprietary interest in such documents is entitled by virtue of s 76 of the Evidence Act to have copies of such reports before trial QUEEN EMPRESS *v* ARUMUGAM

[I L R 20 Mad 189

4. ———————— *Criminal Procedure Code (1882), ss 161 and 172—Police diaries—Right of accused or his agent to see the special diary—Police statement* —In no case is an accused person entitled as of right to inspect any statement recorded by a Police officer in the special diary prepared under the authority of s 172 of Criminal Procedure If the special diary is used by the Court to contradict the Police officer who made it or by the Police officer himself to refresh his memory the accused or his agent has a right to see that portion of the diary which has been referred to for either of these purposes that is to say the accused person or his agent is entitled to see the particular entry which has been referred to and so much of the diary as in the opinion of the Court is necessary in that particular matter to the full understanding of the particular entry so used but no more So *held* by the Full Bench *per* EDGE C J KNOX BLAIR and BURKITT JJ—A Police officer investigating a case may lawfully reduce into writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s 161 of the Code of Criminal Procedure and if he does so his record of such statement is part of the special diary and is just as much privileged as any other entry in the diary *Per* BANERJI J and AIKMAN J Statements recorded under s. 161 of the Code of Criminal Procedure by a Police-officer making an investigation were not intended by the Legislature to be entered in the special diary and if they are so entered do not form an integral part of the diary and are not privileged but the accused person or his agent is entitled to see them. QUEEN EMPRESS *v* MANNU I. L. R 19 All, 390

5 ———————— *Accused right of retrial before jury where conviction set aside for misdirection* —When a case has been tried before a jury and the conviction has been set aside on the ground of misdirection the accused is entitled to have his case retried before a jury *Makin v Attorney General for New South Wales L R 1894 App C 57* referred to SADHU SHEIKH *v* EMPRESS [4 C W N 576

ACKNOWLEDGMENT

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT

See STAMP ACT 1879 s 3 CL. 4.

[I L R 14 Bom., 511
I. L. R 22 Calc., 757

See CASES UNDER STAMP ACT 1879 SCH I ART 1

———— by letter

See STAMP ACT 1879 s. 61

[I L. R., 8 Mad., 11
I L. R., 11 Mad. 329
I L. R., 27 Calc., 324
I L. R. 23 Bom., 54

———— of debt.

See CASES UNDER LIMITATION ACT 1877 s. 19 (1859 s. 4, 1871 s. 20)—ACKNOWLEDGMENT OF DEBTS

See CASES UNDER LIMITATION ACT 1877 ART 64

———— of title

See CASES UNDER LIMITATION ACT s. 19 ACKNOWLEDGMENT OF OTHER RIGHTS

ACQUIESCENCE.

See CASES UNDER ESTOPPEL—ESTOPPEL BY CONDUCT

See CASES UNDER JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES AND WAIVER OF JURISDICTION

See CASES UNDER LACHES

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS

1 ———— **Laches**—*Doctrine of laches and applicability of—Limitation*—The equitable doctrine of laches and acquiescence does not apply to suits for which a period is provided in the Limitation Acts. RAM RAU *v* RAJA RAU 2 Mad 114

TARUCK CHUNDER BHATTACHARJEE *v* HURO SUNKUR SANDYAL 22 W R 267

Contra UDA BEGAM *v* IMAMUDIN [I. L. R., 1 All. 82

2 ———— *Limitation*—Mere laches or indirect acquiescence short of the period prescribed by the Statute of Limitation is no bar to the enforcement of a right absolutely vested in the plaintiff at the time of suit *Semble*—The doctrine of acquiescence or laches will apply only to cases if such there are in which they can be regarded as a positive extinguishment of right When they go merely to the remedy the Courts have no power arbitrarily to substitute an extinguishing prescription different from that determined by the Legislature PEDDAMUTHULATY *v* TIMMA REDDY 2 Mad 270

3 ———— **Delay**—Circumstances constituting delay and acquiescence discussed JAMNADAS SHANKARLAL *v* ATMARAM HARJIVAN [I L R 2 Bom 133

4. ———— **Delay in bringing suit**—Long acquiescence held on the facts to bar a suit for possession after assignment JAN KOONWAR *v* RAM PUTTUN NEOGHY 18 W R 500

5 ———— **Delay in enforcing rights with knowledge of them**—Where the plaintiff in 1859 instituted a suit for a share of certain property which he admitted had been for nine years in the defendants' possession and which the defendants alleged had been sold to them in 1850—*Held* that the plaintiff s taking no steps during that time to enforce his alleged rights amounted to acquiescence on his part in the sale NILATATCHI *v* VENKATACHALA MUDALI 1 Mad. 131

6 ———— *Presumption from long delay—Estoppel*—In a suit by plaintiffs (who had been in possession of the land in dispute under and ever since the date of a pottah granted to them by the Collector in 1843) to have their title under the pottah declared the defendants were held by their long acquiescence in taking no steps within 12 years to have the pottah declared invalid to have concluded themselves from now saying that it was illegal and that the Collector had no power to grant it SUNTLALL MISSER *v* BHUBOSEE ISSUR 18 W R 57

ACQUIESCENCE—*continued*

7 ———— *Contract—Undue influence—Acquiescence by conduct—Exchange of land*—Where the owner of certain land exchanges it for certain other land but takes a lease for one year of the former land and pays the rent thereof and receives and retains the rents of the land he has acquired by the exchange he shows so complete an acquiescence in the transaction that he cannot afterwards have it set aside on the ground of undue influence SEETHARAMA RAJU *v* BAYANNA PANTULU I. L. R, 17 Mad, 275

8 ———— *Acquiescence in lease by Executors which they had no power to make—Estoppel—Representation not acted on*—Where the devisee of an estate for six years after coming of age and succeeding to the estate signed rent bills in respect of land which the executors of his testator had purported to lease for 999 years and such rent bills contained a representation that the land had been given to the lessees on fazendári tenure—*Held* that in the absence of any evidence that the lessees had been deceived by or had acted upon such representation the devisee was not estopped from contesting the validity of the lease A man cannot be precluded from asserting his own rights by acquiescence in acts of other parties inconsistent with them unless (1) he has actual knowledge as distinguished from the means of knowledge of his rights (2) he has knowledge that the persons acting inconsistently with them are doing so under the mistaken belief that they are exercising rights of their own (3) he has encouraged the parties so acting to spend money or do other acts either directly or by abstaining from asserting his legal rights *Willmott v Barber L R 15 Ch D 96* followed JUGMOHANDAS VUNDRAWANDAS *v* PALLONJEE EDULJEE MOBEDINA I L R 22 Bom, 1

9 ———— **Delay in making objection**—*Presumption of consent*—In a suit to avoid alienations effected by the plaintiff s father at a time when the plaintiff was living in commensality with his father as a member of a joint family which suit was brought after 12 or 13 years had been allowed to go by without any objection save the filing of a petition of protest in a Court of Justice whereof the vendees were not made aware—*Held* that the plaintiff was rightly considered to have consented to the alienations. RAM KISHORE NARAIN SINGH *v* ANUND MISSER 21 W R, 12

10 ———— *Knowledge of transaction—Presumption of consent*—Before a man can be held to have given by his conduct an implied assent to a transaction especially one which operates as a conveyance of a valuable estate it must be shown that he was fully aware of what the transaction was and what effect it would have [illegible] interests at the time he so conducted [illegible] dicate assent JAGO BUNDHOO TEWARY [illegible] SINGH 22 W R, 241

11 ———— [illegible] *road—Presumption of consent*—The [illegible] having opposed the making [illegible]

[illegible] 12

ACQUIESCENCE—*continued*

completion was held not entitled to sue to have it closed PADHA NATH BANERJEE *v* JOY KISHEN MOOKERJEE 1 W R., 288

12 ———— *Suit to close road—Presumption of consent* —If *A* construct a road across *B's* land *B* can sue within the ordinary period of limitation and no consent can be inferred from the fact that *B* did not sue immediately after the commencement or completion of the road HURO SOONDUREE DEBIA *v* RAM DHUN BHUTTACHARJEE [7 W R 276

13 ———— Delay in opposing erection of building—*Presumption of consent* —In a suit for the demolition of a privy erected on plaintiff's land it having appeared that plaintiff was aware of the erection of the privy and had allowed it to be completed and to remain standing for at least seven years his application was refused BROMO MOYEE DEBIA CHOWDHRAIN *v* KOOMODINEE KANT BANERJEE BARODA KANT BANERJEE *v* KOOMODINEE KANT BANERJEE 17 W R 467

14 ———— Erection of building without objection —Acquiescence must be inferred when a person stands by and allows another to erect a pucca building on his land and a suit would not lie for the demolition of the building but only for damages or rent of land HURRO CHUNDER MOOKERJEE *v* HULLODHUR MOOKERJEE W R 1864 166
NIL KANT SAHOO *v* JUGOO SAHOO [20 W R 328

15 ———— *Building by trespasser on land* —When a trespasser tortiously enters upon the land of another and builds a house thereon the party injured is entitled to recover possession of the land by destroying the house if there is no proof of acquiescence on his part in the act of injury done GOBIND PURAMANICK *v* GOOROO CHURN DUTT [3 W R 71
GUJADHUR SINGH *v* NUND RAM 1 Agra 244

16 ———— *Suit for restoration of land to former condition* —The rights of a co sharer in a joint estate were sold by auction but it did not appear that a site held by him in the village passed by the sale and the site remained in the possession of his heirs who sold it to the defendant who erected a shop thereon Twenty years after the auction sale the plaintiffs some of the co sharers in the joint estate sued for demolition of the house and the restoration of the site to the village —*Held* that under the circumstances the claim could not be maintained BAHADOOR *v* SHADEE RAM [2 Agra 3

17 ———— *Right to remove building* —Where *H* knowing that *B* claimed certain land as his own nevertheless purchased the land from a third person and erected a bungalow upon it which *B* did not interfere to prevent —It was *held* that the English rule of equity which under such circumstances would allow *B* to recover the land with the bungalow upon it ought not to be applied in India but that *H* should be allowed to remove the bungalow he had erected. NARAYAN BIN RAGHAJI *v* BHOLAGIR GURU MANJIR HORMASJI SORABJI *v* BHOLAGIR GURU MANJIR *v* HORMASJI SORABJI 6 Bom., A. C., 80

18 ———— *Building erected on land by purchaser owner standing by* —Where a purchaser claims to hold land which he has purchased from a third person on the ground that the owner of such land has acquiesced in the sale the purchaser must show clearly that the real owner was aware of the sale at the time it took place Where the owner of land was not aware of its being sold by his father to a third person but having heard of such sale subsequently stood by and allowed the purchaser to build upon the land —It was *held* that the owner could not recover the land without compensating the purchaser for the building erected by him upon the land and three months were allowed to the owner within which to pay such compensation SAVAKLAL KARSANDAS *v* ORA NIZMUDDIN [8 Bom O C 77

19 ———— *Right of way interruption of* — *A* had a right of way over *B's* land He allowed *B* to erect a house on the pathway and enjoy it for seven years He then brought a suit to have the pathway re opened by pulling down *B's* house *Held A* must be taken to have acquiesced in the interruption of his right of way and his claim was one that a Court of equity and good conscience would not enforce BENI MADHAB DAS *v* RAMJAY POKH 1 B L R., A C 213 10 W R 316

20 ———— When a man builds a house on land supposing it to be his own or believing that he has a good title and the real owner perceiving his mistake refrains from setting him right and leaves him to persevere in his error a Court of Equity will not allow the owner to assert his legal right against the other without at least making him full compensation RAMA *v* JAN MAHOMED [3 B L R. A C 18 11 W R., 574
ARUNA CHELLUM CHETTY *v* OLAGAPPAH CHETTY [4 Mad, 312

21 ———— *Suit for ejectment—Transferable tenure—Landlord and tenant —Permissive occupation* —*B* and *C* and their father held lands for upwards of thirty five years and built houses on the same *B* and *C* sold their tenures to *D* and *E* *A* the zamindar who had not objected to the building now sued to eject *D* and *E* as trespassers Evidence was given that the tenures were by the custom of the country transferable *Held A* could not eject *D* and *E* BENI MADHAB BANERJEE *v* JAI KRISHNA MOOKERJEE [7 B L R. 152 12 W R 495

Upholding on appeal KEMP J in S C [11 W R 354

See ESHAN CHUNDER GHOSE *v* HURRISH CHUNDER BANERJEE [10 B L R. Ap 5 18 W R., 19

and NABU MONDUL *v* CHOLIM MULLIK [I L R. 25 Calc 896 *per* RAMPINI J

22 ———— *Erection of pucca building more than 20 years ago—Presumption as to permanent character of tenancy—Second appeal*

ACQUIESCENCE—*continued*

power of Court to question inference from fact in—Omission of the Appellate Court to take into consideration circumstances affecting landlord's acquiescence—A landlord by merely not objecting to his tenant's raising a pucca building does not confer on the tenant a permanent right to remain on the land. But long possession coupled with the acquiescence of the landlord in the raising of pucca buildings and his continuing to receive rent from the raiyat after such buildings have been raised may justify the inference that a tenant has a permanent right *Zeshwada Bai* v *Ram Chandra Takaram I L R, 18 Bom 66* referred to But there are circumstances which may go far to weaken the force of that inference and one of these is the circumstance of the landlord's interest being let out in ijara at the time the building was raised The absence of objection on the part of the landlord to the erection of a permanent building by a tenant during the continuance of an ijara of the landlord's interest should not be construed as amounting to acquiescence such as might be inferred where the landlord is in direct receipt of rent from the tenant *Beni Madhub Banerjee* v *Joy Kissen Mookerjee 12 W R 495* distinguished. KRISHNA KISHORE NEOGI v MAHOMED ALI 3 C W N 255

23 ——— *Assignable interest—Sale in execution of decree*—The plaintiff permitted *B* to erect a thatched dwelling house with mud walls on a piece of land belonging to the plaintiff and *B* dwelt in it for more than forty years *Held* that *B* had an assignable interest on the house and land which could therefore be seized and sold in execution of a decree against *B* and that the purchaser who had obtained possession could not be dispossessed at the suit of the plaintiff DURGAPRA AD MISSER v BRINDABUN SOOKUL

[7 B L R. 159 15 W R, 274

24. ——— *Land let for building purposes*—A landlord who allows his lessee to invest capital in erecting buildings on lands let for cultivation and raises no objection for a considerable number of years will not be allowed to disturb the holding The fact of buildings having been permitted without objection to stand on lands for a considerable number of years is *prima facie* proof that the land had been originally leased for building purposes BRAJA NATH KUNDU CHOWDRY v STEWART 8 B L R Ap 51 16 W R 216

25 ——— *Permissive occupancy—Right of possession as against purchaser*—Where the defendant had been in possession of land for more than thirty years and had without objection built upon the land —*Held* that he had not by such permissive occupancy acquired a right to retain possession when served with notice to quit by a purchaser of the land. ADDAITA CHARAN DEY v PETER DAS 13 B L R. 417 note 17 W R., 383

26 ——— *Law of landlord and tenant as to building by the tenant on the land—Acquiescence of lessor—Equitable estoppel preventing ejectment—Onus of proof*—A lessor is not restrained by any rule of equity from bringing a suit to evict a tenant the term of whose lease has expired, merely by reason of that tenant's having erected permanent structures on the land leased such building having been within the knowledge of the lessor and there not having been any interference on his part to prevent it To raise an equitable estoppel against the lessor precluding him from suing on the determination of the tenancy for possession the tenant should show facts sufficient to justify the legal inference that the lessor has by plain implication contracted that the right of tenancy should be changed into a right of permanent occupancy Acquiescence by the lessor in this case was a legal inference to be drawn from such facts as were found The onus of establishing sufficient cause for an equitable estoppel had not been discharged by the tenant in this instance *Ramsden* v *Dyson L R 1 E and I Ap 129* and s 108 of the Transfer of Property Act 1882 referred to BENI RAM v KUNDAN LAL

[I L R. 21 All 496 L R. 26 I. A 58 3 C W N 502

27 ——— *Erection of building by tenant—Acquiescence of landlord*—To resist ejectment by a tenant on the ground that the tenancy is a permanent one and that the landlord stood by and permitted him (the tenant) to erect pucca buildings on the land in the belief that the said tenancy was a permanent one it is incumbent on the tenant to show that in erecting the buildings he was acting under an honest belief that he had a permanent right in the land and the landlord knowing that he (the tenant) was acting under such belief stood by and allowed him to go on with the construction of the buildings *Beni Ram* v *Kundan Lal I L R 21 All 496 L R 26 I A 58 Ramsden* v *Dyson L R 1 E and I Ap 129 Jug Mohan Das* v *Pallonjee I L R 23 Bom 1 De Busche* v *Alt L R 8 Ch Div 286 Kunhamed* v *Narayana Mussad I L R 12 Mad 320* referred to ISMAIL KHAN MAHOMED v JAIGUN BIBI

[I L R 27 Calc 570 4 C W N 210

28 ——— *Delay—Erection of buildings—Laches—Limitation*—The plea of acquiescence is applicable to suits for which a fixed term of limitation is prescribed by law but mere delay in enforcing a right does not constitute acquiescence The defendants took possession of and erected buildings on land which they knew belonged to the plaintiff and they had no claim to without applying to the plaintiff for consent The plaintiff abstained from suing to eject them for one or two years knowing that the defendants were building on the land —*Held* under the circumstances that the delay in the institution of the suit was not sufficient to deprive the plaintiff of her right to relief UDA BEGUM v IMAM UD DIN I. L. R., 1 All, 82

29 ——— *Standing by and seeing building erected—Right to removal*—In a case in which plaintiffs sought to recover possession of some land on which defendants had constructed a pucca house and in which defendants pleaded that they had purchased a building right from a third party with whom plaintiffs had settled the land and that plaintiffs had seen them building the house in

ACQUIESCENCE—*continued*

question without offering any objections—*Held* that having stood by and allowed defendants to build the house plaintiffs could not sue to have the house removed LALA GOPEE CHAND v LIAKUT HOSEIN [25 W R 211

30 ——— *Absence of protest—Suit for removal of building—Obstruction to right of way*—In a suit for the removal of a building which the defendants had erected and which was an obstruction to the plaintiffs right to use a courtyard adjoining their residences it appeared that the land on which the building stood did not belong to either party but that all the inhabitants of the mohulla had from time immemorial exercised a right of way over it to and from their houses—*Held* that there was no principle of acquiescence involved in the case inasmuch as there was no evidence that the plaintiffs had given their actual consent to the building and the only evidence of their acquiescence could be that they did not immediately protest and the defendants must have known that they were building upon a courtyard which their neighbours had a right to use *Uda Begum v Imam ud din I L R 1 All 82* and *Ramsden v Dyson L R 1 E and I Ap 129* referred to FATEHYAB KHAN v MUHAMMED YUSUP MUHAMMED YUSUF v FATEHYAB KHAN [I L R 9 All. 434

31. ——— Cultivating land without objection—*Acquiescence—Owner standing by and seeing person without title cultivate land—Fraud and deceit*—In order to prevent the owner of land who is charged with standing by and allowing another person who believes he has a good title thereto to enter on the land and spend money in improving it from recovering possession thereof fraud and deceit on the part of the owner must be clearly proved *Dann v Spurrier 7 Vesey 231* and *Rama v Jan Mahomed 3 B L R A C 18 11 W R 574* explained. LANGLOIS v PATTRAY 3 C L R 1

32 ——— Cultivation and changing character of land—*Landlord and tenant—Injunction—Delay*—The tenant of an agricultural holding planted his jote with mango trees to the knowledge but without the consent of his landlord thus changing the character of the land. More than three years afterwards the landlord sued for a mandatory injunction to have the mango trees removed. *Held* that having stood by for more than three years and allowed the tenant to spend his labour and capital upon the land without taking any action in the matter the landlord was not entitled to a mandatory injunction NOYNA MISSER v RUPIKUN

[I. L. R., 9 Calc., 609 12 C L R., 300

33 ——— *Malabar kanam—Change in character of land—Passive acquiescence of landlord—Estoppel—Compensation for improvements by tenant*—Land was demised on kanam wet for cultivation. The demisee changed the character of the holding by making various improvements which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character of the holding was being changed and had thereby caused a belief that the change had his approval *Held* on second appeal that the demisee was entitled to compensation for his improvements on redemption of the kanam *Ramsden v Dyson L R 1 E and I Ap 129* followed. KUNHAMMED v NARAYANAN MUSAD [I. L R 12 Mad., 320

See RAVI VARMAH v MATHIS EN [I. L. R. 12 Mad., 323 note

where however it was held that the landlord had not acquiesced in some of the improvements and compensation was therefore refused for them though the tenant was permitted to remove those for which no compensation was allowed.

34 ——— Acquiescence in title by conduct—In a suit to recover possession of property it was held on the evidence that the plaintiffs had acquiesced in defendant s title by their conduct JEEBUN MUNDAL v NADYAR CHAND POY [25 W R 461

35 ——— Conduct defeating title—*Evidence of ratification*—The plaintiff a member of an undivided Hindu family sued to recover a parcel of land which he alleged his uncle the first defendant to have wrongly transferred to the second defendant The second defendant alleged a sale to him by the first defendant and a subsequent sale to the third defendant and denied the plaintiff s title The Munsif gave a decree for the plaintiff on appeal the Principal Sudder Amin finding that the plaintiff knew of the sale and treating the knowledge as evidence of acquiescence in it reversed the decision of the Munsif *Held* reversing the decision of the Principal Sudder Amin that such knowledge would not make the plaintiff a party to the sale by the first defendant so as to bar his right to recover the land for which he sued in ejectment A person who seeks to bar one who is *prima facie* the legal owner by evidence of ratification or of facts cogent enough to prove one not a formal to be a substantial party must make and prove such a case for he is one who seeks to displace a legal title RAJAN v BASUVA CHETTI [2 Mad 428

36 ——— *Ratification of transfer of property*—A solehnama in 1847 to which were parties the sons daughters and widow of a deceased Mahomedan proprietor transferred the shares of two minor daughters in their father s estate having been executed by their mother the widow on their behalf. On the question whether the solehnama should be set aside at the instance of the two daughters on the ground of its having been beyond their mother's power to bind them and of the instruments having been prejudicial to their interests the evidence showed that it had been acted on and followed by possession and that the daughters had after attaining full age allowed a lengthened period of twenty years to elapse without taking proceedings to dispute it—*Held* that if the mother had exceeded her powers in executing the solehnama on their behalf and if they might at one time have had it set aside their long acquiescence was sufficient to show ratification of the transaction; and the solehnama was

ACQUIESCENCE—*continued*

upheld MAHOMED ABDUL KADIR *v* AMTAL KARIM BANU

[I. L. R., 16 Calc. 161 L. R 15 I A. 220

37 ——— **Presumption from allowing grant of certificate unopposed.**—In a rival claim between two Hindu widows of a deceased husband the plaintiff sued as mother and guardian of her infant son to establish his right as son and heir of his father One defence among others was that the son was not legitimate and could not inherit His legitimacy was established but the incapacity to inherit was sought to be proved by the plaintiff's virtual acknowledgment of the defendant's title as heiress on the grant to the defendant unopposed by the plaintiff of a certificate of heirship *Held* that it was not the practice of the Courts in India or of the Privy Council to press against either an infant or a Hindu female a presumption by acquiescence in a rival claim from the mere non contestation for a limited time of an adverse title RAMAMANI AMMAL *v* KULANTHI NAUCHEAR

[17 W R 1 14 Moore's I A 346

38 ——— **Not objecting to sale**—*Suit to recover property sold—Presumption of consent*—Where *R K* acting ostensibly as recognized agent and manager of the family sold part of the family property to the ancestors of the defendants and the plaintiff who was then of age did not object to the sale but afterwards sued to set aside the sale as to his share on the ground that the property had been purchased by *R K* with the joint funds while the plaintiff was a minor and that it was sold by him without authority the first Court gave him a decree for a one fourth share of the property *R K* appealed but the other defendants did not appeal The Judge assuming the lower Court's finding to be correct held that as the plaintiff who was of age at the time did not object to the sale he could not recover possession of property sold by *R K* as the recognized agent and manager *Held* that *R K* could not found any right upon the presumption of plaintiff's consent however such presumption might have availed the other defendants purchasers from *R K* who had not appealed GOPAL CHUNDER LAHOORY *v* ROY KISHORE LAHOORY 15 W R. 467

39 ———**Pre emption**—*Mortgage by conditional sale*—Acquiescence in a mortgage by conditional sale does not involve relinquishment of the right of pre emption upon the conditional sale eventually becoming absolute AJAIB NATH *v* MATHURA PRASAD I L. R 11 All 164

40 ——— **Account made in course of usual dealing**—The defendant in a suit for balance of payments made by plaintiff on his behalf *held* not entitled to refuse to be bound by an account made up in accordance with the course of dealing which had practically been assented to by him and had been followed between the parties for many years THAKOOR PERSHAD SINGH *v* MOHESH LALL

[24 W R. 390

41. ——— *Civil Procedure Code (Act XIV of 1882) s 443—Suit against a major defendant by guardian* ad litem—*Subsequent objection to execution on ground of his having been wrongly impleaded*—The managing member of a Hindu family consisting of himself and two brothers who were minors mortgaged the ancestral property to secure a debt properly incurred by him in his capacity as manager The mortgagee brought a suit upon the mortgage joining as defendants the three brothers the two younger of whom were sued by the mortgagor as their guardian *ad litem* A decree for the plaintiff having been passed the lands were sold in execution The two younger brothers now sued to have the decree and the sale set aside as regards them on the ground that they had both been of age at the date of the suit and accordingly had been wrongly impleaded It appeared that the elder plaintiff was in fact a major at the date of the previous suit but he was aware prior to the sale of the suit and the execution proceedings and still allowed his elder brother to conduct the defence and proceedings on his behalf —*Held* that both plaintiffs were bound by the decree in the former suit RAMACHARI *v* DURAISAMI PILLAI I. L. R. 21 Mad. 167

42 ——— **Sending agent to settle rent**—*Acquiescence in rate*—The sending of an agent by a tenant to settle with the landlord as to the rent is not a virtual acquiescence in the rate of rent demanded STALKART *v* LALLA BHUBRUT LALL W R 1864 Act X, 115

43 ——— **Receipt of rent in lieu of grant of land.**—In a suit to recover possession of land it appeared that the defendant's father had in 1801 obtained possession on a lease of 280 bighas from the Government of Kulabo and that the plaintiffs father had in 1806 obtained a grant of 10 unspecified bighas of the same land but that he never asked to have them marked out and given to him *in specie* and that he and subsequently his sons the plaintiffs were content up to the year 1856 to receive from the defendant's family in respect of their grant the rent formerly paid by them to the Government for the same The District Court reversed the decree of the Munsif and threw out the claim to recover possession of the land on the ground that the plaintiffs must be taken after such a lapse of time to have acquiesced in the arrangement that a yearly rent was to be received without any particular land being marked out as theirs *Held* that it was competent for the Assistant Judge to come to that conclusion under the circumstances and that there was no ground for saying that there was any error of law in his decision which was accordingly affirmed. SULE *v* DHUNDIRAJ VENAYAK 3 Bom. A C., 55

44. ——— **Accepting lower rent than that entitled to for long time**—Where a landlord who may originally have had a right to collect a higher rent is for a long period of years content to accept a lower it would be manifestly unjust to allow him to turn round upon the tenant at any time he pleases and demand the higher rent ROOCHA RAM MISR *v* NAGA DOSS 2 N W., 92

45 ——— **Long possession by tenant without lease**—An under tenant who has dug a tank and been in *possession undisturbed by the former* proprietor for a long period such acquiescence

ACQUIESCENCE—*concluded*

being equivalent to a lease cannot be ejected by the patnidar SREEMUNT PAM DEY v. ROOKOOR CHAND [15 W R 481

46 ——— Allowing part owner to work forfeiture of tenure as if full owner—*Waiver of forfeiture—Claim of portion of tenure*—If *A* allows *B* to deal with an occupancy tenure as full owner and by an attempted transfer to work a forfeiture thereof without any objection on his part *A* will not be allowed to come in afterwards and claim a part of the forfeited holding on the ground that *B* was only part owner and could therefore only work a forfeiture of his own share MANIRULLAH v. RAMZAN ALI 1 C L R 293

47 ——— *Equitable estoppel—Landlord and tenant—Lessee taking lease direct from zamindar—Suit by occupancy tenant to eject zamindar's lessee*—Where a person took a permanent lease of a cultivatory holding direct from the zamindar without making any inquiries as to who were the cultivators and on what tenure they held and where the permanent lessee having commenced to build one of the cultivators being an occupancy tenant subsequently brought a suit in ejectment against him —*Held* that the lessee should by the knowledge that the land was a cultivatory holding have been put on his guard and have made inquiries as to the exact condition of the title and not having done so the doctrine of equitable acquiescence could not be applied BISHESHAR v. MUIRHEAD [I L R 14 All 362

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——— Association formed for—

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[I L R 17 Calc 786
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ACQUITTAL.

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See CASES UNDER DISCHARGE OF ACCUSED

See PRISONS ACT s 45
[I. L R, 2 All. 301

See CASES UNDER REVISION—CRIMINAL CASES—ACQUITTALS

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——— Application of to Crown.

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[I L R., 14 Bom, 213

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[18 W R, 319

——— X, s 3—

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[7 W R, 401
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See LAND TENURE IN BOMBAY
[4 Bom, O C., 1

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[7 Bom A C 89
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See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS
[I L R 1 Bom. 624
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See LIMITATION ACT 1877 ART 47 (1859 s 1 CL 7) 10 Bom., 479

See MAMLATDAR JURISDICTION OF
[I L R 14 Bom 372

——— XIX s 13—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—ACT XIX OF 1838
[5 Bom Cr, 6

See MERCHANT SHIPPING ACT 1854 ss 24 26 I L R 14 Bom., 170

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[I L R, 7 Bom 280

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[4 Mad. 277

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[3 Moore's I A, 335

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See JUDICIAL OFFICERS LIABILITY OF
[3 Bom., Ap 1

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See PRE EMPTION—RIGHT OF PRE EMPTION 1 Agra 186 [2 Agra 280 6 N W 243 272

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See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE [I L R 20 Bom 437

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See LIMITATION ACT 1877 ART 13 (1859 s 1 CL 5) B L R Sup Vol 633 [2 Ind Jur, N S, 191 7 W R 199 Marsh 573 11 Moore s I. A 405 1 W R 341

——XIX, s 3—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622 [I L R 10 Mad. 68 I L R 12 Mad. 341

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See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827 AND ACTS XIX AND XX OF 1841 W R 1864 227 [W R 1864 Mis 24 1 W R, Mis 28

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See RIGHT OF SUIT—ORDERS SUITS TO SET ASIDE Marsh. 7 214 231 [1 Ind. Jur O S 36 1 Hay 29 559 2 Hay 86 2 W R 267

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[1 N W, Part 3, p 47, Ed. of 1873, 103

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being equivalent to a lease cannot be ejected by the patnidar SREEMUNT RAM DEY v. LOOKOOR CHAND [15 W R, 481

46 ———— Allowing part owner to work forfeiture of tenure as if full owner—*Waiver of forfeiture—Claim of portion of tenure*—If *A* allows *B* to deal with an occupancy tenure as full owner and by an attempted transfer to work a forfeiture thereof without any objection on his part *A* will not be allowed to come in afterwards and claim a part of the forfeited holding on the ground that *B* was only part owner and could therefore only work a forfeiture of his own share MAHIR ULLAH v. RAMZAN ALI 1 C L R 293

47 ———— *Equitable estoppel—Landlord and tenant—Lessee taking lease direct from zamindar—Suit by occupancy tenant to eject zamindar's lessee*—Where a person took a permanent lease of a cultivatory holding direct from the zamindar without making any inquiries as to who were the cultivators and on what tenure they held and where the permanent lessee having commenced to build one of the cultivators being an occupancy tenant subsequently brought a suit in ejectment against him—*Held* that the lessee should by the knowledge that the land was a cultivatory holding have been put on his guard and have made inquiries as to the exact condition of the title and not having done so the doctrine of equitable acquiescence could not be applied BISHESHAR v. MUIRHEAD [I L R 14 All 362

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[18 W R, 319

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[I L R 1 Bom 624
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[I L R 14 Bom 372

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See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—ACT XIX OF 1838
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[3 Moore's I A., 395

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[14 B L R 221 note 18 W R, 64

1. ———— Beng Reg XI of 1825—*Chur in navigable river Right of Government to*—Act IX of 1847 does not alter the state of the law under Regulation XI of 1825 but merely lays down a procedure There is nothing in Act IX of 1847 to prevent the Government from taking possession of a chur after it has silted up if the chur be one that the Government would be entitled to under Regulation XI of 1825 BUDRUNNISSA CHOWDHRAIN *v* PROSUNNO KUMAR BOSE
[6 B L R F B 255 14 W R F B 25

2 ———— Right of Suit—*Effect of an order for additional assessment*—Certain land which formed part of the plaintiff's zamindari became on its reformation after submergence by a change in the course of the river Ganges attached to the zamindari of *J* and it being found so attached an additional jumma was after proceedings taken by the revenue authorities under Act IX of 1847 assessed against *J* in respect of it In a suit in the Civil Court brought by the plaintiff against the Government *J* and *L* an ijaradar under *J* to recover possession of the land,—*Held* that the suit was not barred by the proceedings under Act IX of 1847 S 6 of that Act makes the orders passed under its provisions final only against the zemindar not against third persons. Nor would s 9 bar the suit the words of that section do not necessarily extend to forbidding a suit brought to recover property which the Government or its officers may be instrumental in keeping away from the rightful owner *Held* on the facts that the Government had not by the proceedings under Act IX of 1847 or otherwise interfered with the plaintiff's rights so as to entitle him to relief against it in the present suit COLLECTOR OF MOORSHEDABAD *v* ROY DHUNPUT SINGH BAHADOOR 15 B L R 49 23 W R 38

3 ———— *Settlement by Revenue authorities*—Although a settlement made by the Revenue authorities under Act IX of 1847 is final the fact of such settlement will not preclude a proprietor from seeking in a Civil Court to establish his right to the lands so settled NARAIN CHUNDER *v* TAYLER I L R 4 Calc 103 3 C L R 151

4. ———— Rights of third parties—Act IX of 1847 does not affect any question between the person in possession and any person other than the Government KALIPRASAD MAZUMDAR *v* COLLECTOR OF MYMENSINGH
[6 B L R 261 note 13 W R 366

5 ———— Right of assessment by Government of accreted lands—*Beng Reg XI of 1825*—Act IX of 1847 refers to re-surveys of zamindari lands which the Government as such may cause to be made at certain intervals and to assessment consequent on the changes ascertained by such re-surveys but does not interfere with the rights of the Government in its capacity of zamindar to take possession of and assess all accretions to its own estates under Regulation XI of 1825 OBHOY CHURN CHOWDHRY *v* COLLECTOR OF DACCA 4 W R 59

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6 ———— Land added to revenue paying estate—The words land has been added to any estate paying revenue directly to Government in Act IX of 1847 s 6 mean added to the estate as it is depicted on the survey map RAM JEWAN SINGH *v* COLLECTOR OF SHAHABAD
[19 W R., 127

DEWAN RAM JEWAN SINGH *v* COLLECTOR OF SHAHABAD 14 B L R. 221 note
[18 W R 64

7 ———— ss 6 9—Assessment of accreted land—*Order of Board of Revenue when final under s 6 of Act IX of 1847*—The effect of the words which order thereupon shall be final in s 6 of Act IX of 1847 is that where an assessment has been made under s 6 which has been approved by the Board of Revenue such assessment is final and cannot be called in question in a civil suit but the fact of an assessment having been made is no bar to a suit raising the question whether the Board of Revenue had jurisdiction under s 6 of the Act to assess Act IX of 1847 applies to land reformed on the site of a permanently settled estate SARAT SUNDARI DABI *v* THE SECRETARY OF STATE FOR INDIA IN COUNCIL I L R. 11 Calc 784

8 ———— Assessment of reformed land after diluviation—*Act IX of 1847 ss 1 6 7 and 9 Effect of—Jurisdiction of Board of Revenue its extent—Civil Court Power of—Survey maps their evidentiary value*—Where on inspection of a survey map and after its comparison with a former thak map the Board of Revenue assessed certain land as alluvial increment which however the Civil Court in a suit against the order of the Board found upon further evidence to be a re formation on the original site of a permanently settled estate in respect whereof the plaintiff had all along paid revenue without abatement—*Held* that the land was not liable to fresh assessment under the provisions of s 6 of Act IX of 1847 nor was the comparison of the two maps by the Revenue Officer conclusive on the question of addition to the estate *Sarat Sundari Debi* v *The Secretary of State I L R 11 Calc* 784 partially overruled.—*Held* also (MITTER J dissenting) that the order of the Board of Revenue fixing the land with liability to assessment was not final and could be set aside by the Civil Court as *ultra vires* *Dewan Ram Jewan Singh* v *The Collector of Shahabad 18 W R 64* *Ram Jewan Singh* v *The Collector of Shahabad 19 W R 127* overruled *Held* by the majority of the Full Bench that the language of s. 9 was not such as would prohibit the present suit; and unless the meaning were clear its operation should be limited to suits for damages on account of anything done in good faith for instance in a case of ouster under s 7 *The Collector of Moorshedabad* v *Roy Dhunput Singh 15 B L R 49* approved *Held* (MITTER, J dissenting) s 1 of Act IX

ACT—1847—IX—*concluded*

of 1847 repealed everything in the Regulations which enacted by what officers and how the question of liability to assessment should be tried and therefore took away from Collectors and Boards of Revenue the power of giving any binding decision on the point *Held* also (MITTER J dissenting) that the effect of the words shall be final in s 6 was to make the assessment final in every case in which there was jurisdiction to assess but to leave it open to the Civil Courts to inquire in each case whether there was such jurisdiction or whether the lands assessed were liable to assessment *Per* MITTER J—S 1 has not abolished the judicial functions of the Revenue authorities under Regulation II of 1819 all that has been abolished by that section are the tribunals constituted by Regulation III of 1828 *Per* MITTER J—The proceedings of the Revenue authorities under s 6 embrace an inquiry upon two questions *viz* the question of the liability to assessment and the rate of assessment and under the express wording of the section the finality attaches to the whole order of the Sudder Board of Revenue FAHAMIDANNISSA BEGUM *v* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R 14 Calc 67

———— *Held* on appeal to the Privy Council—A review of the legislation anterior to Act IX of 1847 shows that whilst it was intended to bring under assessment lands not included in the permanent settlement whether waste or gained by alluvion or dereliction from sea or rivers yet all such lands as were comprised in permanently settled estates were to be rigorously excluded from further assessment Lands included in the permanent settlement having afterwards been covered by water and having then been formed again on the same site *Held* not to be lands gained from the river by alluvion or dereliction within the meaning of Regulation II of 1819 that expression being confined to meaning lands gained since the period of the settlement The effect of Act IX of 1847 was merely to change the mode of assessment in the case of land already liable to be assessed under legislation in force when that Act became law It was not the object of that Act to bring under liability land re formed on the site of land previously lost within the area of a permanently settled estate the revenue upon which had been paid without abatement since the permanent settlement Where an order of the Board of Revenue purporting to be made under Act IX of 1847 subjected land included in the permanent settlement to assessment —*Held* that the District Civil Court had jurisdiction (which therefore might be invoked as a matter of right) to entertain a suit brought by the landowner contesting that order and to declare it unauthorised by law SECRETARY OF STATE FOR INDIA *v* FAHAMIDANNISSA BEGUM

[I. L. R 17 Calc. 590
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See COPYRIGHT I. L. R 13 Bom. 358
[I. L. R, 14 Bom. 586
I. L. R 19 Bom. 557

See LIMITATION ACT 1877 ART 40
[I. L. R., 3 Calc., 17

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See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—COPYRIGHT
[I. L. R 6 Calc, 499

———1848—I—

See OFFENCE BEFORE PENAL CODE CAME INTO OPERATION
[5 W R, Cr 8 1 Ind. Jur, N S 97

——— XIII—

See SURVEY AWARD 23 W R, 173

1. ———— Award—*Decision on non appearance of parties*—Act XIII of 1848 for the greater security of possessory titles in the Presidency of Bengal derived from awards made by the revenue authorities under Regulation VII of 1822 Regulation IX of 1825 and Regulation IX of 1833 of the Bengal Code by s 3 enacted that no suit should be entertained for contesting the justice of any award of the revenue authorities under any of these Regulations made after the passing of the Act after the expiration of three years from the date of the final award A suit for the amendment of a map was referred by the Deputy Collector to an Ameen for the purpose of a local investigation and the Ameen returned that neither of the parties appearing before him he was unable to make the investigation whereupon the Deputy Collector struck the case out *Held* that this was not an award within the meaning of the Act GOLAM KOODSEE CHOWDHRY *v* RASHU CHUNDER GHOSE Marsh. 323

2 ———— In order to apply the provisions of Act XIII of 1848 in regard to limitation it was necessary to show that there was an award *i e* an adjudication after a contention between the parties before the survey authorities HURREE MOHUN THAKOOR *v* ANDREWS W R 1864 30

3 ———— *Suit to assess land—Boundary suit*—Act XIII of 1848 did not apply to bar a suit to assess land as rent paying A decision in a boundary suit decides only the question of right to possession of the land irrespective of the right to assess MAHOMED ALI KHAN CHOWDHRY *v* JADUB CHUNDER CHUCKERBUTTY W R 1864 60

4 ———— Awards made by Collectors—*Beng Regs VII of 1822 IX of 1825 and IX of 1833*—Act XIII of 1848 was limited to awards made by Collectors under Bengal Regulations VII of 1822 IX of 1825 and IX of 1833 which gave to the revenue authorities judicial power to determine questions of possession and other matters with a right of appeal to the regular Courts against their awards An order of the Collector for the mutation of names in the register is not an award of the nature contemplated by the Regulation XIII of 1848 and an appeal from it was not subject to the limitation of three years prescribed thereby JEWALA BUKSH *v* DHARUM SINGH
[10 Moore's I. A., 511

5 ———— Settlement award—*Suit to set aside*—Act XIII of 1848 applied only to suits for contesting the justice of an award as between the contending parties and not to suits for the purpose of amending a settlement and establishing the rights

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of persons who were not parties contesting between themselves before the Collector KOMUL KISSEN SURKHUL v BISONATH CHUCKERBUTTI [B L R., Sup Vol. Ap 3 W R F B 128

PURBEAG SINGH v SHIB RAM CHUNDER MUNDUL [3 W R., 165

6 ———— **Thakbast award**—*Beng Reg IX of 1825—Act XIII of 1848—Evidence of possession*—A thakbast award of boundary made in the Lower Provinces may be an award under Regulation IX of 1825 within the meaning of Act XIII of 1848 It would in any case be material evidence of possession. PRAHLAD SEN v RAJENDRA KISHOR SINGH [2 B L R P C 111 12 W R P C 6

7 ———— **Award**—*Decision under Batwara Law*—The decision of a Collector under the Batwara Law was not an award within the meaning of Act XIII of 1848 Act XIII of 1848 only applies to awards made by the revenue authorities under Regulations VII of 1822 IX of 1825 and IX of 1833 PULTOO ROY v GREEDHAREE SINGH [W R F B 12 1 Ind. Jur O S 5

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8 ———— *Order of Collector under Reg VII of 1822*—The order of a Deputy Collector under Regulation VII of 1822 declaring the lands in dispute to be paykan jaghir lands was an award within the meaning of Act XIII of 1848 and any suit to set it aside had to be brought within three years of the order MODHOOSOODUN SINGH v PURTEE BULLUB PAUL W R 1864 140

9 ———— *Order of Collector rejecting claim to alluvial land*—The order of a Collector rejecting a claim to alluvial lands on the ground that a settlement of them had already been concluded was not an award within the meaning of s 3 Act XIII of 1848 SHURAT SOONDERY DABEE v THE GOVERNMENT 7 W R 42

10 ———— *Rejection of claim by survey officer*—The rejection by a survey officer of a claim because it had not been brought forward sooner was not an award within the scope of the special limitation of Act XIII of 1848 SHAMA SOONDERY DABEE v PROSONNO COOMAR TAGORE [1 W R 114

11. ———— *Award adopting order under Act IV of 1840*—An award of survey authorities adopting an Act IV order was not illegal and was consequently governed by limitation under Act XIII of 1848 RAMGUTTY NAG CHOWDHRY v BURODACHURN BOSE 1 W R. 120

12. ———— *Order of Superintendent of Survey striking off appeal*—An order of a Superintendent of Survey striking off an appeal was not an award within the meaning of Act XIII of 1848 SHAM KANT BANERJEE v GOPAL LALL TAGORE 1 W R. 328

ACT—1848—XIII—*concluded*

13 ———— *Order of Commissioner*—Nor was the order of a Commissioner striking an appeal off the file JANOKEE CHOWDHRANEE v DWARKANATH CHOWDHRY [1 Hay 555

RAM GOPAL ROY v OMA SOONDRY DASSEE [2 Hay, 41

14. ———— **Deduction for disability**—No deduction on account of minority or other legal disability could be made from the period of limitation prescribed by Act XIII of 1848 MODHOOSOODUN SINGH v PURTEE BULLUB PAUL [W R, 1864, 140

HURO CHUNDER CHOWDHRY v KISHEN COOMAR CHOWDHRY 5 W R 27

The limitation for awards made under Bengal Regulations VII of 1822 IX of 1825 and IX of 1833 was afterwards provided for by Limitation Act XIV of 1859 s 1 cl 6 and Limitation Act IX of 1871 sch II art 44 and is now contained in art 45 of sch II of the Limitation Act 1877

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See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS 5 Moore's I A 499

See NAWAB OF SURAT 12 Bom., 156 [I L R 12 Bom, 496

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See CONTRACT—CONTRACT FOR GOVERNMENT SECURITIES OR SHARES [Cor 1 2 Hyde 121

See CONTRACT—WAGERING CONTRACTS

[1 Ind Jur O S 126
1 Bom. 34
12 Bom., 51
I. L. R 9 Bom. 358
5 Moore's I A. 109
6 Moore's I A 251

See INTEREST—OMISSION TO STIPULATE FOR ETC —CONTRACTS [9 Moore's I A 256

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS 1 Bom 34

See PROMISSORY NOTE—CONSIDERATION [8 Bom. A. C 131

See TAZI MANDI CHITTIS [8 B L. R., 412 415 note

See TROVER 6 B L. R., 581

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See CONVICTION 5 Mad. Ap 13

———**VI**—

See CASES UNDER PENSIONS ACT VI OF 1849

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See MANDAMUS 11 B L. R., 250

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See CONTRACT ACT s 27
[14 B L R, 76

See CASES UNDER SMALL CAUSE COURT PRESIDENCY TOWNS

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See PARTIES—PARTIES TO SUITS—LEGACY SUIT FOR 13 B L R 142

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———— ss 1 2 and 3—*Construction of*—The words in s 3 Act XXV of 1857 such an offence as aforesaid refer to the offences mentioned in s 2 as well as to the offence of mutiny mentioned in s 1 GANESHLAL *v* AMIR KHAN
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[4 Mad, Ap 21

———— s 2.—*Labouring classes—Forced labour*—Persons who habitually engage in manual labour although they may at the same time be employers of labour are included in the term labouring classes used in s. 2 of Act I of 1858 (Madras) QUEEN *v* MUTTU REDDI
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[I L R 3 All. 852
1 C W N 453

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I L R 15 Bom., 259

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[4 B L R Ap 36
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[15 W R 369

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See EVIDENCE ACT 1872 s 35
[I L R 17 Calc 849
I L R 18 All. 478

1. ———— s 2—Application of Act—*Hindu Law—Power to deal with minor's property without certificate of administration* —S 2 of Act XL of 1858 does not preclude the natural and legal guardian of a Hindu minor from dealing with the minor's property by mortgage or otherwise within the limits allowed by the Hindu law without having acquired a certificate of administration from the Civil Court HEIT SINGH *v* THAKOOR SINGH
[4 N W., 57

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2 ———————— *Hindu and Mahomedan Law* —There is no indication whatever in Act XL of 1858 of any intention to alter or affect any provision of Hindu or Mahomedan law as to guardians who do not avail themselves of the Act The scope of the enactment is merely to remove legislative prohibitions to confer expressly a certain jurisdiction and to define exactly the position of those who avail themselves of or are brought under the Act leaving persons to whom any existing rules of law apply unaffected RAM CHUNDER CHUCKERBUTTY *v* BROJONATH MOZUMDAR I L R 4 Calc, 929
[4 C L. R 247

3 ———————— *Mahomedan Law* —Act XL of 1858 comprises the cases of all minors not under the Court of Wards and not being European British subjects and acts irrespective of the Mahomedan law which can be no guide to the Civil Court in determining whether an applicant should or should not have letters of administration AKIMA BIBEE *v* AZEEM SARUNG 9 W R, 334

4. ———————— *Mahomedan Law* —Act XL of 1858 authorizes a Court to select a guardian irrespective of the law of the parties (*e g* Mahomedan law) but does not prevent the selection of a guardian indicated by such law if he be a fit person MOHUNNUDDY BEGUM *v* OOMDUTOONISSA
[13 W R 454

5 ———————— *Provision made by will for guardianship* —Where a testator makes due provision for the guardianship of his minor son Act XL of 1858 does not contemplate the interference of the Court in its summary jurisdiction ANUND COOMAR GANGOOLY *v* PAKHAL CHUNDER ROY
[8 W R., 278

1 ———— s 3—Application for certificate—*Form of application* —An application for a certificate under Act XL of 1858 need not refer to the estate of the deceased but ought merely to set forth that there is property to which the minor is entitled and of which the applicant claims the right to have charge KOOSOOM KAMINEE DEBEE *v* CHUNDER KANT MOOKERJEE 23 W R 346

2 ———————— *Party having no right to possession* —A certificate under s. 3 of Act XL of 1858 is purely an authority for the administration of property and ought not to be issued where there is neither present right nor prospective possession NOBIN CHUNDER SHAHA *v* RAJNARAIN SHAHA 9 W R. 582

3 ———————— *Guardian and Minor—Ground for refusal of certificate* —An application for a certificate under Act XL of 1858 (which if successful would in effect prolong the minority of an infant from eighteen to twenty-one) should not be granted when the alleged minor is admittedly on the point of attaining the age of eighteen unless under particular circumstances as where very great weakness of mind is proved or where it is shown that there is some absolute necessity for making such

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order IN THE MATTER OF THE PETITION OF NAZIRUN MUHAMDEE v NAZIRUN [I L R 6 Calc 19
6 C L R 210

4. ——— *Minority—Majority Act (IX of 1875) s 3*—A certificate of guardianship under Act XL of 1858 takes effect not from the date when it is applied for nor when an order granting it is passed but from the date when it is actually issued Therefore where an application for a certificate was made in 1877 and an order granting it was passed in December 1879 but the certificate was not issued until December 1881 —*Held* that the minor in respect of whose property the certificate was applied for who had between the date of the application and the issue of the certificate attained the age of 18 years and signed a promissory note was not entitled to take advantage of s 3 of the Majority Act 1875 and set up the plea of minority as a defence to a suit on the note STEPHEN v STEPHEN I L R., 9 Calc., 901
[13 C L R., 430

Affirming on appeal the decision in the same case [I L R 8 Calc 714
10 C L R 533

5 ——— *Guardian Appointment of—Period from which appointment dates*—The making of an order appointing a guardian under Act XL of 1858 and not the subsequent taking out of the certificate is that by which a guardian is appointed of the person and property of a minor within the meaning of s 3 of the Indian Majority Act CHUNEE MUL JOHARY v BROJONATH ROY CHOWDHRY I L R., 8 Calc 967
[11 C L R 315

6 ——— *Period from which authority of guardian dates—Court Fees Act (VII of 1870) s 6*—S 6 of the Court Fees Act (VII of 1870) which says that a certificate under Act XL of 1858 (among other documents) shall not be filed exhibited, or recorded in any Court of Justice or received or furnished by any public officer unless a certain fee be paid means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty Independently of this section however the preparation of such a certificate after the order granting it is not a purely ministerial act it must then be applied for by the grantee and it is from the date of the certificate being actually taken out and not from the date of the order granting it that a guardian of the person and property of a minor is to be considered as appointed under Act XL of 1858 Where therefore on a petition for such a certificate by J an order was made that the "application be allowed, and in a suit on certain bonds in which suit the minor in respect of whose person and property the petition for a certificate was made was a defendant he was represented by J by whom no certificate had been actually taken out —*Held* in a suit by the minor to set aside the decree as not binding on him that without the certificate J had no authority to appear on behalf of the minor and the latter not having been properly represented in the suit brought against him was entitled to have the decree set aside *Stephen v Stephen I L R 8 Calc 714* and on appeal *I L R 9 Calc 901* followed *Chunee Mul Johary v Brojonath Roy Chowdhry I L R 8 Calc 967* dissented from. SAHAI NAND v MUNGNIRAM MARWARI I. L. R., 12 Calc., 542

Held, however on appeal by the Privy Council reversing the above decision that when a Court to which application has been made under s. 3 of Act XL of 1858 for a certificate has adjudged the applicant entitled to have one he then substantially obtains it although it may not be drawn up or issued at the time Having obtained such an order he has in substance complied with the terms of the Act in the same way as when a plaintiff has judgment that he shall have a decree in his suit it may be said that he has then obtained his decree Therefore when a minor had been represented in a suit by a person who had obtained an order for a certificate under s 3 but had not had it issued to him the absence of a certificate was held to be not such an irregularity as entitled the minor on coming of age to have the proceedings set aside on the ground that he had not been properly represented MUGNIRAM MARWARI v GURSAHAI NAND LIAKUT HOSSEIN v GURSAHAI NAND I L R 17 Calc 347
L R., 16 I A 195

7 ——— *Guardian—Minority—Suit by minor—Certificate of Administration*—Whenever an application is made for the appointment of a guardian under Act XL of 1858 and an order is passed appointing a person to be guardian of the minor even though no certificate be taken out by the person so appointed the minor becomes a ward of Court and the period of his minority is extended to 21 years *Stephen v Stephen I L R 8 Calc 714* and on appeal *I L R 9 Calc 901* dissented from *Chunee Mul Johary v Brojonath Roy Chowdhry I L R 8 Calc 967* followed. GRISH CHUNDER CHOWDHRY v ABDUL SELAM
[I L R 14 Calc 55

8 ——— *Appointment of guardian without proof of certificate being taken out—Presumption as to regularity of proceedings—Evidence Act (I of 1872) s 114 illus (e)*—In a suit by a puisne mortgagee against the prior as well as the subsequent mortgagees and the mortgagor's representative it was found that the prior mortgages were executed when the mortgagor was over 18 but under 21 A guardian of his person had been appointed under Act XL of 1858 but there was no evidence as to whether a certificate of administration had also been granted under that Act. The prior mortgagees thereupon contended that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, and there being no evidence of the latter being granted, this appointment of a guardian of the person alone was *ultra vires* *Held* that assuming (but without deciding the point) that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, an independent appointment of a guardian of the person may be made and there being no

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evidence to show that such a certificate of adminis tration was not granted, the Court must presume the regularity of the order under illus. (e) to s. 114 Evidence Act. RAJ COOMAREE DASSEE v PREO MADHUB NUNDY 1 C W N 453

9 ——————— *Certificate of guardianship—Certificate ordered but not issued Effect of—Limitation* —A certificate of guardian ship obtained under s. 3 of Act XL of 1858 takes effect from the time it is issued and not from the date of the order directing its issue *Sahai Nand v Mungniram Marwari I L R 12 Calc 542* followed. NOWBAT ROY v LALA KEDAR NATH [I L R 13 Calc 219

10 ——————— *Right to sue without certificate—Acts of guardians without certificates* —Act XL of 1858 declares that a person shall not be competent to institute a suit in Court in respect of property of which he claims the charge until he shall have obtained a certificate but not that every act of a guardian who has not such a certificate shall be null for the want of one SHOOGHURY KOER v BOSHISHT NARAIN SINGH 8 W R. 331

11. ——————— *Right to sue without certificate—Manager without certificate* —A manager has no authority to deal with the claims or debts and liabilities attaching to the estate of a minor without having taken out a certificate under Act XL of 1858 TUSNEEP HOSSEIN v SOOKHOO [14 W R. 453

SOBHA KOOEREE v HURDEY NARAIN MOHAJUN [25 W R. 97

12 ——————— *Guardian without certificate—Validity of acts* —Without a certificate under Act XL of 1858 a Court may refuse to hear even a natural guardian as of right When the Court in the exercise of the discretion vested in it does hear him the absence of the certificate will not vitiate the proceedings. The private acts of a natural guardian without a certificate under Act XL of 1858 are not vitiated by law LALLA BHOODMUL v LALLA GOWREE SUNKUR 4 W R 71

13 ——————— *Permission to sue by guardian* —A party who sues as guardian of a minor may for good and sufficient reasons be allowed to sue without a certificate obtained under Act XL of 1858 *Held* that this permission may be given by the Court in which a suit by the guardian may be brought TARAMONEE CHOWDHRANI v RAJBIBEE CHOWDHRANI 2 Hay 575

14 ——————— *Permission to sue Proof of* —Although the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order sheet there is nevertheless nothing in the nature of the sanction provided by s 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication BHABA PERSHAD KHAN v THE SECRETARY OF STATE FOR INDIA I L R. 14 Calc 159

15 ——————— *Suit on behalf of minor—Permission to relative to sue, Proof of—*

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Civil Procedure Code ss 440 578 —In a suit conducted on behalf of a minor by a relative the absence of the certificate of guardianship required by s 3 of the Bengal Minors Act (XL of 1858) is not a fatal defect and the fact of the Court allowing such a suit to proceed must be taken as implying that the necessary permission has been given Even if such permission has not in fact been given the irregularity is covered by s 578 of the Civil Procedure Code *Bhaba Pershad Khan v The Secretary of State for India in Council I L R 14 Calc 159* followed PARMESHAR DAS v BELA I. L R, 9 All 508

16 ——————— *Father* —A father cannot sue on behalf of his minor son without having obtained the certificate prescribed by Act XL of 1858 and any decision passed in the case would be irregular as being passed in the absence of the party *primâ facie* principally interested SHIAM SOONDER v NARAIN DAS 2 Agra 343

MADHO RAO APA v THAKOOR PERSHAD [3 Agra 127

17 ——————— *Grandmother* —A grandmother is not competent to represent her minor grandson without having obtained the certificate prescribed by s 3 Act XL of 1858 RUTNEE v ROOHOBEER DYAL 2 Agra 278

18 ——————— *Mother*—A mother may be allowed under s 3 Act XL of 1858 to sue as guardian of her minor son without having taken out a certificate MUNRA JHUNNA KOONWAR v LALJEE ROY 1 W R 121

OODOY CHAND JHA v DHUNMONEE DEBIA [3 W R 183

RAMDHUN DOSS v RAM RUTTON DUTT [10 W R 425

19 ——————— *Ground for dismissal of suit* —When a Court of first instance allows a mother to institute a suit on behalf of her minor son the Judge on appeal has no reason to dismiss the suit on the technical grounds that no certificate had been granted to her under s 3 Act XL of 1858 GOONOMONEE DEBIA v RAM KOMUL SANDLE 17 W R., 144

See AUKHIL CHUNDEE v TRIPOORA SOONDUREE [22 W R 525

20 ——————— S 3 Act XL of 1858 gives discretion to the Court to admit a party to sue without a certificate ANUND CHUNDER GHOSE v KOMUL NARAIN GHOSE 2 W R 219

LUCHMEE KOONWAR v BHUGWAN DOSS [6 W R., Mis 116

SHEOBURRUT SINGH v LALLJEE CHOWDHRY [13 W R., 202

BONOMALLY KESH v HUNOSHE SUR ROY [17 W R., 492

SOBHA KOOEREE v HURDEY NARAIN MOHAJUN [25 W R., 97

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21. ——————— *Held* that the plaintiff not being legally or formally appointed manager or guardian of a minor's estate or person was incompetent to maintain the suit on his (the minor's) behalf especially when the minor's natural father has been appointed as such under Act XL of 1858 and has not been discharged from his office SETUL PERSHAD *v* BIRJ MOHUN DASS **1 Agra 25**

22. ——————— *Waiver of objection—Duty of Judge*—That the persons who sue on behalf of minors are their natural guardians is not a sufficient reason for neglecting the directions of law which require that the minors shall be represented by persons who have obtained certificates or by persons who when the property is of small value are specially permitted by the Court to sue or defend the suit on behalf of minors The fact that the defendant's pleader did not press the objection does not relieve the Judge from the duty imposed on him of seeing that the minors were properly represented ZORAWAR SINGH *v* JAWAHIR SINGH **3 Agra, 167**

23 ——————— *Guardian*—*Held* that the institution of a suit by a guardian on behalf of minors without due authority having been obtained is illegal DHUNRAJ KOOEREE *v* ROODUR PERTAB SINGH **3 Agra 300**

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24. ——————— *Son adopted pending suit*—When adoption takes place while a suit is pending on the part of the widow and the adopted son is a minor it is necessary that he should be substituted for his adoptive mother as the party preferring the appeal and be duly represented in conformity with the provisions of s 3 Act XL of 1858 COLLECTOR OF BAREILLY *v* NURAEN DAY **[3 Agra 349**

25 ——————— *Stranger*—A stranger cannot bring an action on behalf of a minor without a certificate under Act XL of 1858 GOBERDHUN *v* GIRWAR **3 Agra 92**

26 ——————— *Surbarakar*—A surbarakar cannot sue on behalf of a minor without permission of the Court or a certificate under Act XL of 1858. BODH SINGH *v* LOCHUN SINGH **[3 Agra 220**

27 ——————— *Permission of Court*—From the fact that in a *former* suit the plaintiff's mother was arrayed among the parties as his guardian as well as from the line of defence she then adopted and in the absence of any evidence to the contrary it was presumed that she had the permission of the Court to appear and represent the minor's interest in that suit and therefore the decision in that suit was held to be binding on the minor in a subsequent suit where the same question was raised. BONOMALLY KEAH *v* HUNOSHESSUR ROY **[17 W R., 492**

28. ——————— *Suit by unauthorised guardian*—Where a person representing herself as a guardian neither took out a certificate under Act XL of 1858 nor obtained the permission of the Court under s. 3 of that Act to appear in the suit without a certificate—*Held* that the minor was not bound by any act of the alleged guardian nor was he bound to sue within three years from the order passed by the Court under s 246 Act VIII of 1859 rejecting her petition of objection to a sale of attached property SREENATH KOONDOO *v* HURREE NARAIN MUDDUCK **7 W R, 399**

29 ——————— *Beng Reg X of 1793—Suit on behalf of minors*—In a case in which Regulation X of 1793 has no application the Court may under s 3 Act XL of 1858 allow a friend or relative of the minor to institute a suit on his behalf and where the guardian omits to take steps for the protection of the infant the Court may allow another person to sue for the benefit of the latter MODHOO SOODUN SINGH *v* PRITHEE BULLUB PAUL **[16 W R 231**

30 ——————— *Guardian or next friend*—In a suit brought on behalf of a minor by his next friend it is not necessary for the next friend to have a certificate under Act XL of 1858 provided he have in fact permission of the Court to sue. ALIM BAKSH FAKIR *v* JHALO BIBI **[I. L. R, 12 Calc 48**

31. ——————— *Next friend—Civil Procedure Code (Act XIV of 1882) s 440*—S 440 of the Civil Procedure Code read with s. 3 of Act XL of 1858 does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. NEWAJ *v* MAKSUD ALI **I. L. R 12 Calc 131**

32 ——————— *Suit on behalf of minor—Permission to relative to sue*—The mother of a minor who had not obtained a certificate under Act XL of 1858 instituted a suit on behalf of the minor for some property of small value She did not ask the Court in which she instituted the suit for permission to institute it as required by s 3 of that Act but the Court entertained it the defendant not raising the objection that it had been instituted without permission and it was decided on the merits in favour of the minor *Held* that under these circumstances it must be taken notwithstanding there was no order allowing the mother to sue that the suit was instituted with the Court's permission. KEDAR NATH *v* DEBI DIN **I L R, 4 All. 165**

33 ——————— *Right of holder of certificate to defend suits connected with minor's estate*—Under s. 3 of the Bengal Minors Act (XL of 1858) the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act to defend a suit on the minor's behalf as guardian of such minor BALDEO DAS *v* GOBIND SHANKAR **I L R 7 All. 914**

34. ——————— *Right to defend without certificate—Appearance on behalf of minor*—No judgment or order passed in a suit to which a minor subject to the provisions of Act XL of 1858 is a party will bind him on his attaining majority unless he is represented in the suit by some person who has either taken out a certificate or has obtained the permission of the Court to sue or defend on his behalf without a certificate Permission granted to sue or defend on behalf of a minor under s. 3 of

ACT—1858—XL—*continued*

Act XL of 1858 should be formally placed on the record. MRINAMOYI DABIA v JOGODISHURI DABIA [I L R 5 Calc 450 5 C L R, 361

See PIRTHI SINGH v LOBHAN SINGH [I. L. R 4 All., 1

35 ——— *Permission to relative to defend*—The mother of a minor who did not hold a certificate under Act XL of 1858 was sued on behalf of the minor She did not obtain permission to defend the suit on behalf of the minor but the Court allowed her to answer to the suit on behalf of the minor *Held* that under these circumstances it must be inferred that the Court had given her permission to defend the suit as required by s. 3 of Act XL of 1858 and therefore the decree made against her in the suit as representing the minor was binding on the latter JANKI v DHARAM CHAND I. L. R. 4 All. 177

36 ——— *Right to represent minor without certificate—Discretion of Court*—A person who does not hold a certificate under Act XL of 1858 is not debarred by s 3 from representing a minor as plaintiff or defendant in a suit but the Court has the fullest discretion when the property is of small value or for any other sufficient cause to dispense with the production of a certificate SREEMUNT KOONDOO v SHARODA SOONDUREE DOSSEE BHUJOHURREE PARAMANICK v SHARODA SOONDUREE DOSSEE 8 W R., 197

37 ——— *Suit on behalf of a minor—Subject of suit of small value*—A suit can be prosecuted or defended by a relative on behalf of a minor without a certificate under Act XL of 1858 when the subject matter of the suit is of a small value A suit to recover real and personal property of the value of R7 260 was allowed to be prosecuted by the brother of a minor on behalf of himself and his minor brother under s 3 Act XL of 1858 NABADWIP CHANDRA SIRKAR v KALINATH PAL 3 B L R Ap 130

HURENDER LAL SAHOO v RAJENDER PERTAB SAHEE 1 W R 260

——— s 5—Property in several districts — *Residence of minor*—*Held* by LOCH J that the word "residence used in s 5 Act XL of 1858 is not the place where the minor may be dwelling at or about the time when the application for a certificate under the Act is made but the paternal family house or the family residence of the minor in which every member of the family has an interest and in which they usually reside AINSLIE J being of opinion that though ordinarily that might be taken to be the meaning of the word yet circumstances might arise in which it might be taken to mean otherwise MAHOMED HOSSEIN v AKBUR HOSSEIN [17 W R. 275

1 ——— s 6—Enquiry by Court—*Conduct of applicant*—A Civil Court may defer passing orders on an application for a certificate under Act XL of 1858 pending an enquiry by the Collector as to the alleged fraud of the manager and the state of the accounts and the assets of the property MOHESH CHUNDER SEIN v THE COLLECTOR OF DINAGEPORE 16 W R. 312

2 ——— The summary enquiry provided by s 6 of Act XL of 1858 refers to the grant of the certificate to the parties claiming it but no part of the Act allows third parties to demand an enquiry into matters which have nothing to do with the genuineness of the grant MELTOON BIBI v GIBBON 12 W R. 101

3 ——— *Change of guardian*—One manager cannot shift off the responsibility from himself and resign the appointment and another one take up the appointment without the provisions of s 6 Act XL of 1858 (requiring issue of a notice of such application or the fixing of a day for the hearing of the application) being duly carried out JOGODUMBA KOER v MIRCHA KOER [17 W R. 269

1 ——— s 7—Qualification for guardianship—*Right to certificate*—It is not the policy of Act XL of 1858 to prevent parties from performing their natural duties by the younger members of their family who may be deprived of their parents and it should not be considered as an axiom that an uncle or other near relative will necessarily defraud a minor and ought therefore to be refused a certificate under that Act MAHOMED SALEH v GOVERNMENT [W R 1864, Mis 26

2 ——— S 7 looks as much to the fitness of the relative as to his propinquity and when two relatives claim the right to administer the Court is at liberty to disregard the latter qualification and look to the former AKIMA BIBEE v AZEEM SARUNG 9 W R 334

3 ——— In the grant of a certificate to a guardian under Act XL of 1858 unless under peculiar circumstances fitness is to be preferred to mere nearness of relationship AMAN KHAN v HOSEENA KHATOON 9 W R 548

4 ——— Before appointing a guardian the Judge should satisfy himself of the applicant's fitness for the office RAM DYAL GOOYA v AMRIT LALL KHAMAROO 9 W R 555

5 ——— In appointing a manager of a minor's estate a Judge has to consider not only the nearness of kindred but also the suitableness of the person to be appointed KHOODEE MONEE DOSSEE GHOSSANEE v KOYLASH CHUNDER GHOSE 4 W R Mis., 22

6 ——— The mere fact that a near relative who desires to have charge of the property is a *parda nashin* is not of itself a disqualification such as takes away the right to a certificate under s 7 KURUPPOOL KOER v COLLECTOR OF SHAHABAD 20 W R., 432

7 ——— Under s. 7 Act XL of 1858 a person claiming a right to have the charge of the property of a minor by virtue of a will is entitled if the will be a genuine instrument to a certificate of administration notwithstanding the existence of a natural guardian of the minor in the person

ACT—1858—XL—*continued*

of his mother BHOOBUN MOHINEE DEBEE v POORNOO CHUNDER BANERJEE 17 W R, 99

8 ———————— and ss 4 and 6—*Appointment of guardian*—Under ss 4 6 and 7, Act XL of 1858 the Court has power to appoint a guardian other than the father of a minor for the purpose of instituting suits and protecting the property of the minor ETWARI v RAM NARAYAN RAH 4 B L R Ap 71 [13 W R 230

9 ———————— *Certificate of guardianship to minor—Procedure*—Where an application was made by a Hindu female for a certificate of administration under Act XL of 1858 in respect of an estate which she alleged to belong to an adopted son—*Held* that the Judge ought merely to have enquired whether the boy was a minor and whether the petitioner being a near relative was a fit person to be entrusted with the charge of the minor's property BROHMO MOYEE CHOWDHRANI v CHITTURMONEE CHOWDHRANI 8 W R 25

10 ———————— Accounts filing in Court—An administrator holding a certificate under s 7 Act XL of 1858 is not bound to file in Court periodical accounts of moneys realized and disbursed on account of the minor IN RE SONKALLY KOONWAR [6 W R, Mis 53

11. ———————— Account of guardianship—*Resignation of guardianship*—Under s 7 Act XL of 1858 a manager appointed to the estate of a minor cannot in any way get rid of or resign that trust without the permission of the Court and without duly accounting to his successor for all moneys received and disbursed by him KALEE PERSHAD SINGH v POORNO DEBIA 15 W R 398

1. ———————— s 9—Procedure where no near relative—*Appointment of guardian—Collector—Person with certificate*—Under Act XL of 1858 s. 9 the Judge has no power to appoint the Collector as manager of the estate of the minor until he is satisfied that no person has established title to a certificate under a will or decided and that there is no relative willing and fit to be entrusted with the charge of the property and both these alternatives must be proved to the Court in the ordinary way by evidence brought before the Court HYDER REZA v COLLECTOR OF PURNEAH 22 W R 490

2. ———————— and ss 10 11 and 12—Procedure where no near relative—The powers given by ss 10 11 and 12 of Act XL of 1858 only accrue upon the happening of the contingency which is mentioned in s 9 KURUTPOOL KOER v COLLECTOR OF SHAHABAD 20 W R, 432

———————— ss 10 and 12 Power to cancel certificate and grant another—When the estate of a minor consists in whole or in part of land or any interest in land, and when such application is made the Court can only proceed to act in accordance with the provisions of s. 12 of Act XL of 1858 and has no jurisdiction to grant another certificate to any fit person, such a course being confined to cases in which the property is of the description indicated by s 10 SAKHAWAT ALLY v NOORJEEHAN BEGUM [I L R 10 Calc, 429

1. ———————— s 12—Appointment of Collector—*Power to appoint Collector to take charge of minor's estate*—Under the provisions of ss 9 and 12 of Act XL of 1858 the minor's estate cannot be made over to the Court of Wards but the Collector should be directed under s 12 of that Act to take charge of the estate of the minor and he thereupon becomes invested with authority to appoint a manager of the property and a guardian of the person of the minor IN THE MATTER OF THE PETITION OF SIDHOO LAL 2 N W 398

2 ———————— *Trust created under will for religious and charitable purposes*—Where a trust is created under a will for certain purposes mentioned in the will—*e g* the maintenance of religious worship charitable institutions etc—the properties belonging to the trust cannot be taken charge of by the Collector under Act XL of 1858 RAJESSURREE DABIA v JOGENDRO NATH ROY [23 W R 278

3 ———————— *Dispute as to guardianship*—Where two persons were fighting to get hold of the property and the probability was that the minor would suffer if the property lay in the hands of either the Court could not say that either person was a fit person to be appointed manager and therefore under s. 12 ordered the property to be made over to the charge of the Collector with direction to appoint a manager of the property and a guardian of the person of the minor JUGODUMBA KOER v MIRCHA KOER 17 W R 269

4. ———————— Joint property Interest in—*Specification of share of minor*—Where on an application for the appointment of a manager to the estate of a deceased Rajah a Zilla Judge notwithstanding a contention raised before him as to the extent of the minor's interest in the property passed an order strictly within the provisions of s. 12 Act XL of 1858 his successor was held to have acted without jurisdiction in having upon a subsequent application passed an order specifying the shares of the minor and the opposing party COLLECTOR OF TIRHOOT v RAJCOOMAR DEO NUNDUN SINGH [10 W R 218

5 ———————— *Certificate under Act XL of 1858 in respect of interest of sons in ancestral property*—Under Hindu law the interest in ancestral property taken by sons immediately on their birth is an estate and interest in immoveable property in respect of which a certificate of administration under Act XL of 1858 may be granted during the lifetime of their father DHERAJ KOER v ADJOODHYA BUX SINGH 3 N W 91

6 ———————— *Property of minor—Share of minor in joint family property under Mitakshara Law*—Where the joint property of an undivided joint family governed by the Mitakshara law is enjoyed in its entirety by the whole family and not in shares by the members one member has not such an interest therein as is capable of being taken

ACT—1858—XL—*continued*

charge of and separately managed under the provisions of Act XL of 1858 SHEO NUNDUN SINGH v GHUNSAM KOOERFE 21 W R. 143
AJHOLA KOOERER v DIGAMBUR SINGH [23 W R., 206

7 ———— *Partition*—B a Hindu governed by the Mitakshara law died leaving two minor sons, J and K and also a widow L and two minor sons by her the mother of J and K having predeceased him On J's attaining majority the Court of Wards which had taken possession of all the property withdrew from the management and L then applied under Act XL of 1858 and obtained a certificate with respect to the shares of K and her two minor sons. Subsequently K having attained majority his share was excluded from the operation of the certificate On the death of J leaving H his widow and an infant son by her H applied for a similar certificate under Act XL of 1858 with respect to the property of her son and it appeared that K was incapable of managing the property *Held* that though the certificate granted to L had been improperly obtained H was not entitled to one as no partition having taken place since B's death the property was still the joint family property HOOLASH KOER v KASEE PROSHAD [I. L. R. 7 Calc 369

8 ———— and s 9—Appointment of Collector—Where a certificate under Act XL of 1858 which had been granted to the two widows of a deceased Hindu was recalled, simply because in consequence of their disagreement joint management had become impossible and the District Judge refusing the application of the widow who was the minor's mother to be made sole manager directed the Collector under s 12 to take charge—*Held* that in the absence of any ground to remove her summarily the Court was bound to grant the application of the minor's mother as the nearest relative and to allow her the management until some cause to remove her was duly made out NISTARINEE DEBEE v COLLECTOR OF 24-PERGUNNAHS 23 W R. 330

9 ———— Power of Court to limit nature or extent of property—Where a manager is appointed under Act XL of 1858 the Civil Court has no authority to restrict or limit by description or otherwise the nature or extent of the minor's property SHEO PROSUNNO CHOBEY v GOPAL SURU [15 W R 529

1. ———— s 18—Power of guardian—*Certificated guardians—Power of uncertificated guardians—Managers*—The rules laid down in Act XL of 1858 from s 18 downwards apply only to certificated managers and to guardians appointed under the Act S 18 applies in terms to a manager acting under a certificate and to such manager only it confers on him generally the powers of the owner but in regard to acts of alienation beyond certain limits it requires that his acts in order to be valid should have the previous sanction of the Court; such provisions are altogether unsuitable to the case of a manager entirely unconnected with the Court RAM CHUNDER CHUCKERBUTTY v BROJONATH MOZUMDAR I. L. R., 4 Calc., 929 4 C L. R., 347

ACT—1858—XL—*continued*

2 ———— *Power of guardian to sell or mortgage*—*Sanction of Court*—Act XL of 1858 does not prevent a guardian who has obtained a certificate thereunder from selling or mortgaging property in Calcutta without the sanction of the Court GOPALNARAIN MOZUMDAR v MUDDOMUTTY GUPTEE 14 B L. R 21

3 ———— *Mortgage by guardian without sanction of the Court*—Where a guardian had mortgaged certain property of a minor without previously obtaining the sanction of the Court under s. 18 of Act XL of 1858 but it was found that the mortgage transaction was a proper one and there had since been a decree in a suit in which the minor was properly represented under which the property had been sold the irregularity as to the mortgage being made without the sanction of the Court was not allowed to prevail ALFUTUNNISSA v GOLUCK CHUNDER SEN [15 B L R 353 note

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ACT—1858—XL—*continued.*

decree did not protect the mortgagee who purchased at the Court sale nor her vendee from suit by the minor for recovery of the property DEBI DUTT SAHOO v. SUBODRA BIBEE I L R 2 Calc 283
25 W R 449

7 ———— *Mortgage by certificate holder without sanction—Contract Act IX of 1872 s 23*—A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immoveable property belonging to the minor without the sanction of the Civil Court previously obtained is void with reference to s 18 of that Act and s 23 of the Contract Act even though the mortgage-money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree CHIMMAN SINGH v. SUBRAM KUAR
[I. L. R. 2 All 902

8 ———— *Purchaser from guardian*—*Per* GARTH C J—Previously to the passing of Act XL of 1858 where a suit was brought by a minor on coming of age to recover property sold by his guardian during his minority it was generally incumbent upon the purchaser to prove that he acted in good faith that he made proper enquiries as to the necessity for the sale and had honestly satisfied himself of the existence of that necessity Now under s 18 of that Act the Civil Court not only has the power but is bound to enquire into the circumstances of each case and to determine whether as a matter of law and prudence it is right that any proposed sale or mortgage of the minor's property should take place and if the Court upon the materials and information brought before it by the guardian makes an order for sale a purchaser under such an order is not bound to make the same enquiry which the Judge has made and to determine for himself whether the Judge has done his duty properly and come to a right conclusion Where a plaintiff alleges fraud or illegality as a ground for setting aside a sale made under s 18 the onus lies upon him to make out a *primâ facie* case of fraud or illegality and to show that the debt which formed the consideration for the sale in such case was one for which the minor was not responsible *Per* PRINSEP *J*—A stranger purchasing from a guardian acting under the authority granted under s 18 of Act XL of 1858 will be entitled to every protection from the Courts so long as it is not shown that he acted in a *fraudulent* or collusive manner knowing that the debts for the liquidation of which the purchase money would be applied were not debts lawfully binding on the minor The burden of proof in such a case would lie heavily on the person seeking to set aside the alienation But where the purchaser is himself the creditor and therefore has the means of satisfying a Court as to the origin and nature of the debts and how they are binding on the minor the burden of proof is shifted on the purchaser when the plaintiff has established a *primâ facie* case SIKHER CHUND v. DULPUTTY SINGH
I. L R 5 Calc 363
[5 C L R 374

9 ———— *Mortgage by guardian without sanction of the Court*—A mortgage

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without the sanction of the Judge by a guardian of a minor appointed under Act XL of 1858 is absolutely void and a decree obtained upon a mortgage so executed cannot be enforced against the property of the minor BUCHRAJ RAM v. RAM KISHEN SINGH
[11 C L. R., 345

LALA HUBBO PROSAD v. BASARUTH ALI
[I. L. R., 25 Calc., 909

10 ———— *Guardian and minor—Mortgage by certificated guardian without sanction of District Court—Mortgage money applied partly to benefit of minor's estate—Suit by minor to set aside the mortgage—Contract Act (IX of 1872) s 65*—S 18 of the Bengal Minors Act (XL of 1858) does not imply that a sale or mortgage or a lease for more than five years executed by a certificated guardian without sanction of the Civil Court is illegal and void *ab initio*; but the proviso means that in the absence of such sanction the certificated guardian who otherwise would have all the powers which the minor would have if he were of age shall be relegated to the position which he would occupy if he had been granted no certificate at all If any one chooses to take a mortgage or a lease for a term exceeding five years under these circumstances the transaction is on the basis of no certificate having been granted In a suit brought by the guardian of a Mahomedan minor for a declaration that a mortgage deed executed by the minor's mother was null and void to the extent of the minor's share and for partition and possession of such share it was found that a considerable proportion of the moneys received by the mortgagor had been applied for the benefit of the minor's estate by discharging incumbrances imposed on it by his deceased father It appeared that at the time of the mortgage the mother held a certificate of guardianship under the Bengal Minors Act and that she had not obtained from the Civil Court any order sanctioning the mortgage under s 18 of that Act —*Held* that the omission to obtain such sanction did not make the mortgage illegal or void *ab initio* but relegated the parties to the position in which they would have been if no certificate had been granted *i e* that of a transaction by a Mahomedan mother affecting to mortgage the property of her minor son with whose estate she had no power to interfere *Held* that this fell within the class of cases in which it has been decided that if a person sells or mortgages another's property having no legal or equitable right to do so and that other benefits by the transaction the latter cannot have it set aside without making restitution to the person whose money has been applied for the benefit of the estate *Held* that even if mortgages executed by a certificated guardian without the sanction required by s 18 of the Bengal Minors Act were void the section did not make them illegal and with reference to s. 65 of the Contract Act the plaintiff could not obtain a decree for a declaration that the mortgage was inoperative as against his share except on condition of his making restitution to the extent of any moneys advanced by the defendant under the mortgage-deed which had gone to the

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benefit of th plaintiff's estate or had been expended on his maintenance educati n or marria e *Manji Ram* v *Tara Singh I L R 3 All 852* distinguished *Sarat Chunder* v *Rajkissen Mookerjee 15 B L R 350 Pina Ali* v *Sadik Hossein 7 N W 201 Sahee Ram* v *Mahomed Abdool Rahman 6 N W 258 Hamir Singh* v *Zakia 1 L R 1 All 57* and *Gulshere Khan* v *Naubey Khan Weekly Notes All 1881 p 16* referred to. GIRRAJ BAKHSH v HAMID ALI I. L. R. 9 All. 340

11. ———— *Certificated guardian Power of to grant lease—Unauthorized transfer Effect of*—A lease for a term of twelve years but renewable at the pergunnah rate and transferable in its character granted by a certificated guardian with ut the authority of the Court is void *ab initio* and will theref re not avail the lessee even for the period of five years for which such guardian is at liberty to grant the lease —*Held* acc rdingly that in he case f ijmali property whether such a lease was executed by the guardian conjointly with the c sharers of the min r or separately the minor was ntitled to eject the lessee as trespa er in respect of his own share with ut making his co-sharers parties to the suit *Quære* whether such a lease granted by a c rtificated guardian conj intly with the co sharers of a min r and thus creating one and the same tenancy is not also void as against the co sharers *Held*, also that a transfer made by a person in the capacity of a certificated guardian before the actual issue of the certificate but after the orders for its issue have been made i his favour and after his recognition as a certificated guardian is a transfer within s 18 of Act XL of 1858 HARENDRA NARAIN SINGH CHOWDHRY v MORAN I L R 15 Calc 40

12. ———— *Lease granted by guardian of minor's property for term exceeding five years without sanction of Court Effect of*—A lease granted by guardian of a minor s property who has obtained a certificate under Act XL of 1858 for a term exceeding five years without the sancti n required by s 18 of that Act is invalid BHUPENDRO NARAYAN DUTT v NEMYE CHAND MONDUL [I L R 15 Calc 627

13 Procedure on application for leave to deal with property—*Order of Civil Court authorizing lease of minor's property*—On an applicati n under s 18 of Act XL of 1858 for leave to deal with the property of an infant the Civil Court is bound to determine the question whether the pr posed m de of dealing with it would if sancti ned be f r the benefit of such infant and the petiti n sh uld contain all the materials reasonably requir d to enable the C urt to decide that question. The decisi n of GARTH C.J in *Sikher Chund* v *Dulputty Singh I L R 5 Calc 363* foll wed IN THE MATTER OF THE PETITION OF SHRISH CHUNDER MOOKHOPADHYA [I L R 6 Calc 161

1. ———— s 21—Ss 7 and 19—Recall of certificate—*Power of Court to recall certificate granted under s 7 Act XL of 1858*—A certificate granted under s 7 Act XL of 1858 can be recalled summarily under s. 21 Where the application for recall is based on charges of waste and mismanagement the certificate may be so recalled, if a sufficient case is made out without any account having previously been taken in a regular suit under s 19 IN THE MATTER OF THE PETITION OF SHURWAR HOSSEIN KHAN B L R Sup Vol. 720 [2 Ind. Jur, N S 200

NAUNEE BIBEE v SURWAR HOSSEIN [7 W R 522

2 ———— *Mode of revocation*—It is not necessary to institute a regular civil suit in order to obtain the revocation of a certificate of guardianship MAHOMED NUKSHUND KHAN v AFZUL BEGUM 3 N W, 149

3 ———— An order cannot be made in the Summary Department declaring a sale made by a manager invalid as being not within the scope of s 18 and granting an injunction to prevent the demolition of a house That must be done by a regular suit MUKRUMUNNISSA v ABDOOL JUBBAR 17 W R. 171

4. ———— *Bengal Act IX of 1879—Application to cancel certificate of guardianship and grant another*—Where an application is made under the provisions of s 21 of Act XL of 1858 to have a certificate granted under that Act recalled and a fresh certificate granted to another the applicant should set forth in his petition a sufficient cause for such course being taken and the Court should thereupon proceed to enquire *judicially* whether such sufficient cause is established SAKHAWAT ALLY v NOORJEHAN BEGUM [I. L R 10 Calc, 429

5 ———— *Ground for recall*—An order for a certificate may be revoked under s 21 Act XL of 1858 if the Judge sees sufficient cause for its revocation in the conduct of the party in whose favour it was granted TUSNEEF HOSSEIN v SOOKHOO 14 W R 453

6 ———— and s 12—A Zilla Judge having ordered the grant of a certificate under Act XL of 1858 to a widow with reference to the property of her d ceased husband afterwards at the instance of the Collector and on hearing all the parties claiming or objecting set aside his order and directed the Collector to take charge of the estate *Held* that the order though the Judge professed to make it under s 12 Act XL of 1858 was really made under s. 21 CHUNDER COOMAR ROY v COLLECTOR OF JESSORE BUSSANT COOMAREE DOSSEE v COLLECTOR OF JESSORE 13 W R. 243

7 ———— *Ground for recall—Marriage of minor*—The marriage of a minor is not a sufficient cause within the meaning of s. 21 Act XL of 1858 for withdrawing a certificate as manager granted under that Act; there must be some neglect in the performance of duty or s me cause of a similar kind rendering it improper to continue the manager in the appointment. JUGODUMBA KOER v MIRCHA KOER 17 W R. 289

8 ———— *Neglect of duty by manager of estate—Enquiry—Manager appointed by will*—Where a case is started showing that

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decree did not protect the mortgagee who purchased at the Court sale nor her vendee from suit by the minor for recovery of the property DEBI DUTT SAHOO *v* SUBODRA BIBEE I L R 2 Calc 283
25 W R 449

7 ———————— *Mortgage by certificate holder without sanction—Contract Act IX of 1872 s 23*—A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immoveable property belonging to the minor without the sanction of the Civil Court previously obtained is void with reference to s 18 of that Act and s 23 of the Contract Act even though the mortgage-money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree CHIMMAN SINGH *v* SUBRAM KUAR
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9 ———————— *Mortgage by guardian without sanction of the Court*—A mortgage without the sanction of the Judge by a guardian of a minor appointed under Act XL of 1858 is absolutely void and a decree obtained upon a mortgage so executed cannot be enforced against the property of the minor BUCHRAJ RAM *v* RAM KISHEN SINGH
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1. ———— s 21—Ss 7 and 19—Recall of certificate—*Power of Court to recall cert ficate granted under s 7 Act XL of 1858* —A certificate granted under s 7 Act XL of 1858 can be recalled summarily under s. 21 Where the application for

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recall is based on charges of waste and mismanage ment the certificate may be so recalled if a sufficient case is made out without any account having pre viously been taken in a regular suit under s 19 IN THE MATTER OF THE PETITION OF SHURWAR HOSSEIN KHAN B L R Sup Vol. 720 [2 Ind. Jur, N S 200

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4. ———————— *Bengal Act IX of 1879—Appl cat on to cancel cert ficate of guar dianship and grant another* —Where an application is made under the provisions of s 21 of Act XL of 1858 to have a certificate granted under that Act recalled and a fresh c rtificate granted to another the applicant sh uld set f rth in his petition a suffi cient cause f r such course being taken and the Court sh uld thereupon proceed to enquire *judicially* whether such sufficient cause is established SAKHAWAT ALLY v NOORJEHAN BEGUM [I L R 10 Calc 429

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8 ———————— *Neglect of duty by manager of estate—Enquiry—Manager appoi ted by will* —Where a case is started showing that

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elder sons are neglecting their duty as managers of an estate to the material injury of a minor son the Judge is bound to institute inquiry ANUND COOMAR GANGOOLY v RAKHAL CHUNDER ROY [8 W R 278

9 ———— *Failure to produce accounts* —An applicant for a certificate under Act XL of 1858 having alleged that the appointed guardians had neglected their charge in various ways the Judge called upon the guardians to produce their accounts and on their failing to do so took away their certificate and gave it to the applicant *Held* that the Judge would have been justified by s 21 in cancelling the guardians certificate if sufficient cause were shown but he had no authority to do what he did the accounts which a Judge can call for under that section being those which a discharged guardian is to furnish to his successor in office and the only way in which a guardian retaining office can be made to furnish such accounts is by a regular suit brought by a relative or friend of the minor RAM DYAL GOOYE v AMRIT LALL KHAMA ROO 9 W R 555

10 ———— *Waste by Hindu widow* —Acts of waste on the part of the widow in regard to her husband s property if proved would be a ground for withdrawing a certificate granted to her under Act XL of 1858 BHAGWANEE KOONWAR v PARBUTTY KOONWAR 2 W R Mis 13

11 ———— *Interference of Court with guardians of minors* —A person apprehending danger to the health or life of a minor should ask the Court s interference under s 21 Act XL of 1858 LUCKHEE NARAIN AUNG BHEEM v SOORUJ MONEE PAT MOHADAYE 2 W R Mis 6

12 ———— *Mismanagement—Procedure* —A certificate having been granted to *A* under Act XL of 1858 in 18 2 on the death of the father of a minor in 1882 the mother of the minor applied that the certificate should be recalled on the ground of mismanagement and that another should be granted to herself The District Judge assuming that the minor was a member of a joint family held that the original certificate ought never to have been granted recalled the certificate and dismissed the application *Held* that *A* having obtained the certificate brought himself within the jurisdiction of the Court under Act XL of 1858 and that the Court ought to have considered the charges against him DEOBANI KOER v PARUSMAN NARAIN [12 C L R 546

13 ———— Selling the minor's property or allowing portions of it to be unnecessarily sold justifies the recall of a certificate of guardianship GOONOOMONEE DOSSEE v BHABOSOONDUREE DOSSEE 18 W R 258

14. ———— Removal of guardian—*Immorality of guardian* —Where charges of immorality were brought against the holder of a certificate under Act XL of 1858 it was held to be the duty of the Judge to enquire into the truth of the charges and the fitness of the certificate holder MOHUNUDDY BEGUM v OOMDUTOONISSA 13 W R, 454

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15 ———— *Summary procedure* —Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court but under a will of the minor's grandfather LAKHI PRIA DASI v NABIN CHUNDRA NAG [3 B L R A C 37 11 W R, 370

16 ———— *Ground for removal* —A certificate of guardianship was cancelled under s 21 Act XL of 1858 in a case where the guardian without any sufficient cause or justification and without legal advice withdrew an appeal made to set aside a sale of the estate of the minors and at the same time dealt with the auction purchaser and obtained a putnee of a portion of that very property in the name of his own wife PITAMBER DEY MOZOOMDAR v ISHAN CHUNDER DUTT BISWAS [18 W R, 169

17 ———— *Ground for removal* —An application for the removal of guardians or parties appointed to take charge of the estate of a minor under Act XL of 1858 s 7 must be supported by proof of malversation or misconduct such as would afford sufficient ground for removal RAJESSUREE DEBIA v JOGENDRO NAUTH ROY 23 W R 278

18 ———— Removal of manager of estate—*Grounds for removal* —A manager of the estate of a minor appointed by will is liable to removal only upon proof of actual malversation or of that by reason of mental incapacity conviction of felony or by some other incapacitating cause he has become incapable of managing the property but not merely on the ground that another person would manage the property better He is it seems subject to removal upon summary application under Act XL of 1858 s 21 but if the ground upon which his removal is applied for involves an investigation of accounts such investigation must be made in a regular suit under s 19 previous to such summary application under s 21 MUDHOOSOODUN SINGH v COLLECTOR OF MIDNAPORE Marsh. 244

19 ———— and s 16—Power of Judge to order accounts from Guardian—*Discharged guardian* —A Judge has no power under s 16 or 21 Act XL of 1858 to order a discharged guardian of a minor to file his account S 21 refers to the procedure as between discharged guardians and their successors and not to a case where the contest is between the owner of the estate and a discharged guardian DOOLUN SINGH v TORUI NARAIN SINGH 4 W R Mis 3

1 ———— Procedure—*Objections to certificate* —A certificate under Act XL of 1858 having been granted to a party as guardian of an adopted minor it was objected that the minor s adoption had not been legal *Held* that as there was no doubt of the fact of adoption whether the adoption should on enquiry prove legal or not the certificate was rightly given and as the objector did not claim to be appointed guardian he had no *locus standi* to object to the appointment of another person. KISTO KISHORE ROY v ISSUR CHUNDER ROY 15 W R 166

ACT—1858—XL—*concluded*

2. —————— *Party asserting rights adversely to minor—Discretion of Court where a will is propoun led*—Where an application is made for a certificate under Act XL of 1858 a party asserting certain rights adversely to the minor cannot be admitted as a party to the record but must seek his remedy in a regular suit Where the will propounded by an applicant is a genuine document the certificate prayed for must be granted notwithstanding the existence of any natural guardian no discretion being left to the Court in such a case PUROMA SOONDUREE DOSSEE v TARA SOONDUREE DOSSEE 9 W R 343

3. —————— *Security bond Order to furnish—Power of District Judge—Assignment of bonds—Succession Act s 257—Quære*—Whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1858 to furnish security and whether where he has done so and security bonds have been given to him he can assign them in the manner provided in s. 257 of the Succession Act 1865 AMAR NATH v THAKUR DAS [I. L R, 5 All 248

4. —————— *Application for certificate—Limitation*—The lapse of six years was held to be no sufficient ground for a Judge's refusal to enquire into the merits of an application for a certificate under Act XL of 1858 that law providing no limitation as to the time within which such applications are to be made PUROMA SOONDUREE DOSSEE v TARA SOONDUREE DOSSEE 9 W R 343

—————— s 28 and s 6—Right of appeal—*Creditor—Enquiry*—Only persons who claim a right to have charge of property in trust for a minor under a will or deed have a right to make applications under Act XL of 1858 and they alone have a right of appeal under s 28 A mere creditor has no *locus standi* in the proceedings before the Judge and no right to have his objections gone into MELTOON BIBEE v GIBBON 12 W R. 101

1 —————— s 29 Jurisdiction— *Civil Court*—The Court of the Judicial Commissioner of Assam is the Civil Court contemplated by s. 29 Act XL of 1858 KALEEKA PERSHAD BHUTTACHARJEE v DHUKHINA KALI DABEE [W R 1864 Mis, 34

2. —————— *Court of District Judge*—The Civil Court to which the charge of minors and their property is entrusted by Act XL of 1858 is the Court of the Judge of the district MOHAMUDDEE BEGUM v OOMDUTOONISSA [15 W R 271

3 —————— *Estate in territories of Maharajah of Benares*—An application for a certificate under Act XL of 1858 regarding estates situate in the territories of the Maharajah of Benares should be made in the Court of the Judge of Benares KUDUM KOONER v BUDLA SINGH [1 N W Ed 1873, 163

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—————— III—

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I L R 9 Bom 454

—————— VIII—(Civil Procedure Code 1859)

See CASES UNDER CIVIL PROCEDURE CODE 1882

—————— IX, Decree under—

See GOVERNMENT OFFICERS ACTS OF [5 B L R. 312

—————— s 20—

See LIMITATION—STATUTES OF LIMITATION—IX OF 1859
[13 B L R 292
I L R 13 All 108

—————— X—

See BENGAL RENT ACT 1869

See EXECUTION OF DECREE—DECREES UNDER RENT LAW
[1 B L R. A C 177, 216
5 B L R. 115
7 W R 8

See CASES UNDER LIMITATION ACT XIV OF 1859—APPLICATION OF

See REVIEW—ORDERS SUBJECT TO REVIEW 3 N W 22
[4 N W 171
12 W R. 105

See WITHDRAWAL FROM SUIT
[2 B L.R. S N 11
10 W R 373
11 W R. 3
15 W R 260
I L. R 21 Calc 428 514

—————— Decision under—

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURT

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENT—DECREES IN RENT SUITS

1. —————— Object of Act X of 1859—*Rights existing prior to Act*—The object of Act X of 1859 was to re enact the provisions of existing laws relative to the rights of raiyats, and not in any way to destroy these rights If therefore the plaintiff had a gerabundee tenure existing before the enactment of Act X (and it had been found that the plaintiff's gerabundee tenure had been recognized in a long series of decisions commencing from the year 1816) the enactment of that Act in nowise deprived him of his rights in that tenure LEELANUND SINGH v NIRPUT MAHTOON 17 W R. 306

2 —————— Date of passing of Act—The period of limitation within which a suit might be brought for rent due at the time of the passing of Act X of 1859 must be reckoned from 29th April

ACT—1858—XL—*continued*

elder sons are neglecting their duty as managers of an estate to the material injury of a minor son the Judge is bound to institute inquiry ANUND COOMAR GANGOOLY v PAKHAL CHUNDER ROY [8 W R., 278

9 ——— *Failure to produce accounts* —An applicant for a certificate under Act XL of 1858 having alleged that the appointed guardians had neglected their charge in various ways the Judge called upon the guardians to produce their accounts and on their failing to do so took away their certificate and gave it to the applicant *Held* that the Judge would have been justified by s 21 in cancelling the guardians certificate if sufficient cause were shown but he had no authority to do what he did the accounts which a Judge can call for under that section being those which a discharged guardian is to furnish to his successor in office and the only way in which a guardian retaining office can be made to furnish such accounts is by a regular suit brought by a relative or friend of the minor RAM DYAL GOOYE v AMRIT LALL KHAMAROO 9 W R. 555

10 ——— *Waste by Hindu widow* —Acts of waste on the part of the widow in regard to her husband s property if proved would be a ground for withdrawing a certificate granted to her under Act XL of 1858 BHAGWANEE KOONWAR v PARBUTTY KOONWAR 2 W R Mis 13

11. ——— *Interference of Court with guardians of minors* —A person apprehending danger to the health or life of a minor should ask the Court s interference under s 21 Act XL of 1858 LUCKHEE NARAIN AUNG BHEEM v NOOBUJ MONEE PAT MOHADAYE 2 W R Mis 6

12 ——— *Mismanagement—Procedure* —A certificate having been granted to *A* under Act XL of 1858 in 1872 on the death of the father of a minor in 1882 the mother of the minor applied that the certificate should be recalled on the ground of mismanagement and that another should be granted to herself The District Judge assuming that the minor was a member of a joint family held that the original certificate ought never to have been granted recalled the certificate and dismissed the application. *Held* that *A* having obtained the certificate brought himself within the jurisdiction of the Court under Act XL of 1858 and that the Court ought to have considered the charges against him DEORANI KOER v PARUSHAN NARAIN [12 C L R. 546

13 ——— Selling the minor's property or allowing portions of it to be unnecessarily sold justifies the recall of a certificate of guardianship GOONOOMONEE DOSSEE v BHABOSOONDURFE DOSSEE 18 W R. 258

14. ——— Removal of guardian—*Immorality of guardian* —Where charges of immorality were brought against the holder of a certificate under Act XL of 1858 it was held to be the duty of the Judge to enquire into the truth of the charges and the fitness of the certificate holder MOHUNUDDY BEGUM v OOMDUTOONISSA 13 W R. 454

ACT—1858—XL—*continued*

15 ——— *Summary procedure* —Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court but under a will of the minor's grandfather LAKHI PRIYA DASI v NADIN CHUNDRA NAG [3 B L R., A C 37 11 W R., 370

16 ——— *Ground for removal* —A certificate of guardianship was cancelled under s 21 Act XL of 1858 in a case where the guardian without any sufficient cause or justification and without legal advice withdrew an appeal made to set aside a sale of the estate of the minors and at the same time dealt with the auction purchaser and obtained a putnee of a portion of that very property in the name of his own wife PITAMBER DEY MOZOOMDAR v ISHAN CHUNDER DUTT BISWAS [18 W R. 169

17 ——— *Ground for removal* —An application for the removal of guardians or parties appointed to take charge of the estate of a minor under Act XL of 1858 s 7 must be supported by proof of malversation or misconduct such as would afford sufficient ground for removal RAJESURSEE DEBIA v JOGENDRO NAUTH ROY 23 W R. 278

18 ——— Removal of manager of estate—*Grounds for removal* —A manager of the estate of a minor appointed by will is liable to removal only upon proof of actual malversation or that by reason of mental incapacity conviction of felony or by some other incapacitating cause he has become incapable of managing the property but not merely on the ground that another person would manage the property better He is it seems subject to removal upon summary application under Act XL of 1858 s 21 but if the ground upon which his removal is applied for involves an investigation of accounts such investigation must be made in a regular suit under s 19 previous to such summary application under s 21 MUDHOOSOODUN SINGH v COLLECTOR OF MIDNAPORE Marsh 244

19 ——— and s 16—Power of Judge to order accounts from Guardian—*Discharged guardian* —A Judge has no power under s 16 or 21 Act XL of 1858 to order a discharged guardian of a minor to file his account S 21 refers to the procedure as between discharged guardians and their successors and not to a case where the contest is between the owner of the estate and a discharged guardian DOOLUN SINGH v TORUL NARAIN SINGH 4 W R Mis 3

1 ——— Procedure—*Objections to certificate* —A certificate under Act XL of 1858 having been granted to a party as guardian of an adopted minor it was objected that the minor s adoption had not been legal *Held* that as there was no doubt of the fact of adoption whether the adoption should on enquiry prove legal or not the certificate was rightly given and as the objector did not claim to be appointed guardian he had no *locus standi* to object to the appointment of another person. KISTO KISHORE ROY v ISSUR CHUNDER ROY 15 W R., 166

ACT—1858—XL—*concluded*

2. ———— *Party asserting rights adversely to minor—Discretion of Court where a will is propounded*—Where an application is made for a certificate under Act XL of 1858 a party asserting certain rights adversely to the minor cannot be admitted as a party to the record but must seek his remedy in a regular suit Where the will propounded by an applicant is a genuine document the certificate prayed for must be granted notwithstanding the existence of any natural guardian no discretion being left to the Court in such a case PUROMA SOONDUREE DOSSEE *v* TARA SOONDUREE DOSSEE 9 W R, 343

3. ———— *Security bond Order to furnish—Power of District Judge—Assignment of bonds—Succession Act s 257—Quære*—Whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1858 to furnish security and whether where he has done so and security bonds have been given to him he can assign them in the manner provided in s. 257 of the Succession Act 1865 AMAR NATH *v* THAKUR DAS

[I. L R, 5 All., 248

4. ———— *Application for certificate—Limitation*—The lapse of six years was held to be no sufficient ground for a Judge's refusal to enquire into the merits of an application for a certificate under Act XL of 1858 that law providing no limitation as to the time within which such applications are to be made PUROMA SOONDUREE DOSSEE *v* TARA SOONDUREE DOSSEE 9 W R 343

———— s 28 and s 6—Right of appeal—*Creditor—Enquiry*—Only persons who claim a right to have charge of property in trust for a minor under a will or deed have a right to make applications under Act XL of 1858 and they alone have a right of appeal under s 28 A mere creditor has no *locus standi* in the proceedings before the Judge and no right to have his objections gone into MELTOON BIBEE *v* GIBBON 12 W R. 101

1 ———— s 29 Jurisdiction— *Civil Court*—The Court of the Judicial Commissioner of Assam is the Civil Court contemplated by s. 29 Act XL of 1858 KALEEKA PERSHAD BHUTTACHARJEE *v* DHUKHINA KALI DABEE

[W R, 1864 Mis 34

2. ———— *Court of District Judge*—The Civil Court to which the charge of minors and their property is entrusted by Act XL of 1858 is the Court of the Judge of the district MOHAMUDDEE BEGUM *v* OOMDUTOONISSA

[15 W R 271

3 ———— *Estate in territories of Maharajah of Benares*—An application for a certificate under Act XL of 1858 regarding estates situate in the territories of the Maharajah of Benares should be made in the Court of the Judge of Benares KUDUM KOONER *v* BUDLA SINGH

[1 N W Ed 1873 163

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See MERCHANT SEAMEN'S ACT

————III—

See CANTONMENT MAGISTRATE

[4 Bom A C 187
I L R 9 Bom 454

————VIII—(Civil Procedure Code 1859)

See CASES UNDER CIVIL PROCEDURE CODE 1882

————IX, Decree under—

See GOVERNMENT OFFICERS ACTS OF

[5 B L R. 312

———— s 20—

See LIMITATION—STATUTES OF LIMITATION—IX OF 1859

[13 B L R 292
I L R. 13 All 108

————X—

See BENGAL RENT ACT 1869

See EXECUTION OF DECREE—DECREES UNDER RENT LAW

[1 B L R. A C 177 216
5 B L R. 115
7 W R 8

See CASES UNDER LIMITATION ACT XIV OF 1859—APPLICATION OF

See REVIEW—ORDERS SUBJECT TO REVIEW 3 N W 22

[4 N W 171
12 W R. 195

See WITHDRAWAL FROM SUIT

[2 B L.R. S N 11
10 W R 373
11 W R. 3
15 W R 260
I L R 21 Calc 428 514

———— Decision under—

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURT

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENT—DECREES IN RENT SUITS

1. ———— Object of Act X of 1859—*Rights existing prior to Act*—The object of Act X of 1859 was to re enact the provisions of existing laws relative to the rights of raiyats and not in any way to destroy those rights. If therefore the plaintiff had a gerabundee tenure existing before the enactment of Act X (and it had been found that the plaintiff's gerabundee tenure had been recognized in a long series of decisions commencing from the year 1810) the enactment of that Act in nowise deprived him of his rights in that tenure LEELANUND SINGH *v* NIRPUT MAHTOON 17 W R., 306

2. ———— Date of passing of Act.—The period of limitation within which a suit might be brought for rent due at the time of the passing of Act X of 1859 must be reckoned from 29th April

ACT—1859—X—*concluded*

1859 the date of the passing of the Act) and not from 1st August 1859 (the date on which the Act came into operation) LACHMIPAT SING v MAHOMED MOONEER B L R. Sup Vol 32
[W R F B 32

——— s 77—

See STATUTES CONSTRUCTION OF
[3 N W 51
Agra F B Ed 1874, 243

———XI—

See CASES UNDER ONUS OF PROOF—SALE FOR ARREARS OF REVENUE

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT

See CASES UNDER SALE FOR ARREARS OF REVENUE

——— s 5—Manager of estate under attachment—*Sale for arrears of revenue—Portion of estate* —Act XI of 1859 is to a great extent a remedial Act passed for the benefit of the subject and in order to relax the stringency of former Statutes whereby the Crown was empowered to sell estates for non payment of revenue S 5 of the said Act applies to estates which are under attachment issued under Act VIII of 1859 and which are in the hands of a manager appointed on the application of the judgment debtor for the purpose of liquidating the debts Such attachments are not superseded by the appointment of such manager The words arrears of estates under attachment apply to cases where a portion only of an estate is under attachment as well as to cases in which the whole estate has been attached BUNWARI LALL SAHU v MOHABIR PERSAD SINGH
[12 B L R 297
L R 1 I A 89

Affirming on appeal the decision of High Court MOHABEER PERSAUD SINGH v COLLECTOR OF TIRHOOT 13 W R 423

——— ss 5 and 6—Notification of sale specification of— *Estate Meaning of*— Under s 6 of Act XI of 1859 it is not necessary that a notification should specify the owners of an estate or the owners of shares in the estate *Secretary of State v Rashbehary Mookerjee I L R 9 Calc 591* followed. All that is necessary under that section is that the notification should specify the estate or shares in the estate to be sold and in selling a share in an estate it is unnecessary to specify the shares or mouzahs of which that share is composed. The word estate as there used ordinarily means mehal but the term also applies to a portion of a mehal with regard to which a separate account has been opened but not to an undivided portion of a mehal as to which separate accounts are not kept RAM NARAIN KOER v MAHABIR PERSHAD SINGH
[I L R 13 Calc, 208

——— s 9—

See CONTRACT ACT ss 69 AND 70
[I L R. 12 Calc 213

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY
[I. L. R. 14 Calc 809

ACT—1859—XI—*continued.*

——— ss 10 and 11—

See CO SHARERS—SUITS WITH RESPECT TO JOINT PROPERTY—POSSESSION
21 W R. 38

——— ss 13, 14—

See MORTGAGE—SALE OF MORTGAGED PROPERTY —PURCHASERS
[I. L. R., 15 Calc., 546

——— s 31—

See LIMITATION ACT 1877 s. 10
[I. L. R., 18 Calc. 234

See LIMITATION ACT 1877 ART 120
[I. L. R. 20 Calc, 51

——— s 33—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.
[I L R. 25 Calc, 876

See LIMITATION ACT 1877 ART 95 (1871 ART 95) I. L. R., 3 Calc 300

See RIGHT OF SUIT—ROAD AND OTHER CESSES SALE FOR ARREARS OF
[I. L R. 25 Calc 85

1. ——— Suit for damages — S 33 Act XI of 1859 contemplates an action against the individual wrong doer irrespective of Government and co parceners GUNGA NARAIN BOSE v CORNELL
[10 W R. 442

2 ——— Receipt of sale-proceeds —The receipt by a decree holder of a portion of the surplus sale-proceeds lying in deposit in a Collector's Court without opposition on the part of the judgment debtor is not such a receipt as is contemplated by s 33 Act XI of 1859 MOHABEER PERSHAD SINGH v COLLECTOR OF TIRHOOT 13 W R, 423

——— s 34.—*Public Demands Recovery Act (Bengal Act VII of 1880) ss 2 and 20—Limitation* —S 2 of the Public Demands Recovery Act (Bengal Act VII of 1880) does not make the provision of limitation in s 34 of Act XI of 1859 applicable to the execution of a decree annulling a sale under s 20 of Bengal Act VII of 1880 MAHOMED ABDUL HYE v GAJRAJ SAHAI
[I. L R 25 Calc, 283

——— s 36—

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS—ACT XI OF 1859, s 36

——— s 37—

See ASSAM LAND AND REVENUE REGULATION s 65 I. L R. 26 Calc 194

See GHATWALI TENURE
[B L R Sup Vol 559
11 B L R 71
14 Moore's I A 247

See PARTIES—PARTIES TO SUITS PURCHASERS I L R 24 Calc 334
[1 C W N, 314
2 C W N 229

ACT—1859—XI—*concluded*

See CASES UNDER SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859

See CASES UNDER SALE FOR ARREARS OF REVENUE—PROTECTED TENURES

———— **Settlement.** —In Act XI of 1859 s. 37 the word settlement refers not to the permanent settlement but to the settlement which took place after resumption by Government of the lands previously held as lakhiraj RAJ CHUNDER CHOWDHRY *v* BUSHEER MAHOMED **24 W R 476**

———— **s 39—**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS
[I. L. R. 9 Calc, 116

———— **s. 54—**

See ABATEMENT OF RENT
[I. L. R. 21 Calc 1005
L. R., 21 I A 118

———— **XIII—**

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT
[4 Mad. Ap 68

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF CONTRACT **I L R. 7 Mad. 354**

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865
[4 Mad. Ap 64

See WARRANT OF ARREST—CRIMINAL CASES
[I. L. R. 20 Mad 235 457
I L R. 20 All 124

———— **ss 1 4**—*Breach of Contract—Jurisdiction of Presidency Magistrates—Magistrate of Police—Criminal Procedure Code (Act X of 1882) s 3*—A Presidency Magistrate of Calcutta may lawfully take cognizance under s 1 of Act XIII of 1859 of a complaint in respect of a contract made in Calcutta the breach of which has been committed beyond the local jurisdiction of his Court The expression Magistrate of Police' in s 1 Act XIII of 1859 means Presidency Magistrate LAL MOHAN CHOWBEY *v* HARI CHARAN DAS BAIRAGI
[I L R. 25 Calc 637

———— **s 2—**

See CONVICTION **4 Bom. Cr 27**

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY **6 Mad. Ap 24**
4 Bom. Cr 37

1. ———— *Limitation Act 1877 art 120—Claim to recover an advance*—Act XIII of 1859 being a penal enactment the Limitation Act (sch II art 120) is no bar to a claim under s 2 to recover an advance made to a labourer IN RE KITTU **[I. L. R. 11 Mad. 332**

2. ———— *Jurisdiction—Breach of contract to labour in foreign territory*

ACT—1859—XIII—*continued*

—*V* having received an advance of money from *G* contracted to labour for him in foreign territory Having broken the contract *V* was prosecuted under Act XIII of 1859 ordered to repay and sentenced to imprisonment in default —*Held* that the order was illegal GREGORY *v* VADAKASI KANGANI
[I L R. 10 Mad. 21

3 ———— **Bricklayer**—*Workman—Contractor Liability of*—A person whose ordinary business was that of a contracting bricklayer and who did not himself work received an advance contracted to get certain earthwork done on a race course and committed a breach of contract *Held* that he was not an artificer workman or labourer within the meaning of Act XIII of 1859 GILBY *v* SABHU PILLAI
[I L R 7 Mad, 100

4. ———— **Butcher**—*Supplying skins by contract*—A butcher contracting to supply skins is not within Act XIII of 1859 ANONYMOUS
[7 Mad. Ap 13

5 ———— **Coolies**—*Contract for coolies to work for specified time Breach of*—Where a contract was made by the defendant that a number of coolies should be brought by him to an estate and remain at work on the estate for a specified time and there had been a breach of the contract —*Held* that the case was within s 2 of Act XIII of 1859 ANONYMOUS **3 Mad. Ap 25**

6 ———— *Advances to coolies in Assam*—Coolies in Assam who have received advances in contemplation of work to be done may be proceeded against under Act XIII of 1859 QUEEN *v* GAUR GORAH **8 W R. Cr, 6**

7 ———— **Mahout or elephant driver**—A mahout or elephant driver does not come within the provisions of Act XIII of 1859 MUNI CHUNDRA *v* HARIRAM AHOM **8 C L R, 254**

8 ———— **Sub contractor**—*Liability for breach of contract for work undertaken upon an advance—Workman*—The petitioner who as sub-contractor had engaged to do certain work for which he was paid an advance but did not himself work was convicted by a Magistrate under s 2 of Act XIII of 1859 of the offence of breach of contract and sentenced to undergo one month's imprisonment in default of his failure to fulfil the contract. *Held* that he was not an artificer workman or labourer within the meaning of s. 2 of Act XIII of 1859 The conviction and sentence were accordingly set aside IN RE THE PETITION OF [illegible] RAM **I. L. R., 10 Bom., 33**

9 ———— **and Preamble**—[illegible] *of contract—Construction of Statute—Preamble, Construction of—Summary trial—Criminal Procedure Code s 260—Offences under s. 2 of Act XIII* of 1859 are triable summarily under s 260 of the Criminal Procedure Code [illegible] punishable by s. 2 of Act XIII of 1859 is the wilful and [illegible] contract entered into by persons whom the Act concerns. Notwithstanding the preamble of the Act it is not necessary to prove that a breach of contract is fraudulent in

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order to sustain a conviction under s. 2 *Taradoss Bhuttacharjee* v *Bhaloo Sheikh* 8 W R Cr 69 dissented from Where the enacting sections of a statute are clear the terms of the preamble cannot be called in aid to restrict their operation or to cut them down. QUEEN EMPRESS v INDARJIT

[I L R, 11 All, 262

10 ———— Domestic servants—*Artificers—Workmen—Labourers* —Act XIII of 1859 does not apply to contracts for a chakri domestic or personal service but to contracts to serve as artificer workman or labourer IN THE MATTER OF DOMESTIC SERVANTS 2 B L R A. Cr 32

QUEEN v SOOBHOI 12 W R. Cr 26

11 —— Breach of contract to supply wood.—A breach of contract to supply wood does not fall within the purview of Act XIII of 1859 IN THE CASE OF THE UPPER ASSAM TEA COMPANY v THOPOOR 4 B L.R. Ap 1

12 ———— Service for agricultural and other purposes—*Breach of contract by artificers workmen and labourers* —Act XIII of 1859 (to provide for the punishment of breaches of contract by artificers workmen and labourers in certain cases extended to all the collectorates of the Bombay Presidency by notification of the Government of Bombay dated 10th of May 1860) does not apply to a contract whereby a person in consideration of receiving R45 bound himself to another to render service for "agricultural and other purposes" for the period of one year EMPRESS v BHAGABAN BHIVSAN I L.R. 7 Bom. 379

13 ———— Labourer in silk factory—*Breach of contract by labourer* —Where a labourer contracted with the manager of a silk factory for a money consideration to work at the factory for four months in a year for a period of three years and broke the terms of his contract he was held liable to a prosecution under Act XIII of 1859 and the order of the Magistrate holding that such a contract was an unreasonable one and therefore one which ought not to be enforced by him was set aside KOONJOBEHARRY LALL v DOOMNEY KOONJOBEHARRY LALL v RUGHOONATH DOME 14 W R. Cr 29

See LYALL & Co v RAM CHUNDER BAGDEE

[18 W R. Cr 53

14 ———— Non specification of nature and extent of work—*Contract to supply labourers and get labour performed* —A contract to supply labourers and to get labour performed by them even though the nature and extent of the work are not clearly specified falls within the provisions of Act XIII of 1859 ROWSON v HANAMA MESTRI

[I. L R. 1 Mad. 280

15 ———— Advance to labourer—*Breach of contract* —Act XIII of 1859 relates to fraudulent breaches of contract and does not apply where an advance has not only been worked off by a labourer but an actual balance is due to him TARADOSS BHUTTACHARJEE v BHALOO SHEIKH

[8 W R. Cr 69

ACT—1859—XIII—*continued*

16 ———— *Contract to supply labourers* —A contract in consideration of an advance of money to supply labourers to do certain work on an estate falls within the scope of Act XIII of 1859 and the fact that such contract contains covenants to pay penalties in default of supplying the labourers and to repay the advance if necessary by personal labour for five years does not take the contract out of the operation of the Act so as to make illegal an order directing the contractor to be imprisoned for failure to comply with an order to repay the advance RAMASAMI v KANDASAMI

[I. L. R. 8 Mad., 379

17 ———— *Contract to work until repayment of advance made* —Defendant in consideration of an advance of money received from complainant bound himself to work for complainant until the repayment of the sum advanced. For breach of this contract the complainant proceeded against the defendant under Act XIII of 1859 *Held* that the contract was not within the Act. ANONYMOUS 7 Mad., Ap 31

18 ———— *Money advanced on account of work to be performed—Loan on condition that the workman should enter into a contract of service* —A workman agreed in writing to work for the proprietors of an estate for four years and one month from 1st March 1899 to 31st March 1903 for an initial advance of one rupee which was not to be repaid till after the expiration of the agreement The same person subsequently obtained an advance of R10 to be reimbursed by a monthly deduction of one rupee from his wages. He worked from 1st March 1899 till 18th September 1899 when he ceased to work leaving in all a sum of R5 to be accounted for in the adjustment of the total advance He was subsequently charged and convicted under s 2 of the Criminal Breach of Contract Act XIII of 1859 —*Held* that the initial advance of one rupee was not money advanced on account of work to be performed but rather a loan made without interest on the condition that the workman would enter into a contract of service for the duration of the loan and that the Criminal Breach of Contract Act 1859 was inapplicable to this case that with reference to the ten rupees to be repaid out of wages the Act applied and an order should be made directing the workman to work until the expiration of the term of the contract on account of which this sum had been advanced. TANGI JOGHI v HALL I. L. R. 23 Mad. 203

19 ———— *Loan—Deduction from wages* —Having agreed to work for wages in a tannery and received R10 from *M* his employer *T* promised to work off the advance by allowing *M* to deduct 8 annas a week from his weekly wages *Held* that the provisions of Act XIII of 1859 were applicable to this contract QUEEN v TALUKANAM

[I L R 7 Mad. 131

20 ———— *Gold and silver given to workman* —On the construction of s 2 of Act XIII of 1859 —*Held* that gold and silver money given to an artificer as raw material wherewith to

ACT—1859—XIII—*continued*

make the article contracted for is an advance of money within the meaning of the section ANONYMOUS 6 Mad. Ap, 24

21. ——————— *Criminal breach of contract—Labourer—Carrier by boat* —An advance was made under a contract by which the party who received the advance undertook to convey salt by boat but did not bind himself to render personal labour The party who received the advance broke the contract —*Held* the parties to the contract were not an employer of labour and a labourer respectively and consequently the contract did not fall within the provisions of Act XIII of 1859 CALU RAM v CHENGAPPA I. L. R 13 Mad. 351

22. ——————— Advance of grain and money —*Order to repay value of work not performed* —An advance of money and grain having been made to a labourer for work to be done the labourer failed to complete the work and an order was passed by a Magistrate under s 2 of Act XIII of 1859 directing repayment of the balance of the advance not worked off by the labourer *Held* that as it was not proved that the labourer was offered and accepted the grain in lieu of money to be advanced the order was illegal. KONDADU v PAMUDU [I L R. 8 Mad. 294

23 ——————— Working off previous debts—*Breach of contract of service—Labourer* — A labourer agreed to serve in consideration of money due from him on account of previous debts He served for three months only and then quitted service in violation of the agreement He was prosecuted and convicted of breach of contract of service under Act XIII of 1859 *Held* that he was not liable to be dealt with criminally because there was no fraudulent breach of contract within the meaning of Act XIII of 1859 and because further no money in advance was received the consideration for the agreement to serve being an old debt REG JETHYA VALAD VESTYA 9 Bom 171

24 ——————— *Jurisdiction of Magistrates to interfere in cases of wilful and fraudulent breach of contract—Meaning of the expression Advance of money on account of work* —Act XIII of 1859 (an Act to provide for the punishment of breaches of contract by artificers workmen and labourers in certain cases) applies only where there has been an advance of money on account of any work which words do not include mere loans or old debts The interference of the Magistrate under the Act is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse As a rule a mere breach of contract ought not to be an offence but only to be the subject of a civil action and a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process QUEEN EMPRESS v RAJAB I L. R. 16 Bom 368

25 ——————— s 2—*Limitation of civil claim —Order by the Magistrate for repayment of advances* —In a prosecution for breach of contract under Act XIII of 1859 it appeared that the complainant had advanced certain sums of money to the accused but that a suit to recover the same was barred by limitation and the Magistrate thereupon dismissed the charge —*Held* that there was no reason why the Magistrate should not have ordered repayment to be made by the accused under s 2 QUEEN EMPRESS v KONDA I L R 16 Mad. 347

26 ——————— Advance in consideration of exclusive services until repayment—*Masters and workmen—Breach of contract on the part of workmen— Station* —An employer of workmen residing and carrying on business in the city of Mirzapur alleging that he had advanced money to certain workmen on the understanding that they would work for him and no one else until they had repaid such money and that they had broken such contract by leaving his employment made a complaint against such workmen under Act XIII of 1859 which had been extended to the station of Mirzapur by the Local Government It appeared that such money was advanced by way of loan and without any reference to the wages of such workmen or the payment for the work performed by them and that no deduction on account of such advance was ever made from their wages or the payments made to them *Held* that the contract between the parties was something quite different from any contract contemplated by Act XIII of 1859 and that Act was therefore not applicable *Held* also that it was doubtful whether that Act applied locally as it was not shown that the city of Mirzapur was comprised within the station of Mirzapur IN THE MATTER OF THE PETITION OF RAM PRASAD v DIRGPAL I L R 3 All 744

27 ——————— Enquiry under Act—*Breach of contract by artificer* —The enquiry to be made under s 2 of Act XIII of 1859 is not an enquiry into an offence which may be tried summarily POLLARD v MOTHIAL I L R 4 Mad. 234

28 ——————— Imprisonment—*Criminal breach of contract—Procedure—Imprisonment* — Where an order has been made by a Magistrate under Act XIII of 1859 s 2 for the fulfilment of a labour contract a sentence of imprisonment for disobeying such order without complaint made and without taking statements from the accused is illegal although the accused before the order was made may have stated their inability to perform the work stipulated for SRINIVASA v PONNAMBALAM [I L R 5 Mad. 378

29 ——————— *Order of Magistrate for imprisonment for breach of contract—Right of civil suit* —The imprisonment of a defendant by order of the Magistrate under Act XIII of 1859 does not preclude the plaintiff from proceeding by civil suit for recovery of money advanced to the defendant for the performance of work VERSEDE v ABDUL GIRI CHINNA SWAMI 2 Mad. 427

30 ——————— Former conviction—*Breach of contract of service —Statute 4 Geo IV Cap 34 s 3—Autrefois convict* —A conviction for breach of contract of service under s. 2 Act XIII of 1859 is a bar to any subsequent conviction on the

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same contract for a further breach for not returning to service GRIFFITHS v TEZIA DOSADH [I L R 21 Calc 262

31 ———————— *Breach of contract— Offence meaning of—Criminal Procedure Code 1898 ss 4 and 250—Compensation for breach of contract* —A mere breach of contract is not under the first part of s 2 of Act XIII of 1859 an offence within the meaning of the term in s 4 of the Code of Criminal Procedure and no compensation can therefore be legally awarded under s 250 of the Code in respect of such breach IN THE MATTER OF THE PETITION OF RAM SARUP BHAKAT [4 C W N 253

———————— s 3 and s 2 cl. 1—*Procedure under whether summary or not—Criminal Procedure Code (Act V of 1898) s 370*—In the trial of a case under the Workman's Breach of Contract Act (XIII of 1859) the Magistrate is not bound to frame his record in accordance with the provisions of s 370 of the Criminal Procedure Code It is doubtful whether a proceeding under the first clause of s 2 and under s 3 of Act XIII of 1859 is a criminal proceeding There is no *offence* committed and there is no accused The provisions of s 370 of the Criminal Procedure Code are therefore inapplicable to a case of this nature AVERAM DAS MOCHI v ABDUL RAHIM I L R 27 Calc, 131 [4 C W N, 201

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1. ——— **Suit for declaration of trusts of a temple** —In bringing a suit under Act XX of 1863 it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue The Act applies to property in Calcutta GANES SINGH *v* RAMGOPAL SINGH 5 B L R Ap 55

2. ——— **Suit to establish right to share in management of temple** —The suits referred to in Act XX of 1863 as needing the authority of the Court for their jurisdiction are solely suits charging trustees managers or committees

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with misfeasance, malversation of the temple property or neglect of duty There is nothing in the Act to oust the jurisdiction of the ordinary Courts over suits to establish a right to share in the management AGRI SARMA EMBRANDRI *v* VISTNU EMBRANDRI JANADHANA EMBRANDRI *v* PALA BUL KASAVA EMBRANDRI 3 Mad., 198

3 ——— **Right of person interested to sue for misfeasance by managers etc** —*Public endowment* – In the case of a public endowment transferred to trustees managers or superintendents of such funds under Act XX of 1863 any person or persons interested (and the interest need not be a pecuniary one) in the religious establishment in its worship or service or in its trusts has a right of suit after leave obtained from a Civil Court against such trustees etc for misfeasance or breach of trust or neglect of duty KUNEEZ FATIMA *v* SAHEBA JAN 8 W R 313

4. ——— **Suit for removal of mohunt and appointment of another** — A suit for the removal of the present mohunt of a religious endowment and for the appointment of the petitioner in his place is not of such a nature as is contemplated by Act XX of 1863 KISHORE BON MOHUNT *v* KALEE CHURN GIREE 22 W R. 364

5 ——— **Suit to compel heir of manager to make good deficiency**—*Leave of Court* —Act XX of 1863 does not apply to a suit brought by the dharmakarta of a temple and one of its worshippers to compel the defendant as heir of the late manager to make good out of the property inherited by him the deficiency in the devasthanam funds caused by breach of trust and misappropriation by the late manager The leave of the Civil Court for the institution of such a suit is not necessary and the suit is maintainable The right of instituting such suits is not a privilege accorded by Act XX of 1863 but a pre-existing right. JEYANGARU LAVARU *v* DURMA DOSSJI 4 Mad 2

6 ——— **Suit to eject Dharmakarta or agents from temple**—*Right of Government to divest itself of power of interfering with appointment—Mad Reg VII of 1817* —Plaintiffs members of the committee appointed under Act XX of 1863 sued to eject defendants (the dharmakarta and his agents) from the possession and management of the temple dedicated to Sri Viraragava Swami at Trivellore and to establish their (plaintiffs') right to the possession and control of the said temple Defendants denied the right of the plaintiffs to exercise any control whatever over the temple This right depended upon whether at the period of the passing of Act XX of 1863 the nomination vested in was exercised by or was subject to the confirmation of the Government or any public officer It was admitted that in 1812 the Board of Revenue did so far as it could divest itself of all right to interfere with the appointment of a dharmakarta but it was contended for the plaintiffs that it was not in the power of the Board of Revenue so to divest itself of the duties imposed upon it by Regulation VII of 1817 *Held* that assuming the Board of Revenue

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to have had such a right there was nothing in Regulation VII of 1817 to prevent them from renouncing that right if they chose VENKATESA NAYADU v SHAGATOPA SHRI SHAGATOPA SWAMI 7 Mad, 77

7 ———— Jurisdiction—*Clause in deed of endowment excluding jurisdiction* —The jurisdiction given to Courts by Act XX of 1863 cannot be excluded by any clause in a deed of endowment IMDAD HOSEIN v MAHOMED ALI KHAN [23 W R 150

8 ———— *Madras Regulation VII of 1817 s 13—Discretionary power of a temple committee to appoint new trustees when the power of management is not hereditary—Trusts Act (II of 1882) s 49—Jurisdiction of Civil Court* —A temple committee appointed under Act XX of 1863 may appoint new trustees when there is no hereditary trustee to add to the existing trustees but this power although discretionary must be exercised reasonably and in good faith and according to the principle which is applicable to public trusts embodied in s 49 of the Indian Trusts Act If it is not so exercised the power may be controlled by a Civil Court of original jurisdiction DAVUD SAIBA v HUSEIN SAIBA I L R. 17 Mad. 212

9 ———— *Duties and Powers of committee of management—Meetings of committee—Number of members present—Resolution appointing quorum—Resolution by three out of seven—Failure of trustee to submit accounts—Ground for dismissal* —Though committee constituted under the Religious Endowments Act 1863 are not strictly corporations their procedure in matters relating to the management of properties and trustees under their control should be governed by the rules applicable to regular corporations In 1879 when a committee consisted of seven members a meeting was held at which five were present and a resolution was unanimously passed that at future meetings three should form a *quorum* This resolution had never been rescinded and had always been acted upon In 1895 when the committee also consisted of seven a meeting was held after due notice to all its members at which three were present and a trustee of the temple was on valid ground dismissed from office and called upon to hand over charge of the temple and its properties The resolution of dismissal was unanimous and was confirmed at a subsequent meeting —*Held* that the meeting as constituted was competent to pass the resolution removing the trustee Whether unanimity of the whole committee might not have been necessary in the event of business having been transacted otherwise than at a meeting *Quære* —Failure on the part of a trustee to submit accounts to the committee is a breach of one of the most important duties cast upon him by law and is sufficient to justify his dismissal ANANTANARAYANA AYYAR v KUTTALAM PILLAI I L R. 22 Mad 481

1 ———— s 3—Power of committee appointed under the Act A committee appointed under Act XX of 1863 has power to dismiss the trustees or superintendents of temples described in s 3 of the Act without having recourse to a civil suit but such power can only be exercised on good and sufficient grounds CHINNA RANGAIYANGAR v SUBRAYA MUDALI 3 Mad., 334

2 ———— Removal by Committee of Superintendent of Pagoda—*Ground for removal* —Where there were not good and sufficient grounds for the removal from office of the defendants superintendents of a pagoda within s 3 of Act XX of 1863 by the committee appointed under that Act the High Court confirmed the decree of the Civil Judge dismissing a suit brought by the plaintiffs who had been appointed by the committee as superintendents in place of the defendants for the recovery of the pagoda and the property belonging to it CHINNA RANGAIYANGAR v SUBRAYA MUDALI 3 Mad 338

3 ———— Committee Suit by to enforce right of control.—The committee of a district duly appointed under Act XX of 1863 are entitled to maintain a suit in a Civil Court without having obtained the leave of the Court to bring the suit as well when the object of the suit is to establish their right of control under s 3 of the Act as when it is sought to enforce such control against the officers of the temple subordinate to them VENKATASA NAIDU v SADAGOPASMA IYER [4 Mad. 404

4 ———— ss 3 4 11 12—*Suit by members of a temple committee—Burden of proof—Form of decree* —Suit by the members of a temple committee appointed under Act XX of 1863 against one claiming to be the hereditary trustee of a Hindu temple for possession of certain temple property for a declaration of their right to receive certain annual dues and for a perpetual injunction restraining defendant from interfering with these dues —*Held* the burden of proving that the temple was of the class mentioned in s 3 of Act XX of 1863 lay on the plaintiffs On its appearing that the defendants ancestor was not the founder of the temple but was appointed trustee by the Government as also were his successors in the office of trustee of whom all were not members of his family —*Held* (1) the plaintiffs were entitled to a decree declaring the temple in dispute to be of the class mentioned in Act XX of 1863 s 3 and as such subject to their jurisdiction (2) the plaintiffs were not entitled under Act XX of 1863 ss 14 1 and 12 to be put in possession of the property of the temple nor in receipt of its income PONDURANGA v NAGAPPA [I L R 12 Mad. 366

1 ———— s 4—Power of committee to call for accounts from trustees of temple A District Committee appointed under Act XX of 1863 has no right to call for accounts from trustees of temples which are within s 4 of the Act. VENKATABALA KRISHNA CHETTIYAR v KALIYANARAM AIYANGAR 5 Mad. 48

RAMIENGAR *alias* RAMANUJA CHARIYAR v GNANASAMBANDA PANDARASANNADA [5 Mad., 53

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See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622 [I L R. 10 Mad 98 98 note

See VALUATION OF SUIT—SUITS [I L R. 11 Mad 148 149 note

1. ———— **Suit for declaration of trusts of a temple**—In bringing a suit under Act XX of 1863 it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue The Act applies to property in Calcutta GANES SINGH *v* RAMGOPAL SINGH 5 B L R Ap 55

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4 ———— ss 3 4 11, 12—*Suit by members of a temple committee—Burden of proof—Form of decree* —Suit by the members of a temple committee appointed under Act XX of 1863 against one claiming to be the hereditary trustee of a Hindu temple for possession of certain temple property for a declaration of their right to receive certain annual dues and for a perpetual injunction restraining defendant from interfering with these dues —*Held* the burden of proving that the temple was of the class mentioned in s 3 of Act XX of 1863 lay on the plaintiffs On its appearing that the defendants ancestor was not the founder of the temple but was appointed trustee by the Government as also were his successors in the office of trustee of whom all were not members of his family —*Held* (1) the plaintiffs were entitled to a decree declaring the temple in dispute to be of the class mentioned in Act XX of 1863 s 3 and as such subject to their jurisdiction (2) the plaintiffs were not entitled under Act XX of 1863 ss 14 1 and 12 to be put in possession of the property of the temple nor in receipt of its income PONDURANGA v NAGAPPA [I L R 12 Mad. 366

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2 ——— **Right to restoration of endowment of which plaintiff had been deprived under Mad. Reg VII of 1817**—The plaintiff claiming to be the owner of a muth and certain land attached to it under a grant from the Rajah of Tanjore from the possession of which he had been ejected by the Collector of Tanjore in 1856 on charges of breach of trust and other misconduct sued to recover the possession of the lands and mesne profits. The Civil Judge found that the grant was for the performance of religious ceremonies and pious observances only and that the plaintiff had led a vicious life and been guilty of malversation in his office and being of opinion that the plaintiff had been properly deprived of the lands belonging to the muth, under Madras Regulation VII of 1817 dismissed the suit *Held* that under s 4 of Act XX of 1863 the plaintiff became entitled on the passing of the Act to the restoration of the endowment JUSAGHERI COSAMIER *v* COLLECTOR OF TANJORE [5 Mad. 334

3 ——— **Right to control affairs of temple**—*Transfer of property—Form of order—Right of suit*—In 1849 the Board of Revenue acting under Bengal Regulation XIX of 1810 interfered in the management of the affairs of a temple In a suit relating to the affairs of the temple instituted in 1878 it did not appear whether any transfer of property had been made under s 4 of Act XX of 1863 but it did appear that in 1860 the Judge of Patna had appointed a manager of the temple *Held* that the right of the Government officer to control the affairs of the temple had been sufficiently proved DHUBBUM SING *v* KISHEN SINGH [I. L. R. 7 Calc 767 9 C L. R. 410

——— **ss 4 and 5—Power to appoint trustees on vacancy in office**—*Malabar Devasams—Jurisdiction of District Courts*—The District Courts have no power to appoint trustees under s 5 of Act XX of 1863 upon a vacancy occurring in the office of trustee unless property has been actually transferred to the former trustee under the provisions of s. 4. ITTUNI PANIKKAN *v* IRANI NAMBUDRIPAD I. L. R. 3 Mad., 401

——— **s. 5**—*Appointment of trustee to religious endowment—Jurisdiction of District Judge—Collector as Agent of Court of Wards*—Where a hereditary trustee of a temple died and application was made by the Collector as agent of the Court of Wards in whom the management of deceased's estates during the minority of the sons of the deceased had vested to be appointed trustee on behalf of the said sons —*Held* that the case fell within s. 5 of Act XX of 1863 and that the Court (the District Judge) had jurisdiction to make the appointment ——— MASKNDALA MUDALIAR *v* VITHILINGA MUDALIAR I. L. R. 19 Mad, 285

——— **s. 7—Power of appointment in committee**—The defendant was sued as the trustee of a pagoda to recover a certain sum of money for which he had not accounted. The defendant was dismissed by three members of the district committee which consisted of six members, the other three members refusing to sign the order of dismissal. The plaintiffs were appointed trustees in place of the defendant by the members who dismissed the defendant *Held* that the appointment of the plaintiffs was invalid under s 7 Act XX of 1863 and that they were not entitled to sue the defendant PANDURUNGY ANNACHARIYAR *v* IYATHORY MUDALY [4 Mad., 443

——— **s 8—Resignation of member of a committee of a temple**—A member of a committee of a temple appointed under s 8 of Act XX of 1863 can retire from his office of his own will TIRUVENGADA *v* RANGAYYANGAR GOPAL RAM *v* RANGAYYANGAR I. L. R. 6 Mad. 114

——— **s 10—Powers of Judge to appoint new committee of an endowment when the memberships are all vacant**—Under s. 10 Act XX of 1863 the powers of a Judge are not confined to filling up vacancies in the memberships of committee of a religious endowment, but the Judge may appoint a new committee when the memberships of the committee are all vacant MAHOMED ATHOR *v* SULTAN KHAN 4 C W N., 527

——— **ss 11 and 12 and s 3**—*Suit by Manager for rent on muchalkas granted by the committee of religious institution—Right of suit*—Where the committee of a religious institution governed by Act XX of 1863 obtained muchalkas in its own name from the tenants of land belonging to the institution instead of in the name of its manager —*Held* with reference to the provisions of the Act, that this fact constituted a mere irregularity and that a suit brought by the manager on such muchalkas was maintainable. KALYANARAMAYYAR *v* MUSTAK SHAH SAHEB I. L. R. 19 Mad. 395

1. ——— **s 14—Suit for wrongful dismissal from temple by officer**—A suit by an officer of a mosque temple or religious establishment for wrongful dismissal from his office is not a suit for misfeasance within the meaning of s. 14, Act XX of 1863 AMIN SAHIB *v* IBRAM SAHIB [4 Mad. 112

2 ——— **Right to sue for removal of trustees**—*Religious endowment*—S 14 of Act XX of 1863 is sufficiently general in its terms to empower any person interested in any temple mosque or religious endowment or in the performance of the trusts relating thereto to sue the trustee manager or superintendent or the member of a committee appointed under the Act for misfeasance and also to empower the Court to order the removal of a trustee etc The tomb of a reputed saint became a place of pilgrimage and an endowment was made for the maintenance of the shrine and for the performances of certain religious ceremonies. There was a practice on the part of the proprietors and the managers of the institution to divide amongst themselves the residue of the income and to dispose by way of sale or mortgage of the share enjoyed by them *Held* that this was a religious institution within the meaning of Act XX of 1863 The 14th section of the Act empowers the Civil Court to remove trustees for misfeasance etc., and it does not recognize any difference in respect of

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trustees whether hereditary or selected. LAKURUDIN SAHIB v ACKENI SAHIB I L R. 2 Mad. 197

3 ———— *Suit to remove trustee of rel gious endowment though unlawfully appointed*—Act XX of 1863 is applicable to an endowment whereby certain shops have been pur chased by subscripti n and dedicated to the support of a mosque and is also applicable in respect of a person in possession of the endowed property and professing to act as mutwalli even though he may not have been lawfully appointed. *Dhurrum Sing v Kissen S ng I L R 7 Calc 767* and *Sheoratan Kuars v Ram Pargash I L R 18 All 227* referred to MUHAMMAD SIRAJUL HAQ v IMAM UD DIN I L R 19 All. 104

4. ———— Suit to restrain manager from allowing property to be removed—*Form of order—Injunction—Civil Procedure Code 1877 s 30*—S 14 of Act XX of 1863 is generally applicable to all religi us endowments and while it in one sense restrains the ordinary Courts fr m deal ing with cases against trustees of religious endow ments it gives special facilities for suits in the prin cipal Civil Court of th district by any of the per sons interested in those endowments *Quære*—Whether considering the provisi ns of s 30 of the Civil Procedure Cod the intenti n of s 14 of Act XX of 1863 is at all nece sary? An order under s 14 Act XX of 1863 should be mandatory and not prohibitory Where a sacred book was kept at a temple and was an object of venerati n to the mem bers of the sect entitled to worship there —*Held* that a suit w uld lie under s 14 of Act XX of 1863 by some of the persons interested in th temple to restrain the superintendent from removing the book to another place and that he should be directed to retain it as a p rtion of the furniture of the t mple DHURRUM SINGH v KISHEN SINGH [I L R 7 Calc 767 9 C L R 410

5 ———— Trustee of Temple quali fications of—*Duty of Comm ttee—Misfeasance*—Act XX of 1863 does not require that a per son appointed by a c mmittee to be a trustee of a temple should be of any particular s ct and although it may be de irable that the trustee of a temple should be of the sect to which the temple belongs the appointment of a Sivite to be trustee of a Vish nuvite temple does not amount to an act of mi feasance neglect or breach of trust on the part of the committee within the meaning of s 14 of the Act GANDAVATHARA AYYANGAR v DEVANAYAGA MUDALI I L R 7 Mad. 222

6 ———— Jurisdiction of Civil Court—*Endowment—Religious endo ments Appl cat on of Act to*—Act XX of 1863 only applies to certain reli ious trusts and endowments which had been or might come to be under the management of the Government and s 14 of that Act although in its terms it appears to be more general than the earlier sections applies in fact only to the same reli gious endowments to which the rest of the Act ap plies *Panch Co rie Mull v Chu noo Lall I L R 3 Calc 563 2 C L R 121* cited and f llowed KALI CHURN GIRI v GOLABI 2 C L R 128

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7 ———— *Suit to recover land on behalf of temple*—The provisions of s 14 of Act XX of 1863 (*Religious Endowments Act*) do not oust the jurisdiction of the ordinary Courts ex cept in the cases specified therein A suit for recovery of immoveable property on behalf of a temple alleging by way of misfeasance and breach of trust that the defendants (the managers of the temple) had forged d cuments and usurped temple property without any prayer for the removal of the managers or for dam ages or for a decree for specific performance of any act by the managers is n t a suit for which a special jurisdicti n is provided by the Act MAHALINGA RAU v VENCOBA GHOSAMI I L R 4 Mad 157

8 ———— *Suit by persons interested for breach of trust and neglect of duty—Refusal of trustee without adequate reason to accept and utilise offerings for celebration of fes t vals—Misfeasance and brea h of trust in s 14 ex plain d*—In a suit against the trustee of a religious institution under Act XX of 1863 for alleged breaches of trust and neglect of duty by reason of the non performance of ceremonies it is not necessary in order t give jurisdiction to Civil Courts for the plaintiffs to show that there are any special funds constituting an endowment of the instituti n If it be proved that the ceremonies in question have been conducted as a cust m for a series of years and that the defen dant trustee was not absolutely unable owing to lack of funds t carry on these cer monial observances in the cust mary manner he must be held to have been guilty of neglect of duty rendering him liable to a suit under s 14 of the Act Where it has been usual for the trustee to cel brate festivals with the aid of voluntary contributions it is a breach of duty on the part of the trustee to refuse to celebrate them with ut adequate r as ns if funds are available and the trus tee ought not contrary to usage to refuse to receive such offerings and perform the ceremonies for which they are tender d *Per* SUBRAHMANIA AYYAR *J*—Having regard to the fact that funds voluntarily given to public rel gious institutions not only enrich the in titutions but promote the interests of public worship it must be regarded as part of the proper functions of the trustee to utilise such income for the purposes of the institution whenever it is available It is his duty to accept the money and apply it for the specified purpose unless there are proper grounds for its rejection Though a trustee may exercise a discreti n and cannot be charged with misconduct if he acts with an absence of indirect motive with honesty of intenti n and a fair consideration of the subject he may be proceeded against if fr m corrupt or im proper motives he refuses to allow voluntary contri buti ns offered for purposes not inconsistent with the principles rules or usages of the institution to be applied to these purposes The Courts are bound to re train a trustee from injuring the interests of the institution under his charge by corruptly arbitrarily or wantonly departing from the ordinary course of procedure in regard to es ential or important matters connected with the institution. The ground upon which the Courts exercise such jurisdiction over him is that such departure on his part amounts to a breach of legal duty incumbent on him Though the Courts

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cannot be called upon to decide questions of ritual and worship unconnected with civil rights it is perfectly competent for them to adjudicate upon such questions also when the adjudication is necessary for the determination of civil rights *Amin Sahib v Ibram Sahib 4 Mad 112* explained ELAYALWAR REDDIAR v NAMBERUMAL CHETTIAR

[I. L. R., 23 Mad., 298

9 ———— **Trustee manager or superintendent of mosque**—*Application of Act*—The words trustee manager or superintendent of a mosque etc mentioned in Act XX of 1863 mean the trustee manager or superintendent of a mosque etc to which the provisions of the Act are applicable not the trustee etc of any mosque And such persons are those to whom the provisions of Regulation XIX of 1810 were applicable The mosques etc to which the provisions of that Regulation were applicable were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals and the mosques etc to which the provisions of Act XX of 1863 apply are not any mosques etc but any mosques for the support of which endowments in land have been made by the Government or private individuals JAN ALI v RAM NATH MUNDUL I. L. R., 8 Calc 32

[9 C. L. R. 433

10 ———— **Suit by committee against manager for misappropriation**—*Jurisdiction of Civil Court—Leave to sue*—A committee appointed under Act XX of 1863 may without leave of the Court previously obtained sue their manager or superintendent for damages for misappropriation and for an injunction The provisions of Act XX of 1863 s. 14 do not apply to such suits by the committee themselves PUDDOLABH ROY v RAMGOPAL CHATTERJEE I. L. R. 9 Calc 133

[11 C. L. R., 333

11. ———— **Suit against dismissed trustee to recover temple property**—A suit by the trustees to recover the property of a temple from an ex trustee who has been properly dismissed from his office by the temple committee is not governed by s 4 of Act XX of 1863 VERASAMI NAYADU v SUBBA RAM I. L. R. 6 Mad. 54

12. ———— *Hereditary trusteeship—Suspension from trusteeship and right of puja—Maintenance in office on terms*—Suit by certain dikshadars or hereditary trustees of the Chitambaram temple against others of the dikshadars praying for their removal from office and for a money decree alleging that they had been jointly guilty of misconduct in respect of temple property in their custody and had obstructed the repair of certain shrines The District Judge passed a decree suspending some of the defendants from the office of trustee and the right of puja for a period which was not defined he also passed a decree for the money claimed —*Held* that the operation of Act XX of 1863 was not excluded by the admission that the trusteeship was hereditary in certain families and that the District Judge had jurisdiction under Act XX of 1863 to deprive the defendants of the right of puja *Held* further on the evidence that the defendants merited the punishment which had been inflicted on them Decreed that the suspension of the defendants be withdrawn on the terms that they file an undertaking with two sureties that they would restore certain property belonging to the temple now missing and that they would duly conform to the decision of the majority of dikshadars as to the management of temple affairs etc NATESA v GANAPATI

[I. L. R. 14 Mad. 103

13 ———— **Suit to carry out endowment**—In a suit by the mutwalli of a large Mahomedan establishment acting on behalf of the Mahomedans of the neighbourhood to secure the performance of trusts of a deed of appropriation by a Mahomedan the plaintiff was held with reference to the words of ss 14 and 15 Act XX of 1863 to be a person interested in the preservation of the trust and a proper person to bring the suit He was not required under those sections to have any interest in the trust direct or immediate or any share in the management of the property DOYAL CHUND MULLICK v KERAMUT ALI

[12 W. R. 382

14 ———— **Religious endowment**—*Applicability of the Act—Madras Regulation VII of 1817*—In a suit brought with the leave of the District Court under Act XX of 1863 to remove the trustees of a Hindu temple it did not appear that the trustees were nominated by or subject to the confirmation of the Government or any public officer —*Held* that Act XX of 1863 was not applicable to the temple unless it was admitted or proved by evidence that the endowment was one which would have fallen under the provisions of Regulation VII of 1817 MUTHU v GANGATHARA I. L. R. 17 Mad., 95

15 ———— *Madras Regulation VII of 1817—Joinder of purchasers in a suit against trustee*—A temple having been endowed with immoveable property after the passing of Madras Regulation VII of 1817 and before the Religious Endowments Act (XX of 1863) and the trustee having without authority sold the same a suit was instituted under Act XX of 1863 against the trustee and the purchasers of the property to annul the sales and to declare the right of the temple thereto —*Held* (1) that a transferee of trust property under a transaction which amounts to a breach of trust on the part of the trustee of the institution cannot be proceeded against under the provisions of the Religious Endowments Act 1863 and (2) that the trustee of a public religious institution can be sued under the provisions of the Religious Endowments Act 1863 notwithstanding the fact that the institution came into existence after Regulation VII of 1817 was passed SIVAYYA v RAMI REDDI

[I. L. R. 22 Mad. 223

16 ———— *Endowment—Endowment for benefit of family idol Suit to remove shebaits from office Arbitration Reference to—Bengal Regulation XIX of 1810*—Act XX of 1863 does not apply to an endowment which is not a public one but which is made for the benefit of an ancestral family idol Two plaintiffs members of a

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Hindu family applied for and (in the presence of the defendants) obtained leave to institute a suit against the defendants, who were the shebaits of a certain idol for the purpose of having them removed from their office on the ground of misconduct. In their plaint they alleged that the endowment was a public one all Hindus having a common right of worshipping the idol. This was denied by the defendants. After issues had been framed the Court of first instance made an order under s 16 of the Act referring certain of them to arbitration although the defendants contended that as the endowment was not a public one the Act had no application and objected to the reference. The arbitrators made an award finding *inter alia* that the idol was the ancestral family idol of the parties to the suit and that the endowment was not made for the benefit of the public. They further in their award laid down certain definite rules according to which the sheba ought to be conducted and repairs to the temple made. The Court of first instance passed a decree on that award declaring that the idol was the ancestral idol of both parties and directing that the defendants should perform the worship in a certain manner and should execute certain repairs to the temple within six months and declaring that if the parties did not act as directed any member of the family should be able to bring a suit for the appointment of a manager. Against that decree the defendants appealed and contended that the Act did not apply to the case on the finding of facts as to the endowment not being a public one that the compulsory reference to arbitration was illegal and void and that the decree was not one authorised by the terms of s 14 of the Act. *Held* that on the facts as found by the arbitrators Act XX of 1863 did not apply to the case and that the compulsory reference to arbitration and the decree made thereon were illegal and void. *Held* further that the decree itself was bad on the ground that it was not one coming within the scope of s 14 of the Act. PROTAP CHANDRA MISSER v BROJONATH MISSER [I. L. R. 19 Calc 275

17 ———— Suspension and dismissal of trustee of a temple—*Powers of temple committee*—The plaintiff was appointed to the office of trustee of a Hindu temple under Religious Endowments Act 1863 s 3 by the temple committee constituted under that Act. Subsequently the committee having received certain complaints against him suspended him from office pending inquiry without calling on him for an explanation. They alleged as the grounds of his suspension that he had caused loss of property and money to the temple and that he had conducted things in the temple contrary to custom so as to cause a disturbance of the peace. The trustee refused to acquiesce in the order of suspension and to give up certain records etc which he was by that order required to deliver and denied the authority of the committee as asserted by them. Shortly afterwards the committee dismissed him. The plaintiff denying that his suspension and dismissal were legal brought two suits against the members of the committee the first for damages for the suspension and the second for an injunction to restrain the defendants from interfering with the discharge of his duties as trustee. Both of these suits were dismissed and the plaintiff preferred appeals to the High Court. In the appeal relating to the claim for an injunction it was found that no misconduct had been proved against the plaintiff previous to the order of suspension. *Held* by SHEPHARD and DAVIES JJ that a trustee in the position of the plaintiff cannot be dismissed from office except for good cause shown and that his conduct subsequent to the order of suspension did not amount to such good cause. In the appeal relating to damages —*Held* by SHEPHARD J that the order of suspension was illegal and that under the circumstances the plaintiff was entitled to substantial damages. *Held* by DAVIES J (finding that the committee had proceeded in the *bonâ fide* belief that they were acting for the good of the temple in suspending the plaintiff pending inquiry) that the order of suspension was not illegal and that the suit was rightly dismissed. Owing to the difference of opinion between the two Judges the last mentioned appeal was referred to the Chief Justice under Civil Procedure Code s 575 and was heard by him sitting with the two other Judges —*Held* by COLLINS C J and SHEPHARD J (DAVIES J *diss*) that the order of suspension was illegal and the plaintiff was entitled to substantial damages. *Per* COLLINS C J—The power of suspension by the committee is in my judgment the same as the power of dismissal. The committee having made due inquiry and having called on the trustee for an explanation may suspend for good and sufficient cause but not otherwise. SESHADRI AYYANGAR v NATARAJA AYYAR I L R 21 Mad, 179

1 ———— s 18—Leave to sue—*Public and private endowments—Reg XIX of 1810—Jurisdiction of Civil Court—Suit to remove mutualli*—A Mahomedan lady executed a wakf nama purporting to dedicate the whole of her property to an imambara in her house for the purpose of perpetuating various Shiah ceremonies. By the wakf nama she constituted herself joint mutwalli with one *B* and caused the names of herself and *B* as mutwallis to be substituted in the Collector's register for her own name as owner. On the death of *B* *A* acted as the sole mutwalli. The wakfnama was publicly registered. But though the property was styled wakf and *A* the mutwalli thereof in all documents connected with the estate *A* all along continued to deal with it as absolute proprietress and the dedication though made in 185 was never under the control of the Board of Revenue or of local agents. In a suit which the plaintiffs obtained leave to institute under s 18 of Act XX of 1863 to remove *A* from the mutwalliship on the ground of misfeasance —*Held* the wakfnama did not constitute a public religious establishment within the meaning of Act XX of 1863 and that therefore the Judge below had no authority to give the plaintiffs under s 18 leave to sue and that his decision was consequently *ultra vires*. S 18 of Act XX of 1863 applies only to such religious establishments as were under the control or superintendence

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of the Board of Revenue or of local agents under Regulation XIX of 1810 and were transferred to trustees or managers under s 4 of the Act DELROOS BANOO BEGUM v ASHGAR ALLY KHAN [15 B L R, 167 23 W R 453

Affirmed by the Privy Council So far as it held that the endowment created by the document was not of such a public character as would sustain a suit under Act XX of 1863 not dissented from. ASHGAR ALI v DELROOS BANOO BEGUM [I. L R 3 Calc, 324

2. ——— *Right of beneficiaries under deed of endowment* —Act XX of 1863 while it empowers persons to sue whose right to sue independently of the Act may be doubtful does not deprive persons claiming to be beneficiaries under a deed of endowment of the right to sue which they have independently of the Act nor does it impose on them the necessity of obtaining the sanction to institute the suit required by s 18 of th Act. KULAB HOSSEIN v MEHRUM BEEBEE [4 N W 155

3 ——— *Suit to have trusts of endowment carried out* —An appropriator who sues on the ground that the trust created so far as it related to the appointment of mutwallis had never been acted upon and that the original rights of the appropriator remain is at liberty to bring such a suit without leave of the Court under s 18 of Act XX of 1863 HIDAITOONNISSA v AFZUL HOSSEIN [2 N W, 420

4. ——— Sanction to suit—*Suit brought different from the suit sanctioned—Rejection of plaint* —*A* and *B* being worshippers at a Hindu temple obtained sanction under s 18 of the Religious Endowments Act to sue for the removal of the managers of the temple on the ground of breach of trust and for damages *A* and *B* sued to remove the managers but claimed no damages in their plaint:—*Held* that as the suit instituted differed from the one for which sanction was given the plaint was properly rejected. SRINIVASA v VENKATA I. L. R. 11 Mad., 148

5 ——— *Order of Civil Court as to title Effect of*—*Semble*—That an order of the Civil Court under s 18 of Act XX of 1863 refusing leave to institute a suit and deciding that the temple was governed by a hereditary dharmakarta and therefore within s 3 of the Act was not conclusive upon the question of title between the parties. VENKATASA NAIKAR v SRINIVASSA CHARIYAR. SRINIVASSA CHARIYAR v VENKATASA NAIKAR 4 Mad. 410

6. ——— Costs—*Suit for benefit of a trust* —Where a suit under Act XX of 1863 is for the benefit of a trust and no party to the suit is in fault —e g where the right to the succession is disputed, and it is necessary to secure the property —the Court a [illegible] of the estate; [illegible] KISHORE DOSS 22 W R. 21

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——— 1870—XXVII ss 10 294A—

——— Lottery office—*Institution of criminal proceedings—Sanction of Government* —No charge for the offence (of keeping a lottery office) under ss. 10 294A Act XXVII of 1870 can be entertained without the authority of the Local Government QUEEN *v* NGA CHO [6 B L R. Ap 98 15 W R. Cr 2

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[22 W R. 102

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See Magistrate Jurisdiction of—Withdrawal of Cases
[I. L. R. 8 Calc 851

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[24 W R., Cr, 29

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[24 W R., Cr 24

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[2 C L. R, 511

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[I. L. R, 4 Calc, 770

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[I. L. R. 1 Calc 52
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[I. L. R. 27 Calc, 855

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[I. L. R. 27 Calc 1023

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1. ——— Seizure of Raj of Tanjore—*Jurisdiction of Municipal Courts—Independent States*—The transactions of Independent States between each other are governed by other laws than those which Municipal Courts administer The seizure by the British Government acting as a sovereign power through its delegate the East India Company of the Raj of Tanjore with the property belonging thereto was with its consequences an act of State over which a Municipal Court has no jurisdiction THE EAST INDIA COMPANY v KAMACHEE BOYE SAHIBA 4 W R. P C 4
S C SECRETARY OF STATE FOR INDIA v KAMACHEE BOYE SAHIBA 7 Moore s I A 476

2 ——— Arrest under Beng Reg III of 1818—*Jurisdiction of Municipal Courts*—A Mahomedan subject of the Crown was arrested in Calcutta taken into the mofussil and there detained in jail under a warrant of the Governor General in Council in the form prescribed by Reg III of 1818 *Held* that such arrest and detainer were not acts of State but matters cognizable by a Municipal Court IN RE AMEER KHAN 6 B L R. 392

3 Resumption of Jagir by East India Company—*Regulation law*—Where lands were held by a jagirdar under the sovereign of an independent State on a jaidad tenure *i e* on a grant of land together with the public revenues thereof on the condition of keeping up a body of troops to be employed when called on in the service of the sovereign and on the conquest of the State by the East India Company the jagirdar remained in the same position to the Company—*Held* that the resumption of the lands by the Company and the seizure of the arms and stores appertaining to the tenure on the death of the jagirdar was not an act of State and therefore the Municipal Courts had jurisdiction to entertain a suit by the representatives of the jagirdar against the Government for the possession of the land and for the value of the arms and stores This was so although at the time of the resumption the Regulation law was not introduced into the territories in which the jagir was comprised FORRESTER v SECRETARY OF STATE
[12 B L R. 120 18 W R. 349 L R. I A Sup Vol. 10

4. ——— Confiscation of territories of King of Delhi—*Act of State*—The status of the King of Delhi was that of a King recognized by the British Government and the confiscation of his territories in 1857 was an act of State, and not an act done under color of any legal right of which a Municipal Court could take cognizance His tenure of the territories assigned him by the Government was a tenure merely *durante regno* and no power was conferred upon him of creating incumbrances which would survive his deposition The word confiscation does not necessarily import that the appropriation is to be made as a penalty for a crime nor when used in that sense does it necessarily imply that the forfeiture has accrued upon conviction but it may also be properly used as applicable to appropriations of property by Government as an act of State SALIGRAM v SECRETARY OF STATE
[12 B L R. 167 18 W R., 389 L R., I A Sup Vol 119

5 ——— Confiscation by Governor of Foreign State—*Title to timber*—The plaintiff brought a suit at Tonghoo in British Burma to recover possession of certain timber which he alleged the defendants had wrongfully and in collusion with the Burmese Governor of Ninghan taken out of his possession in foreign territory and removed to Tonghoo The defendants stated that they had acquired the timber from the Governor of Ninghan in terms of an agreement between them and the Burmese Government It appeared that the Governor of Ninghan had confiscated the plaintiff's timber in contravention of a royal mandate After the institution of the suit the defendants removed the timber from Tonghoo to Rangoon *Held* that a British Municipal Court might enquire into the character of the act of the Governor of Ninghan and was not bound to accept it as an act of State BOMBAY BURMAH TRADING CORPORATION v MAHOMED ALI SHERAGEE 10 B L R. 345 19 W R., 123

6 ——— Resumption by Government—*Act of State—Jurisdiction of Civil Court*—By the treaty of the 31st July 1801 between the then Nawab of the Carnatic and the Governor in Council at Madras the sovereign rights of the Nawab in the Carnatic were vested in the East India Company *Held* that a resumption by the Madras Government of a jagir granted by former Nawabs as Altamghah inam before the date of the treaty and a re grant by Madras Government to another for a life estate only was such an act of sovereign power by the East India Company as precluded the Supreme Court at Madras from taking cognizance of a suit by the heirs of the original grantee in respect of such resumption EAST INDIA COMPANY v SYEDALLY 7 Moore s I. A 555

7 ——— Resumption of village granted by Peishwa of the Deccan.—A village having been granted in inam by the Peishwa of the Deccan was after the death of the grantee seized by the mamlutdar or farmer of the revenues for an alleged debt due to him and retained until the treaty of Poona in 1818 when it came into the possession of the British Government In a suit instituted by the representatives of the original grantee for possession of the village and payment of the arrears of revenue so sequestered it was held by the Judicial Committee affirming the decree of the Provincial and

ACT OF STATE—*continued*

Sudder Court that the original resumption was the wrongful act of an individual and not an act of the State the British Government were therefore ordered to restore the village but pursuant to Bom Reg V of 1827 s. 3 with only six years arrears of revenue MILLS v MODEE PESTONJEE KHOORSHIDJEE 2 Moore s I. A. 37

8. ——— **Sequestration by British Government of private property of independent Sovereign**—*Jurisdiction of Municipal Court*—A sequestration by the officers of the British Government of the private property of the Angria of Kolaba a native independent Sovereign though made contrary to the express orders of the Court of Directors originally given would not be liable to question in a Municipal Court if subsequently ratified but *aliter* where there is no such ratification ZULEFF ALI v YE HYADABAI SAHEB 9 Bom 314

9 ——— **Seizure by right of conquest**—*Jurisdiction of Municipal Court*—Where an estate is seized by the Crown in right of conquest and not by virtue of any legal title such seizure must be regarded as an act of State and is not liable to be questioned in a Municipal Court *Secretary of State for India in Council* v *Kamachee Boye Sahiba 7 Moore's I A 476* followed BHAGWAN SINGH v SECRETARY OF STATE FOR INDIA IN COUNCIL L. R 2 I A 38

10 ——— **Resumption of inam village and re grant Effect of**—*Waikars Status of—Treaties of 1820—Effect of grant of inam under construction—Attachment by Government of such village Effect of*—From the year 1820 down to the year 1872 the *Waikar family* had been in the enjoyment of the village of Pasarni under a treaty between the East India Company and one *M A* and *K M* who were brothers and the last male descendants of *M* For an alleged fraud of *K M* Government restricted the enjoyment of the said village to his lifetime only *A* predeceased *K* On the death of *K M Government on the 31s* December 1872 placed an attachment over the village On the 13th July 1874 a judgment creditor of *A* caused the lands in dispute which were mirasi lands of the Waikar family situated at Pasarni, to be sold in execution of his decree against *A* and they were purchased by the defendant who was put in possession on the 22nd April 1876 In the meanwhile Government having chosen to recognise the plaintiff as a representative of the Waikar family had removed the attachment and re granted the village to the plaintiff shortly before ... on the 3rd April 1876 The plaintiff being dispossessed sued the defendant contending (*inter alia*) that *A* having predeceased his brother had no interest in the lands which had been purchased by the defendant The Court of first instance awarded the plaintiff s claim and directed the defendant to pay the plaintiff's costs The defendant appealed to the District Judge who was of opinion that the proceedings of Government since the attachment in 1872 and restoration of the village were acts of State and he varied the decree of the lower Court by cutting down the plaintiff s

ACT OF STATE—*concluded*

costs made payable by the lower Court's decree to half On appeal by the defendant to the High Court *held* reversing the decree of the Lower Appellate Court that the plaintiff s claim should be dismissed The attachment placed by Government on the death of *K M* in December 1872 was limited to an exemption from assessment and the resumption and re grant to the plaintiff did not give the plaintiff any title to the lands in question The proceedings of Government in 1873 and 1876 by which the plaintiff was recognised as the representative of the Waikar family were not acts of State The *status* of the Waikars and other persons with whom the agreements of 1820 were entered into was not that of an independent sovereign They (the Waikars) were merely powerful saranjamdars subordinate to the Raja of Satara and after the annexation of the territory of the Raja in 1849 they held their lands under the East India Company *Secretary of State for India* v *Narayan Balvant Bhsle* Printed Judgments 1883 p 244 distinguished. HARI SADASHIV v AYMUDIN

[I L R 11 Bom, 235

ACTION IN REM

1 ——— **Owner indirectly impleaded**—*Towage contract—Vice Admiralty*—The *M S* a steam tug was hired to tow the barque *N* down the Hughli and in consequence of the negligence of the master of the tug whilst so employed and of his wilful disobedience to the order of the pilot on board the *N* the latter ran foul of a sailing vessel the *S F* considerable damage being done to both sailing vessels The *S F* took proceedings against the *N* for the damage sustained and an action *in rem* was brought (pending the proceedings taken by the *S F*) by the *N* against the tug to recover damages including any damages that the *N* might have to pay to the owners of the *S F* The defence set up by the tug was protection under its towage contract which was to the effect that the proprietors of the tug should not be responsible under any circumstances for any loss or damage to any vessel whilst in tow of the tug whether the same should have happened through the default of the master or other sailors etc of the tug or through the incompetence or want of skill of the pilot in charge The Court below held that the accident was due to the wilful disobedience of the master of the tug in not obeying the pilot on board the N and that such misconduct was a default within the meaning of the clause in the towage contract but inasmuch as the action was one *in rem* and not against the proprietors the clause was no answer to the suit *Held on appeal* that the clause was a sufficient answer for that although in every case of a proceeding *in rem* the suit is directly against the ship itself still the owner of the ship must always be considered as indirectly impleaded THE MARY STUART v THE NEVADA

[I. L. R. 10 Calc 866

ACTIONABLE CLAIM

See CASES UNDER TRANSFER OF PROPERTY ACT s 135

ACTS DONE IN EXERCISE OF SOVEREIGN POWERS

See CASES UNDER ACT OF STATE

See RIGHT OF SUIT—ACT DONE IN EXERCISE OF SOVEREIGN POWER
[I. L. R 1 Calc 11
I L R 3 All 829
I L R. 4 Mad. 344
I L R. 5 Mad. 273

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[I L R 14 Mad 386

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[I L R. 10 Bom., 258

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[I L R. 10 Bom, 258 263

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See CIVIL PROCEDURE CODE 1882 ss 100 101 (1859 s 111) 9 B L R Ap 15
[18 W R 141

See CIVIL PROCEDURE CODE 1882 s 156
[18 W R. 325
24 W R 202

See PENSIONS ACT s 4
[I L R 17 Bom 169

See PRACTICE—CIVIL CASES—ADJOURNMENT I L R. 7 Calc 177

See WITNESS—CIVIL CASE—SUMMONING AND ATTENDANCE OF WITNESSES
[I L R. 9 Bom 308
I L R. 20 Calc 740

——— for convenience of Counsel

See PRACTICE—CIVIL CASES—AFFIDAVITS
[9 B L R Ap 10
10 B L R. Ap 67

——— for final disposal Dismissal of suit after—

See CASES UNDER CIVIL PROCEDURE CODE 1858 s 158

——— of Criminal Trial.

See CRIMINAL PROCEDURE CODE s 526A
[I L R. 15 Calc 455

See CRIMINAL PROCEEDINGS
[I L R 19 Mad 375

See PRACTICE—CRIMINAL CASES—ADJOURNMENT 6 Mad. Ap 30

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See CASES UNDER CERTIFICATE OF ADMINISTRATION

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See LETTERS OF ADMINISTRATION

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——— Suit for—

See HINDU LAW—PRESUMPTION OF DEATH I L. R. 1 All. 53

See MAHOMEDAN LAW—DEBTS
[I L. R. 21 Calc, 311

See SECURITY FOR COSTS—SUITS
[10 B L R. Ap 25
I L R. 21 Calc 832

See WILL—RENUNCIATION BY EXECUTOR.
[I. L R. 4 Calc 508

1. ——— **Petition for administration summons**—*Plaint*—A petition for an administration summons may be ordered to be taken as a plaint and as the foundation of an administration suit IN THE MATTER OF THE ESTATE OF FENN MACKINTOSH v WILKINSON 3 B L R. Ap, 3

2 ——— **Suit for share of estate of deceased**—*Recorder Power of*—Where one son of a deceased party sued in the Recorder's Court another son who had obtained a certificate under Act XXVII of 1860 for his share of the deceased's estate it was held that the Recorder had no power to transform the suit into a general administration suit ON TING TEE v AWEINIPEE 10 W R. 86

3 ——— **Heirs at law under Mahomedan law opposing grant of probate**—*Right to bring administration suit pending probate proceedings*—*Probate and Administration Act (V of 1881), s 34*—The plaintiffs as heirs at law had entered caveat in an application by the executor for the probate of an alleged will of the deceased The application was set down as a contentious cause and the executor appointed administrator *pendente lite* As heirs under Mahomedan law the plaintiffs were entitled to two thirds share in the property left by the deceased even if the Will was not established *Held* that the plaintiffs were entitled to maintain a suit for administration by the Court against the administrator *pedente lite* even though the probate proceedings have not been determined KURATUL AIN BAHADUR v BROUGHTON 1 C W N 336

4. ——— **Suit by creditor**—*Misjoinder*—*Multifariousness*—*Practice*—The principle of the rules that the creditor of a deceased person suing for administration is in the same situation with regard to all other persons as if he were bringing an action at law against the administrator and that a debtor to the estate of a deceased person can only be made answerable as such debtor by the representative of the deceased's estate is to be adhered to in this country where there is a different procedure Therefore where to a suit brought against the Administrator General as administrator of the estate of one *W B* by a creditor of the deceased other persons who also had a claim against the estate were made defendants on the allegation that they had realized and were in

ADMINISTRATION—*continued*

pos essi n of a sets of the estate of the deceased — *Held* that there being nothing to show that such persons wer in the positi n of an executor or ad m nistrator *de son tort* or that they had been part ners with the deceased or that they could not be sued if necessary by the legal r presentative him self and there being no other circumstances which would make it equitable that they should be sued jointly with the legal repr sentative they were wrongly made parties and the suit ought to be dis missed as against them for misj inder Even assuming the facts were such that the plaintiff was entitled to sue them as legal r presentatives of the estate he should not mix his own claim with that which the Administrator General might have against them DHUNRAJ v BROUGHTON 15 B L R 296

5 ——— **Claims in administration suit containing complaint of dealings by execu tors as acts of maladministration**—*Separate causes of action* —Where the suit is one to administer the assets of a deceased person and in the claim various dealings by the executors of the estate are complained of as acts of maladministra ti n and sought to be redressed such dealings do not constitute separate causes of action and such a suit is not multifarious NISTARINI DASSI v NUNDO LALL BO E I L R. 26 Calc 891 [3 C W N 670

6 ——— **Suit by creditor on behalf of all other creditors**—*Legal personal representa tive—Receiver Suit by* —Persons interested in the estate of a testator not being the legal personal re prese tatives of the testator will not be allowed to sue persons possessed of assets belonging to the testator unless it is satisfactorily made out that there exist assets which might be recovered and which but for such suit would probably be lost to the estate Such a suit may be supported where the relations between the legal personal representative and the debtor to the estate present a substantial impediment to the prosecution by the legal personal representa tive of a suit against the debtor to recover the assets of the testat r and where there is a strong probability of the loss of such assets unless such a suit be allowed But where there is an administration suit already pending the proper course to pursue is to obtain an order in the administration suit directing either a suit to be brought in the name of the legal personal representative or appointing a Receiver to sue and in this country the Courts might have the power to direct such Receiver to sue in his own name ORIENTAL BANK CORPORATION v GOBI LOLL SEAL [I L R 10 Calc 713

7 ——— **Injunction**—*Order on summons under A t VI of 18ɔ4* —The Court will restrain by injunction a creditor from proceeding in an adminis tration suit after an order has been made on a sum mons obtained by an other creditor under s 24 of Act VI of 18ɔ4 for the administration of the same estate BUTCHEEMUND SETT v KOMULMONEY DOSEE 1 Ind. Jur N S 9

8 ——— **Dividend in respect of debt against the estate**—*Proof of debt—Date from wh ch amount of debt is to be estimated* —In the administration by the Court of the estate of a deceased the dividend in respect of a debt against the estate is to be estimated on the amount of the debt at the date of the order for payment and not at the date of proof AGRA AND MASTERMAN S BANK v ROBINSON IN THE MATTER OF THE LAND MORT GAGE BANK OF INDIA 6 B L R. Ap 140

9 ——— **Decree in administration suit Effect of**—*Subsequent suit to set aside sale by executor* —A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father s will by whom the sale had been made held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside DHONENDRO CHUNDER MOOKER JEE v MUTTY LALL MOOKERJEE [14 B L R. 276 23 W R. 6 L R. 2 I A 18

10 ——— **Supplemental suit**—*Debts due by appointed managing members under the will of the testator—Limitat on* —*A* and *B* two of the sons of one *N* had been declared in a suit brought to administer *N* s estate to be indebted to the estate it was also declared in such suit that a cer tain sum of money should be set apart for the per formance of certain religious ceremonies and paid into Court *A* and *B* died without having satisfied their debt In a suit supplemental to the former suit the descendants of the sons of *N* amongst whom were the descendants of *A* and *B* claimed to be entitled to their share in the interest on the funds in the hands of the Court and sought for a division of such accumulation of interest *Held* that not withstanding that the debt due from *A* and *B* to the estate was barred the descendants of *A* and *B* could not be allowed to share in the accumula tions of interest in the hands of the Court without first satisfying the debt due by their ancestors to the estate. LOKENATH MULLICK v ODOY CHURN MULLICK I L R. 7 Calc, 644

11 ——— **Liability of the share of one of next of kin for a debt due by him to the intestate**—*Debt barred at the date of the death of the intestate* —*Semble* that the rule followed by the Court of Equity in England whereby notwithstanding the provision of the Statutes of Limitation the share of one of the next-of kin in the estate of an intestate while in the hands of the ad ministrator is liable for a debt due by the next-of kin to the deceased though barred at the date of the death of the latter is to be applied in the Courts of British India DHANJIBHAI BOMANJI GUGRAT v NAVAZBAI I L R 2 Bom. 75

12 ——— **Accounts**—*Liability of Exe cutor* —Without intending to rule that in all cases when an ordinary administration account has been directed the value in money of a specific chattel shown to have been possessed by an executor and not forthcoming is to be charged against him —*Held* that notwithstanding the language of the decree it was in the undoubted circumstances of this case within the competency of the master in taking the

ACTS DONE IN EXERCISE OF SOVEREIGN POWERS

See CASES UNDER ACT OF STATE

See RIGHT OF SUIT—ACT DONE IN EXERCISE OF SOVEREIGN POWER
[I L R 1 Calc 11
I L R 3 All 829
I L R, 4 Mad 344
I L R 5 Mad. 273

ADDRESS SUFFICIENCY OF—

See MADRAS MUNICIPAL ACT 1884 s 433
[I L R 14 Mad. 386

ADEN, COURT OF RESIDENT AT—

See APPEAL IN CRIMINAL CASE—ACTS—ACT II OF 1864
[I L R 10 Bom, 258

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT
[I L R, 10 Bom 258 263

ADJOURNMENT

See CIVIL PROCEDURE CODE 1882 ss 100 101 (859 s 111) 9 B L R Ap 15
[18 W R 141

See CIVIL PROCEDURE CODE 1882 s 158
[18 W R 325
24 W R 202

See PENSIONS ACT s 4
[I L R 17 Bom 169

See PRACTICE—CIVIL CASES—ADJOURNMENT I L R 7 Calc 177

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES
[I L R 9 Bom 308
I L R 20 Calc, 740

——— for convenience of Counsel

See PRACTICE—CIVIL CASES—AFFIDAVITS
[9 B L R Ap 10
10 B L R Ap 57

——— for final disposal Dismissal of suit after—

See CASES UNDER CIVIL PROCEDURE CODE 1882 s 158

——— of Criminal Trial.

See CRIMINAL PROCEDURE CODE s 526A
[I L R 15 Calc. 455

See CRIMINAL PROCEEDINGS
[I L R 19 Mad. 375

See PRACTICE—CRIMINAL CASES—ADJOURNMENT 6 Mad., Ap 30

ADMINISTRATION

See CASES UNDER CERTIFICATE OF ADMINISTRATION

ADMINISTRATION—*continued*

See LETTERS OF ADMINISTRATION

——— Effect of—

See COMPANY — RIGHTS OF SHAREHOLDERS I L R 19 Bom 1
[L. R., 21 I A, 139

——— Suit for—

See HINDU LAW—PRESUMPTION OF DEATH I L R, 1 All, 53

See MAHOMEDAN LAW—DEBTS
[I L R 21 Calc, 311

See SECURITY FOR COSTS—SUITS
[10 B L R Ap, 25
I L R., 21 Calc, 832

See WILL—RENUNCIATION BY EXECUTOR.
[I. L. R., 4 Calc 508

1 ——— **Petition for administration summons**—*Plaint*—A petition for an administration summons may be ordered to be taken as a plaint and as the foundation of an administration suit IN THE MATTER OF THE ESTATE OF FENN MACKINTOSH v WILKINSON 3 B L R Ap, 3

2 ——— **Suit for share of estate of deceased**—*Recorder Power of*—Where one son of a deceased party sued in the Recorder's Court another son who had obtained a certificate under Act XXVII of 1860 for his share of the deceased's estate it was held that the Recorder had no power to transform the suit into a general administration suit On Lino Tee v Awkinpee 10 W R. 86

3 ——— **Heirs at law under Mahomedan law opposing grant of probate**—*Right to bring administration suit pending probate proceedings—Probate and Administration Act (V of 1881) s 34*—The plaintiffs as heirs at-law had entered caveat in an application by the executor for the probate of an alleged will of the deceased The application was set down as a contentious cause and the executor appointed administrator *pendente lite* As heirs under Mahomedan law the plaintiffs were entitled to two thirds share in the property left by the deceased even if the Will was not established *Held* that the plaintiffs were entitled to maintain a suit for administration by the Court against the administrator *pedente lite* even though the probate proceedings have not been determined KURATUL AIN BAHADUR v BROUGHTON 1 C W N 336

4. ——— **Suit by creditor**—*Misjoinder—Multifariousness—Practice*—The principle of the rules that the creditor of a deceased person suing for administration is in the same situation with regard to all other persons as if he were bringing an action at law against the administrator and that a debtor to the estate of a deceased person can only be made answerable as such debtor by the representative of the deceased's estate is to be adhered to in this country where there is a different procedure Therefore where to a suit brought against the Administrator General as administrator of the estate of one *W B* by a creditor of the deceased other persons who also had a claim against the estate were made defendants on the allegation that they had realized and were in

ADMINISTRATION—*continued*

possession of assets of the estate of the deceased — *Held* that there being nothing to show that such persons were in the position of an executor or administrator *de son tort* or that they had been partners with the deceased or that they could not be sued if necessary by the legal representative himself and there being no other circumstances which would make it equitable that they should be sued jointly with the legal representative they were wrongly made parties and the suit ought to be dismissed as against them for misjoinder Even assuming the facts were such that the plaintiff was entitled to sue them as legal representatives of the estate he should not mix his own claim with that which the Administrator General might have against them DHUNRAJ v BROUGHTON 15 B L R 296

5 ——— **Claims in administration suit containing complaint of dealings by executors as acts of maladministration**—*Separate causes of action* —Where the suit is one to administer the assets of a deceased person and in the claim various dealings by the executors of the estate are complained of as acts of maladministration and sought to be redressed such dealings do not constitute separate causes of action and such a suit is not multifarious NISTARINI DASSI v NUNDO LALL BOSE I L R 26 Calc 891 [3 C W N 670

6 ——— **Suit by creditor on behalf of all other creditors**—*Legal personal representative—Receiver Suit by* —Persons interested in the estate of a testator not being the legal personal representatives of the testator will not be allowed to sue persons possessed of assets belonging to the testator unless it is satisfactorily made out that there exist assets which might be recovered and which but for such suit would probably be lost to the estate Such a suit may be supported where the relations between the legal personal representative and the debtor to the estate present a substantial impediment to the prosecution by the legal personal representative of a suit against the debtor to recover the assets of the testator and where there is a strong probability of the loss of such assets unless such a suit be allowed But where there is an administration suit already pending the proper course to pursue is to obtain an order in the administration suit directing either a suit to be brought in the name of the legal personal representative or appointing a Receiver to sue and in this country the Courts might have the power to direct such Receiver to sue in his own name ORIENTAL BANK CORPORATION v GOBINLOLL SEAL [I L R 10 Calc 713

7 ——— **Injunction**—*Order on summons under Act VI of 1854* —The Court will restrain by injunction a creditor from proceeding in an administration suit after an order has been made on a summons obtained by another creditor under s 24 of Act VI of 1854 for the administration of the same estate LUTCHEEMUND SETT v KOMULMONEY DOSSEE 1 Ind Jur N S 9

8 ——— **Dividend in respect of debt against the estate**—*Proof of debt—Date from which amount of debt is to be estimated* —In the administration by the Court of the estate of a deceased the dividend in respect of a debt against the estate is to be estimated on the amount of the debt at the date of the order for payment and not at the date of proof AGRA AND MASTERMAN'S BANK v ROBINSON IN THE MATTER OF THE LAND MORTGAGE BANK OF INDIA 6 B L R Ap, 140

9 ——— **Decree in administration suit Effect of**—*Subsequent suit to set aside sale by executor* —A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will by whom the sale had been made held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside DHONENDRO CHUNDER MOOKERJEE v MUTTY LALL MOOKERJEE [14 B L R 276 23 W R 6 L R 2 I A 18

10 ——— **Supplemental suit**—*Debt due by appointed managing members under the will of the testator—Limitation* —*A* and *B* two of the sons of one *N* had been declared in a suit brought to administer *N*'s estate to be indebted to the estate it was also declared in such suit that a certain sum of money should be set apart for the performance of certain religious ceremonies and paid into Court *A* and *B* died without having satisfied their debt In a suit supplemental to the former suit the descendants of the sons of *N* amongst whom were the descendants of *A* and *B* claimed to be entitled to their share in the interest on the funds in the hands of the Court and sought for a division of such accumulation of interest. *Held* that notwithstanding that the debt due from *A* and *B* to the estate was barred the descendants of *A* and *B* could not be allowed to share in the accumulations of interest in the hands of the Court without first satisfying the debt due by their ancestors to the estate LOKENATH MULLICK v ODOYCHURN MULLICK I L R 7 Calc, 644

11 ——— **Liability of the share of one of next-of kin for a debt due by him to the intestate**—*Debt barred at the date of the death of the intestate* —*Semble* that the rule followed by the Court of Equity in England whereby notwithstanding the provision of the Statutes of Limitation the share of one of the next of kin in the estate of an intestate while in the hands of the administrator is liable for a debt due by the next-of kin to the deceased though barred at the date of the death of the latter is to be applied in the Courts of British India DHANJIBHAI BOMANJI GUGRAT v NAVAZBAI I L R 2 Bom. 75

12 ——— **Accounts**—*Liability of Executor* —Without intending to rule that in all cases when an ordinary administration account has been directed the value in money of a specific chattel shown to have been possessed by an executor and not forthcoming is to be charged against him —*Held* that notwithstanding the language of the decree it was in the undoubted circumstances of this case within the competency of the master in taking the

ADMINISTRATION—*continued*

account and within the competency of the Court upon the report to charge the executor for the value of certain property it being impossible to doubt that the original executor had possessed himself of the property and that the property so possessed was not forthcoming and accounted for As to payments stated in the schedule and in the discharge as made on account of just demands on the estate it is competent to the executor to prove them as having been made on other dates than those stated in the schedule and discharge AGA MAHOMED ROHIM SHERAZEE *v* ALLY MAHOMED SHOOSTRY

[4 W R P C 106

13 ——— Civil Procedure Code ss 213 276 295—*Administration decree Effect of —Attachment after date of institution under decree obtained prior to such suit—Injunction*—On the 22nd July 1886 one *P L* obtained a money decree against one *P C* On the 5th November 1886 *P C* died and on the 18th December 1886 *R L* applied to attach certain properties belonging to the estate of his judgment debtor which properties were actually attached on the 8th and 12th January 1887 On the 21st December 1886 one *S* filed a suit to administer the estate of the deceased and on the 20th January 1887 obtained the usual administration decree On the 5th May 1887 *S* applied for an order staying all proceedings taken by *R L* against the estate of *P C* and directing him to come in should he think fit so to do and prove his claim in the administration suit —*Held* that the attachment did not create any interest in or charge upon the properties in favour of the attaching creditor as against other creditors and that the order asked for ought to be granted IN THE MATTER OF THE APPLICATION OF SOOBUL CHUNDER LAW SOOBUL CHUNDER LAW *v* RUSSICK LALL MITTER

[I L R 15 Calc 202

14. ——— Succession Act (X of 1865) s 202—*Estate of intestate Native Christian—Suit for partition of estate by purchaser of widow's share before completion of administration—Dismissal of suit—Only remedy by way of administration suit*—A person to whom the Indian Succession Act 1865 applied having died intestate in April 1884 his widow and son were in September of the same year granted letters of administration which were cancelled for want of stamp duty a fresh grant being made on 19th January 1885 Plaintiff alleging that the said widow had executed a promissory note in her favour in September 1884 filed a suit against her on 6th January 1885 and there being no appearance of the defendant obtained an *ex parte* decree In execution of the decree so obtained plaintiff attached portions of the estate of the deceased and brought them to sale becoming herself the purchaser of the one third share of the widow in each lot sold. In March 1885 the son was appointed sole administrator in January 1888 he died and the letters of administration were revoked in consequence and the amin of the District Court was appointed administrator of the estate until October 1894 when the son's widow was so appointed in his stead Plaintiff now sued for partition of the property comprised in the estate of the deceased in order that she might obtain delivery of the portions of it which she had purchased in execution of the decree against the widow previously obtained as aforesaid The estate of the deceased had never been administered or distributed The defence was that the said previous decree had been obtained by fraud —*Held* that under s 44 of the Indian Evidence Act the defendants were entitled to set up this defence and that the property of the deceased having become vested in his administrator under the Indian Succession Act it remained so vested until the administrator had distributed the estate and that in consequence the widow had no saleable interest in any part of the estate until in the course of the administration thereof her share had been determined and allotted to her Until such allotment (which had not yet taken place) the only process by which plaintiff could legally claim the widow's interest in the estate was by a suit for the administration of the estate to which suit the widow if alive would be a necessary party If not alive letters of administration to her estate would be necessary the administrator being made a party *Held also* that the suit could not be treated as an administration suit SHIRANGAMMAL *v* SANTHAMMAL

I L R 23 Mad, 216

ADMINISTRATION—*concluded*

ADMINISTRATION BOND

1 ——— Assignment of Bond—*Succession Act s 257*—Upon a petition presented to the High Court for the transfer of an administration bond under s 257 of the Succession Act on the allegation that the administratrix had refused to pay certain moneys due to the petitioners on a promissory note given to them by the deceased, and it being admitted that the estate of the deceased was capable of meeting the alleged claim —*Held* on a *prima facie* case having been made out that under the circumstances it was competent for the High Court on a petition being presented to it for the assignment of an administration bond to pass an order authorizing the transfer of it and empowering the assignee to sue as a trustee for the benefit of the creditors IN THE GOODS OF SAUNDERS

[6 N W, 62

2 ——— Breach of condition—Compensation—*Succession Act ss 256 257—Contract Act (IX of 1872) s 74—Exception—Damages*—An administration bond executed by an administrator in accordance with s 256 of the Succession Act is not an instrument of the kind referred to in the exception to s 74 of the Contract Act so as to make the obligor liable upon breach of the condition thereof to pay the whole amount mentioned therein and an assignee of the bond under s 257 of the Succession Act cannot recover more damage than he proves to have resulted to himself or to those interested in the bond —*Held* therefore where neither the assignee of such a bond nor any one else had suffered any damage by reason of the breach of a condition requiring the obligor to file an inventory of the estate within a specified period that the assignee was not entitled to recover from the

ADMINISTRATION BOND—*concluded*

obligor any compensation in respect of such breach LACHMAN DAS *v* CHATER I. L R. 10 All 29

ADMINISTRATOR.

See LAND REGISTRATION ACT 42
[I. L. R. 22 Calc 454

See CASES UNDER LETTERS OF ADMINISTRATION

——— **Right of—**

See DECLARATORY DECREE SUIT FOR—DECLARATION OF TITLE
[I L. R. 17 Bom, 197

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER
[I. L. R. 18 Mad 24

1. ——— **Liability of administrator in distribution of assets**—*Actual knowledge*—*Semble* that an administrator who pays such debts as he knows of otherwise than equally and rateably as far as the assets of the deceased will extend in accordance with the provisions of s 282 of Act X of 1865 is personally liable for any loss occasioned to a creditor of the deceased by such improper distribution of the assets In order to charge such administrator his knowledge must be actual as distinguished from a constructive or imputable knowledge ASIATIC BANKING CORPORATION *v* AMADOR VIEGAS 8 Bom. O C 20

2 ——— **Liability of administrator for loss to estate**—*Compromise of claim by administrator Subsequent suit by a creditor of estate to set aside the compromise and for damages for negligence of administrator—Succession Act (X of 1865) ss 280 and 323 Administrator's liability for neglect to get in any part of the deceased's property* —One P mortgaged certain property to H for R2+6/ H sued P to recover the mortgage-debt Pending the suit P died in 1878 Thereupon A the son of P took out letters of administration to the deceased's estate and contested H's claim H obtained a decree in the Court of first instance for the sale of the mortgaged property and in execution of this decree the property was sold for R810 and purchased by H The decree was afterwards on 2nd August 1883 reversed on appeal by the Assistant Judge Thereupon H entered into a compromise with A by which it was arranged that A should give up his claim under the appellate decree of the Assistant Judge to be repaid by H the sum of R810 which he had realized by the sale of the mortgaged property and that H should pay to A R?40 on account of his costs incurred in the suit and in taking out letters of administration This compromise was effected on 16th November 1883 In the meantime on 14th September 1883 the plaintiff had purchased from one B an old decree which was outstanding against the estate of the deceased P On 10th September 1883 the plaintiff sought to execute this decree against the mortgaged property Having failed in this attempt the plaintiff filed a suit against A for a declaration that the compromise of the 16th November 1883 had been fraudulently effected with the object of defeating his (the plaintiff's) claim and to recover R1 000 as damages

ADMINISTRATOR—*concluded*

from the defendant on account of his fraudulent and negligent conduct as administrator of his deceased father's estate This suit was dismissed by both the lower Courts on the ground that as there were other creditors who had claims against the estate the plaintiff's proper remedy was an administration suit which would enable the Court to assess the claims of all the creditors *Held* (reversing the lower Court's decree) that the plaintiff was entitled to recover By the compromise of the 16th November 1883 the defendant had given up his right under the Appellate Court's decree of the 2nd August 1883 to be repaid by H the sum of R810 and had thereby occasioned a loss to the estate of that amount He was, therefore liable to the plaintiff to make good the amount under s 323 of the Succession Act (X of 1865) subject however to a deduction under s 280 of that Act of the expenses incurred by him in obtaining letters of administration and the costs of any judicial proceeding that might be necessary for administering the estate KHUSRUBHAI NASARVANJI *v* HORMAJSHA PHIROZSHA I. L. R. 17 Bom 637

3 ——— **Sale by administrator not so described**—*Administrators who are also heirs—Purchaser title and rights of*—Certain persons who were heirs of a deceased lady and had also taken out administration to her estate limited to certain Government securities sold such Government securities to a *bona fide* purchaser under a written instrument in which the vendors were not described as administrators —*Held* that the failure to so describe themselves did not affect the sale inasmuch as they were entitled to sell either as heirs or administrators and although as heirs they could sell no more than their own shares in such securities yet the entire purchase money having come to their hands they as administrators were bound to administer the same as part of the assets of the estate the question whether they did so or not not being one which would affect the title of the purchaser *West of England and South Wales District Bank v March L R 23 Ch D 138* and *Corser v Cartwright L P 7 H L 731* followed in principle PREONATH KABAR *v* SURJA COOMAR GOSWAMI I. L. R. 19 Calc., 26

ADMINISTRATOR-GENERAL.

See ILLEGITIMACY II B L. R. Ap 6

See CASES UNDER LETTERS OF ADMINISTRATION

See SUCCESSION ACT s 282
[I. L. R 10 Calc, 929

——— **Certificate of—**

See INTEREST ACT 1839
[I. L. R., 25 Calc., 54

——— **Office of—**

See ADMINISTRATOR GENERAL'S ACT s 31
[I. L. R., 21 Calc. 732
I. L. R., 23 Calc. 788
L. R. 22 I. A., 107

See STATUTES CONSTRUCTION OF
[I. L. R. 21 Calc. 732
I. L. R., 23 Calc., 788
L. R., 22 I. A. 107

ADMINISTRATOR GENERAL—*continued*

——— **Petition by—**

See PRACTICE CIVIL—CASES—PROBATE AND LETTERS OF ADMINISTRATION
[I. L. R. 20 Calc 879
I. L. R. 26 *Calc*, 404

——— **Rights of—**

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER
[I. L. R. 22 Calc 1011
L. R. 22 I. A 203

1. ——— **Authority to pay debt barred by limitation**—The Administrator General of Madras is authorized to pay a barred debt ADMINISTRATOR GENERAL *v* HAWKINS
[I. L. R 1 *Mad.*, 267

2. ——— **Liability of Administrator General in respect of breaches of trust by Intestate Executor**—*Held per* NORMAN J (PHEAR J dissenting) that the Administrator General who had taken out administration to the estate of an executor by whom a breach of trust had been committed by his pledging for his own benefit certain assets of his testatrix and had redeemed the said assets with office money and applied the money recovered as part of the defaulting executor's estate was not personally liable to make good the amount to the testatrix s estate GREENWAY *v* HOGG
[Cor 97
2 Hyde 3
Bourke, A O C 111

3 ——— **Right of retainer in satisfaction of his own debt**—The Administrator General appointed under Act VIII of 1855 has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has RITCHIE *v* STOKES 2 Mad. 255

4. ——— **Right of, to retain assets**—Right of Administrator General to retain assets in his hands in respect of contingent debts SHEPHERD *v* HOGG Cor 67

5 ——— **Grant of letters of administration to**—*Act XXIV of 1867 s 17*—When *ordinary letters of administration to the estate of a* deceased Hindu are granted to the Administrator General under Act XXIV of 1867 (but not under s 17 of that Act) his title does not relate back to the death of the deceased nor to the date of the Judge's order directing such letters to be issued but accrues only as from the date of the grant of such letters *Quære*—Whether if letters are issued to the Administrator General under s 17 of that Act the case would be otherwise or his powers greater LALLCHAND RAMDAYAL *v* GUMTIBAI GHELLA PEMA *v* GUMTIBAI 8 Bom. O C 140

6 ——— **Administrator General s Act (II of 1874) ss 17 and 18**—*Order to collect assets—Decree against deceased s estate passed prior to such order—Attachment of part of deceased s estate subsequently to above order—Claim of Administrator-General prior to that of attaching creditor*—On the 19th April 1898 the plaintiff obtained an *ex parte* decree against the defendant as heir and legal representative of his deceased father Previously to the date of the decree (i e on 4th March 1898) an order had been made by the High Court under ss 17 and 18 of the Administrator General s Act (II of 1874) authorizing the Administrator General to collect the assets of the deceased and ordering him if necessary to take out letters of administration to his estate On the 29th April 1898 the plaintiff under s 268 of the Civil Procedure Code (Act XIV of 1882) attached certain money in the hands of a third party due to the deceased s estate On the 2nd July 1898 letters of administration were granted to the Administrator General *Held* that as against the Administrator General the attachment was void *ab initio* At the date of the decree obtained by the plaintiff the Administrator General was entitled by virtue of the High Court s order to take possession of the estate of the deceased As soon as that order was made his right to possession became paramount and excluded that of the defendant (the son of the deceased) who was then no longer entitled to recover payment of debts due to his father A decree therefore subsequently obtained against the defendant could not as against the Administrator General confer any rights on the decree holder who could not stand in a better position than the defendant his judgment debtor Under s 278 and 280 of the Civil Procedure Code the Administrator General had the right to have the attachment removed because he was exclusively entitled at first by reason of the order under s 18 of Act II of 1874 and subsequently by his letters of administration to recover the debt and was not subject to any decree which affected his title *Lallchand Ramdayal v Gumtibai* 8 *Bom* 140 distinguished BHAIJI BHIMJI *v* ADMINISTRATOR GENERAL OF BOMBAY
[I. L. R. 23 Bom., 428

ADMINISTRATOR GENERAL S ACT VIII OF 1855

See LETTERS OF ADMINISTRATION
[1 Bom 103
1 Ind. Jur O S 139
Bourke Test 6

1. ——— **Recall of letters of administration granted to Administrator General**—*Commission*—When letters of administration which had been granted to the Administrator-General of Madras were recalled and he had merely taken manual possession of cash Government promissory notes and the title deeds of leaseholds belonging to the deceased the High Court under s 2- of Act VIII of 1855 allowed him commission at the rate of 2½ per cent on the cash and the value of the notes but refused to allow it on the leaseholds IN THE GOODS OF SIMPSON 1 Mad. 171

2 ——— **Danger of misappropriation**—*Debts of deceased person*—The bare possibility that the Act of Limitation may ultimately become a bar to the recovery of assets is not such danger of misappropriation as warrants the granting to the Administrator General of an order under s 12 of Act VIII of 1855 *Semble*—A debtor to the estate of a

ADMINISTRATOR GENERAL'S ACT VIII OF 1855—*concluded*

deceased person cannot apply for an order under that section IN THE GOODS OF GIRDIR DAS VALLADA DAS 1 Mad. 234

———— ACT XXIV OF 1867 s 15—

See ILLEGITIMACY 11 B L R Ap 6

———— s 17—

See ADMINISTRATOR GENERAL. [8 Bom. O C 140

———— s 33—Right to payment out of assets—*Distribution of assets*—Plaintiff on the 15th June 1868 immediately after the death of his debtor brought a suit against the debtor's widow (1st defendant) for recovery of the debt and before judgment obtained attachment and sale of property of the deceased the sale-proceeds being kept in deposit in the Court These proceedings took place in June and July and on the 15th August administration was granted to the Administrator General the widow not having taken out administration On the 28th September the Administrator General was on plaintiff's application made defendant in place of the widow and the suit proceeded against him to decree Before plaintiff applied to execute this decree the amount of the sale proceeds was by the direction of the Civil Judge handed over to the Administrator General accordingly on this ground plaintiff's application to the District Munsif for execution was rejected He appealed unsuccessfully to the Civil Court *Held* on special appeal that s 33 of Act XXIV of 1867 took away plaintiff's right to payment otherwise than rateably with the other creditors HANINABALU SANNAPPA *v* COOK 6 Mad 346

———— s 60—

See RES JUDICATA—ADJUDICATIONS [I L R 3 Calc, 340

See REVIEW—ORDERS SUBJECT TO REVIEW I L R 3 Calc 340

————ACT II OF 1874—

See LETTERS OF ADMINISTRATION [I L R 4 Calc 770

See STATUTES CONSTRUCTION OF [I L R 21 Calc 732
I L R 22 Calc 788
L R 22 I A 107

———— ss 12 16 and 17—

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION [I L R 20 Calc 879
I L R 26 Calc. 444

———— s 18—

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS 21 Bom. 102

———— s 27—

See LETTERS PATENT HIGH COURTS CL 15 [I L R 1 Mad. 148

———— Commission payable to—*Collection of debts*—Where there has been only collection but no distribution of the assets by the Administrator General an order under s 27 Act II of 1874 allowing commission at a certain rate ought in accordance with the rule laid down in s 54 of the Act to award only half of the full commission of 5 per cent IN THE GOODS OF CHENGALROYA NAIKER SOMASUNDARAM CHETTI *v* ADMINISTRATOR GENERAL I L R, 1 Mad. 148

ADMINISTRATOR GENERAL'S ACT II OF 1874—*continued*

———— s 31—

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER [I L R 22 Calc 1011
L R 22 I A 203

1. ———— *Transfer to Administrator-General by Hindu executor—Hindu Wills Act (XXI of 1870) s 5—Succession Act (X of 1865) ss 179 187 and 191—Probate and Administration Act (V of 1881)*—N L M a Hindu died on the 22nd February 1891 leaving property in Calcutta and leaving a will dated th August 1889 The executors appointed by the will took out probate on the 17th March 1891 and on the 14th August 1893 executed a deed by which they purported under s 31 of the Administrator General's Act (II of 1874) to transfer all estates effects and interests vested in them to the Administration General of Bengal —*Held* by PRINSEP and TREVELYAN JJ affirming the decision of SALE J (PETHERAM C J dissenting) that the transfer was not a valid one The executor of a Hindu testator has no power to transfer the property of the testator to the Administrator General under the terms of s 31 of Act II of 1874 That section applies only to the executors and administrators of persons of the class mentioned in s 16 of the Act that is to say persons not being Hindus Mahomedans or Buddhists *Per* PETHERAM C.J *contra*—The transfer was a valid one Even if s 5 of the Hindu Wills Act (XXI of 1870) were sufficient to prevent such transfer to the Administrator-General under s 30 of the Administrator General's Act of 1867 which is by no means certain a Hindu executor has power if not since the passing of the Hindu Wills Act at any rate since the coming into force of the Probate and Administration Act (V of 1881) to transfer his interest and estate under a will to the Administrator General as constituted under Act II of 1874. The course of legislation with reference to the creation of the office of the Administrator General and to his duties and powers reviewed and considered in construing Act II of 1874 ADMINISTRATOR GENERAL OF BENGAL *v* PREM LALL MULLICK [I L R 21 Calc. 732

Held (on appeal) by the Privy Council that the right of executors to devolve the property of their testator with all powers and duties relating to its administration upon the Administrator-General conferred by s 31 of Act II of 1874 is not confined to any particular class of executors or of estates The right is given to any executor in whom estate of the deceased has been vested by virtue of the probate upon the one condition that the Administrator-General shall consent It is not required that in a consolidating statute each enactment when traced to its source must be construed according to the state of things

ADMINISTRATOR GENERAL'S ACT II OF 1874—*continued*

which existed at a prior time when it first became law the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstances nor can a positive enactment be annulled by indications of intention at a prior time gathered from previous legislation on the matter Executors having obtained probate of the will and possession of the estate of a Hindu testator executed a deed purporting to be in terms of s 31 Act II of 1874 transferring the property vested in them by the probate to the Administrator General — *Held* reversing the judgment of a majority of the Appellate Court and affirming that of the Chief Justice that this transfer was valid under that section ADMINISTRATOR GENERAL OF BENGAL *v* PREMLAL MULLICK I. L. R. 22 Calc 788 [L. R. 22 I. A., 107

2. ——— s 31—*Transfer by executors to Administrator General*—Where the executors of a will transfer their interest in the estate of the deceased under s 31 of the Administrator General's Act to the Administrator General —*Held* such a transfer would only transfer such powers of disposition over the estate as the executors themselves possessed IN THE GOODS OF NUNDO LALL MULLICK [I. L. R. 23 Calc 908

——— s 35—

See COSTS—COSTS OUT OF ESTATE [I. L. R. 10 Bom. 248 350

See COSTS—SUIT OR APPEAL ONLY PARTLY DECREED I. L. R. 12 Calc 357

See SUCCESSION ACT s 282 [I. L. R. 10 Calc 929

——— s 35—*Right of creditors to immediate payment in full if assets sufficient—'Rateable payment' Meaning of—Costs—Meaning of 'shall be liable to pay'—Succession Act (X of 1865) s 282—Probate and Administration Act (V of 1881) s 104*—In a suit by a creditor if his demand be uncontested or proved and the executor admits assets the plaintiff is entitled at the hearing to an order for immediate payment without taking the accounts The admission of assets for the payment of a debt is also an admission of assets for the purposes of the suit and extends to costs if the Court thinks fit to give them. There is nothing in s 35 of the Administrator General's Act (II of 1874) which qualifies or restricts or otherwise interferes with the right of a creditor to demand immediate payment of his claim in full when the realizable assets in the hands of the Administrator General are sufficient for the immediate payment of all claims in full The rateable payment referred to in the above section as well as in s 282 of the Succession Act (X of 1865) and in s 104 of the Probate and Administration Act (V of 1881) is rateable payment out of the assets it is nowhere provided that it shall be made out of the nett income of the estate or any other specific part of the assets. The language ('shall be liable to pay the costs') used in cl 1 of s 35 of the Administrator General's Act (II of 1874) shows that it was intended not to impose upon a creditor to whom the condition of exemption was inapplicable an absolute obligation to pay the costs of the suit but to leave a discretion to the Court to relieve him of the obligation if the circumstances of the case required it *James v Young L R 27 Ch D 662* referred to OMRITA NATH MITTER *v* ADMINISTRATOR GENERAL OF BENGAL I. L. R. 25 Calc 54

AMRITA NATH MITTER *v* ADMINISTRATOR GENERAL OF BENGAL 1 C W N, 500

——— s 54—*Commission—Collection of Assets Meaning of*—Under s 54 of Act II of 1874 the Administrator General is entitled to charge commission on the collection and distribution of all assets Collection of assets implies the doing of some act in connection with such assets Where part of the estate consisted of a zamindari of which the testator had granted a patni lease subject to payment of a fixed rental and part of the zamindari had been acquired for public purposes the compensation money being by arrangements divisible between the estate and the patnidar in certain proportion —*Held* that the Administrator General was entitled to charge commission on the rents actually collected by him and on the amount apportioned to the estate but not on the *corpus* of the zamindari estate *In the goods of Simpson 1 Mad 171* followed IN THE GOODS OF COURJON I. L. R 25 Calc 65

——— s 56—

See EXECUTOR I L R 22 Calc 14

——— s 63—

See RES JUDICATA—ADJUDICATIONS [I L R 3 Calc 340

See REVIEW—ORDERS SUBJECT TO REVIEW I L R 3 Calc 340

ADMIRALTY ACTS

See CASES UNDER JURISDICTION—ADMIRALTY

ADMIRALTY COURT, PRACTICE OF—

See PRACTICE—CIVIL CASES—ADMIRALTY COURT I L R. 22 Calc 511

See SHIP ARREST OF 15 B L. R, Ap, 3

ADMIRALTY OR VICE ADMIRALTY JURISDICTION

See COSTS—SPECIAL CASES—ADMIRALTY OR VICE ADMIRALTY [I L R. 17 Calc 84

See LETTERS PATENT HIGH COURT cl 15 I L R. 17 Calc, 66

ADMISSION

ADMISSION—*continued*

See CASES UNDER ESTOPPEL.

See CASES UNDER PLEADER—AUTHORITY TO BIND CLIENT

See VARIANCE BETWEEN PLEADING AND PROOF—ADMISSION OF PART OF CLAIM

1 ADMISSIONS IN STATEMENTS AND PLEADINGS

1. ———— **Statement of Party**—*Evidence* — A statement made by a party is not *ipso facto* conclusive against him though it may be used against him and may be evidence more or less weighty possibly even conclusive according to the circumstances of each case and the result come to by judicial investigation AYETUN *v* RAMSEBUK LODDAR 12 W R. 156

2. ———— *Evidence Act (I of 1872) s 115—Estoppel—Admission on point of law* —An admission on a point of law is not an admission of a thing so as to make the admission matter of estoppel within the meaning of s 115 of the Evidence Act *Jotendro Mohun Tagore* v *Ganendro Mohun Tagore 9 B L R 377 : L R I A Sup Vol 47* and *Gopee Lall* v *Chundraolee Buhoojee 11 B L R 391* referred to JAGWANT SINGH *v* SILAN SINGH [I L R. 21 All 285

3 ———— *Proof of contents of document* —The statement of a party to a suit is admissible evidence against him to prove the contents of a written instrument MUTTUKARUPPA KAUNDAN *v* RAMA PILLAI 3 Mad. 158

4.———— *Proof of contents of document* —The case of *Muttukaruppa Kaundan* v *Rama Pillai 3 Mad 158* applies to the defendant s admission of a transaction embodied in a written document not receivable in evidence and is no authority whatever for construing a document present to the Court upon a defendant s admission MAHALATCHMI AMMAL *v* PALANI CHETTI 6 Mad. 245

5 ———— **Statement in former suit**—*Evidence Act 1872 s 18* —A statement made by the defendant in another suit may be used as an admission within the meaning of s 18 of the Evidence Act HURISH CHUNDER MULLICK *v* PROSUNNO COOMAR BANERJEE 22 W R. 303

LALLA JUGDEO SAHOY *v* DIGAMBUR ROY [22 W R. 304 note

KASHEE KISHORE ROY CHOWDHRY *v* RAMA SOONDUREE DEBIA CHOWDHRAIN 23 W R. 27

6 ———— *Statements filed in Court* —In a suit by a daughter for property left by her father in which the defendants relied upon certain admissions said to have been made by plaintiff relinquishing the share in the inheritance left by her father and in which they also set up a will of the father conveying the property to others the lower Court should have enquired into the genuineness of the will and required the defendants to prove that the admissions which plaintiff impugned emanated from her or from some one duly authorized by her to make them The mere fact that the admissions were contained in statements filed in a Court of Justice in her name does not necessarily prove that they were made by her ASMUTOONISSA BEBEE *v* ATTA HAFIZ 8 W R 468

7 ———— In a former suit by *A* against his agent for an account of the collections of a certain share in land *B* intervened and was made a party In that suit the Court declared *A* to be the zamindar and as such entitled to the rents and to an account *Held* that that finding was binding against *B* in a subsequent suit against him by *A* for recovery of the same share Similarly an admission made by *B* in the former suit is evidence against him *quantum valeat* in the subsequent suit SHEO SURN SINGH *v* RAM KHELLAWAN SINGH [14 W R , 165

8 ———— **Admissions made in former arbitration proceedings** —Admissions etc made by the parties in a former arbitration proceeding may be used against them in evidence in a subsequent suit HURONATH SIRCAR *v* PREONATH SIRCAR 7 W R. 249

9 ———— **Admissions in former suit** —Also admissions made in a former suit OBHOY GOBIND CHOWDHRY *v* BEEJOY GOBIND CHOWDHRY [9 W R. 162

10 ———— *Acceptance in evidence of map as correct in former suit* —Where the defendants in a boundary suit accepted in a former suit a particular map as correct their acceptance is legal though not conclusive evidence against them in the boundary suit and is tantamount to an admission and stands upon a very different footing from the decree in the first suit GORDON STUART AND CO *v* BEEJOY GOBIND CHOWDHRY [8 W R. 291

11. ———— *Deposition* —A copy of a defendant s deposition in a former suit having been put in by plaintiff at a late stage of the case when defendant had no means of explaining away any supposed admission therein —*Held* that the first Court was wrong in accepting the same as an admission binding on defendant and that the Lower Appellate Court was right in sending for the defendant and examining him on the subject KOMUROODDEEN *v* MONYE MUNDLE 16 W R. 220

12 ———— *Suit of different nature* —Admissions made by a defendant in other suits brought against him by third parties cannot be treated as estoppels in a suit to recover possession of a different property under different circumstances. WISE *v* RUBAA KHATOON 19 W R. 299

13 ———— Plaintiff sued in the Revenue Court for the recovery of rents fraudulently misappropriated by defendant and upon defendant s allegation that plaintiff was etmamdar or gomashta and not ijaradar the Deputy Collector dismissed plaintiff s suit for want of jurisdiction Plaintiff then sued in the Civil Court the defendant again raising the plea of non jurisdiction. *Held* that any

ADMISSION—*continued*

1 ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued*

admission or allegation of the defendant in the former suit put in evidence by the plaintiff was amply sufficient to support the plaintiff s allegation in this suit that he had been elmarudar BHUGWAN CHUNDER DUTT v MECHOO LALL CHUCKERBUTTY

[17 W R. 372

14. ———— *Suit for resumption of lands—Previous suit to assess the lands—Evidence*—An admission by a jagirdar in a suit brought by Government to assess the lands that the lands were comprised in a zamindari is evidence of that fact in a suit by the zamindar to resume those lands. FORBES v MIR MAHOMED TAKI

[5 B L. R. 529
14 W R. P C 28
13 Moore s I. A 438

15 ———— *Agreement to pay interest*—In a former suit plaintiff mortgagor under a usufructuary mortgage claimed recovery of the mortgaged property on the allegation that there had been a satisfaction of the principal sum by reason of the profits of the estate exceeding 12 per cent interest but having failed to prove that allegation his suit was dismissed He now sued for the recovery of the property under an ekrarnamah which did not stipulate for payment of interest *Held* that the case put forward by plaintiff in the former suit did not amount to an admission that there was an agreement to pay 12 per cent and that he was entitled to restoration of the property on payment of the principal alone PROSUNNO COOMAR MOOKERJEE v BULDEO NARAIN SINGH 18 W R., 62

16 ———— Landlord and tenant—Admission by a co-tenant—An admission by a co tenant as to who is the landlord of a holding is not binding on the other co tenants KALI KISHORE CHOWDHRY v GOPIMOHAN ROY CHOWDHRY

[2 C W N 186

17 ———— Admission by one of several joint tenants—*Suit for rent*—A suit for rent having been brought against two persons as joint tenants and a decree passed thereon in favour of the plaintiff but for a less amount than that claimed by him, an appeal was preferred by the defendants but subsequently pending the hearing of the appeal one of them filed a petition admitting the correctness of the amount claimed by the plaintiff and stating his willingness to pay half of such amount *Held* that the admission of the one defendant did not bind the other; and that notwithstanding such admission the suit having been brought against the defendants as joint tenants a separate decree for half the amount admitted could not be made against the defendant who made the admission CHUNDERESHWUR NARAIN PERSHAD v CHUNI AHIR 9 C L. R., 359

18 ———— Admission made by one co-sharer—*Admissibility of against the others—Evidence Act (I of 1872) s 18*—In a suit between a zamindar and his ijaradars for rent a person who was one of several jotedars in the mahal was called as a witness for the zamindar and admitted the fact that an arrangement existed whereby he and his co-jotedars had agreed to pay rent to the zamindar direct that suit was decided in favour of the zamindar The ijaradars then brought a suit against the jotedars amongst whom was the witness above mentioned to recover the sum which the jotedars ought to have paid to the zamindar direct and which the ijaradars had been decreed to pay The jotedars disclaimed all liability to pay rent to the ijaradars in this suit the evidence given by the jotedar in the zamindar s suit was received as evidence on behalf of the plaintiffs against all the defendants *Held* that the evidence was admissible KOWSULLIAH SUNDARI DASI v MUKTA SUNDARI DASI

[I. L. R., 11 Calc 588

19 ———— Indivisibility of as evidence—*Whole admission*—Where a person uses the admission of another as evidence the whole admission must be put in He cannot put in half and exclude the other half Those who have to decide upon the evidence are not bound to believe the whole of the statement NILMONEY SINGH DEO v RAMANOOGRAH ROY 7 W R. 29

GOLOKE CHUNDER CHOWDHRY v MAGISTRATE OF CHITTAGONG 25 W R., Cr 15

20 ———— *Plaintiff relying on admission of defendant*—A plaintiff abandoning his own case and falling back on the admissions of the defendant is bound to take these admissions as they stand and in their entirety TARINEE PERSHAD SEIN v DWARKANAUTH PUKHEET 15 W R., 451

21 ———— *Effect of as to co defendants*—A defendant s admission if taken at all must be taken as a whole but it cannot bind co defendants NIAMUTOOLLAH KHADIM v HIMMUT ALI KHADIM 22 W R. 519

22 ———— *Pleadings*—The rule that when an admission is relied upon by a party to a suit as against his opponent it must be taken in its entirety does not apply to pleadings BROJO LAL KISHOREE v BISHONATH DUTT

[W R., 1864 305

23 ———— *Pleadings*—A statement under Act VIII of 1859 is not in the nature of confession and avoidance as in English pleading where the confession is considered as an admission of the party and the avoidance has to be proved. The statement of one party if used as evidence against him by the other must be taken altogether and not in part PROBHOO DOSS v SHEONATH ROY

[W R., 1864 Act X 27

SOOLTAN ALI v CHAND BIBEE 9 W R. 130

24 ———— Qualified statement—*Written statement*—*Per* MACPHERSON J—The opinion of the Full Bench in *Tulin Beharee Sen* v *Watson* 9 W R 90 was that if a party make a qualified statement that statement cannot be used against him apart from the qualification; not that if a man makes a series of independent unqualified statements, those

ADMISSION—*continued*

1 ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued*

statements cann t be u d again t him That ca e goes no further than to lay down that an unfair use is n t to be made of a man s written statement by trying to convert into an admis i n by him that which he never intended to be an adm i n BAIKANTANATH KOOMAR *v* CHANDRAMOHAN CHOWDHRY

[1 B L R A C 133 10 W R 190

See PULIN BEHAREE SEN *v* WATSON

[B L R Sup Vol 904
9 W R 190

SOOLTAN ALI *v* CHAND BIBEE 9 W R 130

JUDOONATH ROY *v* BURODA KANT ROY

[22 W R 220

25 ———— Admission in pleading—*Description of plaintiff*—In an action of contract brought by the a signee of a bankrupt a ainst a debtor the defendant pleaded that he had n t contracted in the manner the plaintiff assumed as aforesaid stated *Held* that the form of plea was not an admission of the plaintiff s title as assignee but was only used in reference to the description the plaintiff had given of himself in the declaration CLARK *v* LOUPLALL MULLICK AND CLARK *v* DOORGAMONEY DO LE 2 Moore s I A 263

26 ———— *Onus of proof*—In a suit for confirmation of possession of and declaration of title to land alleged to have been purchased at a private sale from the wife (*S S*) of a judgment debtor who had come into possession of the land by gift from her husband defendants claimed to be *bonâ fide* purchasers from S S to whom they alleged the property really belonged and who had been all along in possession The substance of the defence was that even granting that any such papers (as a hibbah and a deed of sale) were written between the parties this can avail the plaintiff nothing as the deeds were fraudulent *Held* that there was no such admission on the part of the defendants as shifted the burden of proof upon themselves HURISH CHUNDER PAUL *v* RADHANATH SEIN 11 W R 328

27 ———— Agreement admitted in pleading—Where in a suit for specific performance of an agreement the defendant admitted in his written statement the terms of the agreement and its execution—*Held* that the plaintiff was not called upon to prove the execution of the agreement or to put it in evidence BURJORJI CURSETJI PANTHAKI *v* MUNCHERJI KUVERJI I L R 5 Bom 143

28 ———— Admission of title in pleading—*Suit for possession of land—Plea of limitation*—The circumstance that the defendant has in his written answer set up a d fence merely of the statute of limitations in a suit f r the possession of land does n t constitute an admission of the title of the plaintiff so as to dispense with the obligation on the plaintiff to prove his title SOONATUN SAHA *v* RAMJOY SAHA Marsh. 549

ADMISSION—*continued*

1 ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued*

29 ———— Admission in written statement of defendant—When a defendant admits any one fact contained in the written statement of the plaintiff and thereby excludes independent evidence thereof he is not entitled to say that the plaintiff has relied on his statement as evidence and that he (defendant) is in consequence in a position to claim that the whole of it may be read as evidence in his own favour SHURFURAZ MOLLAH *v* DHUNOO

[16 W R, 257

30 ———— Admission in written statement—*Validity of deed Proof of—Onus probandi*—The plaintiff purchased a house from the defendant under a deed of sale dated 23rd June 1886 In a suit to recover possession of the house the defendant pleaded that the sale deed was invalid for want of consideration—*Held* that the mere admission in the defendant s written statement of the execution of the sale deed did not dispense with the necessity of establishing affirmatively the validity of the deed which was expressly impugned by the defendant JAVANMAL JITMAL *v* MUKTABAI

[I L R 14 Bom 516

31 ———— Admission in verified petition—An admission made in a verified petition by an intervener in an Act X suit and repeated in a verified plaint filed by him in a regular suit was held to be binding in a subsequent suit on the party who made it GRISH CHUNDER LAHOREE *v* SHAMA CHURN SANDYAL 15 W R 437

32 ———— Admission by not traversing allegations—A defendant must be taken to admit all material allegations in the plaint which he does not traverse YEKNATH BABAJI *v* GULAB CHAND KAHANGI 1 Bom 85

AHMEDEE BEGUM *v* DABEE PERSAUD

[18 W R 287

33 ———— Not traversing allegations—The mere fact that an allegation is not traversed does not relieve a plaintiff from the burden of proving his case MULJI BECHAR *v* ANUPRAM BECHAR

[7 Bom. A C 136

HAMEEDOOLLAH *v* GENDA LALL 17 W R, 171

34 ———— In a suit for enhancement of rent a defendant is not bound to traverse a statement made by the plaintiff in the notice of enhancement as to the description of the land in question The doctrine of admission by non traverse was not applicable to written statements filed under Act X of 1859 SHADHOO SINGH *v* RAMA NOOGRAHA LALL 9 W R 83

35 ———— Written statement—*Entire statement*—Where defendant s written statement is referred to as evidence in plaintiff s favour the whole of it becomes evidence in the suit and the Court can, in its discretion attach thereto or to any portion thereof as much value as seems to it fit RADHA CHURN CHOWDHRY *v* CHUNDER MONEE SHIKDAR

[9 W R, 290

ADMISSION—*continued*

1 ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued*

36 ——— **Disclaimer of title**—*Pleadings—Admission by one of several defendants—Relinquishment—Disclaimer of title* —I holding estates in Bengal jointly with his brothers as an undivided Hindu family died leaving a widow S and three unmarried daughters B M and N On her husband's death S continued to reside with his brothers and was supported out of the income of the joint estate All the daughters married in the lifetime of S and B became a widow without having had a child After the death of S and in the lifetime of M N also became a childless widow M died after her mother leaving a son R K P N on attaining majority sued to recover with mesne profits a 4 anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of P and from which he alleged he had been dispossessed by the representatives of P's brothers whom he made defendants in the suit joining B and N with them as co defendants Some time after the institution of the suit a petition was filed purporting to proceed from B and N by which they admitted that the plaintiff was the heir of P and that they had no defence to offer *Held* that N being the heir of R P N had not during her lifetime any right to any part of the estate and that his position was not altered by the petition purporting to proceed from B and N such petition not amounting to a conveyance or disclaimer of title in his favour In the English Common Law Courts and *a fortiori* in the Courts of Law in India where the pleadings are less technical an admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue and is not tantamount to proof of the fact An admission or even a confession of judgment by one of several defendants in a suit is no evidence against another defendant AMIRTOLALL BOSE v ROJONEE KANT MITTER 15 B L R. 10 [23 W R. 214 L.R., 2 I A 113

37 ——— *Inheritance—Relinquishment—Admission on pleadings*—A plaintiff suing two defendants M and L for the possession of certain property by right of inheritance admitted in his plaint the right by inheritance of the defendant M to a moiety of the property and only made him a defendant because he would not join in bringing the suit. The claim however was for the entire property The defendant M filed a written statement setting forth that he had long ago willingly resigned all his rights in favour of the plaintiff and that the suit had been instituted with his consent *Held* that this statement was only an admission by M of the plaintiff's title which could not be used against the other defendant L so as to entitle the plaintiff to a decree for the entire estate that since L did not set up M's title to defeat the plaintiff he could not be affected by M's disclaimer and that the plaintiff could not be allowed in the suit to obtain M's share as his representative for that would be to decree him the share on a title he never set up

ADMISSION—*continued*

1 ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued*

Amirtolall Bose v *Rojoneekant Mitter* 15 B L R 10 referred to LACHMAN SINGH v TANSUKH [I. L R., 6 All. 395

38 ——— **Untraversed allegations**—*Suit to set aside sale* —In a suit to set aside a sale in execution of decree on the ground of fraud —*Held*, applying the principle that pleadings should not be construed too strictly that the defendant could not be held by reason of their not having denied it to have admitted the truth of the plaintiff's allegation as to the date upon which knowledge of the fraud was acquired NATHA SINGH v JODHA SINGH [I L R., 6 All., 406

39 ——— **Admission by co defendant Effect of**—*Suit for possession of land* —In a suit for possession of immoveable property brought by three Mahomedan brothers their three sisters were impleaded as defendants under s 32 of the Civil Procedure Code and two of the latter subsequently filed a written statement in which after stating that they were on good terms with their brothers the plaintiffs and that the suit had been instituted with their knowledge and permission they prayed that the suit might be decreed subject to the condition that they would on some future occasion settle with their own brothers as to their right and costs The third sister did not appear to defend the suit *Held* that the Lower Courts were wrong in treating this admission as sufficient to entitle the plaintiffs to a decree for possession not only of their own share but also of the shares of their three sisters it being a fundamental proposition connected with the administration of justice that a plaintiff cannot sue for more than his own right and that no defendant can by an admission of consent of this kind convey the right or delegate the authority to sue for more than his own share in property *Lachman Singh* v *Tansukh* 6 *A* 395 referred to AZIZULLAH KHAN v AHMAD ALI KHAN I L R., 7 All. 353

40 ——— **Request to verify signature to petition**—*Evidence of statements made in petition* —Where a party asks others to verify his signature to a petition or to identify him as one of the petitioners it amounts to an allegation on his party that he made the statements which appear in the petition and is as effective evidence against the party making the request as if the petition were in fact filed. MOHUN SAHOO v CHUTOO MOWAR [21 W R. 34

41. ——— **Petition Statement in**—*Suit to set aside deeds* —Defendant claimed to hold a mokurari tenure under deeds executed by plaintiff zamindar The plaintiff denied the authenticity of the deeds and sued to set them aside The Lower Courts dismissed his suit as barred by limitation on the ground that plaintiff had in a petition before the Collector admitted that defendant was mokuraridar of the tenure and that this being so limitation ran against him from the date of the deeds *Held* that the case should have been tried on the merits as the petition was not a conclusive admission of the

ADMISSION—*continued*

1 ADMISSIONS IN STATEMENTS AND PLEADINGS—*concluded*

gennineness of the deeds and it was not right to infer from it that plaintiff knew of their existence at the time of their professed date IROHLAD SEN v. PUN BAHADUR SINGH 2 B L R P C 111 [12 W R 6 11 Moore's I A, 239

2 ADMISSIONS BY OR AGAINST THIRD PERSONS

42. ———— Admission Effect of against person not party to suit —*Held* that the fact of defendants being allowed to appear as co plaintiffs in a redemption suit to which plaintiff was no party cannot be received in evidence as an admission adverse to plaintiff's interest and the admission made by the plaintiff's brother and lumberdar cannot merely on account of his being such be held as binding against the plaintiff unless it be shown that he was invested by plaintiff with sufficient authority in that behalf BUCHA v LULEE 2 Agra 20

43 ———— Persons without title—*Suit for redemption* —In a suit for redemption the admission of a person having no title to the estate in question in the suit is not admissible against the mortgagor MUTHRA DASS v MAGH SINGH [2 N W 207

44. ———— Guardian Admission by—*Previous transactions* —Although a guardian of two minors may have power to manage or to make a partition of the estate he has no authority to bind the estate of either of his wards by admission of previous transactions SURUJ MOOKHI KONWAR v BHAGWATI KONWAR 10 C L R 377

45 ———— Admission by executors —The admissions of the executors of a donor are treated as the admissions of the donor DWARKANATH BOSE v CHUNDER CHURN MOOKERJEE [1 W R 339

46 ———— The admission of one executor to a will would not bind another nor would the admissions of parties other than the executor bind the estate CHUNDER KANT MITTER v RAMNARAIN DEY SIRKAR 8 W R 63

47 ———— Admission by agent —An agent's admission that he purchased as an agent is evidence against his heirs that the purchase was not made by him on his own account GOREEBOOLLAH SIRKAR v BOYD 2 W R 190

48 ———— Admission by husband—*Admission of joint character of property* —An admission by the widow's husband that the lease was the joint property of himself and the plaintiff though not an estoppel was held to be good evidence to be rebutted by the widow SREENATH NAG MOZOOMDAR v MONMOHINEE DOSSEE 6 W R 35

49 ———— Admissions of vakil—*Criminal case* —Admissions made by a vakil cannot bind his client in a criminal case QUEEN v KAZIM MUNDLE 17 W R Cr, 49

ADMISSION—*continued*

2 ADMISSIONS BY OR AGAINST THIRD PERSONS—*continued*

50 ———— Admission by pleader on behalf of client —Admission made in a statement in a case by a pleader on behalf of his client after full consideration and consultation is admissible as evidence against that client in another case in which he is a party COMARUTTER v PARESHNAUTH PANDAY 15 W R 135

51. ———— Admission of pleader recorded in judgment —The rule of law is that a judgment deliberately recording the admission of a pleader must be taken as correct unless it is contradicted by an affidavit or the Judge's own admission that the record he made was wrong HUR DYAL SINGH v HEERA LALL 16 W R 107

52 ———— Admission by owner after sale of property —An admission subsequently made by a debtor whose property has been sold is not evidence against the purchaser of the property KHEMUNKUREE CHOWDHRAIN v GHOORCHUNDER MOJOOMDAR 5 W R 268

53 ———— Admission by judgment debtor—*Purchaser* — A purchaser in execution of a decree of a Civil or Revenue Court is not bound by any admission made by his execution debtor nor ordinarily by a decree against such person RUNGO MONEE DEBIA v RAJ COOMAR BEBEE 6 W R 197 IMRIT KOOER v LALLA DEBEE PERSHAD SINGH [18 W R, 200

54 ———— Admission by mortgagor—*Suit by purchaser for cancellation of mokurari lease* —Suit by a purchaser from a mortgagee against a durmokurardar for the cancellation of his mokurari lease granted without authority by the mortgagor In a former suit brought by the mortgagee for possession the mortgagor admitted the mortgage *Held* that although that admission was conclusive as between the mortgagor and the mortgagee the colluding parties yet that in the present case brought to avoid the defendant's title on the strength of an alleged collusive mortgage it was quite competent to him to contest its *bonâ fide* nature DONUNJOY DEY v DWARKANATH SINGH 5 W R, 280

55 ———— Admission by lumberdar—*Signature in patwari's diary as lumberdar* —*Held* that the plaintiff being an immediate reversioner might maintain his suit and that his contributing his share of profit and putting his signature in the patwari's diary as lumberdar were not an admission of defendant's title as purchaser NUND KISHORE v NUTHOO RAM 1 Agra 223

56 ———— Admission by heirs—*Admission as to relinquishment of title* —In a suit by the grandchildren of the deceased daughter of a member of a joint Hindu family who though not entitled to his property as his heirs had been long in possession the surviving daughter in whom according to Hindu law her father's interest would now be legally vested, admitted by a petition filed in this suit that by her gift or relinquishment plaintiffs had a title to her father's share The admission was held to be evidence that such title existed anterior to

ADMISSION—*continued*

2. ADMISSIONS BY, OR AGAINST, THIRD PERSONS—*continued*

the commencement of the suit GOUR LALL SINGH *v* MOHESH NARAIN GHOSE 14 W R 484

57 ——— **Admission by zamindar of mokurari right**—Where tenants sued for a declaration that their holding was mokurari at a given rent and the surburakar of their zamindar admitted their right on behalf of the zamindar who himself filed a petition corroborating his surburakar's statement it was held that these admissions would bind any subsequent zamindar not being an auction purchaser at a sale for arrears of Government revenue WATSON & CO *v* NOBIN MOHUN BABU [10 W R. 72

58 ——— **Admission by auction purchaser**—*Admission of title indirectly*—Where an auction purchaser in a proceeding before the Collector for the purpose of charging an estate withstands a claim to a mokurari tenure advanced by a tenant but does not otherwise subsequently legally question the tenant's title the presumption arises that that title has been allowed by the auction purchaser CHOONEE MAHTOON *v* CHATOO MAHTOON [25 W R. 231

59 ——— **Admission of lessor**—*Lessor and lessee*—The admission of a lessor does not bind a lessee in certain cases in which a *bona fide* act might have bound. SUTROOGHUN DUTT *v* BROJO GOPAL GHOSE 3 W R. 143

60 ——— **Admission of tenancy**—*Evidence of tenancy*—A mere admission by the defendant of plaintiff having purchased a jote is insufficient to prove that he ever was defendant's tenant BAKUR ALI CHOWDHRY *v* ASHKUR ALI [5 W R. 156

61 ——— **Admission by raiyat**—*Evidence of rate of rent*—*Similar tenures*—An admission by one raiyat as to the rate of rent at which he holds is not evidence to prove the rate at which another holds NURROHURRY MOHATO *v* NARAINEE DOSSEE [1 Ind. Jur O S, 9 W R. F B 23

62. ——— **Admission of rate of rent**—In a suit for arrears of rent at enhanced rates if plaintiff asks for rates admitted by defendant he must abide by those intended to be admitted and if he desire to take advantage of the finding of the Lower Court he must submit to the whole finding taken altogether SOORENDRONATH ROY *v* BHIKUB MUNDUL 14 W R. 462

63 ——— **Return of amount of rent made to Collector**—*Rate of rent Evidence of*—A return made to a Collector by an occupant of land stating the amount of the rent is an admission as to the amount from that time upon the occupant and all who claim under him AJUDH PERSHAD SINGH *v* RAM LOT TEWARI 18 W R. 105

64. ——— **Rate of rent Evidence of**—*Presumption from enhanced rates of defendants not raising objection*—In a suit for a kabuliat at enhanced rates after notice under 13 Act X of 1859 where the defendants stood by and then by raising a good many objections on other points raised no question as to rates their conduct and pleadings were held to afford a fair presumption of the admission of the plaintiff's claim as to the rates sued for THAKOOR DUTT SINGH *v* GOPAL SINGH 14 W R. 4

65 ——— **Consideration for sale**—*Suit for presumption*—The mere admission of the vendor that an old debt of R 0 mentioned in the sale deed formed part of the consideration is not conclusive evidence of the allegation as against parties claiming a right of presumption PEERA *v* SHIMBHU [2 Agra, 348

3 MISCELLANEOUS CASES

66 ——— **Verbal admissions as to sum due by defendant**—It is a very dangerous thing for a Court to decree in favour of a plaintiff merely upon alleged verbal admissions by the defendant of a sum due without the most clear and cogent proof of such admissions especially when the plaintiff shrinks from bringing his accounts into Court LALLA SHEO PARSHAD *v* JUGGERNATH L R 10 I A 74

67 ——— **Admission of receipt of purchase money**—*Registration Act 1866 s 66 cl 3*—An admission before a Registrar of the receipt of purchase money attested by his endorsement as required by cl 3 s 66 Act XX of 1866 though evidence of the strongest and most reliable description ought not to be treated as conclusive In the face of such admission however the party seeking to get out of its effects must make out his case by very clear evidence MAHOMED HANEEF MEAJEE *v* MOZHUR ALI 15 W R 280

68 ——— **Admission in a mortgage as to amount of land excepted from its operation**—Debutter land within the limits of a revenue paying mouzah which had been mortgaged by the defendants to a predecessor in title of the plaintiff was excepted from the mortgage the deed specifying the number of bighas making the area of the debutter Against a plaintiff who made title to the mortgaged mouzah and claimed possession of all of it that had passed by the mortgage the mortgagors set up that there was more debutter in the mouzah than the deed had specified the intention of the parties to the deed having been to exempt whatever debutter there actually was —*Held* that the statement in the deed as to the quantity of the debutter was a deliberate admission imposing upon the mortgagors who had made it the burden of proving that it was untrue or that they were not bound by it also that the Subordinate Judge's finding that the defendants had not given proof sufficient to discharge themselves of this was correct JABAO KUMARI *v* LALONMONI I. L. R. 18 Calc 224 [L. R. 17 I. A. 145

69 ——— **False statement as to share being separate**—*Joint family*—*Misrepresentation*—In a suit by a member of a joint family to recover possession of certain property alleged to

ADMISSION—*continued*

3 MISCELLANEOUS CASES—*continued*

belong to the joint estate but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of *P* one of the members of the family for his separate debt the defendant alleged as showing the property was the separate property of *R* that on one occasion when *R B* the kurta and a third member of the family entered into a security bond with the Collector whereby *R* pledged the property in suit and the two others pledged other properties each of them described the property pledged by him as being in his possession with out the right of any co sharers *Held* that the misrepresentation as to his separate ownership made by *R* in the security bond given to the Collecter could not be regarded in the present suit as more than an admission inconsistent with the title now asserted by the plaintiff the defendant not having purchased on the faith of such misrepresentation BOODH SINGH DHOODORIA *v* GUNESH CHUNDER SEN 12 B L R P C 317 19 W R 356

70 ———— False statement by defendant —A plaintiff cannot take advantage of a statement made by a defendant which at most amounts to a piece of evidence and not to an admission but which is found to be untrue unless it be shown that the status of the plaintiff had been affected or that he had been misled by such statement GRISH CHUNDER GHOSE *v* ISSAR CHUNDER MOOKERJEE [3 B L R A C 337 12 W R 226

71. ———— Mitigation of effect of admission—*Showing nature of transaction when made* —Where a defendant seeks to make use of statements which have been put in evidence and to treat them as admissions by the plaintiff who put them in it is competent for the plaintiff to show the real nature of the transaction to which they relate and to get rid of the effect of the apparent admissions LUTEEFOONISSA *v* GOOR SURUN DAS PHOOL BIBEE *v* GOOR SURUN DASS 18 W R 485

72. ———————— *Showing real nature of transaction* —A party claiming under another who has made admissions as to a transaction to which that other was a party is at liberty to allege and prove that the admissions were made with a fraudulent purpose and were not true and to show the real nature of the transaction SREENATH ROY *v* BINDOO BASHINEE DEBIA 20 W R 112

73 ———— Effect of admissions not acted on—*Admissions by person who afterwards adopts another* —A party is not concluded by his own representations unless they have been acted upon by the opposite party If treated merely as admissions not acted upon it may be shown by the party who made them that they were not true *Quære*—What is the effect of admissions made by a person who subsequently adopts another in binding the person adopted? BROJENDRO COOMAR ROY CHOWDHRY *v* CHAIRMAN OF THE DACCA MUNICIPALITY [20 W R 223

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ADOPTION

See CASES UNDER HINDU LAW—ADOPTION

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See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP 5 B L R, 109

1. ———— Institution of proceeding by husband—*Criminal Procedure Code 1872 s 478* —*Quære*—Is the formal assent of a husband to a charge of adultery added at the end of his deposition a proper compliance with s. 478, Act X of 1872? QUEEN *v* LUCKY NARAIN NAGORY [24 W R., Cr., 18

ADMISSION—*continued*

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ADMISSION—*continued*

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ADMISSION—*continued*

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ADMISSION—*concluded*

3 MISCELLANEOUS CASES—*concluded*

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1. ——— Institution of proceeding by husband—*Criminal Procedure Code 1872 s 478* —*Quære*—Is the formal assent of a husband to a charge of adultery added at the end of his deposition a proper compliance with s. 478 Act X of 1872? QUEEN *v* LUCKY NARAIN NAGORY [24 W R Cr, 18

DULTERY—*continued*

2 ——————— *Appearing as wit s for prosecution in case of rape* —K was accused D and P alleged to be D's wife of raping and was committed for trial charged in the alternative with rape or adultery *Held* that as no complaint had ever been actually instituted by D against K for the offence of adultery as contemplated s 478 of Act X of 1872 (Criminal Procedure Code) the circumstance of D' appearing as a witness for the prosecution for the offence of rape not amounting to the institution of a complaint within the meaning of that section K's conviction for adultery must be quashed EMPRESS v KALLEE [I L R. 5 All 233

3 ——— Proof of marriage—*Charge of adultery* —Before a person charged with adultery can be convicted strict proof of the marriage is necessary QUEEN v SMITH

[1 Ind. Jur N S 8 4 W R. Cr 31

SOBRATI v JUNGLI 2 C W N 245

4. ——————— *Evidence Act s 50*—The provisions of s 50 of the Evidence Act show that where marriage is an ingredient in an offence as in bigamy adultery and the enticing of married women the fact of the marriage must be strictly proved *Queen v Wazira 8 B L R Ap 3* overruled EMPRESS v PITAMBUR SINGH

[I. L. R. 5 Calc 566 5 C L R. 597

EMPRESS v ARSHED ALI 13 C L. R. 125

5 ——————— *Evidence Act s 50* —K was accused by D and P alleged to be D's wife of raping P and was committed for trial charged in the alternative with rape or adultery The evidence of marriage between D and P consisted of their statements that they were married to each other and of a statement by K that P was D's wife K was convicted on the charge of adultery *Held* that such evidence having regard not only to s 50 of the Evidence Act 1872 but to the principle that strict proof should be required in all criminal cases was not sufficient to establish the vital incident to the charge of adultery namely the marital relation of D and P *Empress v Pitambur Singh I L R 5 Calc 566* concurred in EMPRESS v KALLEE

[I. L. R. 5 All. 233

6 ——————— *Marriage illegal by Hindu law—Custom of caste—Penal Code s 497—Dissolution of marriage at will and marriage (natra) with another man—Custom* —A custom in of the Talapada Hali caste that a woman shall be permitted to leave the husband to whom she has been first married and to contract a second marriage (natra) with another man in the lifetime of her first husband and without his consent is invalid as being entirely opposed to the spirit of the Hindu law; and the man with whom the woman so married having had sexual intercourse with her and it being found that he did not honestly believe that she had become his wife was guilty of adultery under s. 497 of the Penal Code I REG v KHUSHAL COJA REG v BAI RUPA 2 Bom., 124 2nd Ed., 117

7 ——————— *Marriage contrary to Hindu law—Custom of caste—Penal Code s 497* —Where a prisoner accused of adultery sets up in defence a natra contracted with the woman with whom he is alleged to have committed adultery in accordance with the custom of his caste the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the natra that the woman was the wife of another man REG v MANOHAR RAIJI 5 Bom. Cr 17

8 ——————— *Sagai marriages—Custom of caste* —Sagai wives i e widows married in accordance with the custom of Sagai prevailing amongst the Koiries and other low castes of Behar are so far the legal wives of their husbands as to justify the punishment of persons committing adultery with them. BISSURAM KOIREE v EMPRESS

[3 C L. R. 410

9 ——— Proof of adultery—*Sexual intercourse—Presumption of knowledge that woman is married* —In a case of adultery sexual intercourse must be proved the sexual intercourse required for adultery being the same identical thing as the sexual intercourse required for rape The difference lies in the mode of proof in rape no presumption of sexual intercourse can be made in adultery it can be from evidence pointing strongly to an inference of guilt It is not necessary therefore that there should be direct evidence of an act of adultery nor that the adulterer should know whose wife the woman is provided he knew she was a married woman QUEEN v MADHUB CHUNDER GIRI 21 W R. Cr, 13

10 ——— Condonation of adultery—*Penal Code s 497* —The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence QUEEN v SMITH

[1 Ind. Jur N S 8 4 W R., Cr, 31

11. ——— Enticing away woman—*Penal Code ss 497 498 —Form of conviction* —A prisoner need not be convicted both of adultery and enticing away the woman the former (if there were any enticing away) would include it QUEEN v POCHUY CHUNG 2 W R. Cr 35

12. ——————— *Penal Code (Act XLV of 1860) ss 497 498—Condonation* —The complainant alleged that his father in law had detained his wife and that with his help the accused married his wife and since then had kept her in his house The accused was convicted under s 498 Penal Code The Sessions Judge made a reference under s 438 Criminal Procedure Code to the effect that the conviction under s 498 Penal Code was bad inasmuch as there was no evidence whatever to show that the petitioner enticed away the complainant s wife from her husband s or her father's house with intent to have illicit intercourse with her and that there could not be any conviction under s. 497 Penal Code as the circumstances of the case warranted the conclusion that the offence if any had been condoned by the husband by his omission to take any steps since the last six or seven years against the accused. The High Court agreed with the view of the Sessions Judge JASIMADDIN SHEIKH v ICHORAK MISTRY

[1 C. W N, 498

ADVANCEMENT

See ENGLISH LAW 2 W R. 141

See PARSIS I. L. R., 2 Bom 75

ADVERSE POSSESSION

See CASES UNDER LIMITATION ACT 1877 ART 144 (1871 ART 145 1859 S 1 CL 12)—ADVERSE POSSESSION

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION

See CASES UNDER POSSESSION—ADVERSE POSSESSION

See CASES UNDER TITLE—TITLE BY LONG POSSESSION

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2. ——— **Non intervention of vakeel or attorney**—*Appeal from mofussil* —An advocate of the High Court may appear at the hearing of an appeal from the mofussil on the direct instruction of a client and without the intervention of vakeel or attorney GOBIND CHUNDER DUTT *v* HENDRY [14 B L R. Ap 12 24 W R. 15

3 ——— **Filing appeal in Registrar s Office** —An advocate of the High Court is entitled to appear and plead on the Appellate Side but not to file an appeal in the Registrar's Office RAM TARUK BARICK *v* SIDESSOREE DASSEE [13 W R. 60

4. ——— **Right to take instructions directly from client—Right to act for client**—*Practice—Barrister—Letters Patent North Western Provinces ss 7 8—Civil Procedure Code ss 2 36 39 635* —Reading together ss 7 and 8 of the Letters Patent for the High Court and ss 2 36 39 and 635 of the Civil Procedure Code an advocate on the roll of the Court can for the purposes of the Code perform on behalf of a suitor all the duties that may be performed by a pleader subject to his exemption in the matter of a vakalatnama and to any rules which the High Court may make regarding him. No such rule having been made to the contrary such an advocate may take instructions directly from a suitor and may act

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5 ——— **Privilege of speech**—Question of the extent of the privilege of speech accorded to advocates and counsel considered REG *v* KASHI NATH DINKAR 8 Bom Cr 126

6 ——— An advocate in India cannot be proceeded against civilly or criminally for words uttered in his office as advocate SULLIVAN *v* NORTON [I. L. R. 10 Mad. 28

7 ——— **Vakalutnama necessity for**—*Criminal Procedure Code 1872 s 186* —An advocate appearing in defence of an accused person under s 186 of the Criminal Procedure Code 1872 should not be required to file a vakalutnama ANONYMOUS [7 Mad. Ap 41

8 ——— **Right to appear for prosecution in Sessions Court** —An advocate of the High Court may appear on behalf of the prosecution in the Court of Sessions and conduct the prosecution without being specially empowered by the Magistrate of the district for the purpose IN THE MATTER OF THE PETITION OF GUNGADHUR SIRCAR [23 W R., Cr , 14

9 ——— **Right to sue on promissory note given for fees**—*Recorder s Act XXI of 1863 s 18* —With reference to s 18 Act XXI of 1863 an advocate cannot sue upon a promissory note given by anticipation for fees not taxed nor can the Court in such suit award to the plaintiff a *quantum meruit* for his services MACLEOD *v* MAH MAH YET [7 W R. 390

10 ——— **Suspension of Advocate**—*Burma Courts Act VII of 1872 s 58—Entering into contract contrary to public policy* —In a case in which an advocate of the Recorder's Court at Rangoon was suspended by the Recorder under Act VII of 1872 s 58 for having entered into a contract which was contrary to public policy the High Court though reprobating such a practice as improper and mischievous yet considered that a serious warning was all that was called for under the circumstances inasmuch as it appeared that the advocate in this instance did that which was done by other advocates even by persons to whom he might fairly look for an example IN THE MATTER OF MOUNG HTOON OUNG 21 W R. 297

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2. ——— *Local investigation—Act VIII of 1859, s. 180.*—Functions of an Ameen appointed to hold a local investigation under s. 180, Act VIII of 1859 discussed. ISWARCHANDRA DAS *v.* JUGAL KISHOR CHUCKERBUTTY [4 B. L. R. Ap. 33 17 W. R. 473 note 21 W. R. 281 note

3. ——— *Local investigation.*—There were no limits to the powers conferred by Act VIII of 1859 on a Civil Ameen for the purpose of making an investigation. MOHUN LALL ROY *v.* URNOPOORNA DASSEE 9 W. R. 566

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5. ——— Power of Mufti Sudder Ameen to set aside attachment issued by himself.—A Mufti Sudder Ameen may set aside an attachment in a suit issued from his Court and no longer properly in force in the suit, although no express statutory power to do so exists. But on a petition to set aside such an attachment he cannot also make a declaration as to the right to the property attached and claimed to have been acquired subsequently, and direct that possession should be transferred to the petitioner. EX PARTE CHELLAPPERUMAL PILLAI 1 Mad. 135

6. ——— Evidence taken by Ameen.—*Irregular order.*—Where a Principal Sudder Ameen had deputed a Civil Ameen to enquire into the fact of possession instead of hearing the evidence on the point himself,—*Held* that, even if the Principal Sudder Ameen's order was improper, the deputation of the Ameen was legal and the evidence taken by the Ameen was legal evidence to be considered on its own merits. RAM CHURN MAHTOON *v.* SURUBJIT MAHTOON 9 W. R. 494

7. ——— Power to examine witnesses.—*Duties and functions of Ameen.*—An Ameen should be appointed to hold a local investigation only when it is necessary to inspect the land which is the subject of dispute, to take maps of localities, to obtain information with regard to the physical features of the place, to identify the land in maps with parcels which are the subject of the suit, and to identify the maps with one another with the aid of objects to be found in the land, and for these and similar purposes an Ameen may examine witnesses when the evidence which they have to give is of such a nature that it ought to be taken by him on the spot. Where, however, any fact can be proved by evidence taken otherwise than on the spot, that evidence ought to be taken by the Court itself in a regular manner, and not by an Ameen. *Quære*—Whether, where an Ameen has in fact been, though improperly, deputed and has examined witnesses, that evidence ought to be totally rejected. BINDABUN CHUNDER SIRCAR CHOWDRY *v.* NOBIN CHUNDER BISWAS [17 W. R. 282

8. ——— *Evidence taken by Ameen.*—It is not admissible. CHAND RAM *v.* BROJO GOBIND DOSS 19 W. R. 14

9. ——— It was not the intention of the Legislature to allow witnesses to be examined out of Court by Ameens, except with reference to points for the determination of which local inspection is required. SHADHOO SINGH *v.* RAM ANOOGRAHA LALL 9 W. R. 83

10. ——— The report of an Ameen as to a local enquiry upon a matter which no personal inspection on his part could decide, and in regard to which the depositions of parties acquainted with the place could afford proper information, was held to be in no way irregular simply by reason of his having examined witnesses on the spot. SHEO NARAIN BHUGGUT *v.* BUDH SINGH 11 W. R. 423

11. ——— *Local investigation—Suits for enhancement of rent—Act VIII of 1859*

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s 180 —In suits for enhancement of rent it is a proper course of procedure to appoint an Ameen to make a local investigation in order to enquire as to the description of the land and as to the rates paid in the neighbourhood for similar land and the Ameen has power under s. 180 Act VIII of 1859, to examine witnesses in the matter GAUR CHANDRA ROY *v* RASHBEHARI DUTT

[1 B L R, S N 1 10 W R., 43

12. ———————— An Ameen appointed to hold a local investigation has power to examine witnesses relative to the matter he has to enquire into but the Munsif has no power to direct the Ameen to try the whole case when this course was adopted the High Court expressed their disapproval of such a practice and remanded the case to the Munsif for re-trial RAGHUNATH SHAW *v* RAJKRISHNA DEB

[1 B L R, S N 2

13 ———— **Direction to enquire into mesne profits** An Ameen when directed to make an enquiry as to mesne profits ought not in the execution stage of a suit to enter into enquiries as to dates of dispossession which must be taken to have been determined by the decree BIJOY GOBIND NAIK *v* KALI PROSSONO NAIK 16 W R. 294

14. ———— **Enquiry by Ameen as to existence and value of moveable property**—*Time for making enquiry* —In a suit in which the Court considers it necessary to order an enquiry by a Civil Ameen into the existence and value of moveable property such enquiry cannot be left to be made after decree but must be made before the final decree is drawn up ROHINI DEBIA *v* DIGAMBUR CHATTERJEE 23 W R. 422

15 ———— **Deputation of second Ameen to make enquiry before first Ameen s proceedings are annulled.**—When an enquiry has been made by a Commissioner under the Code of Civil Procedure *the Court to which it is reported* ought not unless it annuls the proceedings of the first enquiry to order another on the same matter AZIM ALI KHAN BAHADOOR *v* SURBUSSUTTY DEBIA 23 W R. 93

16 ———— **Objections to Ameen s report.**—Where clear instructions as to a local enquiry ordered by the Court are given to an Ameen in the presence of both parties, and no objection is made to them by either party then and there they have no ground of complaint after the Ameen has carried out his instructions *if the Court acts upon his report* BISSESSUR ROY *v* KANCHUN ROY 11 W R., 155

17 ———————— Objections to the Ameen s report should be enquired into if taken within a reasonable time from the return of the report, even where the case has been struck off the file ISSUR CHUNDER AHIREE *v* SYAM KHAN CHOWDHRY 11 W R., 85

18 ———————— *Notice of time fixed for* —Reasonable notice must be given of the time fixed for hearing objections to the report RAM NARAIN SING *v* MOHENDRA LALL CHOWDHRY

[21 W R., 2

19 ———————— *Party not appearing at local investigation* —A party who refuses to appear before an Ameen at the time he holds his local investigation is not at liberty afterwards to take any objection to the Ameen s report BAMUN DOSS MOOKERJEE *v* BROJO KISHORE MITTER MOJOOMDAR 6 W R., 130

20 ———— **Misconduct of Ameen.**—The Court is bound to enquire into charges against a Civil Court Ameen (such as can be readily enquired into and their truth either disproved or proved) ABDOOL KUREEM BISWAS *v* CAMPBELL

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See PREVENTION OF CRUELTY TO ANIMALS ACT I. L. R., 24 Calc. 881

———————— **Keeping without Licence**

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[I. L. R., 1 Bom. 118

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[I. L. R. 10 Calc., 951

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[13 B. L. R., 160, 163 note

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———— Adding parties on—

See PARTIES—ADDING PARTIES TO SUITS —APPELLANTS

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———— by one defendant, Reversal of whole decree on—

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[I. L. R. 15 Mad. 29
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AMEEN—*continued*

s 150 —In suits for enhancement of rent it is a proper course of procedure to appoint an Ameen to make a local investigation in order to enquire as to the description of the land and as to the rates paid in the neighbourhood for similar land and the Ameen has power under s. 180 Act VIII of 1859, to examine witnesses in the matter GAUR CHANDRA ROY v RASHBEHARI DUTT

[1 B L R S N 1 10 W R, 43

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[1 B L R S N 2

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15 ———— **Deputation of second Ameen to make enquiry before first Ameen s proceedings are annulled.**—When an enquiry has been made by a Commissioner under the Code of Civil Procedure the Court to which it is reported ought not unless it annuls the proceedings of the first enquiry to order another on the same matter AZIM ALI KHAN BAHADOOR v SURUSSUTTY DEBIA 23 W R. 93

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17 ———— Objections to the Ameen report should be enquired into if taken within a reasonable time from the return of the report, even when the case has been struck off the file ISUR CHUNDER AHIREE v SYAM KHAN CHOWDHRY 11 W R, 95

18 ———— *Notice of time fixed for* —Reasonable notice must be given of the time fixed for hearing objections to the report RAM NARAIN SINGH v GOBURDHUN LALL CHOWDHURY

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19 ———— *Party not appearing at local investigation* —A party who refuses to appear before an Ameen at the time he holds his local investigation is not at liberty afterwards to take any objection to the Ameen s report BAMUN DOSS MOOKERJEE v BROJO KISHORE MITTER MOJOOMDAR 6 W R., 130

20 ———— **Misconduct of Ameen.**—The Court is bound to enquire into charges against a Civil Court Ameen (such as can be readily enquired into and their truth either disproved or proved) ABDOOL KUREEM BISWAS v CAMPBELL

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[13 B. L. R. 160, 163 note

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1 ———— Decree—*Judgment*—An appeal lies from the decree and not from the judgment of a Court of original jurisdiction. In a suit to recover possession of certain lands by setting aside a zur i shgee lease of them a decree was made dismissing the suit but in the judgment of the Court there was a finding against the defendant as to some items of the consideration for the lease *Held* he could not appeal against that finding LAL KOOER v BHOWANY KOOER
[6 N. W., 10 Agra F B 1874 208

NOWBAT LAL v BAJRANG LAL 6 N. W., 412

SHAMA SOONDREE DEBIA v DIGAMBUREE DEBIA
[13 W. R., 1

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Contra SHEOGHOLAM SINGH v NURSINGH
[4 N. W., 120

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[6 W. R. Mis 18

1 APPEAL NEWLY GIVEN BY LAW

2 ———— Proceedings instituted prior to change in procedure—*Appeal from order under s 312 Civil Procedure Code (Act XIV of 1882)—Act VII of 1888 ss 55 56*—It is a general principle of law that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made *Held* accordingly that an appeal from an order under the second paragraph of s 312 of the Civil Procedure Code although made before Act VII of 1888 came into force would, upon the operation of that Act lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made *Hurro sundari Debi v Bhojohari Das Manji I. L. R., 13 Calc 86* explained and distinguished IN THE MATTER OF ANUND CHUNDER ROY v NITAI BHOOMIJ
[I. L. R. 16 Calc 429

2 RIGHT OF APPEAL EFFECT OF REPEAL ON

3 ———— Civil Procedure Code (X of 1877)—*Civil Procedure Code 1859*—In all suits instituted before Act X of 1877 came into force in which an appeal lay to the High Court under Act VIII of 1859 an appeal still lies notwithstanding the repeal of that Act by Act X of 1877 RUNJIT SINGH v MEHERBAN KOER
[I. L. R., 3 Calc, 662

4 ———— Civil Procedure Code 1859—*Repeal by Civil Procedure Code 1877*—A decree was obtained *ex parte* before October 1st 1877 and an application was made by the defendant for the first time in May 1878 to have the case reopened This application was refused and an appeal was thereupon preferred against the order of refusal *Held* that no appeal would lie under Act X of 1877 and that as there was at the time of that Act coming into operation no proceeding on foot on the part of the appellant which could be saved by the operation of s 6 of Act I of 1868 there was no remedy by way of appeal from the order under Act VIII of 1859 *Runjit Singh v Meherban Koer I. L. R. 3 Calc, 662 2 C. L. R. 391* distinguished IN THE MATTER OF APACH OJHA v RAM DULARI KOER 4 C. L. R. 18

5 ———— *General Clauses Consolidation Act I of 1868 s 6—Order refusing attachment in execution of decree—Repeal by Civil Procedure Code X of 1877*—The holder of a decree for money applied for the attachment in the execution of the decree of certain moneys deposited in Court to the credit of the judgment-debtor On the 4th June 18 7 the Court of first instance refused the attachment on the ground that the decree directed the sale of certain immoveable property for its satisfaction and awarded no other relief The order of the

APPEAL—*continued*

2 RIGHT OF APPEAL EFFECT OF REPEAL ON—*concluded*

Court of first instance was affirmed by the lower Appellate Court on the 4th August 1877 Act X of 1877 repealing Act VIII of 1859 and Act XXIII of 1861 came into force on the 1st October 1877 On the 13th November 1877 the decree holder applied to the High Court for the admission of a second appeal from the order of the lower Appellate Court on the ground that the decree had been misconstrued. *Held* that an appeal was admissible under the repealed Act VIII of 1859 under the provisions of s 6 of Act I of 1868 *Held* also that the order of the lower Appellate Court was also appealable under Act X of 1877 THAKUR PRASAD *v* AHSAN ALI

[I. L. R. 1 All 668

6 ———— *Change of procedure—Right of appeal—Order under Civil Procedure Code 1877 setting aside sale under Act VIII of 1859*—Where a decree for sale of certain property was obtained under Act VIII of 1859 and the property was sold but an order was passed after the new Code of Procedure Act X of 1877 had come into force setting aside such sale—*Held* that an appeal would lie from such an order under Act X of 1877 HARBUNS SAHAI *v* BHAIRO PERSHAD SINGH I. L. R. 5 Calc 259

[4 C L R 23

7 ———— Civil Procedure Code 1877 —*Act XII of 1879 s 102—General Clauses Consolidation Act (I of 1868) s 6*—On the 25th June 1879 a Subordinate Judge made an order setting aside the sale of immoveable property in the execution of a decree from which an appeal was preferred under Act X of 1877 to the District Court on the 25th July 1879 before Act XII of 1879 came into force *Held* that as the appeal would not have lain at all had Act XII of 1879 been in force on the date of its institution s 102 of that Act did not apply but as the appeal lay to the District Court under the law in force on that date it was competent to dispose of it under the provisions of s 6 of Act I of 1868 DURGA PRASAD *v* RAM CHARAN I. L. R 2 All. 785

8 ———— Registration Act 1871—*General Clauses Consolidation Act I of 1868—Repeal by Registration Act III of 1877*—An order refusing registration of a deed was passed on 23rd August 1877 and when Act VIII of 1871 was in force an application for review was presented and finally rejected on 20th December 1877 after the repeal of Act VIII of 1871 by Act III of 1877 *Held* that under the provisions of s 6 of Act I of 1868 (the General Clauses Act) the proceedings must be governed by the Act in force at the time when they were instituted—namely by Act VIII of 1871—and therefore no appeal would lie MAHOMET HOSSEIN *v* HADZI ABDULLAH

[I L. R. 3 Calc 727

3 ACTS

9 ———— Act XXXV of 1858—*Order on application for permission to alienate property of lunatic*—An appeal lies under s 22 of Act XXXV of 1858 against an order passed on an application for permission to alienate the property of a lunatic DINESH CHUNDER BANERJI *v* SOUDAMINI DEBI

[4 C W N 526

10 ———— Act XL of 1858 ss 21 and 28—*Order rejecting application for removal of guardian*—The order of a Judge rejecting an application for the removal of a guardian under Act XL of 1858 is appealable IN THE MATTER OF THE PETITION OF MOHENDRO NATH MOOKERJEE

[7 B L R. Ap 9

MOHENDRO NATH MOOKERJEE *v* BAMA SOONDUREE DABEA 15 W R. 493

11. ———— *Cancelling of order appointing Collector manager*—Whether a Judge cancels his own order under Act XL of 1858 appointing the Collector to take charge of a minor's estate a friend of the minor on behalf of the minor as the party interested is at liberty to appeal under the provisions of s 28 SHEO PERSHUN CHOBEY *v* THE COLLECTOR OF SARUN 13 W R 256

12. ———— *Party to proceedings—Right of appeal*—Any person who being a party to proceedings taken under Act XL of 1858 is injuriously affected by an order passed thereon is under s 28 of that Act entitled to an appeal IN THE MATTER OF THE PETITION OF NAZIRUN MUHAMDEE *v* NAZIRUN

[I L R 6 Calc 19
6 C L. R. 210

13 ———— *Order refusing to recall certificate under Act XL of 1858*—Where a Civil Court in the exercise of its discretionary power refuses to recall a certificate granted under Act XL of 1858 there is no appeal from such refusal CHUMUTKAR MOHINEE DOSSEE *v* RAJ RAKHAL MITTER 22 W R, 479

14 ———— *Burma Courts Act (XVII of 1875) s 95—Certificate of administration*—The appeal given by s 28 of Act XL of 1858 is subject to the ordinary law of appeal laid down in the Burma Courts Act No appeal therefore will lie from an order refusing an application for the issue of a certificate of administration under Act XL of 1858 it being impossible to place any specific money valuation on such an application IN THE MATTER OF THE PETITION OF MULLA ADJIM

[I L. R 14 Calc 351

15 ———— Act IX of 1861 Order passed under—An appeal lies under Act VI of 1871 to the Judge from an order of the Subordinate Judge passed under Act IX of 1861 SONAMONEE DOSSEE *v* JOY DOORGA DOSSEE 17 W R. 551

16 ———— Act XXIII of 1861, s 6—*Talabana Failure to deposit—Application for review of judgment*—*A* filed a memorandum of appeal but failed to deposit the sum required to defray the cost of issuing the usual notice on the respondent. When the case came on for hearing it was found that in consequence of *A's* failure to

APPEAL—*continued*

3 ACTS—*continued*

deposit no notice had been served on the respondent and the Judge dismissed the appeal under s 6 of Act XXIII of 1861 Within 30 days after this *A* presented a petition explaining the reasons of his default and praying that on payment of the talabana the appeal might be restored to its place but the Judge without considering the reasons which *A* had given in his petition disallowed his prayer *Held* that no appeal lay from the order of the Judge rejecting *A*'s petition which was of the nature of an application for a review of judgment KALI KRISHNA CHANDRA *v* HARIHAR CHUCKERBUTTY [1 B L. R. A. C 155 10 W R, 160

17 ——— *Order dismissing appeal for want of prosecution* —There was no provision in s. 6 Act XXIII of 1861 for the re-admission of appeals once dismissed under the provisions of that section No appeal lay from the order dismissing them RAMESSUR DUTT *v* LOOT FUNNISSA 6 W R Mis 130

18 ——— Act XIV of 1863—*Proceedings of Settlement Officer under Act XIV of 1863* —The proceedings of a Settlement Officer under s 8 Act XIV of 1863 were not judgments or orders appealable to the Judge or especially to the High Court under Act X of 1859 AHMED ALI KHAN *v* NUBEEA 2 Agra 239

19 ——— Act XIX of 1863—*Suit for partition under Act XIX of 1863 s 8* —An appeal lay to the Judge in cases of partition under Act XIX of 1863 where the objection raised by the party opposing partition is severalty of holding by virtue of a former partition KUNCHUN SINGH *v* CHOONNA 1 Agra Rev 44

20 ——— Act XX of 1863 Order passed under —An appeal does not lie from an order passed under the Religious Endowments Act (XX of 1863) but the party dissatisfied with the order may seek to set it aside by a regular suit KHUDIRAM SINGH *v* SHAM SINGH LOOJCORY [W R. 1864 Mis., 25

KALUB HOSSEIN *v* ALI HOSSEIN 4 N W 3

21 ——— s 5—*Civil Procedure Code 1877 s 647* —An appeal lies under s 647 of the Code of Civil Procedure against an order of a District Court under s. 5 Act XX of 1863 SULTAN ACKENI SAHIB *v* BAVA MALI MIYAR I. L. R., 4 Mad. 295

22 ——— *Order appointing trustee of religious endowment—Civil Procedure Code s 622—Interference of High Court* —No appeal lies to the High Court from the order of a District Judge under s 5 of Act XX of 1863 appointing a trustee of a religious endowment. *Minakshi v Subramanya I L R 11 Mad., 26 followed Sultan Ackeni Sahib v Bava Mali Miyar I. L. R., 4 Mad 295 dissented from.* The High Court therefore can revise such an order under

APPEAL—*continued*

3 ACTS—*continued*

s 622 of the Civil Procedure Code. SOMASUNDARA MUDALIAR *v* VYTHILINGA MUDALIAR [I. L. R , 19 Mad , 285

23 ——— s 10—*Order of District Judge filling vacancy on committee* —It is not to be assumed that there is a right of appeal in every matter which comes under the consideration of a Judge such right must be given by the enacted law or equivalent authority The High Court has no jurisdiction to hear an appeal from the order of a District Judge made by him on petition pursuant to s 10 of Act XX of 1863 (Religious Endowments) appointing a member to fill a vacancy in a committee Neither that Act nor the general law gives any right of appeal which therefore does not exist from such an order MINAKSHI NAIDU *v* SUBRAMANYA SASTRI [I. L R 11 Mad 26 L R. 14 I. A. 160

24 ——— s 18 —No appeal lies from an order passed under Act XX of 1863 s 18 DELRUS BANOO BEGAM *v* ABDOOR RAHMAN [21 W R. 368

25 ——— *Civil Procedure Code s 622—Order refusing permission to sue* —An order passed under s 18 of Act XX of 1863 refusing leave to sue is not appealable nor if the Judge has exercised his discretion liable to revision under s 622 of the Code of Civil Procedure IN RE VENKATESWAR I L R. 10 Mad., 98

See ANONYMOUS CASE [I L R , 10 Mad , 98 note

KAZEM ALI *v* AZEM ALI KHAN [I L R. 18 Calc 382

Nor is an order under s. 18 granting leave to institute a suit appealable. PROTAP CHANDRA MISSER *v* BROJONATH MISSER [I. L R 19 Calc , 275

26 ——— *Order made without jurisdiction* —Where a Civil Judge upon a petition applying under s 18 of Act XX of 1863 for leave to institute a suit made an order disposing at once of the matter in dispute and his successor reversing the former order decided by an order upon the rights of the parties—*Held* that though both orders were made without jurisdiction that fact did not give the High Court an appellate jurisdiction in the matter KAVIRAJA SUNDARA MURTEYA PILLAI *v* NALLA NAIKAN PILLAI [3 Mad., 93

27 ——— Act XXI of 1863 s 27—*Interlocutory order of Recorder of Rangoon—Civil Procedure Code 1859 s 83* —No appeal lay to the High Court under s 27 Act XXI of 1863 from an interlocutory order of the Recorder of Rangoon passed before judgment in the suit *e g* one passed under s 83 Act VIII of 1859 directing a defendant to furnish security *Quære*—Whether under Act VIII of 1859 there was any appeal from an order to furnish security under s 83 AHMED ALLY MAHOMED *v* GLADSTONE WYLLIE 7 W R. 508

APPEAL—*continued*

3 ACTS—*continued*

28 ———— Bengal Tenancy Act (VIII of 1885) s 84—*Order of Civil Court under* — There is no appeal from an order passed by a Civil Court under s 84 of the Bengal Tenancy Act GOGHUN MOLLAH v RAMESHUR NARAIN MAHTA

[I L R. 18 Calc 271

29 ———— *Civil Procedure Code (Act XIV of 1882) ss 2 588* —An order made by a Civil Court under s 84 of the Bengal Tenancy Act is not appealable not being a decree within the meaning of s 2 of the Code of Civil Procedure and no appeal being allowed by s. 588 of the Code or by any special provision of the Bengal Tenancy Act *Goghun Mollah* v *Rameshur Narain Mahta I L R 18 Calc 271* referred to and followed. PEARI MOHUN MUKERJI v BARODA CHURN CHUCKERBUTTI

[I. L R. 19 Calc 485

30 ———— ss 90 91—*Order as to measurement—Civil Procedure Code (Act XIV of 1882) s 2* —A proceeding under s 90 of the Bengal Tenancy Act is not a suit and the order passed in such a proceeding is not a decree as defined in the Civil Procedure Code and hence an order made under s 91 on an application under s 90 is not appealable although a declaration was therein made that the petitioner was entitled to make the measurement with a pole of a certain measure DYA GAZI v RAM LAL SUKUL 2 C W N 351

31. ———— s 104 cl 2—*Special Judge—Dispute as to settlement of rent* —No appeal lies to the High Court from the decision of a Special Judge under s 104 cl 2 of the Bengal Tenancy Act LALA KIRUT NARAIN v PALUKDHARI PANDEY

[I. L R 17 Calc 326

32 ———— ss 93 143—*Manager Application for—Suit* —An application under s 93 of the Bengal Tenancy Act 1885 is not a suit between a landlord and tenant within the meaning of s 143 and no appeal lies from an order rejecting such an application HUSSAIN BUX v MUTOOK DHAREE LALL I L. R. 14 Calc 312

33 ———— s 153—*Appeal—Amount—Co sharer—Right of suit —Held* for the purpose of determining whether or not an appeal lies under s 153 of the Bengal Tenancy Act the term amount in that section does not mean merely the amount of rent claimed but the whole amount claimed in the suit including rent interest etc BEHARY CHURN SEN v BHUT NATH PRAMANIK

[3 C W N 214

34 ———— *Suit for rent—Question as to amount of rent* —Where there was a question as to the amount of rent annually payable the plaintiffs claiming R15 and the defendants alleging the rent to be only R7 8 —*Held* an appeal lay under s 153 of the Bengal Tenancy Act AUBHOY CHURN MAJI v SHOSHI BHUSAN BOSE

[I. L. R., 16 Calc. 155

35 ———— *Appeal from decree in rent suit under R100* —The words "amount of rent annually payable by a tenant in s 153 (*a*) of the Bengal Tenancy Act include the case of rent payable by a tenant to one of his co sharer landlords who collects his share of the rent separately An appeal to the High Court therefore lies in such a case notwithstanding the amount claimed is less than R100 NARAIN MAHTON v MANOFI PUTTUK

[I L R. 17 Calc 489

36 ———— *Cesses Suit for—Road Cess Act (Bengal Act IX of 1880) s 47—Appeal in cases under R100—Meaning of rent* —Although the Bengal Tenancy Act declares that in ss 53 to 68 and in ss 72 to 75 rent includes cesses yet these are enabling provisions passed to extend the meaning of rent and it in no way interferes with the law refusing a right of appeal in suits below R100 in value which law is made applicable to suits for cesses by s 47 of Bengal Act IX of 1880 RAJANI KANT NAG v JAGESHWAR SINGH I. L R 20 Calc 254

37 ———— *Suit for arrears of rent—Dák cess when considered as rent—Appeal where subject matter under value of R100* —Where dak cess is claimed under the contract by which the rent is payable it must be regarded as rent i e as part of what is lawfully payable in money for use and occupation of the land held by the tenant and where there is a dispute with regard to such dák cess the amount of rent is in dispute and an appeal lies though the amount in dispute is less than R100 and notwithstanding the provisions of s 153 of the Bengal Tenancy Act WATSON & Co v SREE KRISTO BHUMICK I. L R. 21 Calc 132

38 ———— *Order of Remand* —The term order in s 153 of the Bengal Tenancy Act does not mean merely a final order but includes an interlocutory order such as an order of remand S 153 of the Bengal Tenancy Act precludes an appeal from an order of remand made in an action for rent for less than R100 unless such order has determined any of the questions specified in s 153 GAGAN CHAND SARDAR v CASPERSZ

[4 C W N 44

39 ———— s 173—*Appeal by auction purchaser whether maintainable* —No appeal lies at the instance of an auction purchaser against an order setting aside a sale under s 173 of the Bengal Tenancy Act *Raghu Singh* v *Misri Singh I L R 21 Calc 825* referred to HARABANDHU ADHIKARI v HARISH CHANDRA DEY PAL

[3 C W N 184

ROGHU SINGH v MISRI SINGH

[I. L. R. 21 Calc. 825

40 ———— s. 174 Order under —*Civil Procedure Code 1882 s 244* —An order under s. 174 of the Bengal Tenancy Act is not one under s 244 of the Civil Procedure Code and is therefore not appealable KISHORI MOHUN ROY v SARODAMANI DASI 1 C W N., 30

SUKH NARAIN LALL v GOBOKE PROSAD

[3 C. W. N., 344

APPEAL—*continued*

3 ACTS—*continued*

41. ——— Companies Act XIX of 1857 —*Order placing name on list of contributories of company*—No appeal lay from an order of a District Court placing the name of an alleged allottee on the list of contributories of a company wound up under Act XIX of 1857 JAMIYATRAM HIMATRAM v THE GUJARAT TRADING COMPANY

[8 Bom., A C 185

42. ——— Order under Companies Act (VI of 1882) s. 58—*Appeal in a case where no issue as to title is raised*—An appeal lies from an order passed under s 58 of the Indian Companies Act (VI of 1882) although no issue has been directed upon a question of title AMRITA LALL GHOSE v SHRISH CHUNDER CHOWDHRY

[I. L. R. 26 Calc. 844
4 C W N 101

43 ——— s 162 Order under —*Notice of appeal—Companies Act s 214—Limitation Act (XV of 1877) s 12*—*Held* that no appeal lay from an order made under s 162 of Act VI of 1882 by a Court under the supervision of which proceedings in liquidation were being conducted declining to continue an investigation commenced by it under that section *Held* also that whether or not the service of notice of appeal within three weeks provided for by s 214 of Act VI of 1882 implies that all the formalities prescribed for the presentation and admission of an appeal by the Code of Civil Procedure must first be gone through before notice of appeal can be served a person appealing under the said section cannot avail himself of the provisions of s 12 of the Limitation Act WALL v HOWARD

[I L R 18 All 215

44. ——— Court Fees Act (VII of 1870) s 12 para. 1—*Order fixing amount of court fee chargeable on a plaint—Suit by mortgagor to set aside mortgage—Valuation of suit*—There is no appeal against the order of a District Judge fixing the amount of the Court fee chargeable on a plaint The right of appeal to which the plaintiff might have been entitled under ss 31 to 36 of Act VIII of 1859 has been taken away by s 12 cl 1 of the Court Fees Act (VII of 1870) NARAYAN MADHAVRAO NAIK v THE COLLECTOR OF THANA

[I. L. R. 2 Bom 145

45 ——— *Order rejecting plaint for insufficiency of valuation*—*Held* following *Narayan Madhavrao* v *The Collector of Thana* I L R 2 Bom 145 that the decision of the Court of the first instance rejecting a plaint for insufficiency of the valuation and stamp for the purposes of the Court Fees Act (VII of 1870) not being to the detriment of the revenue is final and no appeal lies from it MONOHAR GANESH v BAWA RAM CHARANDAR I. L. R. 2 Bom 219

46. ——— *Order rejecting plaint—Plaint insufficiently stamped—Civil Procedure Code (Act X of 1877) s 1 tit Decree*—An appeal lies against an order rejecting a plaint on the ground of its being insufficiently stamped. AJOODHYA PERSHAD v GUNGA PERSHAD

[I L. R. 6 Calc. 249
6 C L. R., 567

RAJKRISTO BANERJI v RAMA SOONDUREE DASSEE [23 W R. 296

47 ——— *Civil Procedure Code 1859 s 36*—S 12 of the Court Fees Act does not prevent a party from appealing to the High Court under s. 36 of the Civil Procedure Code and urging that the Court of first instance was wrong as to the particular article of the schedule of fees by which the case was governed GUNGAMONEE CHOWDRAIN v GOPAL CHUNDER ROY 19 W R. 214

48 ——— *Appeal against an order for payment of additional Court fees*—In a suit in a Subordinate Court by members of a Malabar tarwad to set aside an instrument affecting the whole of the tarwad property the Subordinate Judge held that Court fees were leviable assessed on the value of the property and accordingly ordered an additional payment to be made by the plaintiffs, and on their failure to make the payment dismissed the suit *Held* that an appeal lay from the order for payment of the additional Court fees and the High Court was not precluded by the Court Fees Act s 12 from revising it, and reversing the decree KANARAN v KOMAPPAN

[I. L. R. 14 Mad. 169

49 ——— *Order as to valuation and class to which a suit belongs—Decision as to such class—S 7 cl 10 (a) cl 4 (c)*—An appeal lies against a decision as to the class to which a suit belongs although it does not lie against a decision as to the valuation of the suit in that class A decision of the lower Court holding that a suit is one for specific performance of a contract of sale and to be valued according to the amount of the consideration money is appealable DADA BHA KITHU v NAGESH RAMCHANDRA I. L. R. 23 Bom. 486

See SARDARSINGJI v GANPAT SINGJI

[I. L. R. 17 Bom., 56

50 ——— Guardian and Wards Act (VIII of 1890) ss 22 45—*Order refusing remuneration to guardian*—A Nazir of the District Court was appointed guardian of the property of certain minors, but no provision as to his remuneration was made at the time of his appointment. Subsequently he applied for remuneration on his transfer to another appointment The Judge passed an order refusing to allow any remuneration on the grounds that his accounts had been badly kept and the estates had been mismanaged. The Nazir appealed against the order *Held* that the order was not appealable GANGADHAR MULL v SHIVLINGRAO JAYDEVRAO

[I. L. R. 24 Bom. 95

51 ——— s 39—*Appeal against order for removal of guardian*—An appeal does not lie from an order refusing an application for

APPEAL—*continued*

3 ACTS—*continued*

the removal of a guardian who has been appointed by the Court, and also for the appointment of the applicant as the guardian PRAN BANDHU SINGH *v* BRAHMAMAYI DASYA 1 C W N 693

52.——————s 43—*Civil Procedure Code (1882) ss 492 503—Order purporting to be passed under appealable section—Appeal entertained though Judge had no power to pass orders under the section as he purported to do*—By s 43 (4) of the Guardian and Wards Act 1890 in case of disobedience to an order passed under sub ss (1) and (2) of that section in relation to the conduct or proceedings of guardians the order may be enforced in the same manner as an injunction granted under s 492 or s 493 of the Code of Civil Procedure On a petition being presented to a District Court asking that the guardians of certain minors who had been appointed by the Court under the Guardian and Wards Act might be removed the Judge passed an order in which he purported to issue an injunction under s 492 of the Code of Civil Procedure for the attachment of the estate of the minors and to appoint a receiver to manage the estate On an appeal being preferred against the said orders it was contended that the Judge must be taken to have acted under the Guardian and Wards Act 1890 and that inasmuch as no appeal was provided by that Act in respect of such an order no appeal lay —*Held* that though both orders were passed without jurisdiction the Judge purporting to have acted under s 492 of the Code of Civil Procedure as regards the issue of an injunction and under s 503 as regards the appointment of a receiver inasmuch as orders under either of these sections were appealable the fact that the Judge had no power in this case to pass orders under them did not bar the High Court from treating the orders as having been passed thereunder for the purpose of entertaining an appeal against the orders since there was no provision of law under which the Judge could pass orders attaching property or appointing a receiver without such orders being subject to appeal *Hurrish Chunder Chowdhry* v *Kali Sundari Debia L R 10 I A 4 I L R 9 Calc 482* referred to ABDUL RAHIMAN *v* GANAPATHI BHATTA I. L. R 23 Mad. 517

53 ——————s 47—*Removal of guardian—Order refusing to remove a guardian* —No appeal lies under the Guardian and Wards Act (VIII of 1890) from an order of a District Judge refusing to remove a guardian MOHIMA CHUNDER BISWAS *v* TARINI SUNKER GHOSE [I. L. R. 19 Calc. 487

54. ——————*Removal of guardian—Order refusing to remove a guardian* —Upon an application for cancelling a certificate of guardianship of the person and property of a minor the District Judge ordered the certificate to be amended only as regards the guardianship of the person by appointing the applicant as such guardian, and ordering a monthly allowance to be paid to her for the education and maintenance of the minor The applicant appealed to the High Court —*Held* that the order appealed from was one refusing to remove a guardian and as such was not appealable under cls (f) and (g) of s 47 of the Guardian and Wards Act (VIII of 1890) *Mohima Chunder Biswas* v *Tarini Sunker Ghose I L R 19 Calc 487* followed PARHWANTI DAI *v* INDRA NARAIN SINGH I. L. R. 23 Calc 201

55 ——————*Appeal—Order refusing to direct the removal of a guardian* —Where an applicant for a certificate of guardianship applied for a two fold relief namely that the existing guardian might be removed and that she herself might be appointed guardian and her application was dismissed, it was *held* that no appeal would lie from the order of dismissal such order being an order refusing to direct the removal of a guardian *Mohima Chunder Biswas* v *Tarini Sunker Ghose I L R 19 Calc 487 Pakhwanti Dai* v *Indra Narain Singh I L R 23 Calc 201* and *In re Bai Harkha I L R 20 Bom 667* referred to IMTIAZ UN NISSA *v* ANWAR UL LAH [I. L. R. 20 All 433

56 —————— and 48—*Order refusing to remove a guardian* —The effect of ss 47 (g) and 48 of the Guardian and Wards Act (VIII of 1890) is to allow no appeal from an order refusing to remove a guardian IN RE BAI HARKHA [I. L. R 20 Bom., 667

57 ——————Land Acquisition Act (X of 1870) s 15 —*District Judge's order on reference by the Collector—Questions of conflicting claims to title—Persons claiming interest in the compensation— Apportionment construction of the term* —A Collector having acquired land under the provisions of the Land Acquisition Act (X of 1870) and a question having arisen as to the right to the compensation —each of two rival claimants claiming exclusive title to the whole of the compensation awarded —the Collector referred the question to the decision of the District Judge under s 15 of the Act The District Judge having decided the question in favour of one of the claimants the other appealed to the High Court In appeal it was contended that as the provisions of the Land Acquisition Act apply to cases in which there was a dispute as to the apportionment of compensation and not to cases in which there was no question as to apportionment and in which each of the claimants laid claim to the entire amount of the compensation the order passed by the District Judge was not appealable under the provisions of the Act as there was no question of apportionment to be determined —*Held* that looking to the language of s 15 of the Land Acquisition Act (X of 1870) which clearly contemplates the reference of such a dispute being provided for in the subsequent part of the Act and as there is no other provision in the Act made for it the term apportionment in Part IV should be given a liberal construction, as including the case where the Court has to decide between rival claimants to the entire compensation.

APPEAL—*continued*

3 ACTS—*continued*

The order of the District Judge was therefore appealable KASHIM v AMINBI
[I. L. R. 16 Bom 525

58 ———— s. 39—*Additional Judge—District Judge—Civil Procedure Code (Act XIV of 1882) s 647*—An Additional Judge appointed to hear cases under the Land Acquisition Act 1870 is a District Judge within the meaning of s 39 of the Act Under s. 647 of the Civil Procedure Code an appeal from the decision of an Additional Judge so appointed lies to the High Court IN THE MATTER OF THE APPLICATION OF PORESH NATH CHATTERJEE v SECRETARY OF STATE FOR INDIA I. L. R., 16 Calc. 31

59 ———— Land Acquisition Act (I of 1894) ss 18 19 32 and 54—*Reference by Collector to Judge as to disposal of compensation awarded for land—Appeal from Judge's order*—*Held* that an appeal will lie to the High Court from an order of the District Judge made upon a reference by the Collector under ss 18 and 19 of the Land Acquisition Act 1894 as to the disposal of compensation awarded for land taken up by Government under the Act *Balaram Bhramaratar Roy v Sham Sunder Narendra I L R 23 Calc 526* followed. *Held* also that in an appeal from the order of the District Judge above referred to the memorandum of appeal must be stamped as an appeal from an original decree SHEO RATTAN RAI v MOHRI I. L. R. 21 All. 354

60 ———— Military Courts of Request Act XI of 1841.—An appeal lay under Act XI of 1841 GUNTHAM DOSS v MOOLTAN MULL
[2 N W 229

61 ———— An appeal lay to the High Court of Judicature for the North Western Provinces from the decree of a Military Court of Request held at Morar Gwalior MOOLTAN MULL v GUNSAM DOSS 3 N W 75

62 ———— Registration Act (XX of 1866)—No appeal lies to the High Court from an order passed under the Registration Act RAMESSUR MAHATAH v KULLYANESSUREE DEBIA 9 W R 283

63 ———— ss 32 83 and 84—No appeal lay from an order by a Registrar refusing to exercise his discretion under s 32 Act XX of 1866 Such an order came neither within s 83 nor s 84 of the Act SARKIES v SANGRAM SINGH
[6 B L R. 578 note 14 W R 194

64. ———— s 52—*Order refusing to allow amount of decree to be levied by instalments*—There is no appeal from an order refusing to allow the amount due under a decree passed upon an obligation specially registered under s. 52 Act XX of 1866 to be levied by instalments and directing immediate enforcement of the decree IN THE MATTER OF THE PETITION OF RASH BEHARY BABU
[7 W R. 130

65 ———— s 52 53—*Order in execution of decree—Bond specially registered—Registration Act XX of 1866 ss 52 53*—*Held* (STUART C J dissenting) that an appeal lay from an order passed in the execution of a decree obtained under the provisions of s 53 of Act XX of 1866 upon a bond specially registered under the provisions of s 52 of that Act *Ramanand v The Bank of Bengal I L R 1 All 377* overruled *Petition of Rash Behary 7 W R 130* and *Har Nath Chatterjee v Futtick Chunder 18 W R 572* dissented from WILAYAT UN NISSA v NAJIB UN NISSA I. L. R., 1 All. 583

66 ———— s. 53—An appeal lay from an order in execution of a decree made under s 53 of Act XX of 1866 BHIKAMBHAT v FERNANDEZ
[I L R. 5 Bom. 673

67 ———— There was no appeal from a decree nor from orders passed in execution of a decree made under s 53 of Act XX of 1866 BHYRUB CHUNDER v GOLAP COOMARY
[I. L. R., 3 Calc 517

PURUS RAM v DEO KOER 4 N W., 29

68 ———— No appeal lying against a decree made under s 53 Act XX of 1866 the petition was directed to be returned with a view to its being presented to the Court if desired, by way of motion RASH BEHARY BABU v GURUDASS BABU
[7 W R. 115

69 ———— *Specially registered bond*—No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit on a bond specially registered under s. 53 Act XX of 1866 *Quære*—Whether an appeal lies at all against such an order passed in proceedings taken in execution of such a decree SRI BULLAV BHATTACHARJI v BABURAM CHATTOPADHYA
[I. L. R. 11 Calc. 169

70 ———— ss 54 55—*Repeal Effect of*—No appeal lies against orders passed in execution of decrees under Act XX of 1866 the procedure under that Act having been expressly saved by Act VIII of 1871 which repealed Act XX of 1866 RAMANAND v THE BANK OF BENGAL
[I. L. R. 1 All., 377

71 ———— s. 55—An appeal from an order or decree passed in proceedings had in execution of a decree made under s 53 of Act XX of 1866 is not barred by anything in s 55 of that Act SRIBULLAV BHATTACHARJI v BABURAM CHATTOPADHYA I. L. R. 12 Calc 511

72. ———— In cases in which s 55 of Act XX of 1866 bars an appeal it does so equally in matters of execution as in respect of the decree passed HURNATH CHATTERJI v FUTTICK CHUNDER SAMADDAR 18 W R., 512

RADHA KRISTO DUTT v GUNGA NARAYN CHATTERJEE 23 W R. 328

HURO SUNDURI DEBIA v PUNCHURAM MONDUL
[24 W R. 225

73 ———— s 84—*Order refusing to register document*—*Held* that there was no appeal to the High Court from the decision of a District Court on a petition under s 84 of Act XX of

APPEAL—*continued*

3 ACTS—*continued*

1866 to establish the right to have a document registered nor would the Court interfere with such a decision under Regulation XI of 1827 s 5 cl 2 EX PARTE DHARAMDAS BHAVANIDAS [3 Bom A C, 104

74. ———— *Order of Deputy Commissioner—District of Chota Nagpore*—An appeal under s 84 Act XX of 1866 from the order of a Deputy Commissioner in Chota Nagpore must be made to the Judicial Commissioner who exercises the powers of a Zillah Judge in all the districts of that division IN THE MATTER OF THE PETITION OF BUDHU MAHATOON 8 W R. 266

75 ———— *Order of District Court*—An order of a District Court under s. 84 of Act XX of 1866 was not appealable to the High Court SALGRAM MISSER v JANKI KOER [9 W R 122

76 ———— Decree under s 77 Registration Act 1877—*Suit to compel registration—Appeal*—An appeal lies from a decree in a suit under s 77 of the Registration Act 1877 to obtain registration of a document VISHWAMBHAR PANDIT v PRABHAKAR BHAT I L R. 8 Bom 269

77 ———— Stamp Act (X of 1862) s 17—*Order rejecting document tendered in evidence—Finality of order*—*Held* that an appeal lies to the High Court from the decision of a Judge in a Division Court rejecting a document tendered in evidence under s 17 cl 1 of Act X of 1862 on the ground that there had been an intention to evade the payment of stamp duty The point upon which the decision of the Court is to be final under s. 17 of the Stamp Act is as to what is the proper amount of stamp duty which the document ought to bear and not as to whether the Court ought or ought not to receive the document in evidence ROYAL BANK OF INDIA v HORMASJI KHOZEDJI 3 Bom O C 153

78 ———— Act XXVI of 1867—*Order as to valuation of suit*—Under Act XXVI of 1867 the decision of a Court of first instance as to the valuation of the subject matter of a suit is final ISHAN CHANDRA MOOKERJEE v LOKENATH ROY [6 B L R. Ap 12
14 W R. 451

MAFIZUDDIN v KARIMUNNISSA BIBEE [6 B L R. Ap 11
14 W R 381

79 ———— sch. B art. 11 note—*Order rejecting plaint for undervaluation—Act VIII of 1859 ss 30 and 36*—Where a plaint is rejected under s 30 of Act VIII of 1859 by the first Court on the ground that it is undervalued an appeal lies from such order under s 36 of Act VIII of 1859 and this appeal was not taken away by the note to art 11 sch B to Act XXVI of 1867 the object of which was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint COLLECTOR OF SYLHET v KALI KUMAR DUTT 7 B L R. 663 [16 W R. F B, 10

Contra MUDHUSUDAN CHUCKERBUTTY v PYMANI DASI 7 B L R 664 note [13 W R. 415

4 ARBITRATION

80 ———— Arbitration by Court—*Case referred to Court under Chapter XXVIII (ss 328—330) of the Civil Procedure Code—Appeal from a decree in the nature of an award—Case referred to the decision of a Court both parties agreeing to abide by such decision*—Where both parties to a suit referred the matters in dispute between them to the Court and agreed to abide by its decision and the Court passed a decree awarding a certain sum to the plaintiff—*Held* that no appeal lay from the decree the decision of the Court being in the nature of an arbitrator s award SAYAD ZAIN v KALABHAI I L R. 23 Bom. 752

81. ———— Judgment on award—*Civil Procedure Code 1859 ss 325 327—Finality of decree*—On the application of one party to a reference to arbitration without the intervention of a Court to have the award filed and for judgment thereon an objection of the other party that the award had been come to after the arbitrators authority had been repudiated was overruled and judgment was passed by the Munsif in accordance with the award *Held* (PAUL J dissenting) an appeal lay from the decision of the Munsif In another case the question was referred to a Full Bench whether when an award has been ordered to be filed and judgment has been given in accordance with it under s 327 of Act VIII of 1859 is such judgment open to appeal? The answer given (PAUL J dissenting) was It is open to an appellant to show that the paper which has been filed is not an award If it is an award and judgment is given in accordance with such award such judgment is final *Per* PAUL J—The judgment is final SASHTI CHARAN CHATTERJEE v TARAK CHANDRA CHATTERJEE and LALA ISWARI PRASAD v BIR BHANJAN TEWARI 8 B L R. 315 [15 W R. F B., 9

BABUR MEAH v JUMUN MEAH 2 C L R. 383

82. ———— *Finality of decree—Civil Procedure Code 1859 ss 324 and 325*—A suit in the Munsif s Court was after issues had been settled and evidence on such issues adduced by both parties referred by consent of parties to arbitration The arbitrator made his award and on the next day an order was recorded by the Munsif that the parties were to file their objections to the award in one day notwithstanding that s 324 Act VIII of 1859 allows the parties ten days for such purpose The plaintiffs, in accordance with that order filed a petition of objection to the award, and an order was endorsed by the Munsif on this petition that it should be laid before the Court with the

APPEAL—*continued*

4. ARBITRATION—*continued*

papers of the arbitrator The Munsif then gave his judgment in which he went into the evidence and overruling the objection of the plaintiffs gave a decision on the merits which decision was in accordance with the award. *Held* that such judgment though in accordance with the award was not final under s 325 of Act VIII of 1859 but was open to appeal In order to make it final it should appear that all the proceedings have been regular and the directions of Act VIII of 1859 complied with. GUNGA NARAIN GHOSE *v* RAM CHAND BOSE

[12 B L R. 48 20 W R. 311

83 ———— *Civil Procedure Code 1859 s 325*—Judgment under s 325 Act VIII of 1859 if given according to the award is final but such judgment to be final must be one in accordance with the provisions of s 325 and where the Judge gave judgment without allowing sufficient time for objections to be made to the award or for the award to be set aside the judgment was held to be not one within s 325 and therefore subject to appeal JAYMANGAL SINGH *v* MOHANRAM MARWARI

[8 B L R. 319 note 12 W R. 397

Affirmed by Privy Council JOYMUNGAL SINGH *v* MOHUNRAM MARWARI 23 W R., 429

84 ———— In a suit in the Munsif s Court seven issues were fixed for determination and the suit was then referred by agreement to three arbitrators In coming to an award the arbitrators took up specifically some of the issues framed in the Munsif s Court and declined to enter into others They determined the matter in issue between the parties and the award was signed by the three arbitrators Two of the arbitrators subjoined to the award a suggestion which if acted on would prevent the necessity of carrying out the award The Munsif dealt with this suggestion as surplusage and gave the plaintiff a decree in accordance with the award signed by the three arbitrators In appeal it was contended that the award was not a legal one and it was sought to set the decree of the Munsif asid but the Judge found that the decree was in accordance with the award and that he was precluded by s 325 from disturbing the decision of the Munsif On special appeal it was contended that the award was incomplete as all the issues were not decided and that the decree was not in accordance with the award as it did not embody the suggestion of the two of the three arbitrators *Held* that the decree was in accordance with the award and was therefore final under s 325 SARBOREE KANTO BHUTTACHARJEE *v* ANADYA KANTO BHUTTACHARJEE

[12 B L R. Ap 10 20 W R. 226

MADHUSUDAN DAS *v* ADOITO CHARAN DAS

[8 B L R. 316 note 12 W R. 85

85 ———— *Civil Procedure Code 1859 s 325*—A suit was referred by the Munsif to arbitration under s 315 Act VIII of 1859 The arbitrators were of opinion that the case of the plaintiff was fictitious but nevertheless gave an award in his favour The Munsif refused to uphold the award on the ground that the arbitrators had been guilty of misconduct in giving an award contrary to the evidence The Judge reversed their decision on the ground that the Munsif had no jurisdiction to refer to the evidence taken before the arbitrators in order to determine whether they were guilty of misconduct or not he gave judgment in accordance with the award *Held* that his decision was not final under s 325 Act VIII of 1859 the provisions of that section refer only to the Court by which the case is referred to arbitration The Munsif was entitled to refer to the evidence before the arbitrators in order to determine whether they had misconducted themselves or not PARESHNATH DEY *v* NABIN CHANDRA DUTT

[5 B L R. Ap 77 note 12 W R., 93

See BYKUNT NATH MOOKERJEE *v* PRIONATH GHOSE 22 W R. 447

86 ———— *Civil Procedure Code 1859 s 325*—Where a suit is referred to arbitration by an order of Court and the Court afterwards gives judgment according to the award made upon such reference such judgment is final by virtue of Act VIII of 1859 s 325 and no appeal lies therefrom BROJOLALL BAJ PYE *v* UMBITOLALL BAJ PYE Marsh. 163

GOUR CHUNDER BHUTTACHARJEE *v* SODOY CHUNDER NUNDEE 17 W R., 30

SURBOREE KANT BHUTTACHARJEE *v* ANADYA KANT BHUTTACHARJEE

[12 B L R. Ap 10 20 W R., 226

87 ———— *Irregular procedure in arbitration—Consent to award—Civil Procedure Code 1859 s 325*—A judgment in accordance with an arbitration award is under the express terms of s 325 Act VIII of 1859 final if the reference to arbitration has been conducted pursuant to the provisions of the Code And where the matter in dispute in a suit was referred to arbitration and the provisions of Act VIII were not strictly complied with—*Held* nevertheless that as the appellants had consented to the arbitration and to the appointment of arbitrators and took part in the proceedings and after having made objections to the award (which objections were considered by the arbitrators) they assented to the award the Principal Sudder Ameen was justified in passing a judgment in accordance with the award and that the High Court would not interfere with that judgment MISSER DEO KISHUN *v* MISSER BHUGWAN DOSS

[3 Agra 199

88 ———— *Decree in accordance with award*—No appeal lies against a decree made in accordance with an award upon a submission to arbitration in the suit RAMIREDDY NARSAREDDY *v* MUMAREDDY PAPIREDDY

[5 Mad. 404

89 ———— *Civil Procedure Code 1859 s 327*—In an arbitration case between a mahajun and his gomasta an award was made to

APPEAL—*continued*

4 ARBITRATION—*continued*

the effect that R725 were outstanding and due to the kuti of which R483 were due to the mahajun and R241 to the gomasta and that the gomasta should point out the parties owing the R483 or in default make good the amount The mahajun applied to the Subordinate Judge of Bhaugulpore under Act VIII of 1859 s 327 to file the award. The Subordinate Judge held that it was not proved that the gomasta had done as required by the award and ordered him to pay the deficit The gomasta appealed to the Judge who held that no appeal lay from the judgment of the Subordinate Judge enforcing the award. *Held* on special appeal that the Subordinate Judge's judgment decided a question of fact not determined by the award and that an appeal would lie RAMBHANJAN BHUKUT *v* SRIKISHEN BHAKAT

[2 B L R A C 260 11 W R 140

90 ———— *Civil Procedure Code 1877 ss 520 521* —Where in a suit for the filing of an award made on a private reference to arbitration the Court of first instance holding that there was no reason to remit such award to the reconsideration of the arbitrator under the provisions of s 520 of Act X of 1877 or to set it aside under s 521 of that Act did not proceed to give judgment according to such award followed by a decree but merely directed that such award should be filed —*Held* that its order was not appealable as a decree or as an order PAMADHIN *v* MAHESH I L R 2 All 471

91 ———— *Decree confirming award* —Where an award is a legal award has been made and judgment is passed in accordance therewith the judgment is final but where a question arises whether the award is a legal award or not an appeal lies from a judgment of a Court passed in accordance with such award DEBENDRA NATH SHAW *v* ALBHOY CHURN BAGCHI

[I L R 9 Calc 905 12 C L R 525

92 ———— *Civil Procedure Code 1877 s 522*—S 522 of the Code of Civil Procedure 1877 which provides that no appeal shall lie from a decree upon an award except in so far as the decree is in excess of or not in accordance with the award assumes that the award has been regularly and properly passed by arbitrators duly appointed PUGARDIN PAVUTAN *v* MOIDINSA PAVUTAN I L R 6 Mad 414

93 ———— *Civil Procedure Code (1882) s 522—Order determining validity of an award—Decree in accordance with an award* —Objection was unsuccessfully taken before a District Munsif to the validity of an award on the ground of the arbitrator being interested and a decree was passed in accordance with the award The plaintiff appealed to the High Court —*Held* that no appeal lay to the Subordinate Court as to the validity of the award. KRISHNAN CHETTI *v* MUTHU PALANDI VACHA MAKALI TEVER I L R 22 Mad 172

94 ———— *Civil Procedure Code (1882) s 522—Decree in accordance with an award* —A suit having been referred to an arbitrator he made an award and a decree was passed in accordance with it in favour of defendant On an appeal by the plaintiff it appeared that the award was *prima facie* legal and proper —*Held* that no appeal lay against the decree KOMBI ACHEN *v* LANGI ACHEN I L R 21 Mad 405

95 ———— *Civil Procedure Code s 522—Award Appeal against decree in terms of—Extension of time for presenting award—Evidence* —Where a decree purports to have been made in terms of an award under s 522 of the Code of Civil Procedure an appeal lies against it if there was no award in fact or in law SEPPU *v* GOVINDA CHARYAR I L R 11 Mad 85

96 ———— *Award Decree in accordance with—Civil Procedure Code s 522* —After issues had been framed in a suit to wind up a partnership the matter was referred to an arbitrator who made his award and with regard to certain property not part of the partnership property he referred the parties to a separate suit A decree was passed in accordance with the award —*Held* that an appeal lay against the decree passed on the award on the ground that the award was not legal but that the award was not illegal by reason of its comprising the reference of the parties to a separate suit VENKAYYA *v* VENKATAPPAYYA

[I L R 15 Mad 348

97 ———— *Award Decree in accordance with—Civil Procedure Code ss 522 525* —When an award has been filed in Court as provided by s 525 of the Code of Civil Procedure the judgment and decree based thereon must be drawn up specifically in terms of the award If the decree merely decrees in general terms the claim of one party or of the other it cannot be said that such decree is in accordance with the award and being not in accordance with the award an appeal will lie therefrom UMMI FAZL *v* RAHIM UN NISSA

[I L R 13 All 336

98 ———— *Award Decree in accordance with—Illegal award* —Where a decree has been passed in terms of an award an appeal lies only where the question is whether the award was illegal being void *ab initio* NANDRAM DALURAM *v* NEMCHAND JADAVCHAND

[I L R 17 Bom 357

99 ———— *Order confirming award—Civil Procedure Code 1877 ss 521 522* —On appeal from a decree setting aside an award the District Judge reversed the decree of the first Court and made a decree in accordance with the award. *Held* that s 522 of the Civil Procedure Code did not take away the right of second appeal against the latter decree PROHOOBUR DYAL *v* MAINA KOER 12 C L R 564

100 ———— *N W P Rent Act Reference to arbitration under* —Where the Court trying a suit under the North Western Provinces Rent Act the matters in dispute in which

APPEAL—*continued*

4 ARBITRATION—*continued*

have been referred to arbitration has refused an application to set aside the award and has decided the case in accordance with the award of the majority of the arbitrators no appeal lies from its decision FAHIM UN NISSA v AJUDHIA PRASAD

[I L R 6 All 170

101 ——— *Misconduct of arbitrators* —A judgment of a Court given in accordance with an award of arbitration is final even if there has been corruption and misconduct on the part of the arbitrators PAMANOOJRA CHOBEY v PUTMOORTA CHOBAYAN 7 W R 205

SREENATH GHOSE v RAJ CHUNDER PAUL [8 W R 171

ELAHEE BUKSH v HAJOO 14 W R 33

S C IN RE ILAHEE BUKSH 5 B L R Ap 75

102. ——— *Civil Procedure Code (1882) s 522—Grounds of appeal from a decree passed upon a judgment in accordance with an award* —*Held* that an appeal would not lie from a decree passed upon a judgment given according to an award merely because there might have been some irregularities in the procedure of the arbitrator such alleged irregularities having been considered by the Court which passed the decree and having been found by that Court not to be of such a nature as to render the award no award in law *Jagan Nath v Mann i Lal I L R 1C All 231 Bundessuri Pershad Singh v Jankee Pershad Singh I L R 16 Calc 482* and *Lachman Das v Brijpal I L R 6 All 174* referred to I AM DHAN SINGH v KARAN SINGH I. L. R. 18 All. 414

103 ——— *Civil Procedure Code (1882) ss 525 and 526—Arbitration without intervention of Court—Application for decree in terms of award—Denial of submission to arbitration and genuineness of award* —An appeal lies against a decree passed upon an award under Civil Procedure Code ss 525 and 526 when the cause shown against the filing of the award has denied the submission to arbitration and the genuineness of the award HUSANANNA v LINGANNA

[I. L. R. 18 Mad. 423

104 ——— *Civil Procedure Code (1882) ss 521 and 522—Award—Decree on judgment in accordance with an award* —Where a decree has been made upon a judgment given upon an award and is not in excess of and is in accordance with the award an appeal from such decree will lie on the ground that the so called award upon which the judgment and decree are based is from one cause or another no award in law Where an application to set aside an award on the ground of the misconduct of an arbitrator has been made under s 521 of the Code of Civil Procedure and such application has been refused after judicial determination and a decree made under s 522 of the Code which is in accordance with and not in excess of the award no appeal based upon any similar ground will lie from the decree so made But an appeal will lie in the case last mentioned where an application to set aside the award on the ground of misconduct of the arbitrator having been made the Court has passed its decree without considering such application or where the Court has not allowed sufficient time to the parties to file objections to the award *Bhagirath v Ramgholam I L R 4 All 283* approved. *Joymungul Singh Bahadoor v Mohun Ram Marwaree 23 W R 429 Nandram Daluram v Nemchand Jadavchand I L R., 17 Bom 357* and *Lachman Das v Brijpal I L R 6 All 174* referred to IBRAHIM ALI v MOHSIN ALI

[I. L. R., 18 All., 422

105 ——— *Decree in accordance with award with slight modification—Illegal award—Civil Procedure Code (1882) s 522* —In a suit which was defended by an agent (am mokhtar) on behalf of the defendant the agent applied for a reference to arbitration although he had no power to do so under the am mokhtarnamah After the submission of the award objection was made on behalf of the defendant that the agent had no authority to apply for or consent to the reference The objection was overruled by the Court and a decree made in accordance with the award with one slight modification in the defendant's favour —*Held* in answer to an objection that no appeal lay under s 522 of the Civil Procedure Code except in so far as the decree was in excess of or not in accordance with the award, that an appeal would lie if the award was shown to be illegal and void *ab initio* *Nandram Daluram v Nemchand Jadavchand I L R., 17 Bom 357* followed SATURJIT PERTAP BAHADOOR SAHI v DULHIN GULAB KOER

[I. L. R. 24 Calc., 469

106 ——— *Judgment in accordance with an award—Code of Civil Procedure (Act XIV of 1882) ss 521 and 522* —An appeal will lie against a decree given in accordance with an award under s 522 of the Code of Civil Procedure when the award upon which the decree is based is not a valid and legal award. *Debendra Nath Shah v Aubhoy Churn Bagchi I L R 9 Calc 90? Joy Prokash Lall v Sheo Golam Singh I L R 11 Cal 37 Bundessuri Pershad Singh v Jankee Pershad Singh I L R 16 Calc 482 Lachman Das v Brij Pal I L R 6 All 147* and *Venkayya v Venkatappayya I L R 15 Mad 348* referred to KALI PROSANNO GHOSE v RAJANI KANT CHATTERJEE

[I. L. R. 25 Calc 141

107 ——— *Civil Procedure Code (Act XIV of 1882) ss 525 and 526—Arbitration Award—Denial of reference to arbitration—Jurisdiction of Court to determine the factum of reference* —*Held* by the Full Bench that an order under s 525 determining that there has been no valid reference to arbitration and rejecting the application is a decree within the meaning of s 2 and an appeal lies from such order *Kali Prosanno Ghose v Rajani Kant Chatterjee I L R 25 Calc 14* followed MAHOMED WAHIDUDDIN v HAKIMAN

[I L R 25 Calc 757
2 C W N 529

APPEAL—*continued*

4 ARBITRATION—*continued*

108 ———————— *Judgment not in accordance with award* —An appeal lies from a judgment given on an arbitration award on the ground that the judgment is contrary to the award. DEB NARAIN SINGH v RAJMONEE KOONWAR [3 W R. 168

109 ———————— *Addition to award* —The addition in a judgment according to an award of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award and did not affect the decision on the matter referred was held to come within the concluding part of Act VIII of 1859 s 325 and not to affect the finality of the judgment HURO SOONDURREE DABEE v SREEDHUR BHUTTACHARJEE 17 W R 352

110 ———————— *Order varying award as to payment under decree* —An appeal will lie from a decree which varies an award by containing a direction for payment by instalments which is not contained in the award PHIRAN v BAHORAN [7 N W 367

111 ———————— *Doubt as to validity of award* —An appeal lies where the reality of an arbitration award is questioned on the ground of there having been no valid submission to arbitration IN THE MATTER OF THE PETITION OF JUNGLI RAM JUNGLI RAM v RAM HEET SAHOY [19 W R 47

112 ———————— *Judgment in accordance with award—Civil Procedure Code s 522* —*Held* that an appeal lies from a decree passed in accordance with an award, when such decree is impugned on the ground that there is no award in law or in fact upon which judgment and decree could follow under s 522 Civil Procedure Code *Joymungul Singh* v *Mohun Ram 23 W R 429* and *Bhagirath* v *Ram Golam I L R., 4 All 283* observed on. LACHMAN DAS v BRIJPAL [I. L. R. 6 All 174

113 ———————— *Civil Procedure Code 1859 s 325—Finality of decree* —Matters in dispute were referred to the arbitration of five persons of whom four made their award on 27th August 1875 On 3rd September the same arbitrators granted an application for re hearing Before the matter was re heard one of the four died and an order striking off the application was made by two of the surviving arbitrators On 21st February 1876 an application was made to the Court to have the award filed, which was opposed The Court overruled the objection and ordering the award to be filed under s 325 Act VIII of 1859 gave a decree to the plaintiffs *Held* that the award was not a valid and final award that the decree passed thereon was not final; and that an appeal would lie BOONJAD MATHOOR v NATHOO SHAHOO [I. L. R., 3 Calc. 375 1 C L R. 455

114 ———————— *Finality of decree—Civil Procedure Code (Act VIII of 1859) s 325* —A case was referred by consent to arbitration and after having been recalled into Court was again referred An award was made by the arbitrator and filed in Court The defendants then objected on the ground that they had no notice after the second reference and that they were not heard and that the arbitrator had otherwise misconducted himself These objections were disallowed by the Subordinate Judge who gave a decree in the terms of the award This decree was upheld by the Judge on appeal who however found that the arbitrator had been guilty of misconduct *Held* that if the decree of the first Court was not final under s 325 Act VIII of 1859 all that the lower Appellate Court could do was to remand the case to be dealt with on its merits but inasmuch as there had been an award and a decree thereon which was final within the terms of that section the lower Appellate Court had no jurisdiction to hear the appeal or to express any opinion on what had passed in the first Court WAZIR MAHTON v LULIT SINGH [I. L R. 7 Calc 166 8 C L R 505

115 ———————— *Judgment in accordance with award—Appeal—Defendants not all joining in reference to arbitration* —The question whether under s 522 of the Code of Civil Procedure an appeal will lie against a decree given in accordance with an award depends upon whether the award upon which the decree is based is a valid and legal award A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application) an award was passed and a decree made in accordance with such award The plaintiffs objected to the validity of the award on the ground that all the parties to the suit had not joined in referring the suit to arbitration the objection was dismissed and judgment given in accordance with the award *Held* that an appeal would lie from a decree dismissing the objection and confirming the award. JOY PRAKASH LALL v SHEO GOLAM SINGH I. L. R. 11 Calc 37

116 ———————— *Order setting aside decree upon award—Civil Procedure Code (Act XIV of 1882) s 521.*—All matters in dispute in a suit were referred to arbitration An award was duly made and filed and a decree passed in accordance with the terms thereof Subsequently on the application of the plaintiff in the suit the Court passed an order setting aside the decree and the award and ordering the case to be set down for hearing upon the ground that the proceedings in connection with the arbitration had been taken and the award had been filed without notice to the plaintiff and that although the award was alleged to have been made with the consent of the parties the plaintiff had not consented to it *Held* that no appeal lay from such order *Howard* v *Wilson I L R 4 Calc., 231* dissented from *Mothooranath Tewaree* v *Brindabun Tewaree 14 W R 3* followed. AMBICA DASI v NADYAR CHAND PAL [I. L. R., 11 Calc., 173

APPEAL—*continued*

4 ARBITRATION—*continued*

117 ——— *Civil Procedure Code (1882) s 521—Legality of order remitting award for reconsideration* — An award submitted by arbitrators to whom all matters in dispute had been referred stated that defendant has not produced any witness in support of his contention raised in issues Nos 1 2 5 and 6 hence we have only to deal with issues Nos 3 4 and 7 and dealing with those issues the arbitrators gave their finding The award was remitted on the ground that the arbitrators had not determined the issues Nos 1 and 2 5 and 6 — *Held* (1) the legality of an order remitting an award for the reconsideration of the arbitrators may be challenged on appeal against the decree ultimately passed and (2) that the award ought not to have been remitted there was no illegality on the face of it and there was a decision on the whole matter in issue between the parties *Mathooranath Tewaree v Brindaban Tewaree 14 W R 327 Ambica Das v Nadyar Chand Pal I L R 11 Calc 172 Nanok Chand v Ram Narajan I L R 2 All 181* and *Bikramjit Singh v Husaini Begam I L R 3 All 643* referred to GEORGE v VASTIAN SOURY **I L R 22 Mad 202**

118 ——— *Civil Procedure Code ss 521 and 522—Revocation of submission—Appellate decree in accordance with award* —By reason of s 582 of the Civil Procedure Code where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof and a Court of first appeal holding that the award was not open to objection upon the grounds mentioned in s 521 passes a decree strictly in accordance with the award such appellate decree is entitled to the same finality as the first Court s decree would have been under the last paragraph of s 522 and cannot be made the subject of second appeal *Pureshnath Dey v Nobin Chunder Dutt 12 W R 93* and *Roghbeer Dyal v Maina Koer 12 C L R 564* dissented from NAURANG SINGH v SADAPAL SINGH **[I L R 11 All 8**

119 ——— *Award—Application to file award Objection to—Decree on award Finality of—Private arbitration—Civil Procedure Code (Act XIV of 1882) ss 520 521 525 526* —Certain disputes between parties were referred under a written agreement to an arbitrator who in due course made his award. The plaintiffs then applied to the Subordinate Judge to have the award filed in Court under the provisions of s 525 of the Code of Civil Procedure The defendants came in and objected to the award on the following amongst other grounds —(1) That the value of the property in suit was Rs00 only and therefore that the application should have been made in the Munsif s Court and not in that of the Subordinate Judge (2) that the agreement of submission was vague and indefinite and did not clearly set out the matters in dispute The Subordinate Judge overruled the objection without taking any evidence and directed the award to be filed and a decree to be passed thereon The plaintiff appealed The defendants contended that no appeal lay and that if it did it lay to the District Judge and not to the High Court —*Held* that assuming that in a proceeding under ss 525 and 526 the Court has power to consider such objections as are mentioned in ss 520 and 521 the above objections did not fall under either section and therefore no appeal lay BINDESSURI PERSHAD SINGH v JANKEE PERSHAD SINGH **I L R 16 Calc 482**

120 ——— *Civil Procedure Code 1859 ss 327 and 325—Finality of judgment on award* —S 327 Civil Procedure Code incorporates the provision in s 325 as to the finality of the judgment given according to the award and puts the award filed under s 327 in the same position as the award filed under s 325 Where a Court files an arbitration award and passes a decree that decree is final *Semble*—The word date in s 327 does not mean the day written in the award as when it was made but the time when it is handed over to the parties so that they may be able to give effect to it SREENATH CHATTERJEE v KYLASH CHUNDER CHATTERJEE **21 W R 248**

121 ——— *Agreement to refer not providing for disagreement of arbitrators—Award by umpire and one arbitrator—Appointment of umpire by Court—Decree in accordance with award—Civil Procedure Code ss 505 523* — In an agreement to refer certain matters to arbitration which was filed in Court under s 523 of the Civil Procedure Code and on which an order of reference was made by the Court no provision was made for difference of opinion between the arbitrators by appointing an umpire or otherwise The arbitrators being unable to agree upon the matters referred the Court on the application of one of them appointed an umpire and directed that the award should be submitted on a particular date An award was made by the umpire and one arbitrator without the concurrence of the other arbitrator and submitted to the Court which passed a decree in accordance with its terms. On appeal by the defendants in the case the District Judge reversed the decree *Held* that an appeal would lie to the Judge from the decree of the first Court where there had been no legal award such as the law contemplated *Lachman Das v Brijpal I L R 6 All 174* referred to *Held* that in the present case there had been no legal award such as the law contemplated inasmuch as the agreement to refer gave the Court no power to appoint an umpire and required that the award should be made by the arbitrators named by the parties MUHAMMAD ABID v MUHAMMAD ASGHAR **[I L R 8 All 64**

122 ——— *Powers of arbitrators—Payment by instalments—Civil Procedure Code ss 518 522* —The arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant and further directed that these sums should be paid by certain instalments The plaintiff preferred objections to the award in so far as it directed payment by instalments and the Court holding that the arbitrators had no power to make such a direction modified

APPEAL—*continued*

4 ARBITRATION—*continued*

the award to that extent under s 518 of the Civil Procedure Code On appeal the District Judge while allowing the power of the arbitrators to direct payment by instalments reduced the number of instalments which had been fixed *Held* that the decree of the first Court not being in accordance with the award an appeal lay to the Judge with reference to s 522 of the Code *Per* MAHMOOD *J*—The word award used in the last sentence of s 522 of the Code must be understood to mean an award as given by the arbitrators and not as amended by the Court under s 518 The words in excess of or not in accordance with the award used in s 522 were intended to enable the Court of appeal to check the improper use of the power conferred by s 518 JAWAHAR SINGH *v* MUL RAJ

[I L R 8 All 449

123 ———— *Evidence given by party on oath proposed by opposite party—Award in accordance with such evidence—Judgment in accordance with award—Validity of award—Act X of 1877 (Civil Procedure Code) ss 520 521 522—Act X of 1873 (Oaths Act)*—The plaintiff in a suit which had been referred to arbitration offered before the arbitrator to be bound by the evidence of the defendant given on a certain oath With the arbitrator's consent the defendant accepted such offer and gave evidence on such oath The arbitrator made an award in accordance with the evidence so given The plaintiff objected to the award not on any of the grounds mentioned in ss 520 and 521 of the Civil Procedure Code but on the ground that the procedure of the arbitrator had been illegal The Court disallowed this objection and gave a judgment and decree in accordance with the award *Held* by STRAIGHT *J* that such decree being in accordance with the award was not appealable *Held* by STUART *C J* that the award not being open to objection on any of the grounds mentioned in ss 520 and 521 of the Civil Procedure Code and the decree being in accordance with the award the decree was not appealable *Held* by OLDFIELD *J* that the procedure adopted by the arbitrator being illegal not being warranted by the Oaths Act and there being in reality no award within the meaning of the Civil Procedure Code the decree therefore was appealable *Per* STUART *C J* that the procedure of the arbitrator did not require to be warranted by the Oaths Act as he was entitled by virtue of his office to proceed as he did BHAGIRATH *v* RAM GHULAM

[I L R 4 All 283

124 ———— Application to file award—*Civil Procedure Code (Act XIV of 1882) ss 525 520 and 521*—When an application is made to a Court to file an award under s 525 of the Code of Civil Procedure and an objection is made to the filing of it upon any of the grounds mentioned in s 520 or 521 the proper course for the Court to pursue is to dismiss the application and to leave the applicant to bring a regular suit to enforce the award in which all the objections to its validity may be properly tried and determined Where no such ground of objection is made to the filing of the award and the Court consequently orders it to be filed no appeal lies against that order HURRO NATH CHOWDHRY *v* NISTARINI CHOWDRANI

[I L R 10 Calc 74

125 ———— *Order rejecting appeal—Civil Procedure Code s 525—Matters to be decided upon application to file an award—Court fee on such application*—No appeal lies from an order upon an application to file an award under s 525 of the Civil Procedure Code Upon an application to file an award under s 525 of the Civil Procedure Code the Court to which the application is made has no jurisdiction to enquire whether the defendant has agreed to the terms of the instrument referring the matter to arbitration or whether the terms were obtained by fraud When such objections are made it is the duty of the Court to reject the application under s 525 and refer the parties to a regular suit BIJADHUR BHAGUT *v* MONOHUR BHUGUT I L R 10 Calc 11

PALUT BHAGUT *v* MONOHUR BHAGUT

[13 C L R 171

126 ———— Refusal to file award in Court—*Civil Procedure Code s 2 and s 525—Arbitration—Decree*—*Held* (OLDFIELD *J* dissenting) that an appeal does not lie from an order disallowing an application to file an award under s 525 of the Civil Procedure Code *Janki Tewari v Gayan Tewari I L R 3 All 427* distinguished by STUART *C J* The same case followed by OLDFIELD *J* BHOLA *v* GOBIND DAYAL I L R 6 All 186

127 ———— *Act VIII of 1859 ss 325 and 327*—An application was made under s 327 of Act VIII of 1859 to file an arbitration award and the Court after calling on the opposite party to show cause why it should not be filed rejected the application —*Held* that the case did not come within the meaning of s 327 and that the order being simply one rejecting an application to file an award was final RAJKUMAR SING *v* KALI CHARAN SING 1 B L R Ap 20 11 W R 57

128 ———— *Order rejecting application to file—Act VIII of 1859 s 327*—No appeal lies from an order rejecting an application to file an award (MITTER *J* dubitante) ROY PRIYANATH CHOWDHRY *v* PROSONNO CHUNDER ROY CHOWDHRY 2 B L R A C 249

PREONATH CHOWDHRY *v* RAMDHUN

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129 ———— *Order granting or refusing*—*Held* by the majority of the Court (PEARSON *J* dissentiente) that no appeal lies from an order passed under s 327 Act VIII of 1859 whether granting or refusing the application JOKHAN RAI *v* BUCHO RAI 3 Agra, 353

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APPEAL—*continued*

4. ARBITRATION—*continued*

130 ———— *Want of consent of parties—Private award* —An appeal on the allegation of want of consent of parties lies from the order of a lower Court under s 327 Code of Civil Procedure directing a private award of arbitration to be filed and enforced HULODHUR SANTAL *v* GONESH SANTAL 6 W R. 60

131. ———— *Order refusing application—Civil Procedure Code 1859 s 327* —No appeal lies against an order disallowing an application under s 327 of Act VIII of 1859 to file an award VYANKATESH RAMCHANDRA JOGEKAR *v* BALAJERAV BIN ANANDRAV 1 Bom 184

132 ———— *Order refusing application—Civil Procedure Code 1859 s 327* —Application to file an award under s 327 of Act VIII of 1859 should be made to the Court of the lowest grade competent to receive it and no appeal lies to High Court from an order by a District Court confirming on appeal an order of a subordinate Court declining to file such an award EX PARTE BALKRISHNA BHASAKAR GUPTE [2 Bom 96 2nd Ed. 91

133 ———— *Order refusing application—Civil Procedure Code 1859 s 327* —*Quære*—Does an appeal lie from the refusal of a Civil Court under Act VIII of 1859 s 327 to order an award to be filed? RAJ CHUNDER ROY CHOWDHRY *v* BROJENDRO COOMAR ROY CHOWDHRY [21 W R 182

134. ———— *Civil Procedure Code s 327* —The plaintiff sought to file and to enforce a private award under the provisions of s 327 Act VIII of 1859 The defendant objected that he was no party to the award The Court to which the plaintiff s application was made after enquiry into the matter overruled the objection and directed that the award should be filed but made no decree enforcing the award under the provisions of Chapter VI Act VIII of 1859 *Held* that the order was not open to appeal as it did not operate as a decree HUSSAINI BIBI *v* MOHSIN KHAN [I. L R 1 All 156

135 ———— *Order refusing to file award—Civil Procedure Code (Act X of 1877) ss 525 588* —Matters in dispute were referred to arbitration without the intervention of the Court An award was made and upon an application under s 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed and the Subordinate Judge held the objection to be good *Held* that no appeal lay SREE RAM CHOWDHRY *v* DENOBUNDHOO CHOWDHRY [I. L R. 7 Calc 490 9 C L R. 147

136 ———— **Order to enforce award**—*Civil Procedure Code 1859 s 327* —An appeal lies from an order made in execution of an arbitration award filed under the provisions of s 327 of the Civil Procedure Code VASUDEB VISHNU *v* NARAYAN JUGANNATH DIKSHIT [5 Bom. A C 129

HUMUTOOLLAH CHOWDHRY *v* HEERUN [13 W R. 63

137 ———— **Order refusing to enforce illegal award**—*Civil Procedure Code 1859 s 327* —An order refusing to enforce an obviously illegal award of arbitrators under s 327 Act VIII of 1859 is not a decree and therefore not appealable DIGAMBUREE DOSSEE *v* POORNANAND DEY 7 W R 401

138 ———— **Order enforcing award—Private award.**—An appeal lies from the order of a Court directing the enforcement of an award of arbitrators when the matter was referred to arbitration without the intervention of a Court ANUND CHUNDER SINGH *v* GOPAL CHUNDER DASS [3 W R. 154

LAKSHMAN SHIVAJI *v* RAMA FSU [8 Bom A C 17

139 ———— *Private award—Civil Procedure Code 1859 ss 325 327* —A decree passed by a Civil Court in accordance with an award of arbitrators made without the intervention of a Court of Justice under s 327 of the Civil Procedure Code (Act VIII of 1859) is not subject to appeal VISHNU BHAU JOSHI *v* RAVJI BHAU JOSHI I. L. R 3 Bom. 18

140 ———— *Civil Procedure Code s 525—Filing private award in Court—Amendment of plaint Ch XXXVII of Civil Procedure Code 1877* —By the amendment of the plaint a case under s 525 of Act X of 1877 was taken out of the scope of Chapter XXXVII of that Act *Held* that this being so the decree of the Court of first instance was appealable JUALA SINGH *v* NARAIN DAS I L. R., 3 All. 54

141. ———— **Order refusing to enforce award**—*Civil Procedure Code 1877 ss 2, 540—Filing private award in Court—Order rejecting application* —*Per* SPANKIE J —An order refusing an application to file a private award in Court is appealable as a decree *Jokhan Rai* v *Bucho Rai 3 Agra 353* and *Hussaini Bibi* v *Moshin Khan I L R 1 All 156* impugned and distinguished. *Vishnu Bhau Joshi* v *Ravji Bhau Joshi I L R 3 Bom 18* distinguished *Per* STUART C J —An order refusing an application to file a private award in Court on grounds not mentioned in ss 520 and 521 is a decree and appealable as such JANKI TEWARI *v* GAYAN TEWARI I. L. R. 3 All 427

142 ———— **Order enforcing award**—*Civil Procedure Code 1859 s 327* —Plaintiff sued for confirmation of an award delivered by arbitrators appointed by agreement of parties to decide upon his claim to a share of ancestral property Defendant objected that the award was illegal principally upon the ground that he had cancelled his submission

APPEAL—*continued*

4 ARBITRATION—*continued*

some time before the award was passed The District Judge ordered the award to be filed on the authority of *Pestonjee v Maneckjee 3 Mad 183* affirmed in *12 Moore s I A 112* The defendant appealed *Held* that no appeal lay SANTANJA v RAMARAYA 7 Mad. 257

143 ———— **Arbitration award**—*Act VIII of 1859 s 325* —An appeal lies from an order enforcing execution of an arbitration award or from a decree under s. 325 of Act VIII of 1859 WALI ALAM v BIBI NASRAN [3 B L.R. Ap 104 12 W R 50

144. ———— **Order refusing to enforce award**—*Civil Procedure Code 1877 s 622.*—When a Court has refused to file an award upon an application under s 525 Civil Procedure Code no appeal lies against such decision which is an order and not a decree but the High Court can interfere under s 622 MANA VIKRAMA v MALICHERRY KRISPEAN NAMBUDRI MAHARAJA OF CALICUT [I. L. R. 3 Mad. 68

145 ———— **Order enforcing award**—*Final order—Civil Procedure Code 1877 ss 522 526* —The power to file an award includes the power to enquire if there was a submission to arbitration and this question is concluded by the decree which is final under ss 526 and 522 of the Code of Civil Procedure MICHARAYA GURUVU v SADASIVA PARAMA GURUVU I. L. R 4 Mad 319

146 ———— **Curtailment of time for taking objection to award**—*Review* —When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court no appeal lies but a review should be granted by the Court of first instance MONJI PREMJI SET v MALIYAKEL KOYASSAN KOYA HAJI [I L R. 3 Mad 59

147 ———— **Order setting aside award**—*Misconduct of arbitrators* —An order of a Civil Court setting aside an arbitration award being an interlocutory order is not open to an appeal immediately but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator and after hearing the case on its merits makes its decree in favour of the plaintiff it is competent to the defendant to appeal against that decree MATHOORANATH TEWAREE v BRINDABUN TEWAREE 14 W R. 327

148 ———— **Setting aside award**—*Civil Procedure Code 1859 s 313* —A regular and not a summary appeal lies to set aside an award of arbitrators passed under s 313 Act VIII of 1859 RAM COOMAR CHOWDHRY v NOBIN CHUNDER CHOWDHRY [W R. 1864 Mis 33

149 ———— **Order directing submission to be filed**—*Civil Procedure Code 1859 s 326* —No appeal lies from an order directing that an agreement to submit matters in dispute to arbitration should be filed under the provisions of s. 326

APPEAL—*continued*

4 ARBITRATION—*concluded*

of the Civil Procedure Code PESTONJEE NUSSERWANJEE v MANECKJEE & Co 3 Mad. 183
Affirmed on appeal by Privy Council
[12 Moore s I A 112

150 ———— **Order refusing to file submission**—*Civil Procedure Code 1859 s 326* —An order disallowing an application under s 326 of the Code of Civil Procedure 1859 is unappealable BHUGWAN v PURMESHREE 5 N W 179

151 ———— **Application to file compromise**—*Agreement of parties—Decree on compromise—Withdrawal from compromise—Code of Civil Procedure Act XIV of 1882 s 375* —After suit filed by the plaintiff against several defendants one of whom was an infant a petition of compromise entered into between the adult parties was filed in Court The petition stated the terms of arrangement and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf Ten days after the petition of compromise was filed the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise and praying that the suit should proceed The second defendant presented a petition praying that the compromise should be recorded and a decree passed according to its terms The Court made a decree in accordance with the prayer of the second defendant s petition The first defendant appealed. *Held* that an appeal lay s. 375 of the Code of Civil Procedure merely covering cases in which all parties consent to have the terms entered into carried out and judgment entered up *Juttonsey Lalji v Pooribai I L R 7 Bom 340* questioned HARA SUNDARI DEBI v KUMAR DUKHINES UR MALIA [I L R. 11 Calc 250

5 BENGAL ACTS

152. ———— **Chota Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879) ss 37 cl. (4) 39 137 and 139**—*Rent Suit for—Appeal in cases where the aggregate amount claimed is above R100* —An appeal lies to the Judicial Commissioner and not to the Deputy Commissioner from a decree passed by the Deputy Collector in a suit for rent where the aggregate amount of rent claimed under s. 39 Bengal Act I of 1879 is above R100 PRIAG NATH LAH DEO v MURA MUNDA I. L. R. 24 Calc., 249 [1 C W N 181

153 ———————— **ss. 37 137**—*Arrears of rent and ejectment suit for* —In suits instituted under Bengal Act I of 1879 for arrears of rent and ejectment on account of non payment of arrears of rent a second appeal lies to the High Court this class of cases not being within s 137 of the same Act. RAMJAN KHAN v PAMAN CHAMAR [I. L. R. 10 Calc 89

Dissented from by the Full Bench in KHEDU MAHTO v BUDDUN MAHTO [I. L. R. 27 Calc 503

APPEAL—*continued*

5 BENGAL ACTS—*concluded*

154 ———————— ss 137 144—*Suit for rent—Intervenor under s 87—Civil Procedure Code (Act XIV of 1882) ss 622 584*—The decision of a Deputy Collector as to whether intervenor under s 87 Act I of 1874 (B C) had been actually and in good faith receiving and enjoying rent before and up to the time of the commencement of the suit is a decision upon the question whether the intervenor is entitled to collect rent thereof so it is a decision upon a question relating to some interest in land as between parties having conflicting claims thereto and under s 144 the appeal from the judgment of the Deputy Collector to the Judicial Commissioner *Held further* that an appeal lay to the High Court from the judgment of the Judicial Commissioner and therefore s 622 Civil Procedure Code did not apply LALL BHIM SINGH v GUMAN GHANJHU [1 C W N 341

6 BOMBAY ACTS

155 ——— Bombay Civil Courts Act (XIV of 1869) ss 8 and 26—*Suit for account and for balance that may be found due*—The plaintiffs sued for an account of all the business done by the defendants as their commission agents from 1874 to 1877 and prayed that whatever was found due might be awarded with interest The plaintiffs valued the relief sought approximately at R510 and this was the only valuation stated in the plaint The suit was filed in the Court of a first class Subordinate Judge who rejected the plaintiff's claim Against this decision the plaintiffs preferred an appeal to the High Court—*Held* that as the approximate amount of the claim was stated in the plaint to be R510 that must be taken to be the value of the subject matter of the suit for purposes of jurisdiction The appeal therefore lay under ss 8 and 26 of Act XIV of 1869 not to the High Court but to the District Court KHUSHALCHAND MULCHAND v NAGINDAS MOTICHAND [I L R 12 Bom. 675

156 ———————— s 36—*Valuation of suit—Jurisdiction*—Where a suit wherein the subject matter exceeded R5 000 was instituted in the Court of a Principal Sadr Amin but decided by a Subordinate Judge first class appointed under the Bombay Civil Courts Act XIV of 1869—It was held that an appeal lay direct to the High Court under s 26 of the Act RAYASANGJI SHIVSANGJI v GULAM RASUL 9 Bom. 286

157 ———————— *Application by creditor for less than R5 000 in suit for above that amount*—Although the applicant to have a sale set aside was creditor for a sum less than R5 000 still as the sale took place in a suit for a sum above R5 000 an appeal lay to the High Court KRISHNARAV VENKATESH v VASUDEV ANANT [11 Bom 15

158 ———————— *Suit for declaration of right to property under attachment*—In a suit for a declaration that the plaintiff had a right of property and possession in a certain house under attachment being in effect a suit for the removal of the attachment—*Held* that the judgment debt in respect of which the house was attached being less than R5 000 no appeal lay to the High Court MOTICHAND JAICHAND v DADABHAI PESTONJI [11 Bom., 183

APPEAL—*continued*

6 BOMBAY ACTS—*concluded*

159 ———————— *Administration suit—Suit filed in second class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree to District Court*—The plaintiff filed an administration suit in the Court of a Subordinate Judge of the second class valuing the relief claimed at R130 The Subordinate Judge found that the property in suit was worth over a lakh of rupees that the liabilities came to R5 729 and that the defendant was indebted to the estate in the sum of R15 199 He drew up a preliminary decree directing (*inter alia*) that the defendant should pay this amount into Court within two weeks Against this order the defendant appealed to the District Court The District Judge returned the appeal for presentation to the High Court on the ground that the subject matter exceeded R5 000 *Held* reversing the order of the District Judge that the appeal lay to the District Court SHET KAVASJI MANCHERJI v DINSHAJI MANCHERJI I. L. R. 22 Bom., 963

160 — — Bombay Municipal Act (Bombay Act III of 1888) ss 298 299, and 301—*Order of Chief Judge of Small Cause Court granting compensation for land—Act XII of 1888 s 3*—An appeal lies to the High Court from a decision of the Chief Judge of the Small Cause Court of Bombay granting compensation to the owner of land taken by the Municipality in case of a set back under the Municipal Act III of 1888 ss 298 299 and 301 MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v ABDUL HUQ 18 Bom., 184

7 CERTIFICATE OF ADMINISTRATION (ACTS XXVII OF 1860 AND VII OF 1889)

161 ——— Act XXVII of 1860 and Act XIX of 1841—Order granting certificate of possession—The order granting a certificate under Act XXVII of 1860 and directing possession to be given to the certificate holder under Act XIX of 1841 held not to be open to appeal or review JUSODA KOONWAR v GOUREE BYJNATH PERSHAD [I Ind Jur N S, 365

162 ———— Act XXVII of 1860—Order refusing to grant certificate—No appeal lies from an order of a District Judge refusing to grant a certificate under Act XXVII of 1860 IN THE MATTER OF THE PETITION OF VISHVANATH HARI [7 Bom A C. 71

163 ———————— Order refusing to recall certificate—No appeal lies from an order of a District Judge refusing an application to recall a certificate granted by him under Act XXVII of 1860 IN THE MATTER OF THE PETITION OF NANUK PERSHAD NANUK PERSHAD v LALLA NITYA LALL I L R. 6 Calc 40 [6 C L R 388

APPEAL—*continued*

7 CERTIFICATE OF ADMINISTRATION (ACTS XXVII OF 1860 AND VII OF 1889)—*continued*

184. ——— **Order as to form of certificate**—There are no general words in any part of Act XXVII of 1860 declaring that orders made by the Zillah Court under that Act as to the form of the certificate shall be subject to appeal to a High Court BANEEMADHUB MOOKERJEE *v* NILAMBUR BANERJEE 8 W R. 376

165 ——— **Case transferred under Act XVI of 1868 s 19**—Where an application for a certificate under Act XXVII of 1860 has been transferred by the High Court in the exercise of the power vested in it by s 19 Act XVI of 1868 from the file of a Judge to that of a Subordinate Judge the order of the latter is appealable to the Court of the Zillah Judge and only specially appealable to the High Court FUZL HOSSEIN *v* TUSUDDUCK ALI KHAN 13 W R 395

166 ——— **Enquiry or omission to make enquiry**—An appeal lies from the result of an enquiry or omission to make an enquiry under Act XXVII of 1860 TARINEE CHURN BROHMO *v* POMA SOONDUREE DOSSEE [20 W R. 312

167 ——— **Deposit of security by person entitled to a certificate**—No appeal lies under Act XXVII of 1860 on a question of the deposit of security by a person who has been declared entitled to a certificate under the Act MONMOHINEE DASSEE *v* KHETTER GOPAL DEY [I L R. 1 Calc 127
24 W R. 362

IN THE MATTER OF RUKMIN [I L R 1 All. 287

168 ——— **ss 5 6—Certificate for collection of debts**—No appeal impugning the order of a District Court requiring security from the person to whom it has granted a certificate under Act XXVII of 1860 lies under that Act to the High Court *In the matter of the petition of Rukmin I L R 1 All 287* followed IN THE MATTER OF THE PETITION OF PADDO SUNDARI DASI [I. L. R. 3 All 304

RAJ MOHINEE CHOWDHRANI *v* DINO BUNDHOO CHOWDHURY 17 W R. 566

169 ——— **s 6—Order for security**—An appeal will lie under s 6 of Act XXVII of 1860 merely for the purpose of varying the Judge's order by reducing the amount of security required by him from the party declared entitled to have the certificate When an appeal has been properly instituted under s 6 it has been ruled that the Court may alter or vary the Judge's order with respect to security SOONEA *v* RAM SUHA 2 N W 146

170 ——— **Fresh certificate**—*Appeal to High Court*—The fresh certificate contemplated by s 6 of Act XXVII of 1860 means a certificate granted to a person other than the person to whom the first certificate was granted. Where therefore a person to whom the District Court had granted a certificate under Act XXVII of 1860 appealed to the High Court and prayed for a fresh certificate on the ground that the District Court should not have made the grant of certificate conditional upon her giving security to another person—*Held* that no appeal lay to the High Court in the case NAURANGI KUNWAR *v* RAGHUBANSI KUNWAR I. L. R. 9 All. 231

171 ——— **Order of District Judge as to security**—*Insufficiency of security—Succession Act (X of 1865) s 263*—No appeal lies against an order made whether in pursuance of the directions of the High Court or otherwise by a District Judge as to security for the grant of a certificate of administration on the ground that such security is insufficient *Mon Mohinee Dassee v Khetter Gopal Dey I L R 1 Cal 127* referred to LUCAS *v* LUCAS I. L. R. 20 Calc 245

172 ——— **Act VII of 1889—Order to person holding certificate under Act XXVII of 1860 to furnish security where portion of the property held as security has been sold**—An order by which a person who had obtained a certificate under Act XXVII of 1860 was directed to furnish security to the extent to which the security originally furnished had been diminished by the sale of a portion of the property is not an order from which an appeal lies either under Act XXVII of 1860 or Act VII of 1889 ALTA SOONDARI DASI *v* SRINATH SAHA I L R. 20 Calc 641

173 ——— **ss 6 and 19—Order for security on grant of certificate**—Where a minor petitioner represented by the Court of Wards applied for a succession certificate under Act VII of 1889 and the District Court granted the certificate but ordered security to be given by the Court of Wards—*Held* that no appeal lay from the order requiring security PAPA REDDI *v* PAPI REDDI [I. L R. 19 Mad. 199

174 ——— **ss 9 and 10—Order for issue of certificate subject to security being given**—On a contested application for a succession certificate under Act VII of 1889 an order was made for the issue of the certificate on security being furnished by the applicant. The opposite party preferred an appeal against the order:—*Held* that the appeal was maintainable ARIYA PILLAI *v* THANGAMMAL I. L. R. 20 Mad. 442

175 ——— **ss 9 and 19—Order granting certificate conditional on the filing of security**—Where on an application for a certificate of succession under the Succession Certificate Act (Act VII of 1889) an order was made granting the certificate conditionally on the applicant's furnishing security—*Held* that this was not an order granting refusing or revoking a certificate within the meaning of s 19 of the Act and that therefore no appeal would lie therefrom. BHAGWANI *v* MANNI LAL I. L. R., 13 All., 214

APPEAL—*continued*

7 CERTIFICATE OF ADMINISTRATION (ACTS XXVII OF 1860 AND VII OF 1889)—*concluded*

176 ———— *Order granting certificate on the applicant s furnishing security* —The widow of a deceased person having applied for a certificate und r the Succession Certificate Act (VII of 1889) the Judge ordered the certificate to issue on the applicant s furnishing security under s 9 of the Act *Held* that such an order was not an order granting refusing or revoking a certificate within the meaning of s 19 of the Act and was therefore not appealable *Bhaguani* v *Manni Lal I L R 13 All 214* followed BAI DEVKORE v LALCHAND JIVANDAS I L R 19 Bom 790

177 ———— *Order granting certificate conditional upon giving security* —Where on an application for a certificate of succession under the Succession Certificate Act (VII of 1889) an order was made granting the certificate conditionally upon the applicant s giving security —*Held* that this was an order granting refusing or revoking a certificate within the meaning of s 19 of the Act and that therefore an appeal would lie therefrom *Bhagwani* v *Manni Lal I L R 13 All 214* dissented from RADHA RANI DASSI v BRINDABUN CHUNDRA BASACK [I L R 25 Calc 320

178 ———— ss 19 and 28 —**Order refusing certificate of heirship**—*Bombay Regulation VIII of 1827 —Practice* —An appeal lies from the order of a District Judge refusing to grant a certificate of heirship under Regulation VIII of 1827 by virtue of the provisions of s 28 of the Succession Certificate Act (VII of 1889) JAVERMAL v NAZIR OF THE DISTRICT COURT OF POONA [I L R 18 Bom 748

179 ———— *Order refusing certificate of heirship—Bombay Regulation VIII of 1827* —An appeal lies from an order refusing to grant a certificate of heirship under Regulation VIII of 1827 by virtue of s 19 of the Succession Certificate Act (VII of 1889) PANGUBAI v ABAJI [I L R 19 Bom 399

8 COSTS

180 ———— Discretion Exercise of— *Act VIII of 1859 ss 187 189 193 196* —*Held* (MACPHERSON J doubting) an appeal will lie on a mere question of costs GRIDHARI LAL ROY v SUNDAR BIBI [B L R Sup Vol 496 6 W R 187

See DOWCETT v WISE 1 W R 522

181 ———— *Decree enforcing award* —*Held* (by LOCH J) with reference to the Full Bench ruling *Gridhari Lal Roy* v *Sundar Bibi B L R Sup Vol 496 6 W R 187* that an appeal lies on the point of costs from a decree enforcing an arbitration award KHODA BUKSH v MOWLA BUKSH 14 W R 255

Contra COLLECTOR OF DACCA v KAMALA KANT MOOKERJEE 2 W R 33

CHOONI LAL MISSER v PATROO DEO 6 W R 19

APPEAL—*continued*

8 COSTS—*continued*

KEEMEE BAEE v LUCHMUN DOSS NARAIN DOSS [5 W R P C 59 1 Moore s I A 470

ACHUMBIT SINGH v KUNHYA LAL MOHAJUN [7 W R 208

182 ———— *Semble* —A regular appeal in respect of costs will not lie where *bona fide* care and discretion have been exercised on the part of the Court below DESAJI LAKHMAJI v BHAVANIDAS NAROTAMDAS [8 Bom A C 100

LUCHMUN RAM UNOOJ v WATSON [W R 1864 146

183 ———— As a general rule an appeal in respect of costs will only be entertained in cases in which no discretion has been fairly exercised upon the question and the decision of the Court below has proceeded upon mistake or misapprehension Where *bonâ fide* care and discretion have been exercised no appeal in respect of costs should be allowed and the question whether such discretion has been well or ill exercised should not be entertained KESHAVRAM KRISHNA JOSHI v BHAVANJI BIN BABAJI 8 Bom A C 142

184 ———— Where no appeal is made against the judgment passed on the subject matter of the suit the discretionary power of assessing costs given by s 187 of Act VIII of 1859 should not unless in a very exceptional case be interfered with by the Appellate Court KUPPUSVAMIAYYAN v NANNUVAYYAN 1 Mad 74

185 ———— **Order involving matter of principle** —Though the distribution of costs is under the Civil Procedure Code a matter within the discretion of the Court yet there may be circumstances which will justify an appeal upon a mere question of costs CHITHRAYIL *alias* KUNATH AHMED KOYA v IRUMANOM VITTIL KANHAMATH HAJI 3 Mad Rep 279

DANTULURI NARYANA GAJAPATI RAZU GARU v SARUPPA RAZU 3 Mad 113

186 ———— An appeal will lie on a question of costs where a matter of principle is involved SECRETARY OF STATE FOR INDIA IN COUNCIL v MARJUM HOSEIN KHAN [I L R 11 Calc 359

187 ———— *Order in discretion of Court—Special appeal* —When a question of costs is purely in the discretion of the lower Court no appeal will lie but when a matter of principle is involved an appeal will lie Where *A* was sued upon the allegation that he had instigated his co defendant *B* to refuse to deliver up a document for the recovery of which the suit was brought and where no relief was prayed as against *A* but the lower Courts awarded a decree in favour of the plaintiff directing *A* to pay half the costs of suit —*Held* that the question was one of principle and that a second appeal lay to the High Court against

APPEAL—*continued*

8. COSTS—*continued*

the decree directing it to pay such costs. BUNWARI LALL *v* CHOWDHRY DEEP NATH SINGH [I. L. R. 12 Calc. 179

188. ———— *Exercise of discretion of Court as to apportionment of costs*—An appeal as to costs will lie from an appellate decree when the Court has exercised its discretion as to costs arbitrarily and not according to general principles *Khoda Baksh v Tlahee Baksh I S D A N W (1871) p 23* and *Asa Ram v Kashmere Dass Agra H B 40* followed. DAULAT RAM *v* DURGA PRASAD I. L. R. 15 All 333

189. ———— Power of Appellate Court—*Civil Procedure Code (Act XIV of 1882) s 220*—The power given by s. 220 Civil Procedure Code to a Court to apportion costs in any manner it thinks fit is subject to the controlling power of the Appellate Court *Crishna Lal Joyshankar B L R Sup Vol 466 Janki Sundar das v Ba Kas I L R 16 Bom 66* and *Daulat Ram v Durga Prasad I L R 15 All 333* referred to. TARA PROSUNNO MUKHARJEE *v* SATISH CHANDRA SINGH 4 C W N 90

190. ———— *Appeal as to costs—Alteration of lower Court's costs on appeal*—On an appeal by the defendant on among other matters costs the Appeal Court held that even on the findings of the lower Court the order as to costs should be materially altered in favour of the defendant. SUDDASOOK KOOTARY *v* RAM CHUNDER [I. L. R. 17 Calc. 620

191. ———— *Appeal as to costs—District Judge Jurisdiction of—Procedure*—The plaintiff sued for possession of certain land in the Court of a Subordinate Judge of the second class. The Subordinate Judge returned the plaint for want of jurisdiction and ordered the plaintiff to pay a separate set of costs to each of the defendants. The plaintiff appealed to the District Judge on the grounds first that the Subordinate Judge had jurisdiction to entertain the plaint; and secondly that the order as to costs was improper. At the hearing of the appeal the plaintiff's pleader abandoned the point of jurisdiction. Thereupon the District Judge held that the appeal would not lie simply on the question of costs. He therefore confirmed the Subordinate Judge's order.—*Held* that the District Judge had jurisdiction to hear the appeal on the question of costs. VASUDEV RAMCHANDRA *v* BHAVAN JIVRAJ [I. L. R. 16 Bom. 241

192. ———— *Appeal as to costs—Civil Procedure Code (XIV of 1882) ss 220 540 and 588—Error of lower Court under misapprehension of fact and law*—Where the original Court has made an erroneous order for costs under a misapprehension of fact and law an appeal lies from such order under the Civil Procedure Code although the appellant complains of nothing else but the order for costs so erroneously made. RANCHORDAS VITHALDAS *v* BAI KASI [I. L. R. 16 Bom. 676

APPEAL—*continued*

8. COSTS—*concluded*

KHUSHAL SADASHIV *v* PUNAM CHAND JUSRUPJI [I. L. R. 22 Bom. 164

193. ———— — Party improperly brought on the record as representative of deceased judgment-debtor—*Civil Procedure Code ss 2 244 cl (c) 540*—One B D was made a party to an application for execution of a decree as one of the representatives of a deceased judgment debtor. It had been decided in a previous suit that B D was not related to the judgment debtor in such a manner that he could become his legal representative and in this proceeding also he objected that he was not such representative and his objection was allowed and the order allowing it remained unappealed and became final. The Court however while allowing the objection did not give the objector his costs.—*Held* that the objector did not by being improperly brought into the execution proceedings lose his right of appeal and further that he could under the circumstances appeal on the question of costs alone. BIHEN DAYAL *v* BANK OF UPPER INDIA I. L. R. 13 All 290

194. ———— Civil Procedure Code (Act XIV of 1882) ss 2 588—*Religious Endowments Act (XX of 1863) s 18—Order for payment of plaintiffs' costs out of the funds of the institution—Appeal on behalf of the institution*—A suit having been instituted under Religious Endowments Act 1863 s 14 *bonâ fide* in the interests of a Hindu temple the plaintiffs desired to withdraw the suit with liberty to sue again and an order was made permitting them to do so and directing that the costs be paid from the funds of the institution.—*Held* that no appeal lay against the order as to costs. RAMAKISSOOR DOSSJI *v* SHIRANGA CHARLU [I. L. R. 21 Mad. 421

195. ———— Appealable order—If an order is itself appealable as affecting the jurisdiction of the Court or the merits of the case an appeal will lie from that part of the order which relates to costs but as in the case of decrees in those cases and those cases only where the order is appealable will an appeal lie against the direction as to costs which is ancillary to the order. BALKISSEN DASS *v* LUCHMIPUT SINGH I. L. R. 8 Calc. 91

196. ———— Return of plaint—*Jurisdiction—Code of Civil Procedure ss 15 and 57*—On the hearing of a suit in the Court of first instance the Court came to the conclusion that the value of the property in dispute placed the claim beyond the jurisdiction of the Court. The suit was therefore dismissed with costs. On appeal this decision was reversed with costs on the ground that the plaint ought to have been returned to the plaintiff for presentation in the proper Court. The defendant appealed to the High Court.—*Held* that the defendant ought to have been allowed his costs in both Courts and that he was entitled to an appeal on that ground. MOSHINGAN *v* MOZARI SAJAD [I. L. R. 12 Calc. 271

APPEAL—*continued*

7 CERTIFICATE OF ADMINISTRATION (ACTS XXVII OF 1860 AND VII OF 1889)—*concluded*

176 ———— *Order granting certificate on the applicant's furnishing security* —The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889) the Judge ordered the certificate to issue on the applicant's furnishing security under s 9 of the Act *Held* that such an order was not an order granting refusing or revoking a certificate within the meaning of s 19 of the Act and was therefore not appealable *Bhagwani v Manni Lal I L R 13 All 214* followed BAI DEVKORE v LALCHAND JIVANDAS I L R. 19 Bom 790

177 ———— *Order granting certificate conditional upon giving security* — Where on an application for a certificate of succession under the Succession Certificate Act (VII of 1889) an order was made granting the certificate conditionally upon the applicant's giving security — *Held* that this was an order granting refusing or revoking a certificate within the meaning of s 19 of the Act and that therefore an appeal would lie therefrom *Bhagwani v Manni Lal I L R 13 All 214* dissented from RADHA RANI DASSI v BRINDABUN CHUNDRA BASACK [I. L. R. 25 Calc 320

178 ———— ss 19 and 28 —Order refusing certificate of heirship— *Bombay Regulation VIII of 1827 —Practice* —An appeal lies from the order of a District Judge refusing to grant a certificate of heirship under Regulation VIII of 1827 by virtue of the provisions of s 28 of the Succession Certificate Act (VII of 1889) JAVERMAL v NAZIR OF THE DISTRICT COURT OF POONA [I. L R. 18 Bom 748

179 ———— *Order refusing certificate of heirship—Bombay Regulation VIII of 1827* —An appeal lies from an order refusing to grant a certificate of heirship under Regulation VIII of 1827 by virtue of s 19 of the Succession Certificate Act (VII of 1889) RANGUBAI v ABAJI [I. L. R. 19 Bom. 399

8 COSTS

180 ———— Discretion Exercise of— *Act VIII of 1859 ss 187 189 193 196* —*Held* (MACPHERSON J doubting) an appeal will lie on a mere question of costs GRIDHARI LAL ROY v SUNDAR BIBI

[B L R. Sup Vol. 496 6 W R. 187

See DOWCETT v WISE 1 W R. 522

181 ———— *Decree enforcing award* —*Held* (by LOCH J) with reference to the Full Bench ruling *Gridhari Lal Roy v Sundar Bibi B L R Sup Vol 496 6 W R 187* that an appeal lies on the point of costs from a decree enforcing an arbitration award KHODA BUKSH v MOWLA BUKSH 14 W R. 255

Contra COLLECTOR OF DACCA v KAMALA KANT MOOKERJEE 2 W R. 33

CHOONI LAL MISSER v PATROO DEO 6 W R. 19

APPEAL—*continued*

8 COSTS—*continued*

KEEMEE BAEE v LUCHMUN DOSS NARAIN DOSS [5 W R. P C 59 1 Moore's I. A 470

ACHUMBIT SINGH v KUNHYA LAL MOHAJUN [7 W R. 203

182 ———— *Semble*—A regular appeal in respect of costs will not lie where *bona fide* care and discretion have been exercised on the part of the Court below DESAJI LAKHMAJI v BHAVANIDAS NAROTAMDAS [8 Bom A C 100

LUCHMUN RAM UNOOJ v WATSON [W R. 1864 146

183 ———— As a general rule an appeal in respect of costs will only be entertained in cases in which no discretion has been fairly exercised upon the question and the decision of the Court below has proceeded upon mistake or misapprehension Where *bonâ fide* care and discretion have been exercised no appeal in respect of costs should be allowed and the question whether such discretion has been well or ill exercised should not be entertained KESHAVRAM KRISHNA JOSHI v BHAVANJI BIN BABAJI 8 Bom A. C 142

184 ———— Where no appeal is made against the judgment passed on the subject matter of the suit the discretionary power of assessing costs given by s 187 of Act VIII of 1859 should not unless in a very exceptional case be interfered with by the Appellate Court KUPPUSVAMIAYYAN v NANNUVAYYAN 1 Mad. 74

185 ———— Order involving matter of principle —Though the distribution of costs is under the Civil Procedure Code a matter within the discretion of the Court yet there may be circumstances which will justify an appeal upon a mere question of costs CHITHRAYIL *alias* KUNATH AHMED KOYA v IRUMANOM VITTIL KANHAMATH HAJI 3 Mad. Rep 279

DANTULURI NARYANA GAJAPATI RAZU GARU v SARUPPA RAZU 3 Mad. 113

186 ———— An appeal will lie on a question of costs where a matter of principle is involved SECRETARY OF STATE FOR INDIA IN COUNCIL v MARJUM HOSEIN KHAN [I L R. 11 Calc 359

187 ———— *Order in discretion of Court—Special appeal* —When a question of costs is purely in the discretion of the lower Court no appeal will lie but when a matter of principle is involved an appeal will lie Where *A* was sued upon the allegation that he had instigated his co defendant *B* to refuse to deliver up a document for the recovery of which the suit was brought and where no relief was prayed as against *A* but the lower Courts awarded a decree in favour of the plaintiff directing *A* to pay half the costs of suit — *Held* that the question was one of principle and that a second appeal lay to the High Court against

APPEAL—

decree ... ILR 12 Calc 179

188 — ... appeal ... Akbar ... Dirtat ... Prasad

[I. L. R. 1 All. 337]

189 — Power of Appellate Court —Civil Procedure Code ... s 2 ... the Appellate Court ... Tara Prosunno Mukharjee v. ... Chandra Singh

4 C. W. N., 90

190 — Appeal as to cost —Alteration of lower Court's order as to cost —On an appeal by the defendant on, amongst other matters costs the Appeal Court held that ... on the findings of the lower Court the order as to costs should be materially altered in favour of the defendant Sudderpook Kootary v. Ram Chunder

[I. L. R. 17 Calc., 620]

191. — Appeal as to costs—District Judge ... —The plaintiff sued for possession of certain land in the Court of a Subordinate Judge of the ... class The Subordinate Judge returned the plaint for want of jurisdiction and ordered the plaintiff to pay a separate set of costs to each of the defendants The plaintiff appealed to the District Judge on the grounds first that the Subordinate Judge had jurisdiction to entertain the plaint and secondly that the order as to costs was improper At the hearing of the appeal the plaintiff's pleader abandoned the point of jurisdiction Thereupon the District Judge held that the appeal would not lie simply on the question of costs. He therefore confirmed the Subordinate Judge's order —*Held* that the District Judge had jurisdiction to hear the appeal on the question of costs Vasudev Ramchandra v. Bhavan Jivraj

[I. L. R. 16 Bom 241]

192 — *Appeal as to costs—Civil Procedure Code (XIV of 1882) ss 220 540 and 588—Error of lower Court under misapprehension of fact and law* —Where the original Court has made an erroneous order for costs under a misapprehension of fact and law an appeal lies from such order under the Civil Procedure Code although the appellant complains of nothing else but the order for costs so erroneously made Ranchhordas Vithaldas v. Bai Kasi

[I. L. R. 16 Bom 676]

APPEAL—

193 — ...

[I. L. R. 12 ... 2...]

194. — Civil Procedure Code (XIV of 1882) ss 2 ... 588 ... 1887 s 14 ... paid from the funds of the ... appeal ... the ... Kissock Dossee v. Srikanta ...

[I. L. R. ... Mad., 4..]

195 — Appealable order ... order is itself appealable as affecting the jurisdiction of the Court or the merits of the case an appeal will lie from that part of the order ... but as in the case of decrees ... in those cases only where the order ... an appeal lie against the direction as to costs which is ancillary to the order Baikie ... v. ... Miput Singh

I. L. R., 8 Calc 91

196 — Return of plaint *Jurisdiction—Code of Civil Procedure ss 15 ... —*On the hearing of a suit in the Court of first instance the Court came to the conclusion that the value of the property in dispute placed the claim beyond the jurisdiction of the Court; the suit was therefore dismissed with costs On appeal the decision was reversed with costs on the ground that the plaint ought to have been returned to the plaintiff for presentation in the proper Court The defendant appealed to the High Court *Held* that the defendant ought to have been allowed his costs in both Courts and that he was entitled to an appeal on that ground Moshingan v. Mozari Sajad

[I. L. R., 12 Calc 2..]

APPEAL—*continued*

9 DECREES

197 ——— Order returning plaint—*Civil Procedure Code 1877 s 540—Decree Form of*—The plaintiffs the widow and son respectively of N deceased claimed immoveable property inherited from his father by N and also immoveable property which had devolved upon N from his brother who had predeceased him and mesne profits of such properties The Court of first instance finding that the claim to the former property was admitted and that to the latter was not denied but resisted as barred by s 13 of Act X of 1877 and holding it not to be so barred made a decree returning the plaint to the plaintiff that they might after correcting it file it either in the Revenue Court in regard to the profits of the former property or in the Civil Court for possession of the latter property *Held* that although the claim of the plaintiffs was not either decreed or dismissed yet as the right and title asserted by them to such properties was implicitly recognised by such decree the defendants were entitled to appeal from it BEHARI BHAGAT *v* BEGAM BIBI I. L. R. 3 All. 75

198 ——— Order dismissing a suit—*Civil Procedure Code (1882) ss 2 and 136—Decree*—An order dismissing a suit under s. 136 of the Civil Procedure Code (1882) is a decree under the definition contained in s 2 of the Code and as such is appealable MANSINGJI *v* MEHTA HARIHARRAM NARHARRAM [I. L. R. 19 Bom. 307

199 ——— Order dismissing suit as not properly brought—*Right of appeal*—The plaintiffs in this suit claimed as the heirs of *G* possession from the defendants of certain lands which *G* had mortgaged to the defendants alleging that the mortgaged-debt had been satisfied from the usufruct The defendants denied the title of the plaintiffs to redeem asserting also that the mortgage-debt had not been satisfied. The Court of first instance held that the plaintiffs were entitled to redeem but dismissed the suit on the ground that the mortgage-debt had not been satisfied *Held* that the defendants were entitled to appeal the case of *Pan Kooer v Bhagwan Kooer 6 N B 19* not being applicable to this case RAM GHOLAM *v* SHEO TAHAL [I L. R. 1 All., 266

200 ——— *Right of appeal*—*M* sued *K* and *J* to enforce a right of pre-emption in respect of property which he alleged *K* had sold to *J* *K* denied that she had sold such property to *J* *J* set up as a defence that *M* had waived his right of pre-emption The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place *J* then appealed to the High Court making *K* the respondent *Held* that neither the appeal from the original decree in the suit nor the appeal from the appellate decree therein was admissible JUMNA SINGH *v* KAMARUNNISSA I. L. R. 3 All. 152

201 ——— Order on death of party—*Death of sole defendant—Survival of cause of action—Legal representative—Civil Procedure Code Act X of 1877 ss 368 372—Limitation Act (XV of 1877) sch ii art 171b*—In a suit for the recovery of land against a sole defendant the latter died before the hearing Sixty three days after the death of the defendant the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant On the 22nd of November 1880 the Court rejected the application under the provisions of Act XV of 1877 sch. ii art. 171b and ordered the suit to abate On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate but this application was also rejected on the 20th of September 1881 On appeal to the High Court—*Held* that no appeal lay against the order of the 20th of September 1881 BENODE MOHINI CHOWDHRANI *v* SHARAT CHUNDER DEY CHOWDHRY [I. L. R. 8 Calc 837
10 C L. R. 449

202 ——— Order treating as a nullity order made without jurisdiction—*Civil Procedure Code 1859 ss 102 103*—There is no appeal from the order of a Principal Sadr Ameen setting aside as a nullity the order of a Judge who acting for him in his absence had admitted an appellant as legal representative of the original plaintiff who had died *pendente lite* the Judge having no jurisdiction to make such substitution BIPRO CHUNDER JOODRAJ *v* RAMLOCHUN DEB [W R. 1864 121

203 ——— Order refusing decree holder to execute decree against legal representatives—*Civil Procedure Code 1859 ss, 210 364*—S 364 of Act VIII of 1859 prohibits an appeal from an order made on proceedings taken under s 210 of the same Act the rule applicable in such cases being analogous to that laid down by the Privy Council in *Abidunnissa Khatoon v Amirunnissa Khatoon I L R 2 Calc 327* PATGO *v* LOGOSE I. L. R. 3 Calc. 709 note

POGOSE *v* CATCHICK I. L. R. 3 Calc. 708
[2 C L. R. 278

204 ——— *Order under s 210 Civil Procedure Code 1859*—No appeal lies from an order passed under s 210 Act VIII of 1859 refusing application of decree holder to execute decree against legal representatives of the person against whom the decree was passed. LOOTFUR ALI KHAN *v* SADDA BRUT PERSHAD W R. 1864, Mis 35

205 ——— Order refusing to issue notice to representatives—*Civil Procedure Code 1859 s 217*—No appeal lies from an order passed under s 217 Act VIII of 1859 declining to issue notice as against certain alleged legal representatives of an original party SOHUDRA *v* ROY KALIHA SAHOY W R., 1864 Mis., 23

206 ——— Order directing suit to abate—*Civil Procedure Code ss 2 366 588 (18)—Death of plaintiff appellant*—An Appellate Court rejected the application of the legal representatives of a deceased sole plaintiff appellant to enter

APPEAL—continued

9 DECREES—*continued*

his name in the place of such appellant on the record on the ground that such application had not been made within the time limited by law and passed an order that the suit should abate *Held* that the order of the Appellate Court passed under the first paragraph of s. 368 of Act X of 1877 not being appli ed under cl 18 s. 588 of that Act nor being a decree within the terms of s. 2 from which a second appeal would lie was not appealable AHMAD ATA v MATA BADAL LAL L. L. R. 3 All. 814

207 ———— Abatement, Order of —*Civil Procedure Code s 366—Legal representative of a deceased Omission to apply by within sixty days—Procedure—Limitation* —An order made under s. 366 of the Civil Procedure Code (Act XIV of 1882) that a suit do abate being virtually a decree within the meaning of s. 2 is appealable BHIKAJI RAMCHANDRA v PURSHOTAM [I. L. R. 10 Bom. 220

208 ———————— *Order for abatement of suit—Civil Procedure Code (1882) s 366* —No appeal will lie from an order under the first paragraph of s. 366 of the Code of Civil Procedure such order neither amounting to a decree nor being specifically appealable under s. 588 *Bhikaji Ramchandra v Purshotam I L R 10 Bom. 220* dissented from. HAMIDA BIBI v ALI HUSEN KHAN [I. L. R. 17 All. 172

See SUBBAYYA v SAMINADAYYAR [I. L. R. 18 Mad. 496

209 ———— Order dismissing application to be brought on the record as representative of deceased party—*Civil Procedure Code (1882) ss 2 and 372*—An appeal will lie from an order dismissing an application under s 372 of the Code of Civil Procedure to be brought upon a record as representative of a deceased party such order being a decree within the meaning of s 2 of the Code INDO MATI v GAYA PRASAD [I. L. R. 19 All 142

210 ———— Order dismissing application to be made party as representative—*Civil Procedure Code (Act XIV of 1882) ss 2 372 588 cl 21* —An order disallowing an application of a person under s 372 Civil Procedure Code to be made a party defendant as assignee of a defendant is not a decree within the meaning of s 2 of the Civil Procedure Code and no appeal lies against such an order *Indo Mati v Gaya Prasad I L R 19 All 142* distinguished and explained LALIT MOHAN ROY v SHEBOCK CHAND CHOWDHRY 4 C W N 403

211 ———— Order rejecting application by assignees of interest in suit to be allowed to appeal against the decree—*Civil Procedure Code 1882 ss 372 588* —A defendant pending the suit made an assignment of his interest therein No application was made by the assignees or the assignor to have the assignees brought on the record and the suit was decided *ex parte* to the detriment of the assignees The assignees filed a memorandum of appeal claiming that they were entitled to file an appeal under the circumstances set forth in their memorandum The Court apparently treating this memorandum as an application under s 372 of the Code of Civil Procedure dismissed it *Held* that an appeal would lie from this order of dismissal as from a decree *Indo Mati v Gaya Prasad I L R 19 All 142* followed MOTI LAM v KUNDAN LAL [I. L. R. 22 All 380

212 ———— Order refusing execution of decree simultaneously against person and property—*Code of Civil Procedure (Act X of 1877) ss 2 and 230* —An order under s 230 of Act X of 1877 by a Court executing a decree refusing an application to execute it at the same time against the person and property of the judgment debtor being a decree under s 2 of the Act an appeal lies against such order and the Appellate Court is bound to consider whether the lower Court has properly exercised the discretion vested in it by s 230 of that Act CHENA PEMAJI v GHELABHAI NARANDAS [I. L. R. 7 Bom 301

213 ———— Order directing the release of judgment debtor—*Civil Procedure Code (Act XIV of 1882) ss 2 244 337* —A judgment debtor who had been arrested in execution of a decree of a District Munsif made an application for his release under Civil Procedure Code s 337 (*a*) and his application was granted —*Held* that an appeal lay against the order granting the application ABDUL RAHIMAN v MAHOMED KASIM I. L. R. 21 Mad. 29

214 ———— Security for costs order rejecting appeal in default of—*Civil Procedure Code ss 2 549* —An order under s 549 of the Civil Procedure Code rejecting an appeal because security has not been furnished as directed under that section is a decree within the meaning of s 2 from which an appeal will lie SIRAJ UL HUQ v KHADIM HUSAIN [I. L. R. 5 All 380

215 ———— Order disallowing objection to execution—*Civil Procedure Code 1877 ss 2 216—Order in execution of decree*—An order made in the execution of a decree disallowing the objections taken by the judgment debtor to execution of the decree being taken out by a transferee by assignment of the decree being the final order in a judicial proceeding and therefore a decree within the meaning of s 2 of Act X of 1877 is appealable under that Act *Thakur Prasad v Ahsan Ali I L R 1 All 668* followed MURLI DHAR v PURSOTAM DAS I. L. R. 2 All 91

216 ———— Order dismissing suit in its present form—*Civil Procedure Code 1877 ss 2 13 510—Judgment* —The plaintiff in this suit sued for the possession of certain land on the ground that he was the owner thereof in virtue of a purchase from N The defendants claimed such land as owners on the ground that it was included in a certain garden which they had previously purchased at a sale in the execution of a decree against N and they also claimed it on the ground that they were lessees thereof under a lease from N the term whereof had not expired They also set up as a defence to the suit that it had been finally determined in a former suit

APPEAL—*continued*

9 DECREES

197 ——— **Order returning plaint**—*Civil Procedure Code 1877 s 540—Decree Form of*—The plaintiffs the widow and son respectively of Y deceased claimed immoveable property inherited from his father by Y and also immoveable property which had devolved upon N from his brother who had predeceased him and mesne profits of such properties The Court of first instance finding that the claim to the former property was admitted and that to the latter was not denied but resisted as barred by s 13 of Act X of 1877 and holding it not to be so barred made a decree returning the plaint to the plaintiffs that they might after correcting it file it either in the Revenue Court in regard to the profits of the former property or in the Civil Court for possession of the latter property *Held* that although the claim of the plaintiffs was not either decreed or dismissed yet as the right and title asserted by them to such properties was impliedly recognised by such decree the defendants were entitled to appeal from it BEHARI BHAGAT *v* BEGAM BIBI I L R. 3 All 75

198 ——— **Order dismissing a suit**—*Civil Procedure Code (1882) ss 2 and 136 — Decree* —An order dismissing a suit under s 136 of the Civil Procedure Code (1882) is a decree under the definition contained in s 2 of the Code and as such is appealable MANSINGJI *v* MEHTA HARIHARRAM NARHARRAM [I L R 19 Bom. 307

199 ——— **Order dismissing suit as not properly brought**—*Right of appeal*—The plaintiffs in this suit claimed as the heirs of *G* possession from the defendants of certain lands which *C* had mortgaged to the defendants alleging that the mortgage debt had been satisfied from the usufruct The defendants denied the title of the plaintiffs to redeem asserting also that the mortgage debt had not been satisfied The Court of first instance held that the plaintiffs were entitled to redeem but dismissed the suit on the ground that the mortgage debt had not been satisfied *Held* that the defendants were entitled to appeal the case of *Pan Kooer v Bhugwant Kooer 6 W R 19* not being applicable to this case RAM GHOLAM *v* SHEO TAHAL [I L R. 1 All 266

200 ——— *Right of appeal*—*M* sued *K* and *J* to enforce a right of pre emption in respect of property which he alleged *K* had sold to *J* *K* denied that she had sold such property to *J* *J* set up as a defence that *M* had waived his right of pre emption The Court of first instance dismissed the suit on the ground that the alleged sale had not taken place *J* then appealed to the High Court making *K* the respondent *Held* that neither the appeal from the original decree in the suit nor the appeal from the appellate decree therein was admissible JUMNA SINGH *v* KAMARUNNISSA I L R. 3 All. 152

201 ——— **Order on death of party**—*Death of sole defendant—Survival of cause of action—Legal representative—Civil Procedure Code Act X of 1877 ss 368 372—Limitation Act (XV of 1877) sch ii art 171b*—In a suit for the recovery of land against a sole defendant the latter died before the hearing Sixty three days after the death of the defendant the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant On the 22nd of November 1880 the Court rejected the application under the provisions of Act XV of 1877 sch ii art 171b and ordered the suit to abate On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate but this application was also rejected on the 20th of September 1881 On appeal to the High Court—*Held* that no appeal lay against the order of the 20th of September 1881 BENODE MOHINI CHOWDHRANI *v* SHARAT CHUNDER DEY CHOWDHRY [I L R 8 Calc 837 10 C L R. 449

202 ——— **Order treating as a nullity order made without jurisdiction**—*Civil Procedure Code 1859 ss 102 703*—There is no appeal from the order of a Principal Sadr Ameen setting aside as a nullity the order of a Judge who acting for him in his absence had admitted an appellant as legal representative of the original plaintiff who had died *pendente lite* the Judge having no jurisdiction to make such substitution BIPRO CHUNDER JOOBRAJ *v* RAMLOCHUN DEB [W R. 1864 121

203 ——— **Order refusing decree holder to execute decree against legal representatives**—*Civil Procedure Code 1859 ss 210 364*—S 364 of Act VIII of 1859 prohibits an appeal from an order made on proceedings taken under s 210 of the same Act the rule applicable in such cases being analogous to that laid down by the Privy Council in *Abidunnissa Khatoon v Amirunnissa Khatoon I L R 2 Calc 327* RAYGO *v* POGOSE I L. R. 3 Calc 709 note

POGOSE *v* CATCHICK I L R. 3 Calc. 708 [2 C L R 278

204 ——— *Order under s 210 Civil Procedure Code 1859*—No appeal lies from an order passed under s 210 Act VIII of 1859 refusing application of decree holder to execute decree against legal representatives of the person against whom the decree was passed LOOTFUR ALI KHAN *v* SADDA BRUT PERSHAD W R 1864, Mis 35

205 ——— **Order refusing to issue notice to representatives**—*Civil Procedure Code 1859 s 217*—No appeal lies from an order passed under s 217 Act VIII of 1859 declining to issue notice as against certain alleged legal representatives of an original party SOHUDRA *v* ROY KALIHA SAHOY W R. 1864 Mis 23

206 ——— **Order directing suit to abate**—*Civil Procedure Code ss 2 366 588 (18)*—*Death of plaintiff appellant*—An Appellate Court rejected the application of the legal representatives of a deceased sole plaintiff appellant to enter

APPEAL—*continued*

9. DECREES—*continued*

his name in the place of such appellant on the record in the ground that such application had not been made within the time limited by law and passed an order that the suit should abate *Held* that the order of the Appellate Court passed under the first paragraph of s. 366 of Act X of 1877 not being appealable under cl. 18, s. 588 of that Act nor being a decree within the terms of s. 2 from which a second appeal would lie was not appealable AHMAD ATA *v.* MATA BADAL LAL I. L. R. 3 All. 814

207 ———— Abatement Order of —*Civil Procedure Code s. 366 Legal representative of a deceased Omission to apply within sixty days*—*Procedure Limitation* An order made under s. 366 of the Civil Procedure Code (Act XIV of 1882) that a suit had abated is virtually a decree within the meaning of s. 2 and appealable BHIKAJI RAMCHANDRA *v.* PURSHOTAM [I. L. R. 10 Bom. 220

208 ———— *Order for abatement of suit*—*Civil Procedure Code (1882) s. 366*—No appeal will lie from an order under the first paragraph of s. 366 of the Code of Civil Procedure such order neither amounting to a decree nor being specifically appealable under s. 588 *Bhikaji Ramchandra* v. *Purshotam I. L. R. 10 Bom. 220* dissented from. HAMIDA BIBI *v.* ALI HUSEN KHAN [I. L. R. 17 All. 172

See SUBBAIYA *v.* SAMINADAYYAR [I. L. R. 18 Mad. 496

209 ———— Order dismissing application to be brought on the record as representative of deceased party *Civil Procedure Code (1882) ss. 2 and 372*—An appeal will lie from an order dismissing an application under s. 372 of the Code of Civil Procedure to be brought upon the record as representative of a deceased party such order being a decree within the meaning of s. 2 of the Code INDO MATI *v.* GAYA PRASAD [I. L. R. 19 All. 142

210 ———— Order dismissing application to be made party as representative—*Civil Procedure Code (Act XIV of 1882) ss. 372, 588 cl. 21*—An order disallowing an application of a person under s. 372 Civil Procedure Code to be made a party defendant as assignee of a defendant is not a decree within the meaning of s. 2 of the Civil Procedure Code and no appeal lies against such an order *Indo Mati* v. *Gaya Prasad I. L. R. 19 All. 142* distinguished and explained LALIT MOHAN ROY *v.* SHEBOCK CHAND CHOWDHRY 4 C. W. N. 403

211 ———— Order rejecting application by assignees of interest in suit to be allowed to appeal against the decree—*Civil Procedure Code 1882 ss. 372, 588*—A defendant pending the suit made an assignment of his interest therein No application was made by the assignees or the assignor to have the assignees brought on the record and the suit was decided *ex parte* to the detriment of the assignees The assignees filed a memorandum of appeal claiming that they were entitled to file an appeal under the circumstances set forth in their

memorandum The Court apparently treating this memorandum as an application under s. 372 of the Code of Civil Procedure dismissed it *Held* that an appeal would lie from this order of dismissal as from a decree *Indo Mati* v. *Gaya Prasad I. L. R. 19 All. 142* followed MOTI LAL *v.* KUNJAN LAL [I. L. R. 22 All. 380

212 — Order refusing execution of decree simultaneously against person and property—*Code of Civil Procedure (Act X of 1877) ss. 2 and 230*—An order under s. 230 of Act X of 1877 by a Court executing a decree refusing an application to execute it at the same time against the person and property of the judgment-debtor being a decree under s. 2 of the Act an appeal lies against such order and the Appellate Court is bound to consider whether the lower Court has properly exercised the discretion vested in it by s. 230 of that Act CHENA PEMAJI *v.* GHELABHAI NARANDAS [I. L. R. 7 Bom. 301

213 ———— Order directing the release of judgment-debtor—*Civil Procedure Code (Act XIV of 1882) ss. 2, 244, 337*—A judgment-debtor who had been arrested in execution of a decree of a District Munsif made an application for his release under Civil Procedure Code s. 337 (*a*) and his application was granted—*Held* that an appeal lay against the order granting the application ABDUL RAHIMAN *v.* MAHOMED KASSIM I. L. R. 21 Mad. 29

214 — Security for costs order rejecting appeal in default of—*Civil Procedure Code ss. 2, 549*—An order under s. 549 of the Civil Procedure Code rejecting an appeal because security has not been furnished as directed under that section is a decree within the meaning of s. 2 from which an appeal will lie SIRAJ UL HUQ *v.* KHADIM HUSAIN [I. L. R. 5 All. 380

215 ———— Order disallowing objection to execution—*Civil Procedure Code 1877 ss. 2, 216*—*Order in execution of decree*—An order made in the execution of a decree disallowing the objections taken by the judgment-debtor to execution of the decree being taken out by a transferee by assignment of the decree being the final order in a judicial proceeding and therefore a decree within the meaning of s. 2 of Act X of 1877 is appealable under that Act *Thakur Prasad* v. *Ahsan Ali I. L. R. 1 All. 668* followed MURLI DHAR *v.* PURSOTAM DAS I. L. R. 2 All. 91

216 ———— Order dismissing suit in its present form—*Civil Procedure Code 1877 ss. 2, 13, 540*—*Judgment*—The plaintiff in this suit sued for the possession of certain land on the ground that he was the owner thereof in virtue of a purchase from *N* The defendants claimed such land as owners on the ground that it was included in a certain garden which they had previously purchased at a sale in the execution of a decree against *A* and they also claimed it on the ground that they were lessees thereof under a lease from *N* the term whereof had not expired They also set up as a defence to the suit that it had been finally determined in a former suit

APPEAL—*continued*

9 DECREES—*continued*

between themselves and by whom the plaintiff represented that such land was included in such garden and that consequently their title to such land as owners could not be questioned in the present suit The Court of first instance held that such land was not included in the defendants garden and they were not the owners of it but that they could not be ejected from it as they were in possession under the lease which had not expired and that the question whether such land was included in the defendants garden and they were the owners of it was not *res jud cata* It made a decree dismissing the suit in these terms Ordered that the plaintiff s claim as it stands at present be dismissed *Held* (STRAIGHT J dissenting) that the defendants were entitled, under s 540 of Act X of 1877 to appeal from such decree LACHMAN SINGH *v* MOHAN I. L. R. 2 All. 497

217 ———— Order in execution of decree—*Civil Procedure Code 1877 ss 2 3 244 5 4 588 (1)—Execution of decree—Appeal from order—Act VIII of 1859—Repeal—Pending proceedings—Act I of 1868 s 6*—The Court executing a decree for the removal of certain buildings made an order in the execution of such decree directing that a portion of a certain building should be removed as being included in the decree On appeal by the judgment debtor the Lower Appellate Court on the 22nd September 1877 reversed such order *Held per* PEARSON J on appeal by the decree-holder from the order of the Lower Appellate Court that the Lower Appellate Court s order being within the scope of the definition of decree in s 2 of Act X of 1877 was appealable under s 84 of that Act as well as under Act VIII of 1859 notwithstanding its repeal in reference to s. 6 of Act I of 1868 The Full Bench ruling in *Thakur Prasad* v *Ahsan Ali I L R., 1 All 668* followed *Held per* STUART C J dissenting from the Full Bench ruling in *Thakur Prasad* v *Ahsan Ali* that a second appeal in the case would not lie UDA BEGUM *v* IMAM UD DIN [I. L. R. 2 All. 74

218 ———— Order refusing to file in Court agreement to refer to arbitration—*Civil Procedure Code 1877 ss 2 8 625—Decree*—*Held* by the Full Bench (OLDFIELD J dissenting) that an order refusing to file in Court an agreement to refer to arbitration is not appealable *Per* OLDFIELD J that such an order is appealable *Jank Tewari* v *Cayan Tewar I L R 3 All 40?* distinguished by STUART C J and followed by OLDFIELD J DATA NAND *v* BAKHTAWAR SINGH [I. L. R. 5 All., 333

219 ———— Agreement to refer—*Civil Procedure Code 1882 ss 523 540—Decision the e n s a decree—Right of appeal*—In a suit to file an agreement to refer a matter to arbitration a decision was passed refusing a reference on the ground that the agreement to refer was not proved On the plaintiff appealing against such refusal —*Held* that a decision passed under s 523 of the Code of Civil Procedure is a decree and an appeal lies therefrom under s 540 of the Code Decision of OLDFIELD J in *Data Nand* v *Bakhtawar Singh I L R 5 All., 333* approved. GOWDU MAGATA *v* COWDU BHAGAYAN I. L. R. 22 Mad. 239

220 ———— Order rejecting memorandum of appeal—*Civil Procedure Code ss 2 54(c) and 622— Decree*—An order rejecting a memorandum of appeal as barred by limitation is a decree within the meaning of s 2 of the Civil Procedure Code *Gajraj Singh* v *Bhagwant Singh Weekly Notes All 1883 p 255* and *Dianatullah Beg* v *Wajid Ali Shah I L R 6 All 438* distinguished GULAB RAI *v* MANGLI LAL [I. L. R. 7 All., 42

221. ———— Order directing accounts to be taken—*Civil Procedure Code 1882 s 2—Interlocutory order*—In a suit for a share of the cost of a party wall built by the plaintiffs who and also the defendant were adjoining owners of plots of land under the Government for building portion of the agreement being that all disputes as to the cost and maintenance of party walls were to be settled by the Government Surveyor whose decision was to be final—the Judge SCOTT J on 11th December 188- decreed that the defendant was liable to pay half whatever sum the Government Surveyor might certify to be due for the cost and that the defendant was entitled to set off in the calculation of what was due from him the cost of any work or materials which the Government Surveyor might find had been contributed by him and the case was thereupon adjourned for the certificate of the Government Surveyor The Government Surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall but stated that on the evidence before him he was unable to decide as to the ownership of the foundations etc., of the wall The case came on again before SCOTT J who decided to take evidence on the points left undetermined by the Government Surveyor Witnesses were accordingly examined and on 11th December 1883 the Court disallowed the defendant s claim of set off and gave judgment for the plaintiff for half the sum certified by the Government Surveyor as the cost of the disputed part of the wall The defendants appealed. *Held* that the decree of the 11th December 188- was not a decree or an order directing accounts to be taken within the meaning of s 2 of the Civil Procedure Code (XIV of 188-) and that the defendants although they had not filed an appeal against it within the period allowed by the Limitation Act were entitled to appeal against it when appealing against the decree of 11th December 1883 COVERJI LUDDHA *v* MORARJI PUNJA I. L. R. 9 Bom. 183

222 ———— Order rejecting appeal as barred—*Civil Procedure Code ss 2 and 540—Presentation of appeal beyond time*—The plaintiff s claim to redeem certain lands was rejected by a Subordinate Judge on 21st December 188-. On the 1st February 1883 the plaintiff who was an agriculturist presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists Relief Act His application was rejected by that Judge who was of opinion that the plaintiff's remedy

APPEAL—*continued*

DECREES—*continued*

lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June 1883 he presented an appeal on the opening of the District Court. The District Judge dismissed the appeal as barred by limitation. On appeal to the High Court a preliminary objection being taken that a second appeal would not lie—*Held* that the order of the District Judge having the force of a decree within the meaning of s. 2 of the Civil Procedure Code Act XIV of 1882 was appealable under s. 540 of the Code. RAGHUNATH GOPAL *v.* NILU NATHAJI

[I. L. R. 9 Bom. 452

223. ——— Order allowing purchaser of decree to execute it—*Civil Procedure Code 1882 ss 2 232 244*. On an application under s. 232 of the Civil Procedure Code by the purchaser of a decree to be allowed to execute it, two of the judgment-debtors objected that the purchaser was benamidar for the other judgment-debtor and that this had paid off the decree to the original decree-holder. The Munsif found the objections against them and allowed the purchaser to execute the decree. *Held* that the question was one between the parties to the suit or their representatives relating to the execution, discharge, or satisfaction of the decree and that the decision of that question was a decree under ss 2 and 244 of the Code and therefore appealable and a second appeal lay therefrom to the High Court. AFZAL *v.* RAM KUMAR BHUTHA

[I. L. R. 12 Calc 610

224. ——— Order by Appellate Court directing that the plaint be returned—*Civil Procedure Code (Act XIV of 1882) s 2*. The plaintiff sued in the Court of the District Munsif to recover his share of family property. The amount of the property exceeded but the amount of the share claimed was within the pecuniary limit of the jurisdiction of the District Munsif, who passed a decree for the plaintiff. On appeal it was held that the suit was not within the jurisdiction of the Court. The decree accordingly was reversed and it was ordered that the plaint be returned for presentation to the proper Court. The plaintiff preferred this second appeal to the High Court—*Held* that the Lower Appellate Court had not passed a decree within the meaning of the Civil Procedure Code s. 2 and that plaintiff's remedy was not by way of a second appeal but he should have proceeded under Civil Procedure Code s. 588. CHINNASAMI PILLAI *v.* KARUPPA UDAYAN

[I. L. R. 21 Mad 234

Contra BINDESHRI CHAUBEY *v.* NANDA

[I. L. R. 3 All 456

225. ——— Order under s 18 of Act XX of 1863 granting leave to institute a suit—*Bengal N W P and Assam Civil Courts Act XII of 1887 s 20*—An order passed under s. 18 of Act XX of 1863 granting leave to institute a suit is not a decree under the Civil Procedure Code and is not an appealable order. In a suit to have the defendants removed from the office of shebaits of an endowment in which should leave to institute it be taken under s. 18 of the Act it was contended that having regard to the provisions of s. 20 of Act XII of 1887 an appeal to the High Court lay from that order. *Held* that s. 20 of Act XII of 1887 was intended only to define the Court to which an appeal lies from a decree or order of a District Judge and was not intended to define the right of appeal or the class of decrees or orders from which appeals shall lie and that no appeal lay from the order passed under s. 18 of Act XX of 1863 granting the plaintiffs leave to institute the suit. PROTAP CHANDRA MISSER *v.* BROJONATH MISSER

[I. L. R. 19 Calc. 275

226. ——— Order refusing leave to sue—*Act XX of 1863 s 18—Decree—Civil Procedure Code 1882 s 2*—An order refusing leave to institute a suit under s. 18 of Act XX of 1863 is not a decree within the meaning of s. 2 of the Civil Procedure Code and is not appealable. KAZEM ALI *v.* AZEM ALI KHAN

[I. L. R. 18 Calc 382

IN RE VENKATESWARA I. L. R. 10 Mad 98
See ANONYMOUS CASE I. L. R. 10 Mad. 98 note
DELRUS BANOO BEGAM *v.* ABDOOR RAHMAN

[21 W R. 388

227. ——— Order rejecting plaint—*Civil Procedure Code ss 2 53 54 412—Decree what it includes*—S. 412 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where in a suit the plaintiffs described themselves as adults and on the objection of the defendants an issue was raised and enquired into on the question of age—*Held* that the order passed under the circumstances although it professed to have been made under s. 412 of the Procedure Code must be treated as one rejecting the plaint or dismissing the suit on the ground that the suit was instituted by persons who were established on the evidence to be minors and was appealable as a decree within the meaning of s. 2 of the Code. The words rejecting the plaint in s. 2 are not limited to the cases provided for in ss 53 54. BENI RAM BHUTT *v.* RAM LAL DHUKRI

[I. L. R. 13 Calc 189

228. ———Order allowing withdrawal of suit with leave to bring fresh one—*Civil Procedure Code ss 373 592*—Where on appeal from a decree dismissing a suit the Appellate Court being of opinion that the plaint was informally drawn and its allegations regarding the cause of action not sufficiently specific gave the plaintiff permission under s. 373 of the Civil Procedure Code to withdraw the suit with leave to institute a fresh one—*Held* that the order of the Appellate Court was a decree within the meaning of the Civil Procedure Code and afforded a proper ground of second appeal to the High Court. GANGA RAM *v.* DATA RAM I. L. R. 8 All 82

APPEAL—*continued*

9 DECREES—*continued*

229 ——— **Order permitting withdrawal of suit**—*Civil Procedure Code (Act XIV of 1882) ss 2 373 and 588*—An order made by an Appellate Court under s 373 of the Civil Procedure Code giving permission to withdraw a suit with liberty to bring a fresh one is not a decree within the meaning of s 2 and is not appealable *Ganga Ram* v *Data Ram I L R 8 All 82* dissented from *Kalian Singh* v *Lekhraj Singh I L R 6 All 211* approved of JOGODINDRO NATH v SARUT SUNDURI DEBI

[I. L. R 18 Calc 322

DICK v DICK I. L. R. 15 All. 169

PAMA KISSOOR DOSSJI v SRIRANGA CHARLU

[I L. R 21 Mad. 421

230 ——— *Civil Procedure Code (1882) s 373*—An order under s 373 of the Code of Civil Procedure allowing a plaintiff to withdraw his suit with leave to bring another suit on the same cause of action is not appealable being neither one of the orders specified in s 588 nor a decree within the meaning of s 2 of the said Code *Kalian Singh* v *Lekhraj Singh I L R 6 All 211* and *Jogodindro Nath* v *Sarut Sunduri Dei I L R 18 Calc 322* followed *Ganga Ram* v *Data Ram I L R 8 All 82* dissented from JAGDESH CHAUDHRI v TULSHI CHAUDHRI

[I. L. R. 16 All. 19

GENDA MAL v PIRBHU LAL

[I. L. R. 17 All 97

231. ——— *Appeal from order setting aside the order of withdrawal and dismissing the suit—Civil Procedure Code (Act XIV of 1882) ss 2 373 and 588*—An order under s 373 of the Civil Procedure Code giving permission to withdraw a suit with liberty to bring a fresh one is not a decree within the meaning of s 2 of the Code and is not appealable If however such an order is appealed from and the Lower Appellate Court sets aside the order and dismisses the suit then the order of the lower Appellate Court is a decree within the meaning of s 2 of the Code and is appealable *Jogodendro Nath* v *Sarut Sundar Debi I L R 18 Calc 322* followed ABDUL HOSSEIN v KASI SAHU

[I. L. R. 27 Calc 362
4 C W N 41

232 ——— **Order rejecting application under Civil Procedure Code s 44 rule (a) and returning plaint**—*Civil Procedure Code s 44 rule (a) and s 2—Decree*—No appeal lies under any of the provisions of s 588 of the Civil Procedure Code from an order under s 44, rule (a) rejecting an application for leave to join another cause of action with a suit for the recovery of immoveable property In a plaint filed in the Court of a Subordinate Judge the plaintiff claimed to recover possession of a house together with some grain which was stored in it The plaintiff applied to the Subordinate Judge for leave under s 44 rule (a) of the Civil Procedure Code to join the claim for grain with the claim for possession of the house The Subordinate Judge refused leave and returned the plaint with directions that the plaintiff should institute two suits for recovery of the house and the grain respectively in the Court of the Munsif *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint on the ground that the plaintiff had joined a cause of action with a suit for recovery of immoveable property that although this might have been a misapplication of s 44 rule (a) of the Code its effect was to reject the plaint that such an order was a decree with reference to the definition in s 2 and was appealable as such to the District Judge and that therefore a second appeal lay in the case to the High Court and that Court was not competent to interfere in revision under s 622 BANDHAN SINGH v SOLHU

[I. L. R. 8 All. 191

233 ——— **Order directing commission of partition**—*Civil Procedure Code 1882 ss 2 396—Decree for partition—Appealable order*—Where an Appeal Court made a decree or order directing a commission to issue directed to an Amin to make a partition of certain property into certain specified shares and to allot the shares to the parties to the suit—*Held* that such order amounted to a decree within the meaning of s 2 of the Code of Civil Procedure and that though called a decree it was in fact an order in the terms of s. 396 of the Code, and was a proper order to make BEPIN BEHARI MODUCK v LAL MOHUN CHATTOPADHAYA

[I. L. R. 12 Calc 203

234. ——— **Order in partition suit leaving proceedings to be taken in execution of decree**—*Civil Procedure Code (Act XIV of 1882) ss 2 and 396—Order for partition in execution of decree*—An order under s 396 of the Code of Civil Procedure declaring the rights of the parties in a partition suit but leaving their shares to be determined in execution of the decree is a decree within the meaning of s 2 of the Code and an appeal therefore lies from such order IN THE MATTER OF THE PETITION OF BHOLA NATH DAS BHOLA NATH DASS v SONAMONI DASI

[I. L. R 12 Calc 273

235 ——— *Civil Procedure Code (Act XIV of 1882) ss 2 and 396*—The proceedings contemplated by s 396 of Act XIV of 1882 are proceedings in a suit before decree and in order to enable the Court in that suit to determine exactly the terms of that decree Where those proceedings however were left to be taken in execution of the decree the High Court treating it as an error in point of form and without deciding whether or not an objection if it had been taken would have been fatal to the proceedings dealt with the case in the same way as was done in *Gyan Chunder Sen* v *Doorga Churn Sen I L R 7 Calc 318* regarding the further proceedings taken after decree declaring the rights of the several parties as proceedings to obtain a decree on further consideration Where in a partition suit an order was made in the course of such proceedings by which the position of some of the

APPEAL—*continued*

9 DECREES—*continued*

parties to the suit was determined but no declaration was made of the exact rights of each of the parties —*Held* it was a mere interlocutory order and no appeal would lie from it *Semble*—Such an order is not a decree within the terms of s. 2 Act XIV of 1882 *Bhola Nath Dass* v *Sonamoni Dasi I L R 12 Calc.*, 2?3 distinguished BHOOBUN MONI DABEA v SHIBUT SUNDERY DABEA

[I. L. R. 12 Calc 275

236 ——— **Order declaring the rights of parties to a partition in certain specific shares**—*Civil Procedure Code (Act XIV of 1882) ss 2 396—Partition suit—Held* by the Full Bench (PRINSEP J doubting) that an order in a suit for partition which declares the specific rights of the parties and the property to be partitioned decides that the suit must be decreed as after such an order the suit could not be dismissed by the Court by which it was made and is therefore an order which adjudicates upon the rights claimed and the defence set up in the suit and which as far as the Court expressing it is concerned decides the suit within the definition of a decree in s 2 of the Civil Procedure Code and is therefore appealable as a decree DULHIN GOLAB KOER v RADHA DULARI KOER I. L. R. 19 Calc 463

237 ——— **Provisional decree**—*Suit for partition—Form of decree—Civil Procedure Code (1882) ss 2 215 215A and 540*—In a suit for partition of family property a decree was passed declaring the share to which the plaintiff and some of the defendants were entitled in the family property but reserving all other questions involved in the suit —*Held* that the decree was a provisional decree and was subject to appeal but that it was irregular in form in that it should have contained declarations as to all the rights and liabilities which had been adjudicated on and directions as to the accounts and inquiries remaining to be taken and made KRISHNASAMI AYYANGAR v RAJAGOPALA AYYANGAR

[I. L. R. 18 Mad. 73

238 ——— **Order declaring the rights of parties to a partition suit in certain specific shares**—*Civil Procedure Code (1882) ss 2 and 591*—In a suit for partition the Court of first instance (the Munsif) on the 28th of February 1893 passed the following order — Plaintiff is entitled to a moiety of the lands described in the plaint and to a decree thereto The lands set out in the plaint will therefore be divided into two equal shares by a Civil Court Amin and when that is done one of these shares will be decreed to plaintiff with costs of the suit On the 30th June 1893 the Munsif decreed the suit in accordance with the report of the Amin On the 11th August 1893 the defendants filed an appeal from the final decree to the District Judge and questioned the legality of the order of the 28th February 1893 :—*Held* that the order of the 28th February 1893 declaring the rights of parties to a partition in certain specific shares was a decree within the meaning of s 2 of the Code of Civil Procedure and therefore appealable *Dulhin Golab Koer* v *Radha Dulari Koer I L R 19 Calc 463* followed The defendant not having filed an appeal from that order within thirty days from its date (*see* art 15? of sch. II of the Limitation Act) were not at liberty to question the correctness of the said order an appeal from it being then barred by limitation BOLORAM DEY v RAM CHUNDRA DEY

[I. L. R. 23 Calc 270

239 ——— **Order appointing commission to effect partition after preliminary decree**—*Interlocutory order—Effect of not appealing from order—Civil Procedure Code (1882) ss 2 244 and 591*—*Held* by the majority of the Full Bench (O'KINEALY MACPHERSON TREVELYAN and BANERJEE JJ) that an order passed in a suit for partition subsequently to the preliminary decree appointing a commission to make the partition is not an order in execution and therefore is not appealable under s 244 of the Civil Procedure Code It is an interlocutory order pending the suit which has not been finally decided and the appellant may take objection to it in an appeal against the final decree MACLEAN C J thought it unnecessary under the circumstances to decide the point JOGODISHURY DEBEA v KAILASH CHUNDRA LAHIRY

[I. L. R. 24 Calc 725
1 C W N 374

240 ——— **Order directing accounts to be taken**—*Civil Procedure Code (1882) ss 2 and 591—Suit for dissolution of partnership and an account—Omission to appeal from preliminary order—Limitation*—The right of appeal given by Act XII of 1879 in making an order directing accounts to be taken within the definition of a decree and thus giving an appeal in a preliminary stage of a suit for dissolution of a partnership did not alter the existing law which allowed an appeal against such an order on the termination of the trial that is in the final decree In a suit for dissolution of partnership and an account the Munsif on the 29th April 1893 passed an order declaring the shares of the parties and directing them to render accounts stating that this must be done within fifteen days from this date after which the final order will be passed and referred the case to a Commissioner to take the accounts On the 31st May 1893 the Munsif decreed the suit and made defendants Nos 1 and 2 liable to pay certain sums of money in accordance with the report of the Commissioner On the 14th July 1893 defendant No 1 filed an appeal to the District Judge in which he questioned the correctness of the preliminary order of the Munsif making him liable as a partner *Held* that the order of the District Judge allowing the plea of defendant No 1 and finding that he was not a partner was right though no appeal against the preliminary order had been filed within the period of limitation BISWA NATH CHARI v BANI KANTA DUTTA I. L. R 23 Calc 406

241 ——— **Order by Appellate Court remitting case to Original Court to pass decree upon award**—*Civil Procedure Code (Act XIV of 1882) s 2*—An appeal was preferred against

APPEAL—*continued*

9 DECREES—*continued*

a decree of an Original Court dismissing a suit and the Appellate Court sent the case back for the purpose of certain evidence being taken and certified to it Pending that being done the parties applied to the Appellate Court to refer the case to arbitration and that Court referred that application to the Original Court for disposal although the case was still pending on its own file for disposal Subsequently another application was made to the Original Court to refer the case to arbitration and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days On the 12th September as the award had not been sent in the Original Court passed an order recalling the record and subsequently the award of the arbitrator dated the 12th September was filed The Original Court thereupon forwarded the record to the Appellate Court for its decision Objections were taken to the award but overruled and the Appellate Court passed an order directing the case to be sent back to the Original Court with orders to pass a formal decree in accordance with the award of the arbitrator *Held* that a second appeal lay against the last mentioned order inasmuch as it amounted to a decree under the provisions of s 2 of the Civil Procedure Code BHUGWAN DAS MARWARI *v* NUND LALL SEIN I L R 12 Calc 173

242 ——— **Order disallowing objections by defendant**—*Civil Procedure Code 1882 ss 556 584*—Where a portion of the plaintiff s claim was disallowed by the first Court and the plaintiff appealed to the Subordinate Judge from the portion of the decree which refused part of his claim and the defendant filed a memorandum of objections under s 561 of the Civil Procedure Code the Judge decreed the plaintiff s appeal and disallowed the defendant s objections —*Held* in an appeal by the defendant on a preliminary objection taken by the respondent that a second appeal lay from so much of the decree of the Subordinate Judge as disallowed the objections filed by the appellant under s 561 of the Code of Civil Procedure GANAPATI *v* SITHARAMA [I L R 10 Mad 292

243 ——— **Civil Procedure Code 1882 ss 232 244**—*Assignment of decree—Validity of transfer —Registration of transfer*—The holders of a decree for the sale of mortgaged property transferred the same to *M* by instruments which were registered at a place where a small portion only of the property was situate Subsequently *M* transferred the decree to other persons and the co transferees applied under s 232 of the Civil Procedure Code to have their names substituted for those of the original decree holders The judgment debtor opposed the application on the grounds that *M*'s name had not been substituted for the names of the original decree holders who had transferred to him and that the transfers to *M* were inoperative as the instruments of transfer had not been registered at the place where the substantial portion of the mortgaged property was situate in accordance with s 28 of the Registration Act (III of 1877) It appeared that no notice had been issued to *M* under s 232 of the Civil Procedure Code, that he was dead and that his legal representatives had not been cited as required by law The application was allowed by the Courts below —*Held* that the matter involved questions arising between the parties to the decree or their representatives within the meaning of s 244 (*c*) of the Code and that the order allowing the application was therefore a decree within the definition of s 2 and was appealable as such GULZARI LAL *v* DAYA RAM I L R 9 All 46

244 ——— **Civil Procedure Code, ss 244 411**—*Application by Collector in pauper suit —Court fees Recovery of by Government—Question between parties to suit —Held* that a Collector applying on behalf of Government under s 411 of the Civil Procedure Code for recovery of Court fees by attachment of a sum of money payable under a decree to a plaintiff suing *in formâ pauperis* might be deemed to have been a party to the suit in which the decree was passed within the meaning of s 244 (*c*) of the Code and that an appeal would therefore lie from an order granting such application JANKI *v* COLLECTOR OF ALLAHABAD I L R 9 All 64

245 ——— **Application for permission to sue as a pauper**—*Rejection of application on the ground that it had been withdrawn—Civil Procedure Code s 2 —Held* that an order rejecting an application for permission to sue as a pauper and striking the case off the Court s file on the ground that the applicant had previously withdrawn the application and entered into a new contract with the defendants was a decree within the meaning of s 2 of the Civil Procedure Code and appealable as such BALDEO *v* GULA KUAR [I L R 9 All 120

246 ———**Order rejecting stay of execution**—*Civil Procedure Code 1882 ss 2 545*—An order by a District Judge under s 545 of the Civil Procedure Code (Act XIV of 1882) refusing to stay execution is a decree as defined in s 2 and is therefore appealable MUSAJI ABDULLA *v* DAMODAR DAS [I L R 12 Bom 279

247 ——— **Civil Procedure Code ss 2 54**—*Dismissal of suit for insufficient Court fee on plaint—Court Fees Act (VII of 1870) s 12*—The Court of first instance being of opinion that the plaint bore an insufficient Court fee and the plaintiff not making good the deficiency dismissed the suit after recording evidence but without entering into the merits On appeal the lower Appellate Court held that the Court fee was sufficient and remanded the case for trial on the merits —*Held* that the first Court s disposal of the suit must be treated as being under s 54 of the Civil Procedure Code and was therefore a decree within the meaning of s 2 and appealable as such and that such appeal was not prohibited by s 12 of the Court Fees Act *Ajoodhya Pershad v Gunga Pershad I L R 6 Calc 249* and *Annamalai Chetti v Cloete I L R 4 Mad 204* referred to MUHAMMAD SADIK *v* MUHAMMAD JAN I L R 11 All 91

248 ———**Order deciding point of law arising incidentally**—*Civil Procedure Code*

APPEAL—*continued*

9 DECREES—*continued*

(Act XIV of 1882) s 2—Decree—An order merely determining a point of law arising incidentally or otherwise in the course of a proceeding for determining the rights of parties seeking relief is not a decree within the meaning of s. 2 of the Civil Procedure Code and is not appealable Where the judgment-creditor after satisfaction entered upon a compromise applied for execution on the ground of the compromise having been obtained from him by fraud and the Court below being of opinion that the remedy of the judgment-creditor was by a proceeding in execution and not by a regular suit ordered the case to be tried on its merits —*Held* that no appeal lay from such an order BEHARI LAL PUNDIT v KEDAR NATH MULLICK

[I. L. R. 18 Calc 469

249 ———— Civil Procedure Code 1882 s 2—*Rent Recovery Act (Madras Act VIII of 1865) s 27 Order under—Decree*—An order made under the Madras Rent Recovery Act s. 27 is not a decree within the meaning of the Civil Procedure Code s. 2 PERUMAL v RAJAGOPALA

[I. L. R 13 Mad. 248

250 ———— Order dismissing application to certify adjustment of decree—*Civil Procedure Code ss 2 258 559*—*Semble*—An appeal lies against an order dismissing an application made under the Civil Procedure Code s 258 that the adjustment of a decree be recorded as certified such order being a decree within the meaning of s 2 of the Code LINGAYYA v NARASIMHA

[I. L. R. 14 Mad. 99

251. ———— Order refusing to certify adjustment of decree out of Court—*Civil Procedure Code (1882) ss 2 244 and 258*—An appeal will lie from an order under s 258 of the Code of Civil Procedure refusing an application to record an adjustment of a decree made out of Court Such an order is one determining a question in execution of a decree within s 244 and is therefore a decree within the meaning of s. 2 of the Code *Lingayya v Narasimha I L R 14 Mad 99* and *Ranji v Bhai Harjivan I L R 11 Bom 57* cited JAMNA PRASAD v MATHURA PRASAD

[I L. R. 16 All 129

252 ———— Order refusing to certify—*Payment to decree holder out of Court—Civil Procedure Code (1882) ss 244 and 258*—An order under s 258 of the Code of Civil Procedure as to payment under a decree is appealable under s 244 as it falls under the definition of a decree no separate suit lies since the question is *res judicata* between the parties GURUVAYYA v VUDAYAPPA

[I. L R. 18 Mad. 26

253 ———— Order absolute for foreclosure—*Transfer of Property Act (IV of 1882) s 87—Execution of decree—Practice—Civil Procedure Code ss 2 244*—The order mentioned in s. 87 of the Transfer of Property Act (IV of 1882) is an order in execution of the substantive foreclosure decree and is appealable as a decree under s 244 read with s. 2 of the Civil Procedure Code upon the stamp payable in respect of such orders So *held* by the Full Bench EDGE *C.J* doubting Where an appeal has been erroneously presented to the High Court as a first appeal from an order the Court will not convert it into a first appeal from a decree under s 244 read with s 2 of the Civil Procedure Code KEDAR NATH v LALJI SAHAI

[I. L. R. 12 All. 61

As to latter portion *see* SANT LAL v SRIKISHEN

[I. L. R. 14 All. 231

254. ———— Civil Procedure Code s 2—*Decree Definition of*—An order of a District Judge returning a memorandum of appeal to be presented in the proper Court on the ground that the value of the suit is beyond the pecuniary limits of his jurisdiction is not a decree within the meaning of s 2 of the Civil Procedure Code MAHABIR SING v BEHARI LAL

I. L. R. 13 All 320

255 ———— Order dismissing application for participation in assets—*Civil Procedure Code ss 2 244 295*—No appeal will lie from an order under s 295 of the Code of Civil Procedure dismissing on the ground that the decree was barred by limitation a decree holder's application to share in the assets realized under another decree against the same judgment debtor Such an order cannot be regarded as a decree under s 244 read with s 2 of the said Code KASHI RAM v MANI RAM

[I. L. R. 14 All 210

256 ———— Transfer of Property Act s 87 order under—*Civil Procedure Code ss 2 244 and 622—Superintendence of High Court*—An order under s 87 of Act IV of 1882 extending the time for payment of the mortgage money by a mortgagor is a decree within the meaning of ss 2 and 244 of the Code of Civil Procedure 1882 and an appeal will lie from it An application will therefore not lie under s 622 of that Code for revision of such order RAHIMA v NEPAL RAI

[I. L. R. 14 All. 520

257 ———— Order rejecting an appeal—*Civil Procedure Code ss 2 582*—An intending appellant executed in favour of two vakils a vakalatnama it was accepted only by one of the vakils and he presented the appeal The appeal was placed on the file by the District Judge but on its coming on for disposal before the Subordinate Judge he held that it had not been duly presented and made an order rejecting it *Held* that an appeal lay against the above mentioned order as being a decree within the meaning of s 2 of the Code of Civil Procedure AYYANNA v NAGABHOOSHANAM

[I. L. R. 16 Mad. 285

258 ———— Order under Civil Procedure Code (1882) s. 543 rejecting memorandum of appeal on account of scandalous matter therein.—A memorandum of appeal presented to a District Court alleged *inter alia* actual partiality against the Judge whose decree was in question The memorandum was returned for amendment on the ground that it contained language disrespectful to the Court of first instance The appellant's

APPEAL—*continued*

9 DECREES—*continued*

pleader presented the appeal memorandum unamended, stating he wished to rely in the appeal on the passages objected to and asking that the Court would if necessary strike them out The District Judge there upon rejected the memorandum of appeal under Civil Procedure Code s 543 It appeared that the objec tionable portions of the memorandum were separable from the rest —*Held* that an appeal lay to the High Court against the order rejecting the appeal to the District Court ZAMINDAR OF JUNI v BENNAYYA

I. L. R. 22 Mad. 155

259 ——— **Order dismissing an ap peal for default**— *Decree Definition of— Civil Procedure Code (1882) ss 2 and 556* —An order dismissing an appeal for default under s 556 of the Civil Procedure Code does not fall within the definition of decree in s 2 and there is no appeal from such order *Ram Chandra Pandurang Naik v Madhav Purushottam Naik I L R 16 Bom 23* dissented from JAGARNATH SINGH v BUDHAN

I. L. R 23 Calc 115

260 ——— *Decree de finition of—Civil Procedure Code (1882) ss 2 and 556* —An order dismissing an appeal for default is not a decree within the definition in s 2 of the Civil Procedure Code (1882) and no appeal lies there from *Jagarnath Singh* v *Budhan I L R 23 Calc 115* followed. *Mansab Ali* v *Nihal Chand I L R 15 All 359* referred to ANWAR ALI v JAFFER ALI I. L. R. 23 Calc., 827

261. ——— **Order rejecting appeal on default in furnishing security for costs**— *Civil Procedure Code (1882) ss 2 and 549* —An order rejecting an appeal under s. 549 of the Code of Civil Procedure is not appealable either as an order or as a decree *Siraj ul Huq* v *Khadim Hussain I L R., 5 All 380* overruled LEKHA v BHAUNA

I. L. R. 18 All. 101

262. ——— **Appeal against order re jecting an insufficiently stamped appeal**— *Civil Procedure Code (Act XIV of 1882) s 2* —An appeal petition having been presented bearing an insufficient Court fee stamp was returned to the appellant After the period of limitation had expired it was presented again bearing a sufficient stamp together with a petition that it be received The Appellate Court made an order refusing to admit the appeal —*Held* that the order was not a decree and therefore that no appeal lay to the High Court VENKATARAYADU v RANGAYYA APPA RAO

I. L. R. 21 Mad. 152

263 ——— **Application for leave to sue in forma pauperis**—*Decree—Civil Procedure Code (1882) s 409* —*Held* that no appeal will lie from an order rejecting an application for leave to appeal *in forma pauper* s *Baldeo* v *Gula Kuar I L R 9 All 129* and *Lekha* v *Bhauna I L R., 18 All 101* referred to. THE SECRETARY OF STATE FOR INDIA v JILLO I. L. R 21 All 133

APPEAL—*continued*

9 DECREES—*concluded*

264. ——— **Decree on compromise extending beyond scope of suit**—*Civil Procedure Code (1882) s 375* —In a suit for the parti tion of a zamindari the parties effected a compro mise in writing which provided *inter alia* for certain reliefs which could only have been given by the Court in a suit based upon a different cause of action The compromise was presented in Court and a decree was passed embodying the whole of its terms —*Held* that an appeal lay against the decree A decree under s 375 of the Civil Procedure Code is only final so far as it relates to so much of the subject matter of the suit as is dealt with in the com promise VENKATAPPA NAYANIM v THIMMA NAYANIM I. L. R. 18 Mad. 410

265 ——— **Order dismissing applica tion for removal of a trustee**—*Civil Procedure Code (1882) s 2—Trusts Act (II of 1882) ss 53 60 61 and 74* —No appeal will lie from an order dismissing an application for the removal of a trustee such order not being a decree within the meaning of s 2 of the Code of Civil Procedure and not being otherwise appealable WILSON v MACAFEE

I. L. R., 19 All, 131

266 ——— **Final order in the execu tion department**—*Appealable order—Civil Procedure Code ss 2 540 588* —An order of the District Court in execution proceedings limiting the recovery of mesne profits to three years from 12th November 1887 is in the nature of a final decree as defined by s 2 of the Civil Procedure Code and is appealable under s 540 BHUP INDAR BAHADUR SINGH v BIJAI BAHADUR SINGH

I. R 27 I A., 209

10 DEFAULT IN APPEARANCE

267 ——— **Order refusing to issue fresh summons after dismissal**—*Civil Pro cedure Code 1859 s 110—Order refusing to issue fresh summons on plaint* —Where a suit is dismissed under s 110 Act VIII of 1859 upon default in appearing made by both parties no appeal lies from a refusal by the Court to issue a fresh summons upon the plaint already filed. LOKE NATH SAHOO v TUKEER SINGH Marsh. 630

268 ——— **Order rejecting applica tion to sue as a pauper**—*Civil Procedure Code 1859 s 310* —There is no appeal open to a pauper when his application to sue as pauper is rejected for default Where there has been no refusal under s 310 Act VIII of 1859 the applicant may revive his application for leave to sue as a pauper BHOJ SINGH v MAHA KOONWER 3 Agra Mis. 1

269 ——— **Order dismissing suit for non appearance after adjournment**—*Civil Procedure Code 1877 s 540 and ss 102 and 103* —Nothing remained to be done in a suit except to hear arguments for which a time had been appointed Neither the plaintiff nor his pleader appeared at the appointed time The Court consequently dismissed the suit *Held* that its decree was appealable under

APPEAL—*continued*

10 DEFAULT IN APPEARANCE—*continued*

s. 540 of Act X of 1877 and the Lower Appellate Court should have entertained the appeal and disposed of it with reference to the provisions of s 56 and ss. 102 and 103 were not applicable to the circumstances LAL CHAND v MATHURA PRASAD [I. L. R. 3 All. 292

270 ——— *Civil Procedure Code ss 98 99 102 108* —A District Munsif struck a case off the file of his Court on neither party appearing Subsequently on an application by the plaintiffs the case was restored. The order of restoration was reversed by the District Judge *Held* (1) that the order to strike off the case was illegal; (2) that assuming that the case was dismissed no appeal lay to the District Judge whose order was accordingly made without jurisdiction ALWAR v SESHAMMAL [I. L. R. 10 Mad. 270

271. ——— *Civil Procedure Code ss 102 103—Dismissal of suit for non appearance of plaintiff* —S 103 of the Civil Procedure Code does not take away the remedy of appeal from a decree dismissing a suit under s 102 *Lal Singh v Kunjan I L R., 4 All 387 Ajudhia Prosad v Balmukand I L R 8 All 354* and *Partab Rai v Ram Kishen Weekly Notes All 1883 p 171* referred to ABLAKH v BHAGIRATHI I. L. R. 9 All. 427

272. ——— Order dismissing suit in adjourned hearing for non appearance of plaintiff—*Civil Procedure Code (1882) ss 102 157 and 158* —An order dismissing a suit at an adjourned hearing for non appearance of the plaintiff and his pleader is an order under s 157 and its consequential section (102) and not under s 158 of the Civil Procedure Code (1882) and is appealable SHRIMANT SAGAJIRAO KHANDERAO v SMITH [I. L. R. 20 Bom. 736

273 ——— Order dismissing appeal for default —An appeal does not lie from the order of a Judge dismissing an appeal before him for default of prosecution —MAHOMED JAN v AMEERUN 17 W R 180

274. ——— Order rejecting application for re-admission of appeal -*Civil Procedure Code (Act VIII of 1859) s 347* —No appeal lies against an order rejecting an application for the re admission of an appeal under s 347 Act VIII of 1859 AMIRUDDIN v JIBAN BIBEE [1 B L. R. F B 101 10 W R F B 39

275 ——— Order rejecting application for re hearing of appeal—*Civil Procedure Code 1859 s 347* —A special appeal lies from an order passed under s 347 of Act VIII of 1859 rejecting an application for the re hearing of an appeal dismissed for default of prosecution The reasons for rejecting such an application should be stated. HURO CHUNDER DOSS CHOWDHRY v RAM COOMAR CHOWDHRY 2 W R. 254

RAM YAD v BISSESSUR BHUTTACHARJEE [2 W R. Mis 23

GHOLAM MAHOMED AKBUR v LOONJ BEHAREE LALL 5 W R Mis 27

APPEAL—*continued*

10 DEFAULT IN APPEARANCE—*continued*

KISHEN CHUNDER PUTRONOVIS v TARA MONEE CHOWDHRAIN 3 W R. 4

DINOBUNDHOO CHUTTERAJ v BEHAREE LALL MOOKERJEE 3 W R Mis 23

MITTOO KHAN v RAHMAN KHAN 8 W R 36

276 ——— *Civil Procedure Code 1859 s 347* —When a lower Appellate Court after eleven months delay and without fixing any time for disposing of the appeal made an order dismissing the case for default the High Court set aside the order as erroneous holding that it was the subject of an appeal notwithstanding s 347 Act VIII of 1859 which only applies to cases of involuntary failure to comply with a Court s order SOODHA MONEE DOSSEE v GOOROOPERSAUD DUTT [W R. 1864 176

277 ——— *Civil Procedure Code 1877 s 556* —Where an appeal is dismissed under s 556 of Act X of 1877 for the appellant s default the order dismissing it is not appealable NAND RAM v MUHAMMAD BAKHSH [I. L R., 2 All., 616

278 ——— *Civil Procedure Code 1877 ss 556 558* —An Appellate Court the appellant not attending in person or by his pleader instead of dismissing the appeal for default as provided by s 556 of Act X of 1877 proceeded in contravention of the provisions of that law to dispose of the appeal on the merits and dismissed it The appellant preferred a second appeal to the High Court contending that the Appellate Court had acted contrary to law *Held* that the Appellate Court had so acted and its decision could only be treated as a dismissal for default and that so treating it the proper and only course open to the appellant was to have applied under s 558 for the re admission of his appeal and under these circumstances the second appeal would not lie *Nand Ram v Muhammad Bakhsh I L R 2 All 616* followed KANAHI LAL v NAUBAT RAI I L. R 3 All., 519

279 ——— *Civil Procedure Code 1877 ss 2 540 556* —An order under s 556 of Act X of 1877 dismissing an appeal for the appellant s default is not a decree within the meaning of s 2 and is not appealable MUKHI v FAKIR I. L R. 3 All 382

280 ——— Dismissal of appeal for default— *Order — Decree —Civil Procedure Code s 2 and ss 556 558* —No appeal will lie under s 10 of the Letters Patent from the order of a single Judge of the High Court dismissing an appeal for default The decision of a Court dismissing a suit or appeal for default is an order and not a decree *Nand Ram v Muhammad Bakhsh I L R 2 All 616 Mukhi v Fakir I L R 3 All 382 Dhan Singh v Basant Singh I L R 8 All 519 Chand Kour v Partab Singh I L R 16 Calc 98 Muhammad Naim ullah Khan v Ishan ullah Khan I L R 14 All 226* cited *Ram Chandra Pandurang Naik v Madhav Purushottam Naik I L R*

APPEAL—*continued*

10 DEFAULT IN APPEARANCE—*continued*

16 Bom 95 not followed. MAN AB ALI *v* NIHAL CHAND I. L. R., 15 All. 359

281. ——— **Order dismissing suit for default of appearance**—*Civil Procedure Code (1882) s 102*—The decision of a Court passed under s 102 of the Civil Procedure Code dismissing a suit in default of appearance by a plaintiff is an order and not a decree and there is no first or second appeal therefrom. GILKINSON *v* SUBRAMANIA AYYAR I. L. R., 23 Mad. 221

282. ——— **Order dismissing suit for non-appearance of plaintiff specially ordered to appear**—*Civil Procedure Code ss 66 103 107 540 588 (8)*—*Rejection of application to set aside dismissal*—A plaintiff who had been ordered under s 66 of the Civil Procedure Code to appear in person in Court upon a day specified failed to appear and under s. 107 read with s. 102 his suit was dismissed. He then applied to the Court under s. 103 for an order to set the dismissal aside but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit under the provisions of s. 540 *Held* that the plaintiff was not entitled to appeal from the decree dismissing the suit and that his only remedy was by way of an appeal under s 588 (8) of the Code from the order rejecting the application to set the dismissal aside *Lal Singh v Kunjan I L R 4 All 387* referred to. KRISHNA RAM *v* GOBIND PRASAD I. L. R., 8 All. 20

283. ——— **Order dismissing appeal for default**—*Pleader present but unprepared to go on with case*—*Civil Procedure Code 1882 ss. 556 558*—Where when an appeal is called on the pleader is not absent but is unprepared to go on with the case the dismissal is a dismissal for default within s. 556 of Act XIV of 1882 and the appeal can therefore be re-admitted under s. 558 *Baldeo Misser v Ahmed Hossein 15 W R., 143* followed. SHIBENDRA NARAIN CHOWDHURI *v* KINOO RAM DASS I. L. R., 12 Calc., 605

284. ——— *Dismissal of an appeal for default—Pleader unprepared to proceed with a case—Civil Procedure Code (Act XIV of 1882) ss 2 and 556—"Decree"*—On the day fixed for the hearing of an appeal in the lower Appellate Court the appellant appeared by a duly appointed pleader The pleader applied to the Court for an adjournment on the ground that he had not time to fully prepare himself in the case The Court refused to grant any adjournment and dismissed the appeal for default —*Held* that the order of dismissal was bad. The mere fact that the appellant's pleader was not prepared to proceed with the case would not enable the Court to deal with the case as if there was no appearance at all for the appellant and to dismiss the appeal for default. *Per* BIRDWOOD *J*—An order dismissing an appeal for default is one falling within the definition of a "decree" contained in s. 2 of the Code of Civil Procedure (Act XIV of 1882) and is therefore appealable RAMCHANDRA PANDURANG NAIK *v* MADHAV PURUSHOTTAM NAIK [I. L. R., 16 Bom., 23

But *see* JAGARNATH SINGH *v* BUDHAN [I. L. R. 23 Calc., 115

ANWAR ALI *v* JAFFER ALI [I. L. R., 23 Calc., 827

LEKHA *v* BHAUNA I. L. R., 18 All., 101

WATSON & CO *v* AMBICA DASI [I. L. R. 27 Calc. 520
4 C. W N 237

285. ——— **Order rejecting application for re-trial**—*Civil Procedure Code 1859 ss 119 347*—*Appeal heard ex parte*—A special and not a regular appeal will lie from an order rejecting a respondent's application for the re-trial of an appeal heard in his absence SREEDHURCHUREN NUNDEE *v* JUGOBUNDOO PAUL [W R. 1864 Mis., 37

286. ——— **Order dismissing appeal for default**—*Suit struck off for default*—*Civil Procedure Code 1859 ss 119 347*—*Order striking off*—In regular suits, where a Court of first instance refuses to re-admit a suit there is an appeal under s. 119 Act VIII of 1859 but there is no provision under s. 347 for an appeal where an Appellate Court has refused to re-admit an appeal struck off for default ANONYMOUS 1 Ind. Jur., O S., 49

FUZZOO KHAN *v* ISSUR CHUNDER SIRCAR [Marsh. 30

287. ——— **Order to attend as witness**—*Decree against defendant*—*Civil Procedure Code 1859 s 170*—A defendant who has been ordered to attend and give evidence under Act VIII of 1859 s. 170 and has failed to do so is not precluded from appealing against a decree in favour of the plaintiff KHOMKAR ABDOOL GUFFOOR *v* KHODA NEWAZ [Marsh., 568

KEDARNATH BHUTTACHARJEE *v* KRIPA RAM BHUTTACHARJEE 5 W R., 270

288. ——— *Decree on default of party summoned as witness*—*Civil Procedure Code 1859 s 170*—A regular appeal lies from the judgment of a first Court passed on the default of a party summoned to attend as witness under s. 170 Act VIII of 1859 CHUNDER MOHUN MOJOOMDAR *v* TEETOORAM BOSE [4 W R. Act X, 18

289. ——— *Decree on default of plaintiff summoned as witness*—The right of appeal is not lost to a plaintiff whose suit is dismissed for default by reason of non-appearance as a witness, or when the appellant wants to prove that he should not have been summoned at all. LEKHRAJ ROY *v* BUCKLAND 5 W R., Act X, 65

11 EX PARTE CASES

290. ——— **Order admitting application to set aside ex parte decree**—Where

APPEAL—*continued*

II EX PARTE CASES—*continued*

a Court of first instance had admitted an application made after the time allowed by law to set aside an *ex parte* decree —*Held* that the Appellate Court was authorized to try in appeal whether under the law the Court of first instance had power to receive the application and if its order was made without jurisdiction to set it aside PADHA BENODE CHOWDHRY *v* JUGGUT SURNOKAR 6 W R. 300

291. ———— Order on application to set aside ex parte decree—*Civil Procedure Code 1859 s 119* —Though an order passed for setting aside a judgment is on the merits of the application final yet where a Civil Court makes an order setting aside an *ex parte* judgment on an application presented after the period allowed by law has elapsed an appeal against that order will lie on the ground that it has been made without jurisdiction KESHAV RAM VALAD HIRACHAND *v* RAMCHANDRA TRIMBAK [8 Bom A C 44

TOOLSEE DOSSEE *v* DOORGA CHURN PAUL [15 W R. 175

292. ———— Appeal from ex parte decree wrongly admitted —Where a decree is passed *ex parte* in an original suit the defendant has no right to a special appeal even though his appeal have been entertained by the Civil Court CHIDAMBARA PILLAI *v* KAMAN 1 Mad. 189

293 ———— Order setting aside ex parte decree—*Civil Procedure Code 1859 s 119* —An *ex parte* decree of June 1865 kept alive by successive applications for execution was subsequently set aside on an application of 14th August 1871 (within 30 days after attachment in execution) made under Act VIII of 1859 s 119 and a judgment was passed on the merits The lower Appellate Court reversed the order setting aside the *ex parte* decree *Held* that in so far as the Munsif had decided that the application was in time he did not come under s. 119 and therefore his order was not final, and the lower Appellate Court had jurisdiction to enquire into his proceedings BIMOLA SOONDUREE DASSEE *v* KALEE KISHEN MOJOOMDAR [22 W R. 5

294.———— Order refusing to set aside ex parte decree—*Act VIII of 1859 s 119—Delay in appealing until Act X of 1877 which gave no appeal* —An application under s 119 Act VIII of 1859 for the re hearing of a case decreed *ex parte* was rejected Under that law this order was appealable No appeal was however filed until October 1st 1877 on which date Act X of 1877 came in force *Held* that the appeal was inadmissible there being no provision in Act X of 1877 for such an appeal IN THE MATTER OF JAN KOER [1 C L R. 402

295 ———— Order setting aside ex parte decree—*Civil Procedure Code 1859 s 119* —A District Judge is not competent to entertain a summary or miscellaneous appeal from an order setting aside an *ex parte* judgment But where an *ex parte* judgment has been set aside and a judgment afterwards come to on trial and where a regular appeal

APPEAL—*continued*

II EX PARTE CASES—*continued*

is preferred the Appellate Court may amongst the matters urged in appeal take into consideration the regularity of the proceedings of the Court below in making an order under Act VIII of 1859 s 119 LUCKHEE MONEE DOSSEE *v* BHOODUN MOHUN BOSE [23 W R. 147

296 ———— Order refusing to set aside ex parte decree—*Civil Procedure Code 1877 s 588* —No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for an order setting aside a decree made *ex parte* against a defendant GULAB SINGH *v* LACHMAN DAS I. L. R. 1 All. 748

297 ———— *Civil Procedure Code s 591* —An appeal lies from an order made under s. 591 of the Civil Procedure Code of 1877 refusing to set aside an *ex parte* decree LUCKMIDAS VITHALDAS *v* EBRAHIM OSMAN [I. L. R. 2 Bom 644

298 ———— Refusal to re hear appeal—*Civil Procedure Code 1877 ss 560 551 558—Hearing of appeal ex parte* —An appeal was heard *ex-parte* in the absence of the respondent (defendant) and judgment was given against him He applied to the Appellate Court to re hear the appeal and the Appellate Court refused to re hear it He then appealed not from the order refusing to re hear the appeal but from the decree of the Appellate Court *Held* that he was not debarred by reason that he had not appealed from the order refusing to re hear the appeal from appealing from the decree of the Appellate Court RAMJAS *v* BAIJ NATH [I. L. R. 2 All. 567

299 ———— Order ex parte directing attachment in execution of decree —An appeal lies from an *ex parte* order directing attachment in execution of a decree ZAMINDAR OF SIVAGIRI *v* ALWAR AYYANGAR SANGLI VIRALANDIA CHINNATHAMBIAR *v* ALWAR AYYANGAR [I L R. 3 Mad 42

300 ———— Order against defendant not appearing—*Civil Procedure Code 1877 s 540* —Under s 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte* If a defendant appears at the first hearing and files a written statement he should not be placed *ex parte* ANANTHARAMA PATTER *v* MADHAVA PANIKER [I L R. 3 Mad. 264

See LUCKMIDAS VITHALDAS *v* EBRAHIM OOSMAN [I. L. R. 2 Bom., 644

and EX PARTE MODALATHA [I. L. R. 2 Mad. 75

301 ———— *Civil Procedure Code 1877 ss 108 540* —*Held* by STUART C J and STRAIGHT and TYRRELL JJ (OLDFIELD and BRODHURST JJ dissenting) that a defendant against whom a decree has been passed *ex parte* and who has not adopted the remedy provided by s. 108 of the Civil Procedure Code cannot appeal

APPEAL—*continued*

11 EX PARTE CASES—*continued*

from such decree under the general provisions of s 540 LAL SINGH v KUNJAN

[I. L R., 4 All 387

302 ——————— *Application to defend refused—Ex parte decree against defendants—Right of defendants to appeal without taking steps to set aside the decree—Civil Procedure Code (Act X of 1877) ss 101 108*—Defendants who put in no appearance at the original hearing and who have subsequently been refused leave to appear and defend, are at liberty where an *ex parte* decree has been passed against them to appeal to a higher Court without previously taking any steps to have the *ex parte* decree set aside under s 108 of Act X of 1877 ASHRUFFUNNISSA v LEHAREAUX

[I L R 8 Calc 272
10 C L R. 502

303 ——————— *Civil Procedure Code s 108—Decree against defendant under s 136— Ex parte decree*—A defendant failing to comply with an order to answer interrogatories the Court under s 136 of the Civil Procedure Code struck out his defence and proceeding *ex parte* passed a decree against him *Held* that the decree could not be treated in respect of the remedy by appeal as an *ex parte* decree and therefore under the ruling in *Lal Singh* v *Kunjan I L R 4 All 387* is not appealable but that an appeal would lie from the decree CHUNNI LAL v CHAMMAN LAL

[I. L R. 7 All. 159

304 ——————— *Appearance of defendant under Civil Procedure Code s 101—Civil Procedure Code ss 64 100 108 157*—The first hearing of a suit was fixed for the 12th December 1883 on which day the defendant did not appear and the case was adjourned to the 18th December and as the defendant did not then appear a decree was passed in favour of the plaintiff A vakalatnama had been previously filed on the defendant's part and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment *Held* that these acts on the defendant's part did not constitute an appearance by him within the meaning of s 100 of the Civil Procedure Code which referred to an appearance in answer to a summons to appear and answer the claim on a day specified issued under s 64 that the decree was therefore *ex parte* within the meaning of ss 100 and 108 and an appeal consequently lay to the High Court under s 588 cl (9) from an order rejecting an application to set the decree aside *Zain ul abdin Khan* v *Ahmad Raza Khan I L R 2 All 67 L R 5 I A 233* distinguished *The Administrator-General of Bengal* v *Dyaram Dass 6 B L R 688 Bhimacharya* v *Fakirappa 4 Bom 206* and *Bibee Haloo* v *Alw ro ~ W R 51* referred to *Per* MAHMOOD J—That the Court on the 18th December seemed to have acted under s 157 of the Civil Procedure Code and chosen the first of the alternative courses allowed by that section namely under Chapter VII of the Code and passed an *ex parte* decree under the provisions of s 100 of that Chapter HIRA DAI v HIRA LAL

I L R 7 All 538

305 ——————— **Order setting aside ex parte decree**—*Civil Procedure Code (1882) ss 108 and 157*—No appeal will lie from an order made under s. 157 read with s 108 of the Code of Civil Procedure setting aside a decree passed *ex parte* in default of appearance of the defendant on a day to which the hearing of the suit had been adjourned *Jonardan Dobey* v *Ramdhone Singh I L R 23 Calc 738* referred to BHAGWAN DAI v HIRA

19 All 355

306 ——————— *Civil Procedure Code ss 100 101 108 540—Appeal from ex parte decree*—A defendant against whom a decree has been passed *ex parte* and who has not adopted the procedure provided by s 108 of the Code of Civil Procedure can appeal from such decree under the general provisions of s 540 *Lal Singh* v *Kunjan I L R 4 All 387* dissented from KARUPPAN v AYYATHORAI

I L R 9 Mad 445

307 ——————— *Civil Procedure Code (1882) ss 108 540—Decree passed ex parte through non attendance of defendants—Order on appeal for re trial de novo on ground that defendants had insufficient opportunity for being heard—Jurisdiction of Subordinate Judge*—The defendants in a suit for possession of property and an injunction filed written statements but failed to appear either in person or by pleader when the suit came on for hearing in the District Munsif's Court Evidence adduced by the plaintiff was taken and a decree passed in plaintiff's favour as prayed. Some of the defendants applied to the District Munsif for an order to set aside the *ex parte* decree which application was refused and the defendants then appealed against the original *ex parte* decree when the Subordinate Judge reversed the said decree and remanded the suit for re trial *de novo* on the ground that the defendants had not had a proper opportunity for being heard *Held* that it was not competent for the Subordinate Judge to pass such an order that he could only deal with the case on the materials on the record and that the decree of the District Munsif must be restored. CAUSSANEL v SOURES

I. L R. 23 Mad. 260

308 ——————— **Order against respondent not appearing**—*Civil Procedure Code ss 103 108 540 560 584—Construction of Statute—General words*—*Held* by the Full Bench (STRAIGHT Offg C J and TYRRELL J expressing no opinion) that a respondent in whose absence the appeal has been heard *ex parte* and against whom judgment has been given may prefer a second appeal from the decree under the provisions of s 584 of the Civil Procedure Code and his remedy is not limited to an application under s 560 to the Court which passed the decree to re-hear the appeal *Pamjas* v *Baijnath I L R 2 All 567* approved *Per* OLDFIELD J—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in an Appellate Court not appearing

APPEAL—*continued*

11 EX PARTE CASES—*concluded*

with reference to ss 108 and 600 of the Code *Lal Singh v Kunjan I L R 4 All 387* and *Pamshet Pachasri v Balkishna Abakhai 6 Bom A C 161* referred to *Per* MAHMOOD J—The distinction is one of detail merely and not of principle *Lal Singh v Kunjan* dissented from *Zain ul abd n Khan v Ahmad Raza Khan I L R 2 All 67 L R, 5 I A 233 Jamaitunnissa v Lutfunnissa I L R 7 All 606 Ashruffunnissa v Lehareaux I L R 8 Calc 2?2 Luckmidas Ithol das v Ebrahim Oosman I L R 2 Bom 644 Anantharama v Madhava Pankar I L R 2 Mad., 264* and *Modalatha s case I L R 2 Mad ?5* referred to Also *per* MAHMOOD J—Where two procedures or two remedies are provided by statute one of them must not be taken as operating in derogation of the other AJUDHIA PRASAD *v* BALMUKAND I. L. R. 8 All. 354

309 ———— Order admitting appeal—*Ex parte order*—An *ex parte* order admitting an appeal is subject to reconsideration on the hearing of the appeal MOSHAULLAH *v* AHMEDULLAH [I. L. R. 13 Calc 78

310 ———— Order setting aside ex parte decree—*Civil Procedure Code (Act XIV of 1882) ss 108 588—Notification in Gazette*—There is no appeal from an order setting aside an *ex parte* decree SHAMA DASS *v* HURBUNS NARAIN SINGH I. L. R. 16 Calc 426

12 EXECUTION OF DECREE

(*a*) QUESTIONS IN EXECUTION

311. ———— Order refusing application to execute joint decree—*Civil Procedure Code 1859 s 207*—No appeal lay from an order of a lower Court refusing an application by one decree holder under s 207 Act VIII of 18?9 to execute the whole of a joint decree to the execution of his co decree holder GOOROO DASS ROY *v* RAM RUNGINEE DOSSIA 17 W R. 136

ODHOYA PERSHAD *v* MOHADEO DUTT BHANDAREE 17 W R. 415

312 ———— Order on application for execution by one or more joint decree holders—*Civil Procedure Code (1882) ss 231 and 244*—An appeal lies from an order under s 231 of the Code of Civil Procedure such an order being one relating to the execution of a decree within the meaning of s 244 *Gooroo Dass Roy v Ram Runginee Dossia 17 W R 136* and *Odhoya Pershad v Mahadeo Dutt Bhandaree 17 W R 415* distinguished. LAKSHMI AMMAH *v* PONNASSA MENON [I. L. R. 17 Mad. 394

313 ———— Order refusing to allow execution by one of several joint decree holders—*Civil Procedure Code (1882) s 231*—No appeal lies against an order under s 231 of the Code of Civil Procedure (Act XIV of 1882) refusing to allow one of several joint decree holders to execute joint decree RATANLAL *v* BAI GULAB [I. L. R. 23 Bom 623

314. ———— Adjustment of decrees more than three years old—*Civil Procedure Code 1882 ss 257 258—Reference to High Court under s 617 of a question arising under these sections*—On the 22nd March 1886 the applicant presented an application to a Subordinate Judge praying that the adjustment of certain decrees dated the 20th March 1867 and 11th July 18?1 might be certified and a sanction granted to a sankhat dated 18th March 1880 passed to him by the defendant in satisfaction of the said decrees and in substitution of two bonds dated February 1879 The Subordinate Judge being of opinion that the application could not be granted inasmuch as the execution of the decrees was then barred by limitation referred the case to the High Court under s 617 of the Civil Procedure Code (Act XIV of 1882) *Held* that the question could not be referred under s 617 of the Civil Procedure Code (Act XIV of 1882) as the order applied for to the Subordinate Judge was appealable under s ?2 of the Code The question raised by the application related to the satisfaction of the decree within the meaning of s ?44 of the Code RANOJI *v* BHAIJI HARJIVAN [I L R 11 Bom 57

315 ———— Order in matter specially provided for—*Act XXIII of 1861 s 11—Civil Procedure Code 1859 ss 243 364*—S 11 of Act XXIII of 1861 did not allow an appeal in matters already specifically provided for in the different sections of the Procedure Code (*e g* ss 243 and 364) GREEJANUND OOPADHYA *v* LUTTEE RAMAN OOPADHYA 8 W R. 136

316 ———— Order confirming report of Commissioner of Accounts—*Act XXIII of 1861 s 11*—S 11 of Act XXIII of 1861 must be read as an amendment to the Civil Procedure Code (Act VIII of 18?9) That section is in terms confined to questions arising in the execution of decrees which expression as used in the said Code means the enforcement of the decree on the application of one or other of the parties to it *Held* that an order of a Judge confirming the report of the Commissioner for taking accounts by which he refused to require the defendants to give inspection of certain books was not an order within the contemplation of that section and was therefore not appealable RUSTOMJI BURJORJI *v* KESSOWJI NAIK [I. L. R. 8 Bom. 287

317 ———— Dispute among heirs of deceased decree holder—*Act XXIII of 1861 s 11*—According to s 11 Act XXIII of 1861 no appeal lay in a case of private dispute among the heirs of a deceased decree holder as to their respective rights PAUCHUNDER ROY CHOWDHRY *v* GRISHCHUNDER ROY 5 W R. Mis. 45

318 ————Order under s. 246 Civil Procedure Code 1859—*Act XXIII of 1861*

APPEAL—*continued*

12 EXECUTION OF DECREE—*continued*

s 11—S 11 Act XXIII of 1861 did not alter or modify the effect of s 346 Act VIII of 1859 so as to give an appeal from orders passed under the latter section DHEERAJ MAHATAB CHAND *v* LEABEE DOSSEE 6 W R Mis 61

319 ——— **Order rejecting appeal in execution case**—*Act XXIII of 1861 s 11*—Under s 11 of Act XXIII of 1861 an appeal lay from the order of a lower Appellate Court rejecting an appeal in an execution case as presented out of time GOPEENATH ROY *v* GOPEENATH CHATTERJI [6 W R Mis 106

320 ——— *Act XXIII of 1861 s 11*—The Munsif on the application of a judgment debtor set aside a sale held in execution of a decree passed against him on the ground that the decree was barred by lapse of time The judgment creditor appealed to the Judge who rejected the appeal on the ground that no appeal was allowed from such an order *Held* in special appeal that under s 11 of Act XXIII of 1861 an appeal lay from the order of the Munsif DHAN BIBEE *v* HARADHAN RAM [2 B L R Ap, 11 11 W R 4

321 ——— **Order passed on application for discharge from arrest in execution of decree**—*Act XXIII of 1861 s 11—Civil Procedure Code 1859 ss 273 283 365*—*Held* that the procedure on an application for his discharge under s 273 of Act VIII of 1859 by a person arrested in execution of a decree for money was such a question as came within the words introduced by s 11 of Act XXIII of 1861 in addition to the original provision in Act VIII of 1859 s 283 and the order passed thereon by the Court executing the decree was subject to appeal notwithstanding that orders as to imprisonment in execution of a decree were excepted from the operation of s 365 of Act VIII of 1859 as this exception there being no affirmative prohibition was removed by the provision of ss 8 and 11 of Act XXIII of 1861 which Act as directed by s 44 thereof was to be read as part of Act VIII of 1859 YESVANTRAV AMRITRAO JAMIN *v* ISMAIL ALI KHAN [2 Bom 99 2nd Ed 94

322 ——— **Order refusing refund of purchase money**—*Act XXIII of 1861 s 11*—A sale in the execution of a decree having been cancelled the auction purchaser applied for the refund of the purchase money which the Court executing the decree ordered, subject to the deduction of the sale fees The auction purchaser then applied for the return of the sum deducted The Court passed an order refusing the application which order the auction purchaser questioned in appeal *Held* that an appeal did not lie HURDEI BEEBEE *v* SURJOO PERSHAD 6 N W 309

323 ——— **Order on application to correct error in proceeding**—*Act XXIII of 1861 s 11*—Where an application was made to correct an error in a proceeding in which interest was calculated the order passed on the application was open to appeal under s 11 Act XXIII of 1861 AMANUT ALI *v* BINDHOO 13 W R 138

324 ——— **Order as to sum due on mortgage accounts**—*Usufructuary mortgage—Suit by mortgagor for possession*—In a suit by a mortgagor against a mortgagee to recover lands in the possession of the latter under a usufructuary mortgage the only question in issue is whether the plaintiff is entitled to enter and no appeal lies from the finding of the Judge that a specific sum is still due it being open to the parties to dispute that decision by a separate suit MOTEE SOONDEREE *v* INDRAJIT KOWAREE Marsh 112

S C BRIJOLALL UPADHYA *v* MOTEE SOONDEREE [W R F B 33

325 ——— **Order allowing mortgagor to deposit in Court amount due after date fixed**—*Ministerial act—Civil Procedure Code ss 244 588*—S 244 of the Civil Procedure Code contemplates that there must be some question in controversy and conflict in execution which has been brought to a final determination and conclusion so as to be binding upon the parties to the proceedings and which must relate in terms to the execution discharge or satisfaction of the decree A judgment debtor under a decree for foreclosure made an application to the Court two days after the expiry of time prescribed by the decree for payment of the amount due thereunder in which she alleged that by reason of the two previous days having been holidays she had been unable to pay the money before and asked to be allowed to deposit the same Upon this application the Court passed the following order — Permission granted Applicant may deposit the money The money was deposited accordingly *Held* that the order was merely a ministerial act and nothing more than a direction from the Judge to his subordinate official to receive the money which as it did not fall within either s 244 or s 588 of the Civil Procedure Code was not appealable and that the proper remedy of the decree holder assuming the deposit to have not been made in time was to apply for an order absolute for foreclosure which order would be subject to any steps the parties affected by it might take by way of appeal or otherwise HULAS RAI *v* PIRTHI SINGH I L R 9 All 500

326 ——— **Order rejecting appeal in execution case**—*Act XXIII of 1861 s 11—Question whether decree is barred by limitation*—The question whether the execution of a decree is barred by limitation is a question arising between the parties to the suit and an appeal lay under s 11 of Act XXIII of 1861 from a decision on such question whether it be raised by the Court *proprio motu* or by the parties HARI VISHNU *v* GOPAL BIN RAGJI 6 Bom A C 181

327 ——— **Order in case transferred for execution**—*Act XXIII of 1861 s 11—Beng Act III of 1870*—Where a decree by a

APPEAL—*continued*

12. EXECUTION OF DECREE—*continued*

Deputy Collector had been transferred to the Civil Court, and application for execution was made while Bengal Act III of 1870 was in force—*Held* that the execution proceedings were subject to the provisions of the Civil Procedure Code and an order passed therein was appealable under Act XXIII of 1861 s. 11 CHEDEE SINGH v PEAREEFOONISSA [20 W R. 19

328 ——— An order passed by a Court to which a decree has been transferred for execution is not open to appeal unless the order has been made in the course of the actual execution of the transferred decree *Quare*—Whether where a decree has been transferred to the Munsif's Court for execution an appeal will lie to the Judge from the Munsif's order in the matter of the execution? IN THE MATTER OF THE PETITION OF SUMAT DAS [13 B L R. Ap 27

SOOMUT DASS v BHOOBUN LALL [21 W R. 293

See this case at a former stage in which the question was raised. SOOMUT DASS v BHOOBUN LALL [20 W R. 478

329 ——— A decree transmitted to a Court for execution is to be regarded as a decree of that Court for the purpose of execution and an appeal therefore lies against the order of a District Judge passed in execution of a decree transmitted to his Court from a Small Cause Court MOBARUCK ALI v SOOMEE LUNOA CHAREE [3 N W 168

330 ——— **Order as to issue of certificate**—*Act XXIII of 1861 s 11—Civil Procedure Code 1859 s 285*—All orders passed by a Court between parties to the decree and relating to the execution of decree are unless they are specially barred appealable There is no special prohibition against an appeal from an order directing or refusing the issue of a certificate under s 98 Act VIII of 1859 GOPAL LALL v MAHOMED HADEE [6 N W 73

331. ——— **Order rejecting application as to mode of sale of property**—*Civil Procedure Code 1877 ss 214 588—Question relative to the execution of decree*—A judgment debtor having applied under s 284 of Act X of 1877 that certain property attached in execution of a decree against him should be sold in successive 8 pie shares, on the ground that the amount due under the decree was only R9 000 and that on a former occasion a similar share of the same property had been sold for R5 000 the Judge refused the application *Held* that the question between the parties was one relating to the execution of a decree and accordingly that although no appeal was given by the Act against an order under s 284 there was an appeal under s 588 (j) CHANDHARI SITAL PERSHAD SINGH v JHUMAH SINGH 4 C L R. 27

332 ——— **Order as to mesne profits subsequent to decree and as to costs of execution**—*Civil Procedure Code 1877 s 244*—There is no appeal against an order made under s 244 of the Code of Civil Procedure (X of 1877) determining the questions between the parties to a suit as to the amount of mesne profits recovered by the plaintiff subsequently to the decree and as to the amount payable on account of the costs of the execution of that decree DALPATHBHAI BHAGUBHAI v AMARSANG KHEMABAI [I. L. R. 2 Bom 553

333 ——— **Order disallowing objection to attachment**—*Civil Procedure Code 1877 ss 244 (c) 281—Execution of decree—Decree against firm—Attachment of property as property of firm—Claim by partner to property as private property*—The holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm One of the partners in the firm objected to the attachment on the ground that such property was not the property of the firm but was his private property The Court disallowed the objection whereupon such partner appealed from the order disallowing the objection *Held* that such order was not one under s 244 (c) of Act X of 1877 but under s 281 and was therefore not appealable ABDUL RAHMAN v MUHAMMAD YAR I L R. 4 All 190

334 ——— **Order of security in execution**—*Civil Procedure Code (Act X of 1877) ss 2 244 cl (c) ss 546 588—Security for restitution of property*—Where an order requiring the decree holder to give security within three days is made under s 546 of the Code of Civil Procedure by the Judge of the Court in which the decree was passed and in which the execution is pending such order is appealable as a decree under the provisions of the Code of Civil Procedure s 2 and s 244 cl (c) LUCHAMIPUT SINGH v SITA NATH DOSS [I. L. R. 8 Calc 477 10 C L R. 517

335 ——— **Order for attachment and sale of property**—*Civil Procedure Code (Act X of 1877) ss 244 and 588 cls (j) and (r)*—An order for attachment and sale of property in execution of a decree is an order of the same nature with an order made in the course of a suit for attachment of the debtor's property The latter order is appealable under s 588 cl (r) of the Code of Civil Procedure It follows that an order for attachment and sale in execution of a decree is [according to the requirement of s 588 cl (j)] of the same nature with appealable orders made in the course of a suit and therefore is appealable under that section POLOKDHARI RAI v RADHA PERSAD SINGH [I L. R. 8 Calc 28 L. R. 8 I. A 165

Reversing the decision of the High Court in POLOKDHARI ROY v RADHA PERSAD SINGH [I. L. R., 5 Calc 50 4 C L. R., 342

APPEAL—continued

12. EXECUTION OF DECREE—continued

336 ——— Claim by legal representative to property as his own independently of deceased judgment-debtor—*Separate suit—Jurisdiction —Civil Procedure Code ss 234 244 278 and 283 —Held* by the Full Bench (TYRRELL, J., dissenting) where a judgment-debtor dies after the passing of the decree and his legal representatives are brought on the record in execution proceedings to represent him in respect of the decree questions which they raise as to property which they say does not belong to his assets in their hands and as such is not capable of being taken in execution, are questions which under s. 244 (c) of the Civil Procedure Code must be determined in the execution department and not by separate suit There is no distinction in this respect between the positions of legal representatives added to the suit before and those added after the decree Under the last paragraph of s. 234 the Court executing the decree may try and determine the question whether property in the legal representative's hands formed part of the deceased judgment-debtor's estate and find this fact for the purpose of bringing the property to sale in execution, and giving the auction purchaser a good title under the sale and the Court's order is subject to appeal but not to a separate suit under s. 283 SETH CHAND MAL v DURGA DEI I. L. R. 12 All., 313

337 ——— Questions between execution-creditor and persons placed on the record as representative of deceased judgment-debtor—*Civil Procedure Code (1882) ss 244 278 and 283* —Certain decree-holders obtained during the lifetime of their judgment-debtor attachment of certain immoveable property as belonging to the said judgment debtor but on the decree holders seeking to bring the property to sale one *S D* came forward with an objection that the property was his, and was not liable to sale in execution of the decree in question. Pending the decision of the Court on this objection, the decree-holders applied to the Court to have the names of *S D* and the widow of the judgment-debtor (who died about the time the previous objection was filed) placed on the record as representatives of the judgment debtor *S D* filed a similar objection to this application also but both objections, being heard together on the 6th September 189_ were dismissed and *S D* was placed on the record as representative of the deceased judgment-debtor On appeal by *S D* against the order of the District Judge of Jaunpur of the 6th September 189_ it was *held* that the order making *S D* a party to the execution proceedings as representative of the judgment-debtor rendered any order as to his former objection superfluous, and that order was appealable under s. 244 of the Code of Civil Procedure SHANKAR DAT DUBE v HARMAN [I. L. R., 17 All., 245

338 ——— Assignment of decree—*Transferee—Civil Procedure Code (1882) ss 232 244 540 and 588* —Where a Court on the application of a transferee of a decree for execution, decides that he is not a transferee under s. 232 of the Civil Procedure Code or that although he is a transferee within the meaning of that section he is not a representative of a party to the suit or that by reason of limitation he is not entitled to obtain execution of the decree it has determined a question or questions mentioned or referred to in s. 244 of the Code and though not specified in s. 588 an appeal lies under s. 540 *Parmanandas Jivandas v Vallabhji Wallji I L R., 11 Bom 506* and *Gulzari Lal v Daya Ram I L R 9 All 46* approved. *Ram Bakhsh v Panna Lal I L R., 7 All 457* considered. *Haladhar Shaha v Hargobind Das Koibarto I L R., 12 Calc 405 Sambasiva v Srinivasa, I L R 12 Mad., 511 Rama v Nuppil Nayar I L R., 14 Mad 478* and *Vilayati Begam v Imtiaz Begam W N., All (1893) 106* referred to. BADRI NARAIN v JAI KISHEN DAS I. L. R., 16 All., 483

339 ——— Question whether transferee of decree is the representative of decree-holder—*Civil Procedure Code 1882 ss 232 244—Decree* —An order of a Court executing a decree determining whether an alleged transferee from a decree holder or from his legal representative is or is not the representative of the decree-holder within the meaning of s. 244 cl. (c) of the Code of Civil Procedure is an order under that section and therefore a decree and an appeal lies from such order *Dwar Buksh Sircar v Fatik Jali I L R., 26 Calc., 250* and *Badri Narain v Jai Kishen Das I L R 16 All., 483* followed. GANGA DAS SEAL v TAKTB ALI BOBASHI I. L. R., 27 Calc., 670

340 ——— Order refusing to allow representative to take out execution until granted certificate—*Civil Procedure Code s 244* —On appeal from an order allowing an application by the legal representative of a deceased decree-holder for execution, the Appellate Court holding that the applicant must obtain a certificate under Act XXVII of 1860 before he could take out execution of the decree made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate *Held* that such order fell under s. 244 of the Civil Procedure Code and was therefore appealable HOTI LALL v HARDEO I. L. R., 5 All., 212

341. ——— Order staying execution of decree —All orders staying execution of decrees whether passed by the Court which passed the decree or by the Court to which it is sent for execution, are "questions arising between the parties to the suit in which the decree was passed, and relating to the execution" thereof within the meaning of s. 244 (c) of the Civil Procedure Code and, as such appealable irrespective of the provisions of s. 588. *Kristomohiny Dossee v Bama Churn Nag Chowdry I. L. R., 7 Calc 733* and *Luchmeeput Singh v Sreenath Doss I L R 9 Calc., 477* followed. The widest meaning should be attached to cl. (c) of s. 244 of the Civil Procedure Code so as to enable the Court of first instance and the Court of Appeal to adjudicate upon all kinds of questions arising between

APPEAL—*continued*

12 EXECUTION OF DECREE—*continued*

the parties to a decree and relating to its execution CHAZIDIN v FAKIR BAKSH I. L. R. 7 All. 73

342. ———— Order staying execution of decree—*Civil Procedure Code 1882 ss 2 243 244—Decree* —An order under s. 243 of the Civil Procedure Code staying execution of a decree determines a question relating to the execution of the decree within the meaning of s. 244 and is therefore a decree within the meaning of s 2 an appeal therefore lies from such order STEEL v ICHCHAMOYI CHOWDHRAIN I. L. R. 13 Calc. 111

343 ———— *Civil Procedure Code 1882 ss 2 and 244—Stay of execution—Amount of security required in granting of execution a question in execution and order thereon appealable* —The defendant in a redemption suit against whom a decree had been passed appealed to the High Court which on his application granted the usual stay of execution pending the appeal upon security being given by him The Subordinate Judge feeling doubt as to whether the actual value of the property or the value stated in the plaint should be regarded in fixing the security referred the case to the High Court. *Held* that the question as to the amount of the security was a question relating to execution as contemplated by s. 244 of the Code and therefore an order determining that question would be appealable under s 2 of the Code ISHWARGAR v CHUDASAMA MANABHAI [I. L. R. 12 Bom 30

344. ———— *Civil Procedure Code (1882) s 244—Question as to what had actually been subject of sale—Question between judgment-debtor and auction purchaser* —Land was sold in execution of a decree of a subordinate Court and a sale-certificate was issued A question having subsequently arisen as to what had actually been the subject of the sale the auction purchaser applied to the Court and an order was made by which the sale certificate was amended The judgment debtor appealed to the District Court joining the decree holder and the auction purchaser as respondents The appeal was dismissed on the ground that no appeal lay *Held* that the question was not one which could be determined under the Civil Procedure Code s 244 and consequently the decision of the lower Appellate Court was right MAMMOD v LOCKE [I. L. R. 20 Mad. 487

345 ———— Order staying sale in execution of decree—*Civil Procedure Code 1877 s 244 cl (c)* —In execution of a decree on a mortgage bond executed by the father of the judgment debtors since deceased which decree directed that the mortgage lien should be enforced—*first* by sale of the property specifically mortgaged and *secondly* if the debt remained unsatisfied by the sale of the other property in the possession of the judgment debtors the judgment creditor proceeded to have the mortgaged property sold After the issue of the sale notification and three days prior to the date fixed for the sale one of the judgment debtors applied to have the sale stayed on the ground that an administration suit was pending with respect to the property of his father the mortgagor and also asked that a receiver might be appointed and arrangements made for the purpose of paying off the mortgage debt and saving the property from being sold. On this application the Court passed an order staying the sale *Held* that such order was appealable being a question arising between the parties to the suit in which the decree was passed and relating to the execution of that decree and as such coming within the provision of cl (c) s 244 Act X of 1877 *Gambhirmal* v *Chejmal Jodhmal 11 Bom 151* distinguished KRISTOMOHINEY DOSSEE v BAMA CHURN NAG CHOWDHRY I. L. R. 7 Calc 733 [9 C L R. 344

346 ———— *Order directing application to stay sale in execution proceedings on ground of under valuation—Decree* —An application was made by certain defendants against whom a decree had been passed for an order that a sale at the instance of the decree holder in execution of his decree should not be proceeded with on the ground that in the sale proclamation the value of the property had been underestimated The Subordinate Judge held the undervaluation to be immaterial and dismissed the application whereupon the judgment debtor appealed to the High Court On the preliminary objection being there taken that no appeal lay from the order of dismissal—*Held* that an appeal lay the order having been made with reference to a question which related to the execution and the question being one arising between the parties to the suit in which the decree was passed and relating to its execution within the meaning of s 244 of the Code of Civil Procedure SIVASAMI NAICKER v RATNASAMI NAICKER I. L. R. 23 Mad 568

347 ———— *Civil Procedure Code (Act XIV of 1882) ss 244 318 588—Order refusing possession to purchaser at sale in execution* —An order passed under s 318 of the Civil Procedure Code rejecting an application by a purchaser at an execution sale for possession is not appealable no appeal is given by s 588 and the order cannot be said to be one under s 244 of the Civil Procedure Code inasmuch as it does not relate to the execution discharge or satisfaction of the decree *Ghulam Shabbir* v *Dwarka Prasad I L R 13 All 36* approved of *Mutt a v Appasami I L R 13 Mad 504* dissented from BHIMAL DAS v GANESHA KOER 1 C W N 658

348 ———— Order directing account in administration suit—*Civil Procedure Code (Act X of 1877) s 244* —An order directing an account is not an order in the nature of a final decree nor one in execution of decree and is unappealable such an order merely directs certain proceedings to be taken in order that a final decree may thereafter be made SREENATH ROY v RADHANATH MOOKERJEE [I. L. R. 9 Calc 773

APPEAL—*continued*

12 EXECUTION OF DECREE—*continued*

349 ———— *Civil Procedure Code 1882 s 293—Question for Court executing decree—Defaulting purchaser answering for loss by re sale—Description of property at sale and re sale—Difference of—Regular suit*—An appeal will lie against an order made under s 293 of the Code of Civil Procedure *Sree Narain Mitter* v *Mahtab Chund* 3 *W R* 3 *Sooruj Buksh Singh* v *Sree Kishen Dass* 6 *W R Mis* 126 *Joolraj Singh* v *Gour Buksh* 7 *W R* 110 *Bisokl a Moyee Choudhrain* v *Sonatun Dass* 16 *W R* 14 and *Ram Dial* v *Ram Das* *I L R* 1 *All* 181 followed. BAIJNATH SAHAI *v* MOHEEP NARAIN SINGH [I. L. R. 16 Calc 535

KALI KISHORE DEB SARKAR *v* GURU PRASAD SUKUL [I L R 25 Calc 99 2 C W N 408

RAJENDRANATH ROY *v* RAM CHARAN SINHA [2 C W N 411

(*b*) PARTIES TO SUITS

350 ———— **Person other than party to suit**—*Act XXIII of 1861 s 11*—No one but a party to a suit can appeal under s 11 of Act XXIII of 1861 against an order passed in such suit CARMICHAEL *v* BIRCH EX PARTE BROOKS 1 Mad. 8

KALUB HOSSEIN *v* DEEN ALI 4 N W, 2

351 ———— **Liability of defaulting purchaser**—*Civil Procedure Code 1882 ss 244 293 306—Appeal from order under s 293*—At a sale in execution of a decree a decree holder who had obtained leave to bid was alleged to have made a bid through his agent of R90 000 but he shortly afterwards repudiated the bid and did not pay the deposit The property was put up for sale again on the following day under s 306 of the Code of Civil Procedure and was in due course knocked down for a smaller sum The judgment debtor filed a petition under s. 293 to recover from the decree holder the loss by resale; the petition was rejected On appeal —*Held* that the question at issue was one arising between the parties to the suit and that an appeal lay against the order rejecting the petition VALLABHAN *v* PANGUNNI [I. L. R. 12 Mad. 454

352. ———— *Civil Procedure Code (1882) ss 21 244 293 and 306—Default by purchaser in paying deposit—Order refusing remedy against purchaser*—The purchaser at an execution sale failed to make the deposit of 25 per cent under Civil Procedure Code s 306 alleging that the property was discovered by him subsequently to the sale to be subject to an incumbrance The property was put up for sale again and knocked down for a smaller sum The decree holder sought in execution to recover the amount of the difference from the first purchaser The Court of first instance made an order dismissing the application *Held* that an appeal lay against the order in question Orders made in respect of a default by the purchasers in such a case are in the nature of decrees and the parties affected must be deemed to be parties to the suit within the meaning of s 244 of the Code AMIR BAKSHA SAHIB *v* VENKATACHALA MUDALI [I. L. R. 18 Mad., 439

353 ———— **Purchaser objection by**—*Act XXIII of 1861 s 11—Civil Procedure Code 1859 ss 246 247 364*—Where the holder (*G*) of a simple money decree who is at the same time a mortgagee applies to a Civil Court to sell mortgagor's property in execution of said decree such property having previously been sold in execution of *K* s decree and purchased by *N* (*G* s claim upon it being at the same time notified) and in his (*G* s) application inserts the name of *N* and calls him a judgment-debtor in the room of the heir and representative of the deceased debtor and a purchaser comes in and denies that he is a judgment debtor or liable and asks for the release of the property and the Judge disallowed his objection —*Held* that if the Judge s order was made after investigation then under s 246 of Act VIII of 1859 an appeal was barred if it was an order refusing to investigate the objection then the appeal was barred either by s 247 or by s. 364 unless allowed by s. 11, Act XXIII of 1861 *Held* also that the objector was not a party to the suit and that he was not entitled to appeal under s. 11 S 223 Code of Civil Procedure can have no bearing on such a case NARAIN ACHARJEE *v* GREGORY [8 W R., 304

354 ———— **Purchaser Substitution of for original party in record**—"*Party to suit*"—A party who had sued, on the party of himself and of his minor brother to recover possession of ancestral property alleged to have been alienated sold his rights and interests in the suit to a third party whose name was accordingly substituted in the place of plaintiff *Held* that the substitution of such party for the plaintiff in respect of part of the latter's share in the subject matter of the suit did not make that party a party to the suit and gave him no *status* which would enable him to appeal SAHEB ROY *v* CHOONEE SINGH 9 W R. 487

355 ———— **Intervenor**—*Act XXIII of 1861 s 11—Party to suit*—The first Court gave a decree to the plaintiff for possession of land against *A* the original defendant in the suit but exempted land in the possession of *B* an intervenor whom the Court had made a co defendant The Appellate Court reversed so much of that decree as adjudicated upon the claim as between the plaintiff and *B* and confirmed its decree for possession against *A* but awarded costs against *B* *Held* that *B* continued to be a defendant in the suit and had a right of appeal under s 11 Act XXIII of 1861 and that he was not as a person other than the defendant bound to come in under s 230 Act VIII of 1859 HUREE KISHORE ROY *v* KALEE KISHORE SEIN 8 W R. 114

356 ———— **Claimant under title created subsequently to suit**—*Act XXIII of*

APPEAL—*continued*

12. EXECUTION OF DECREE—*continued*

1861 s 11—Party to suit—A female plaintiff obtained a decree against certain defendants declaring certain ekrarnamahs, etc., void as against her husband and his representatives. After his death she proceeded to execute the decree as one for possession and obtained an order under s. 223 Act VIII of 1859 for delivery of possession of property in the possession of a third party as being a person claiming under a title created by the defendants subsequently to the institution of the suit. The third party appealed from that order. *Held* that this was not a case in which an appeal lay under s 11 Act XXIII of 1861 inasmuch as the questions raised by the appeal were not questions between the parties to the suit. AMEEROONISSA KHATOON v. ABEDOONISSA KHATOON **16 W R. 307**

357 ———— **Representative of deceased debtor**—*Act XXIII of 1861 s 11—Execution of decree—Limitation*—A decree was obtained in 1849 and execution issued in 1862. Several subsequent applications for execution were made against one of which the objection was raised by some of the representatives of the judgment debtor that the decree was barred by lapse of time but it was overruled by the High Court in special appeal. A further application was made and was opposed by one of the representatives who had since attained his majority upon the ground that the suit was barred. The Munsif disallowed the objection. On appeal the Judge reversed his decision. *Held* in special appeal that the terms of s 11 Act XXIII of 1861 did not prohibit an appeal by a representative of a deceased judgment-debtor against an order passed in execution of a decree against his ancestor. BHIRTU NARAYAN BANDOPADHYA v. GANGA NARAYAN BISWAS

[3 B L R. A C, 40 11 W R. 368

358 ———— *Civil Procedure Code 1882 s 244—Decree passed against representative of debtor—Attachment of property as belonging to debtor—Objection to attachment by judgment debtor setting up an independent title—Appeal from order disallowing objection—Civil Procedure Code ss 2 283*—The decree holders in execution of a simple money decree passed against the legal representatives of their debtor and which provided that it was to be enforced against the debtor's property attached and sought to bring to sale a house as coming within the scope of the decree. The judgment debtors objected to the attachment and proposed sale on the ground that the house was their own private property and not the property of the debtor within the meaning of the decree having been validly transferred to them during the debtor's lifetime. The objection was disallowed by the Court of first instance. *Held* that s 283 of the Civil Procedure Code had no application that the case fell within s 244 and that an appeal would lie from the first Court's order. *Ilam Ghulam v Hazara Kuar I L R 7 All 517* and *Sita Ram v Bhagwan Das I L R 7 All, 723* followed. *Shankar Dial v Amir Haidar I L R 2 All 752 Abdul Rahman v Muhammad Yar I L R 4 All 190 Awadh Kuari v Roktu Tiwari I L R 6 All 109 Chowdhry Wahed Ali v Jumaee 11 B L R 149 Ameeroonnissa Khatoon v Meer Mahomed 20 W R 280* and *Kurryali v Mayan I L R 7 Mad 255* referred to. MUL MANTRI v ASHFAK AHMAD **I L R 9 All 605**

359 ———— *Civil Procedure Code (1882) s 244—Representative of judgment debtor—Agreement for satisfaction of judgment debt*—A money decree was passed against a zamindar by the High Court in 1883 and it was transferred to the District Court for execution. The decree holder attached and prepared to bring to sale certain villages of the judgment debtor. These villages were included in a mortgage subsequently executed by the judgment debtor in favour of third parties. Both before and after the mortgage the decree holder received from the zamindar certain sums in consideration of his agreeing to postponements of the sale also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree. Subsequently the decree holder sought to bring the land to sale and in computing the amount then due gave credit for none of the sums so received and calculated interest at the enhanced rate. The mortgagee objected that the computation was erroneous in both these respects and the District Judge upheld his objection. The judgment debtor took no part in the contest. *Held* that the mortgagee was a representative of the judgment debtor within the meaning of the Civil Procedure Code s 244 and that an appeal lay against the order of the District Judge. PARAMANANDA DAS v MAHABEER DOSSJI

[I. L R 20 Mad., 378

360 ———— **Assignee of decree**—*Act XXIII of 1861 s 11—Act VIII of 1859 s 208—Assignment of decree*—Under s 11 Act XXIII of 1861 no appeal lay from an order passed under s 208 Act VIII of 1859 substituting the assignee of a decree in the place of the original decree holder. MEGH NARAYAN SING v RADHA PRASAD SINGH

[4 B L R. A C 200
13 W R. 224

See contra FRAMJI RUSTOMJI v RATANBA PESTANJI **9 Bom 49**

361. ———— **Surety**—*Order between judgment creditor and surety—Act XXIII of 1861 s 11—Civil Procedure Code 1859 s 204*—By virtue of s 11 of Act XXIII of 1861 and the provisions of s 204 of the Code of Civil Procedure an appeal lay from an order passed in a matter between a judgment creditor and sureties on behalf of a judgment-debtor for the performance of the decree. EX PARTE BHIKAJI VITHAL AMBIKAR

[4 Bom. A. C 119

GHAZEE LALL JHA v SHEO NARAIN SINGH

[8 W R 24

APPEAL—*continued*

12 EXECUTION OF DECREE—*continued*

362 ———————— *Execution of decree—Act VIII of 1859 ss 201 and 363—Act XXIII of 1861 ss 11 and 36* —Where a person becomes a surety in the course of the proceedings on an appeal to pay all such sums as may be decreed against the plaintiff on appeal the decree when passed can be executed against the surety under s 204 of the Civil Procedure Code and an appeal will lie from an order made in execution of such decree against the surety AKHUT RAMANA *v* AHMED YOUSAFFJI 7 B L R 81 [15 W R 538

363 ——— Purchaser of interest in suit—*Assignment of interest in subject matter of suit—Right of purchaser* —The purchaser of the right title and interest of the defendant in a suit in and to the land the subject matter of that suit has *no right as such to appeal from a decree passed* against the defendant GAJADHAR PRASAD *v* GANESH TEWARI 7 B L R 140 [15 W R 485

BEET BHUNJUN SINGH *v* JOWHUR DOSS [4 W R Mis 17

KRISTOMONEE THAKOOR *v* BISSUMBHUR DOSS [5 W R 215

364 ——— Purchaser at sale in execution—*Interlocutory order obtained by purchaser at execution sale* —No appeal lies from an interlocutory order obtained by a purchaser at a sale in execution of a decree who was not a party to the original suit BHOONDUR MUL *v* GUNGA PERSHAD [2 W R Mis 50

365 ——— Objector not party to suit.—An appeal does not lie by an objector who is not one of the parties *i e* who is neither the decree holder nor the judgment debtor LUCHMIPUT SINGH *v* LEKRAJ ROY 2 W R Mis 56

RAGHOONATH NARAIN SINGH *v* RAM CHURN SAHOO 2 W R Mis 48

GOSSAIN JHUNMI POOREE *v* ANUND MOYEE DOSSEE 3 W R Mis 9

SOODHA MONEE DOSSEE *v* BROJONATH MOZOOMDAR 4 W R Mis 14

366 ——— Purchaser at sale in execution—*Order refusing to put purchaser at sale in execution in possession* —The order of a Munsif declining to put the purchaser at a judicial sale of immoveable property in possession thereof was open to appeal under s 11 Act XXIII of 1861 IN THE MATTER OF GORUPPA BIN PACHAPPA [1 Bom 90

367 ———————— *Civil Procedure Code 1882 ss 244 and 318—Petition by purchaser at Court sale for possession* —On an application made in 1888 under Civil Procedure Code s 318 by the purchaser at a Court sale (who was the assignee of the decree which was being executed) praying for delivery of possession of the property purchased it appeared that the sale took place in 1885 that it was confirmed in 1886 and that in January 1887 an order was made for delivery of possession to the purchaser The judgment debtor had resisted the purchaser s efforts to obtain possession in 1887 and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser The application was rejected *Held* that the question was one relating to the execution of the decree between the representative of the original decree holder and one of the defendants to this suit and fell within s 244 of the Civil Procedure Code and an appeal therefore lay against the order rejecting the application MUTTIA *v* APPASAMI I L R 13 Mad 504

368 ———————— *Purchaser in execution of decree—Order refusing to recognize purchaser* —No appeal lies from an order of a Judge refusing to recognize the position of a purchaser of a decree LALLA OJHEE LALL *v* LOOFT ALI KHAN [2 W R Mis 33

CHUNDEE PERSHAD MISSER *v* NILANUND SINGH [2 W R Mis 38

369 ———————— *Purchaser at sale in execution—Act XXIII of 1861 s 11—Representation of decree holder and the auction purchaser* —An appeal did not lie under s 11 Act XXIII of 1861 from an order in execution in which the representative of a decree-holder was on one side and a stranger (the auction purchaser) on the other LUCHMUN PERSHAD *v* AMEER ALI [W R 1864 Mis 15

370 ———————— *Act XXIII of 1861 s 11* —An auction purchaser of property sold in execution of decree is not a party to the suit; he is not therefore entitled to appeal from an order passed as to the execution of the decree LUCHMEE NARAIN *v* BAIROW PERSHAD 1 Agra Mis 5

371 ——— Third party—*Order excluding property from sale* —No appeal lies from an order passed at the instance of a third party for excluding a particular property from sale in execution of decree SAHEB JEHAN *v* ASUDOOLLAH [5 W R Mis 28

372 ———————— *Order passed in execution of decree between party to suit and a third party* —No appeal lies from an order passed in execution of a decree between either of the parties to the suit and a third party but a regular suit may be brought to set aside the order GOBINDNATH SANYAL *v* RAMCOOMAR GHOSE 6 W R 21

373 ——— Rival decree holders—*Act XXIII of 1861 s 11—Act VIII of 1859 ss 270 271—Proceeds of sale in execution* —An appeal did not lie under s 11 of Act XXIII of 1861 from an order made under ss 270 and 271 of Act VIII of 1859 with regard to the claims of several rival decree holders in respect of the proceeds of property sold in execution of a decree MISRI KOOER *v* MAHESWAR BUKSH SINGH MURDER KOOER *v* MAHESWAR BUKSH SINGH GURDI MISREE *v*

APPEAL—*continued*

12. EXECUTION OF DECREE—*continued*

MAHESWAR BUKSH SINGH *v.* SRIONGO KOOER *v.* MAHESWAR BUKSH SING B L R Sup Vol 13 [Marsh 527 W R F B 116

CHOONEE LALL *v.* PULTOO BHUKUT [6 W R, Mis 74

ALLY HOSSEIN *v.* DHUNPUT SINGH [W R 1864 Mis 19

JUNGEE LALL MAHAJAN *v.* BRIJO BEHAREE SINGH 2 W R Mis 21

AFZOOLOONISSA BEGUM *v.* LARBUTTY KOONWAR [2 W R Mis 41

MAHOMED KHAN KUZULBASH *v.* THAKOOR SINGH [3 W R Mis 1

JUGOBUNDHOO SHAH PORAMANICK *v.* OFFICIAL ASSIGNEE 21 W R 194

374. ———— *Act XXIII of 1861 s 11—Attachment under s 237 Act VIII of 1859*—One of several decree holders who had obtained separate decrees against the same judgment debtor attached under s 237 of Act VIII of 1859 a fund in the hands of the Collector belonging to the debtor being the surplus proceeds of a sale for arrears of Government revenue and the fund was subsequently attached by the other decree holders The fund was not sufficient to satisfy all the decrees in full. The Principal Sudder Ameen by order of the Judge heard the various execution cases together but recorded separate orders in each case for the rateable distribution of the fund amongst the creditors On appeal by the first attaching creditor who claimed to be entitled to be paid the amount of his decree in full to which appeal the rival decree holders as well as the judgment debtor were made parties—*Held (per* PEACOCK C.J and SETON KARR JACKSON and HOBHOUSE JJ) that the several orders of the Principal Sudder Ameen were substantially only one order made upon one hearing in one case to which all the execution creditors in the several suits were parties that the rival decree holders were properly made respondents in the appeal and could not be struck out and that the question to be determined being one between the rival decree holders and not between the parties in each suit the case was not appealable under s 11 Act XXIII of 1861 *Held per* MACPHERSON J that though no appeal would lie as regards the rival decree-holders the appeal was maintainable as regards the judgment debtor alone DEEN DIAL SAHOO *v.* RADHA MUDDUN MOHUN DOSS HATTEE LALL BHUGGUT *v.* RADHA MUDDUN MOHUN DOSS KANYA LALL PUNDIT *v.* RADHA MUDDUN MOHUN DOSS [B L R Sup Vol 927 9 W R 223

375 ———— Co-defendants—*Appeal by defendant against co-defendant*—One defendant

APPEAL—*continued*

12 EXECUTION OF DECREE—*continued*

cannot be allowed to appeal as against his co defendants KASHEE CHUNDER ROY *v.* DOORGA [11 W R 410

376 ———— *Rival defendants*—In a suit for possession where a second defendant is admitted (though improperly) upon the record and both defendants claiming under different titles issues are raised between the plaintiff and each of them and the suit is dismissed the decision on these issues cannot be regarded as a decision between the rival defendants so as to give one a right of appeal against the other KALEE KINKUR BACHUSHUTTY *v.* KISTO MUNGLE BHUTTACHARJEE 11 W R 462

377 ———— Assignee of interest in suit—*Civil Procedure Code 1877 s 244 and ss 278 283—Representative*—The holders of a talukh hypothecated certain other property belonging to them as security for the rent A decree for rent was obtained against them Prior to attachment the talukhdars assigned their interest in eight annas of the hypothecated property to *A* and made a maurasi lease of the remaining eight annas to him The decree holder then obtained an order for summary sale for the rent due for 1876 77 She then attempted to sell the property hypothecated to her An objection by *A* was allowed A regular suit was then instituted by the decree holder against *A* and it was declared that she was after selling the talukh entitled to sell the hypothecated property The decree holder again attempted to execute her rent decree by attaching and selling the hypothecated property and an objection by *A* was disallowed *Held* that no appeal lay from the order disallowing the objection as *A* could not be considered to be a representative of the talukhdars within the meaning of s 244 cl (c) of the Civil Procedure Code and was therefore debarred from appealing under ss 278 and 283 RASHBEHARY MOOKHOPADHYA *v.* SURNOMOYEE [I L R 7 Calc 403 9 C L R, 79

378 ———— Attachment—*Objection to attachment by judgment debtor on behalf of others—Order against decree holder—Civil Procedure Code (Act XIV of 1882) ss 244 280 283*—Where a judgment debtor claims property which is the subject matter of attachment either on his own account as his own property under whatever right or as the representative of third parties in which capacity he has been sued the question between him and the attaching creditor is properly one between the parties to the suit under s 244 of the Code of Civil Procedure But where the judgment debtor raises the claim or objection on behalf of third parties who are not represented before the Court the order passed thereon must be regarded as an order under s 280 of the Code and the only mode in which that order can be contested is in a regular suit as provided by s 283 In execution of a decree against a judgment debtor in his private capacity the judgment creditor attached certain property Thereupon the judgment debtor objected that the property attached had been dedicated by him some time previous as

APPEAL—*continued*

12 EXECUTION OF DECREE—*continued*

wakf under a registered wakfnamah and that he was only in possession as mutwali under the deed The lower Court found that the document created a valid wakf and allowed the objection and released the property from attachment. The judgment-creditor appealed. At the hearing of the appeal it was contended that no appeal lay inasmuch as the order was one under s 280 of the Civil Procedure Code On behalf of the judgment creditor it was contended that the order was one under s 244 and was thus appealable *Held* that the order was one under s 280 and that no appeal lay the remedy of the judgment creditor being by way of a regular suit as provided by s 283 ROOP LALL DASS v BEKANI MEAH MOHINEE MOHUN ROY v BEKANI MEAH

[I. L. R., 15 Calc 537

379 ———— Order on claim by trustee for release of trust property attached under personal decree against trustee—*Civil Procedure Code (1882) ss 244 278 to 283—Appeal from such order* —A decree holder having attached certain property in the course of execution two of the defendants in the suit in which the decree had been passed presented a petition praying that the property might be released from the attachment on the ground that it had been set apart for charitable purposes and that it was held by defendants as trustees The Subordinate Judge upheld the trust and ordered the properties to be released from the attachment Plaintiff then appealed to the High Court when objection was taken that no appeal lay against the order of the Subordinate Judge The Court referred to a Full Bench the question whether an appeal lies against an order passed with regard to a party to a suit against whom there is a personal decree in respect of a claim he may set up to hold property attached in execution of that decree as a trustee on behalf of third persons not parties to the suit *Held* that such a claim falls under s 278 and not under s 244 of the Code of Civil Procedure and that no appeal lies against any order passed on it by the Court executing the decree The claims of third parties whether put forward by themselves or by a party to the suit must be dealt with under ss 278 to 283 of the Code of Civil Procedure and not under s 244 *Roop Lall Dass* v *Bekani Meah I L R 15 Calc 437* referred to RAMANATHOUR CHOTTIAS v LEWAI MARATHOUR

[I. L. R. 23 Mad. 195

380 ———— Co-decree holders—*Order on questions arising between co decree holders—Civil Procedure Code (Act X of 1877) s 244 art (c) s 588* —A decree holder having assigned a share of her decree applied several times jointly with such assignee for execution On a subsequent application made by the original decree holder alone the Court while granting the application directed that the proceeds arising from such execution should only be paid over to the co-decree holders jointly *Held* that the question in dispute being one between co decree holders and not between parties to the suit or their representatives as contemplated by art (c) s 244 of the Civil Procedure Code no appeal would lie from such order GYAMONEE v RADHA LOMON

[I. L. R. 5 Calc. 592

381. ———— Collector—*Civil Procedure Code 1877 s 244—Refusing execution of order for costs* —A Subordinate Judge admitted a plaint in *forma pauperis* but holding that he had no jurisdiction to try the suit returned the plaint to the plaintiff for its presentation in the proper Court and ordered each party to pay his own costs After the presentation of the plaint in another Court and before the termination of the suit the Collector applied to the Subordinate Judge for execution of the order as to costs by seeking to recover the amount of the stamp duty from the plaintiff The Subordinate Judge refused to execute the order on the ground that the pauper suit was still pending in another Court His order was affirmed by the District Judge on appeal On second appeal to the High Court —*Held* that there was no appeal and therefore no second appeal under s 244 cl (c) of the Civil Procedure Code (Act X of 1877) against the order of the Subordinate Judge refusing execution of the order as to costs inasmuch as the question was not between the parties to the suit COLLECTOR OF RATNAGIRI v JANARDAN KAMAT

[I. L. R 6 Bom. 590

See COLLECTOR OF TRICHINOPOLY v SITARAMA KRISHNA SASTRIGAL I. L. R. 23 Mad. 73

382. ———— Decree holder in character of purchaser—*Order in execution of decree—Fraud—Cancellation of sale in execution of decree—Civil Procedure Code (Act XIV of 1882) ss 2 244 cl (c) 311 and 588 cl 16* —Where it was shown that a judgment-creditor was himself the purchaser at an execution sale and the amount for which he so purchased the property of his judgment-debtor was set off against the amount due to him under his decree and where on the application of the judgment debtor the Court passed an order setting aside the sale on the ground of fraud practised by the judgment-creditor on the judgment-debtor in connection with the sale in consequence of which fraud the property had been sold at an undervalue —*Held* that inasmuch as the order involved the decision of a question between the parties to the suit relating to the execution discharge or satisfaction of the decree (the decree having been satisfied as far as the purchase-money bid by the decree-holder went and the order cancelling that *pro tanto* satisfaction), though not appealable under the provisions of s 588 cl 16 was appealable as a decree under the provisions of the Code of Civil Procedure (Act XIV of 1882) s 2 and s 244 cl (c). BALLODEB LALL BHAGAT v ANADI MOHAPATTRO

[I. L. R 10 Calc. 410

383. ———— Purchase by decree-holder at auction sale—*Order for delivery of possession* —Certain holders of a decree for sale upon a mortgage having brought the property ordered to be sold to sale purchased it themselves Having taken out certificates of sale they applied to be put in possession

APPEAL—*continued*

12. EXECUTION OF DECREE—*continued*

of the property purchased by them and obtained an order for possession On appeal by the judgment debtors against this order it was *held* that no appeal lay the order objected to being one under s 319 and not under s. 244 of the Code of Civil Procedure The decree-holder as such was not entitled to the order for possession he was only entitled to it in his character of auction purchaser which character did not bring him within s. 244 as a party to the suit *Subhaji v. Sri Gopal I L R 17 All 222* referred to GHULAM SHABBIR v DWARKA PRASAD

[I. L. R. 18 All 36

384. ———— Representative of decree holder—*Civil Procedure Code ss 244 and 308—Order cancelling sale*.—One who had attached a decree and obtained leave to bid at the sale of land ordered to be sold in execution and to have the purchase-money and the amount due under the decree set off against each other became the purchaser for a sum less than the amount due under the decree The Court made an order under Civil Procedure Code s 308 cancelling the sale and ordering a re-sale on the ground that the purchaser had not paid the full amount due on his purchase within the time limited. *Held* that the petitioner was the representative of the decree holder within the meaning of Civil Procedure Code s 244 and an appeal by him lay against the order SAH MAN MULL v KANAGASABAPATHI

[I. L. R. 16 Mad 20

385 ———— Assignee of decree—*Civil Procedure Code (Act XIV of 1882) ss 2 244 cls (a) (b) and (c)—Execution of decree*.—The ancestors of *B* mortgaged their share in a certain mehal to *A* Subsequently *B* became entitled to this share in the mehal and *A* obtained a decree on his mortgage in execution of which the right title and interest of *B* was sold and purchased by *C* Subsequently to this latter decree and sale *B* obtained a decree against *D* for possession of certain lands which were proved to belong to this mehal *E* then obtained a decree against *B* in execution of which the right title and interest of *B* in this same mehal was sold and purchased by *F* *C* and *F* transferred their rights under their respective purchases to *E* *E* thereupon as purchaser of the right title and interest of *B* from *F* applied to execute the decree obtained by *B* against *D* This application was rejected by the Subordinate Judge but on appeal to the District Judge was allowed *B* thereupon applied to the High Court to have this order set aside *Held* that the order should be set aside inasmuch as no appeal lay from the order of the Subordinate Judge the order not being a decree within the meaning of ss 2 and 244 (cls *a b* and *c*) of the Civil Procedure Code MOHABIR SINGH v RAM BAGHOWAN CHOWBEY

[I. L. R. 11 Calc 150

386 ———— Execution proceedings at instance of attaching creditor—*Civil Procedure Code 1882 s 244 and ss 311 588—Party to a suit—Right of appeal*.—*A* attached a decree which *B* his judgment debtor had obtained against *C* and in execution thereof he brought to sale land belonging to *C* *B* applied to have the sale set aside and his application was refused *Held* that *B* had a right of appeal under Civil Procedure Code s 311 and not under s 244 SAMI PILLAI v KRISHNASAMI CHETTI

[I. L. R. 21 Mad 417

387 ———— Question between auction purchaser and applicant to set aside sale under s 310A of Civil Procedure Code 1882. An order under s 310A of the Civil Procedure Code is not appealable as it decides a question between the auction purchaser and the applicant under s 310A and not between the parties to the suit or their representatives BUNGSHIDHAR HALDAR v KEDAR NATH MONDAL

I C W N 114

388 ———— Order under Civil Procedure Code 1882 s 310A setting aside sale—*Deposit on one property of several sales in lots*—Where at a sale in execution of a decree the properties attached were sold separately in nine lots and the judgment debtor prayed to have the sale of one of the properties set aside under s 310A of the Civil Procedure Code by tendering the balance (together with the percentage required by law) due under the decree after deducting the amounts bid by the decree holder for some of the properties and the amounts deposited by the other purchasers and an order was made thereupon setting aside the sale —*Held* that an appeal lay under s 244 Civil Procedure Code against the order made under s 310A as the parties stood in the position of decree holder and judgment debtor and the order was made upon an application to set aside the sale KRIPA NATH PAL v RAM LAKSHMI DASYA

1 C W N 703

389 ———— Appeal by some of the parties to a suit—*Decree in appeal binding parties who were not parties to the appeal—Civil Procedure Code (Act XIV of 1882) s 244 cl (c)—Superintendence of High Court—Civil Procedure Code s 622—District Judge Jurisdiction of*—The plaintiffs filed a suit in ejectment against *A* *B* and *C* The Subordinate Judge decreed the claim On appeal the District Judge rejected it The plaintiff then preferred a second appeal to the High Court which finally decided in plaintiff's favour To this second appeal *A* was not made a party In execution of the High Court's decree *A* was dispossessed but was restored to possession by the Subordinate Judge under s 332 of the Code of Civil Procedure This order was reversed on appeal by the District Judge *A* thereupon applied to the High Court under s. 622 of the Code of Civil Procedure to set aside the District Judge's order as *ultra vires* on the ground that s. 244 of the Code was not applicable to the case, *A* not having been a party to the appeal in which the decree under execution was passed and that therefore no appeal lay to the District Judge from the Subordinate Judge's order —*Held* that *A* being a party to the suit though not to the appeal in which the final decree was passed the District Judge had

APPEAL—*continued*

12. EXECUTION OF DECREE—*concluded*

jurisdiction to hear the appeal under s. 244 cl (c) of the Code of Civil Procedure GOWRI v VIONY H VAR I. L. R. 17 Bom. 49

390 ——— Application by exonerated defendant—*Civil Procedure Code (1882) s 244—Right of appeal*—A defendant against whom no decree has been passed but whose rights are invaded in execution is entitled to come in under Civil Procedure Code s 244 and to appeal against an order made in such proceedings *Kurrijali v Mayan I L R 7 Mad 255* referred to *Jagamuthu v Savarimuthu I L R 15 Mad 226* and *Vasudeva Upadyaya v Iswaraja Thirthasami I L R 19 Mad 331* referred to VIBHUDAPRIYA THIRTHASAMI v VIDIANIDHI THIRTHASAMI [I. L. R. 22 Mad. 131

13 LETTERS PATENT CL 12.

391. ——— Order granting leave—*Leave to institute suit*—An appeal lies from an order granting leave to the plaintiff to institute a suit under cl 12 of the Letters Patent ISMAIL HAJEE HUBUB v MAHOMED HAJEE YOOSUF JOHIM BYE v MAHOMED HAJEE YOOSUF [13 B L R., 91 21 W R. 303

392. ——— Order refusing leave to sue—Where at the time of filing the plaint an application for leave to sue was granted under cl 12 of the Letters Patent leave being reserved to the defendant to move to have the order set aside and the plaint was then filed but in the settlement of issues the defendant questioned the jurisdiction of the High Court and the Court eventually withdrew the permission to sue in the High Court—*Quære*—Whether the order appealed against finally deciding that leave ought not to be granted to institute a suit for want of jurisdiction under cl 12 of the Letters Patent was an appealable order RADHA BIBEE v MUCKSOODUN DOSS 21 W R 204

14 MADRAS ACTS

393 ——— Madras Forest Act s 10—*Decision as to title to land—Appeal to High Court from decision of District Court on appeal*—An appeal lies to the High Court from a decision of a District Court passed under s 10 of the Madras Forest Act 1882 on appeal from the decision of a Forest Settlement Officer KAMARAJU v SECRETARY OF STATE FOR INDIA I. L. R. 11 Mad. 309

394 ——— Madras Rent Recovery Act (Madras Act VIII of 1865)—*Order of Collector*—By Madras Act VIII of 1865 an appeal from the [illegible] of the Collector lies to the Civil Court OLAGA SUNDARAM PILLAY v MUTTIEN CHETTY 4 Mad. 227

395 ——— *Procedure*—The Civil Court in hearing an appeal from the decision of a Collector under the Act must be guided by the Civil Procedure Code SUBRAMANEY PILLAY v PERUMAL CHETTY 4 Mad 251

APPEAL—*continued*

14 MADRAS ACTS—*concluded*

396 ——— s 10—*Order to eject tenant*—No appeal lies to the District Court from an order passed on an application to eject a tenant under s 10 of the Rent Act (Madras Act VII of 1865) MAHOMED YAKUB SAHEB v MAHOMED JAFFER ALI SAHEB I. L. R. 4 Mad. 167

397 ——— ss. 10 69 73—*Decision of Collector ejecting tenant*—An appeal lies from the decision of a Collector ejecting a tenant under s 10 of the Rent Recovery Act (Madras) 1865 Such a decision notwithstanding the use of the word order in the section referred to is a judgment within the meaning of s. 69 *Mahomed Yakub Saheb v Mahomed Jaffer Ali I L R 4 Mad 167* not followed NARASIMHASWAMI v LAKSHMAMMA I. L. R., 22 Mad., 436

15 MANAGEMENT OF ATTACHED PROPERTY

See CASES UNDER APPEAL—RECEIVERS

398 ——— Order postponing sale to enable debtor to raise amount—*Civil Procedure Code (Act VIII of 1859) s 243—Civil Procedure Code 1882 ss 305 503—Order postponing sale—Act XXIII of 1861 s 11*—An appeal lay from an order passed under s 243 of Act VIII of 1859 postponing the sale of the property attached in order to enable the judgment debtor to raise the amount of the decree against him (JACKSON J dissenting) HANUMAN PRASAD v AJODHYA PRASAD [1 B L R. F B. 7 10 W R. F B 5

399 ——— Order refusing application to appoint a manager—An appeal lay from an order refusing the request of a judgment-debtor for the appointment of a manager under s 243 Act VIII of 1859 BISRAM SINGH v INDERJEET KOONWAR 2 W R., Mis. 49

400 ——— *Quære*—Is a refusal to make an order on an application for the appointment of a manager an order from which an appeal lies under s. 11 Act XXIII of 1861? NUZMOODDEEN AHMED v ABDOOL AZEEZ [13 W R., 243

401. ——— Order of Manager—*Civil Procedure Code 1859 s 243*—There was no appeal against the order of a manager appointed under s 243 Act VIII of 1859 BHOOBUN MOYEE DEBEA v MOOTY 1 W R. Mis 11

16 MEASUREMENT OF LANDS

402. ——— Order of Deputy Collector—An appeal from the decision of a Deputy Collector in a suit under s 9 Bengal Act VI of 1862 lay not to the Collector but to the Zilla Judge. ERSKINE & Co v GHOLAM KHEZUR 9 W R. 520

403 ——— Question as to standard pole of measurement—Where a question as to the standard pole of measurement in use in a pergunna

APPEAL—*continued*

16. MEASUREMENT OF LANDS—*concluded*

is properly raised and determined between parties by the Revenue Court in a proceeding under Bengal Act VI of 1862 s. 9 the determination is final NEEM CHAND SAHOO v. RAM GOLAM SINGH [24 W R. 424

404. ———— **Order of Collector in survey and measurement of lands** — An appeal lay to the Judge from the decision of a Collector in matters of survey and measurement falling within ss. 9 and 10 Bengal Act VI of 1862 No appeal lay from the decision of a Collector under s 11 of the same Act. TARUCK NATH MOOKERJEE v. MEYDEE LI WAS 5 W R. Act X 17

405 ———— **Order of Deputy Collector as to standard pole of measurement.**—No appeal to the Judge lay from the decision of a Deputy Collector under s 11 Bengal Act VI of 1862 *on the question of the standard pole of measurement* RAKHAL DAS MOOKERJEE v. TUNOO POHAMANIC 7 W R. 239

406 ———— **Order of Collector as to standard of measurement**—*Beng Act VI of 1862 ss 9 and 11* —When the right of a proprietor to make under s 9 Bengal Act VI of 1862 a measurement of a tenure is disputed solely on the ground that the proper standard pole of measurement under s. 11 is not employed the Collector has power to enquire into and decide the true length of the standard pole and an appeal lay from his decision MANMOHINI CHOWDHRAIN v. PREMCHAND ROY [6 B L R. 1 14 W R. F B 4

407 ———— **Order in measurement proceedings**—*Decree—Civil Procedure Code (Act X of 1877) ss 2 and 540—Beng Act VIII of 1869 s 37 Order under*—An order made under s 37 Bengal Rent Act (Bengal Act VIII of 1869) is a decree within the meaning of the definition contained in the Civil Procedure Code (Act X of 1877) and an appeal lies therefrom under the provisions of s 540 BROJENDRO COOMAR ROY v. KRISHNA COOMAR GHOSE I. L. R. 7 Calc 684 [9 C L. R. 444

408 ———————— *Beng Act VIII of 1869 s 38* —An appeal lies to the High Court from proceedings taken under Beng Act VIII of 1869 s 38 AHMED ALI v. NITTYANUND ROY [24 W R. 171

See ABDOOL BAREE v. NITTYANUND KOONDOO [21 W R. 103

where an appeal was heard though the question was not raised

409 ———————— *Beng Act VIII of 1869 s 38* —There is no appeal against an order made by the Civil Court under s 38 of Bengal Act VIII of 1869 directing the measurement of lands *Crowdy* v *Gobordhan Roy 22 W R 491* followed *Goluck Kishore Acharjee* v *Kesha Majhee Ib W R 23* and *Manoo Dassee* v *Ishan Chunder Banerjee ib 24* cited. KALLY CHURUN DUTT v. I ROTAB CHUNDER GHOSE 6 C L. R 484

APPEAL—*continued*

17 N W P ACTS

410 ———— **N W P Rent Act (XVIII of 1873) s 148**—*Landholder and tenant—Suit in which right to receive rent is disputed—Determination of such right—Determination of proprietary right*—C sued J for the rent for certain land alleging that he was the tenant of such land and J was his sub tenant J disputed C's right to receive rent for such land alleging that he was not his sub tenant but S's and had paid such rent to S Under the provision of s 148 of Act XVIII of 1873 S was made a party to the suit The Collector decided on appeal in the suit that S and not C was the tenant of such land and J was her sub tenant and not C's and had paid such rent to S *Held* that there was no determination by the Collector of the title to such land but as incidental to the question who was entitled to receive the rent and consequently the decision of the Collector was not appealable to the District Judge CHOTU v. JITAN [I. L. R. 3 All. 63

411. ———————— *Suit for rent where the right to receive it is disputed—Question of title—Jurisdiction of Civil and Revenue Courts—District Judge Jurisdiction of*—U sued I and another for rent in the Court of the Collector The defendants pleaded payment to F who was accordingly brought on to the record as a co defendant under s 148 of the North Western Provinces Rent Act (XII of 1881) The Collector decided in favour of F The plaintiff appealed to the District Judge making all three persons respondents The District Judge reversed the decision of the Collector and ordered the whole costs to be paid by F who thereupon appealed to the High Court *Held* that the District Judge had no jurisdiction to entertain the appeal so far as the party brought in under s 148 was concerned and that being so had no power to award costs against him ANAND RAM v. MAUSUMA BEGAM [I. L. R. 13 All. 364

412 ———————— ss 148 183 189 —*Landholder and tenant—Suit for arrears of rent—Right to rent disputed by third person—Appeal by intervenor*—K sued B for arrears of rent such arrears not exceeding R100 His right to receive rent was disputed by H a third person who was made a defendant under the provisions of s 148 of Act XVIII of 1873 The suit was tried by an Assistant Collector of the second class who decided that K was entitled to the rent H and B appealed to the Collector who decided that H was entitled to the rent K thereupon appealed to the District Judge who affirmed the decision of the Collector K then appealed to the High Court *Held* that the Collector was not competent to entertain an appeal by H that as between K and B all that the Collector could decide was whether or not K was entitled to the amount of rent claimed that the District Judge had no jurisdiction to entertain K's appeal and that K's appeal to the High Court was not entertainable the District Judge not having decided any question of proprietary right that would justify such an appeal KISHNA RAM v. HINGU LAL I L. R. 4 All. 237

APPEAL—*continued*

17 N W P ACTS—*continued*

413 ———————— s. 189—*Question of title—Suit for arrears of rent*—Where the defendant pleaded in answer to plaintiff's suit for arrears of rent that defendant no longer held as tenant but as sub proprietor under a settlement made direct with defendant by the settlement officer —*Held* that under s 189 of Act XVIII of 1873 the suit involved a question of proprietary title and that an appeal lay to the Judge of the district although the amount in suit was less than R100 BISHESAR SINGH *v* SURUNDHI I. L. R. 1 All. 366

414. ———————— *Appeal to District Judge*—An appeal lies to the District Judge under s 189 of the North Western Provinces Rent Act as well from appellate as from original decisions of the Collector RAJA SINGH *v* SULKA [I. L. R. 6 All. 398

415 ———————— N W P Rent *Act Amendment Act (XIV of 1886) s 5— Rent payable by the tenant —Rate of rent*—The words rent payable by the tenant in s 189 of the North Western Provinces Rent Act (XII of 1881 as amended by Act XIV of 1886) mean the rate of rent payable by the tenant and not merely the actual amount of money which is due at any given time by the tenant to his landlord as rent The appeal therefore given by that section is limited to cases in which the Court of first instance has determined the rate of rent RADHA PRASAD SINGH *v* PERGASH RAI [I. L. R. 13 All. 193

416 ———————— N W P *Rent Act Amendment Act (XIV of 1886) s 5—Rent Rate of*—Where a zamindar sued a tenant for rent of certain alluvial land, the amount claimed not being above R100 and the tenant objected that there was a custom in the village by which rent was paid in case of alluvial land only on the culturable portion and that during some of the years in suit a less portion of the land than that for which rent was claimed had been culturable —*Held* that in such a suit the rate of rent was in dispute and an appeal would therefore lie *Radha Prasad Singh v Pergash Rai I L R 13 All 193* followed. *Payag Sahu v Matadin Weekly Notes 1890 p 229* overruled. RADHA PRASAD SINGH *v* MATHURA CHAUBE [I. L. R. 14 All. 50

417 ————————*Landholder and tenant—Rent payable by tenant—Rate of rent*—The criterion to be used in deciding whether an appeal lies under s. 189 of Act XII of 1881 is whether the decision would merely affect a particular year or whether it would supply a plea of *res judicata* if not appealed against for all succeeding years in which the landlord and tenant stood in the same relation as when the suit was brought *Radha Prasad Singh v Mathura Chaube I L R., 14 All 50* referred to MOHIB ALI KHAN *v* MARTIN [I. L. R. 16 All. 51

418 ———————— *Suit to recover arrears of revenue— Rent — Revenue*—The term rent as used in s 189 of Act XII of 1881 cannot be extended so as to include revenue Hence where a plaintiff sued to recover arrears of revenue alleged to be payable to the plaintiff by the defendants under an agreement the defendants being admitted to be inferior proprietors of the land in respect of which the revenue claimed was payable it was *held* that no appeal lay to the District Judge under s 189 of Act XII of 1881 TILAKDHARI RAI *v* SOOHRA BIBI I. L. R. 18 All. 302

419 ———————— *Rent payable by the tenant not in issue—Landholder and tenant*—Certain defendants being sued by the zamindars for the rent of land held by them pleaded in effect that whatever the rent of the land in suit might be they were entitled to retain it under an agreement between them and the predecessor in title of the plaintiffs in lieu of interest payable to them on account of a mortgage given by the said predecessor in title *Held* that the case was not one in which an appeal would lie to the District Judge under s 189 of the N W P Rent Act inasmuch as the rent payable by the tenant was not in issue in the suit DEOCHARAN SINGH *v* BENI PATHAK [I. L. R. 21 All. 247

420 ———————— and s 93—*Question as to rate of rent payable by the tenant not in issue in the appeal*—Under s 189 of Act XII of 1881 an appeal lies in a suit under s. 93 of the Act where the rent payable by the tenant *has been* a matter in issue and has been determined. It is not necessary that the rent payable by the tenant should be a matter in issue in the appeal SARJU PRASAD *v* HAIDAR KHAN I. L. R. 18 All. 463

421. ———————— s. 191—*Appeal to High Court from appellate decree of District Judge passed in appeal from appellate decree of Collector*—An appeal lies to the High Court from a decree of a District Judge passed in appeal from an appellate decree of a Collector JAI RAM *v* DULARI CHAND I. L. R. 5 All. 309

422. ———— N W P Land Revenue Act (XIX of 1873) ss. 113 and 114—*Partition*—Where in the course of carrying out an order for a partition and of assigning the lands to each co sharer certain co-sharers claimed certain plots of land as belonging to them in severalty and demanded that the same should be assigned to them and the Collector decided that some of such plots were held in severalty and one was held in common —*Held* that his decision was not passed under s 113 of Act XIX of 1873 and was therefore not appealable under s 114 of that Act SHIBBAN LAL *v* TILOKE CHAND I. L. R. 2 All. 619

423 ———————— *Order for partition by Assistant Collector confirmed by Collector—Objection subsequently made to mode of partition—Question of title*—Upon an application made under s 103 of the N W P Land Revenue Act (XIX of 1873) for partition of a share in a mehal no question of title or proprietary right of the nature contemplated by s 113 was raised nor any serious objection made by any of the co sharers and the Assistant Collector recorded a proceeding setting

APPEAL—*continued*

1" N W P ACTS—*concluded*

f rth the rules which were to govern the partition and this proceeding was confirmed by the Collector under s 131 An Amin was ordered to carry out the partition and in taking steps to do s stated the principle upon which he pr posed to distribute the common land. An objection was then f r the first time raised by two of the c sharers in the Court of the Assistant Collector to the inclusion of a particular piece of land in the partiti n on the ground that it appertained exclusively to their share This objection was disallowed by the Assistant C llect r and on appeal by the District Judge *Held* that at the stage of the proceedings when objections were taken it was t o late to determine questions of title under s 113 of the Act that accordingly the Assistant Collector could not be said to have done so that the obj cti ns could theref re only be regarded in the light of objections to the m de in which it was pr p sed to make the partition and that consequently there was no appeal from the order of the Assistant Collect r to the District Judge or from the District Judge to the High Court IOTA RAM v ISHUR DAS I. L. R. 9 All. 445

424. ——— *Question of title —Appeal from order under first part of s 113* —No appeal lies to the High Court from a deci si n of a Collector or Assistant Collector under the first part of s 113 of the North Western Provinces Land Revenue Act (XIX of 1873) declining to grant an applicati n f r partiti n until the question in dispute has been determined by a competent Court IMTIAZ BANO v LATAFAT UN NISSA [I. L. R. 11 All. 328

425 ——— *Order of Collector on application for partition—Decision on question of title* —An appeal will lie from the order or decision of a Collector or Assistant Collector trying a question of title raised in the course of the hearing of an application for partition under the N W P Land Revenue Act (XIX of 1873) NIAZ BEGAM v ABDUL KARIM KHAN [I. L. R. 14 All. 500

426 ——— ss 214 and 219—*Order in partition proceedings—Decision of question of title by a Court of Revenue—Effect of such decision taken ex parte* —*Held* that the provisions of ss 214 and 219 of Act XIX of 1873 do not apply to an *ex parte* decision of a question of title by a Court of Revenue acting in partition proceedings under s 113 of the said Act An appeal to the District Judge therefore lies from an order of the Assistant Collector in such proceedings TULSI PRASAD v MATHU MAL I. L. R. 18 All. 210

18 ORDERS

See CASES UNDER APPEAL—DECREES

427 ——— Interlocutory order—*Isolated issue of law* —An appeal will not lie from the separate determination of an isolated issue of law or fact before the taking of evidence on the remaining issues IN THE MATTER OF THE PETITION OF THE COURT OF WARDS 7 W R. 222

APPEAL—*continued*

18 ORDERS—*continued*

428 ——— *Illegal order* —The plaintiff obtained a decree in the Court of first instance The defendant appealed The lower Appellate Court impr perly directed the Court of first instance to settle the matter in dispute in accordance with a decision of a former Judge in the matter and allowed the parties ten days after the return of the case to file objections *Held* that the proceeding of the lower Appellate Court was unwarranted by law and must be taken to be if anything an interlocutory order and as such unappealable LUKHI RAM v BUNSEE DHUR 5 N W 180

429 ——— Order dismissing part of claim before final decree—*Civil Procedure Code 1877 s 540* —Where a Judge after the defendant s written statement was put in framed certain preliminary issues and decided them directing part of plaintiff s claim to be dismissed and part to be tried on the merits (which trial might necessitate the taking of an account from defendant) —*Held* that no appeal lies from such an order on the part of the plaintiff because the Civil Procedure Code only allows an appeal against a p rti n of the decision when there has been a d cision relating to the disp sal of the entire suit or on the part of the defendant inasmuch as there had been no final order to take an account VENCATAGIRI RAJA v MAHOMMED RAHIMTULLA SAHIB I L R 3 Mad 13

430 ——— Order rejecting application for refund of stamp duty —An appeal does not lie from an order of the lower Court made on an application f r refund of sufficient stamp duty and penalty after a case remanded to it had been compromised Redress should be sought by way of motion rather than as an appeal RAMANOOJ DOSS v GOVERNMENT 2 W R. Mis 36

431 ——— Order of Munsif dismissing suit for under valuation.—An appeal will lie from an order of a Munsif dismissing a suit as beyond his jurisdiction because it was under valued. JOHAN BUKSH v MEHER BIBEE *alias* MOHUR [7 W R. 183

432 ——— Order disallowing appointment of ministerial officer—*Act XII of 1868 s 9* —A party whose appointment by a Subordinate Judge or Munsif is disallowed by a Zillah Judge on the ground that he is not qualified for the appointment has no right of appeal to the High Court against the Judge s order IN THE MATTER OF SHOSHEE KISHEN MOOKERJEE [14 W R., 328

433 ——— Order of Magistrate dismissing ministerial officer—*Commissioner of Revenue and Circuit* —The Commissioner is the proper authority to whom an appeal lies from the order of a Magistrate dismissing a ministerial officer from his post and the order of the Commissioner

APPEAL—*continued*

18 ORDERS—*continued*

passed in appeal is final IN RE PARBHU NARAYAN SINGH 3 B L. R., A. C 370 12 W R. 323

434 ——— Order giving possession to purchaser—*Civil Procedure Code 1859 s 264* —No appeal lay from an order of a Court giving possession under s 264 Act VIII of 1859 to a purchaser at a sale in execution of a decree OMIRTO MOYEE DOSSEE v GOOROO DOSS ROY [17 W R. 395

435 ——— Order refusing to grant possession—*Civil Procedure Code 1859 ss 259 263* —No appeal lay from an order refusing to grant possession under ss 259 and 263 Act VIII of 1859 GOPAL CHUNDER GHOSE v RAJ CHUNDER DUTT [2 W R. Mis 9

436 ——— Order admitting claim of dar patnidar—*Civil Procedure Code 1859 s 269* —No appeal lay from an order admitting the claim of a dar patnidar who has intervened under s 269 Act VIII of 1859 JADUB CHURN THAKOOR v BHOLANATH SINGH ROY 5 W R., Mis 51

437 ——— Order on application to review—*Civil Procedure Code 1882 s 629—Appeal from decree as amended* —A second appeal lies against an order of a lower Appellate Court passed under s 629 of the Civil Procedure Code (Act XIV of 1882) where the appeal to the lower Appellate Court has been not from the order allowing a review but from the original decretal order itself as amended by the original Court on the application for review *Than Singh v Chundun Singh I L R 11 Calc 296* distinguished *Semble*—The words of s 629 an order of the Court for rejecting the application shall be final *prima facie* apply to the Court which has passed the original decree but in spirit they would seem properly to apply also to an order of an Appellate Court BALA NATHA v BHIVA NATHA I. L. R. 13 Bom 496

438 ——— Order rejecting review —*Civil Procedure Code 1859 s 378* —No appeal lies from the order of a Judge rejecting an application for a review of his order dismissing an appeal for default of prosecution CHOWDHRY PUTTUN PERSAD v HUNOOMAN JAH W R. 1864 Mis 20

439 ——— Under s 378 Act VIII of 1859 an order rejecting an application for review of judgment is final CALLY DAS SIRCAR v JANOKEENATH ROY 1 W R. Mis 7

440 ——— Order rejecting application for review of order dismissing execution proceedings for default in payment of process fees—*Civil Procedure Code (Act XIV of 1882) ss 2 244 (c) 540 623 and 629* —That an application for review of an order dismissing an execution case for nonpayment of process fees is not an application under s 244 cl (c) of the Code of Civil Procedure but one for review and no appeal lies therefrom PUDMANUND SINGH v DOORGA PERSHAD DOOBEY 4 C W N 39

APPEAL—*continued*

18 ORDERS—*continued*

441 ——— Order disposing of application for review on the merits —Where an application for review is disposed of as upon a rehearing on the merits an appeal lies from the order so passed. AMANUT ALI v BINDHOO [13 W R., 138

442 ——— Order granting review—*Civil Procedure Code (Act XIV of 1882) s 629* —No appeal lies from an order granting a review of judgment except in the cases set forth in s 629 of the Civil Procedure Code (Act XIV of 1882) BOMBAY AND PERSIA STEAM NAVIGATION COMPANY v S S ZUARI I. L. R. 12 Bom., 171

443 ——— *Letters Patent High Court cl 15—Judgment —Order granting review of judgment—Civil Procedure Code 1882 s 629* —A second appeal was decided on the 1st June 1888 in favour of the respondents by two Judges of the High Court On the 24th July 1888 an application for review was filed with the Registrar Various reasons prevented the two Judges from sitting together until the month of March 1889 On the 6th March the matter came up before them when a rule was issued calling upon the respondents to show cause why a review should not be granted and made returnable on the 28th March 1889 On that day one of the Judges had left India on furlough, and the rule was taken up heard and made absolute by the other of the two Judges sitting alone *Held* that the order was not a judgment within the meaning of cl. 15 of the Letters Patent and that no appeal would lie therefrom the order being final under s 629 of the Code of Civil Procedure *Bombay and Persia Steam Navigation Company v The Zuari I L R 12 Bom 171* and *Achaya v Ratnavelu I L R 9 Mad 253* approved AUBHOY CHURN MOHUNT v SHAMANT LOCHUN MOHUNT I. L. R. 16 Calc. 788

444 ——— *Order granting review of judgment—Civil Procedure Code (1882) s 629* —No appeal lies from an order granting a review of judgment except as provided by s 629 of the Civil Procedure Code *Bombay and Persia Steam Navigation Co v S S Zuari I L R 12 Bom 171* followed HAR NANDAN SAHAI v BEHARI SINGH [I. L. R. 22 Calc 3

MAHABIR PRASAD v NATHNI THAKUR [1 C W N 338

445 ——— In general final appeal an order for review can only be challenged upon the grounds stated in s 629 of the Civil Procedure Code *Har Nandan Sahai v Behari Singh I L R 22 Calc 3* followed BARODA CHURN GHOSE v GOBIND PROSHAD TEWARY [I L R 22 Calc 984

446 ——— *Civil Procedure Code (1882) ss 626 and 629* —No appeal will lie from an order granting a review of judgment except under the conditions specified in s 629 of the Code of Civil

APPEAL—*continued*

18 ORDERS—*continued*

Procedure *Bombay and Persia Steam Navigation Co.* v *S S "Zuari"* I L R 12 Bom 171 followed. DARYAI BIBI v BADRI PRASAD [I. L. R. 18 All. 44

See CHUNILAL HAJARIMAL v SONIBAI [I. L. R. 21 Bom. 328

447 ———— *Grounds of appeal* —No appeal lies from an order granting a review of judgment except in cases specified in s 629 of the Civil Procedure Code *Bombay and Persia Steam Navigation Company* v *S S "Zuari"* I L R 12 Bom 171 followed. *Har Nandan Sahai* v *Behari Singh* I L R., 22 Calc 3 and *Baroda Churn Ghose* v *Gobind Pershad Tewary* I L R 22 Calc 981 referred to That the Court which has granted the review has done so without sufficient reasons is not a valid ground of appeal under s 629 MUNNI RAM CHOWDHRY v BISHEN PERKASH NARAIN SINGH [I. L. R 24 Calc. 878

448 ———— *Civil Procedure Code (1882) ss 626 629 586 and 591—Order granting a review in a suit of Small Cause Court nature valued at less than R500*—In a suit of a nature cognizable by a Small Cause Court and valued at less than R500 an order granting a review was passed by the Appellate Court without recording any reason for it An appeal was preferred against that order to the High Court under s 629 of the Code of Civil Procedure —*Held* that the order was bad being in contravention of the provisions of s 625 of the Code of Civil Procedure —*Held* also upon the objection of the respondent that no appeal lay against the above order that the appeal was permissible under s 629 the provisions whereof are not controlled or superseded by s 591 of the Code Questions raised in an application for review are totally different from those raised in the suit a review can only be granted on special grounds and it may well be that although an appeal is not allowed from the final decree in the suit an appeal is allowable from an order granting a review which could reopen the case after it had been disposed of GYANUND ASRAM v BEJIN MOHUN SEN I L R. 22 Calc 734

See MANICKA MUDALIAR v GURUSAMI MUDALIAR [I L R. 23 Mad. 496

449 ———— Order amending decree —*Correction of clerical mistake in original order* —Where the Court on the application for a review of judgment amends a clerical mistake in its original order the decree drawn up in conformity to this order becomes the final decree and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree JOYKISHEN MOOKERJEE v ATAOOR POHOMAN I L R. 6 Calc 22 6 C L R. 575

450 ———— Order rejecting insufficiently stamped document.—The question of the admissibility of an insufficiently stamped document once admitted as evidence by a Court can form

APPEAL—*continued*

18 ORDERS—*continued*

no valid ground of appeal KHOOB LALL v JUNGLE SINGH I L R 3 Calc 787 [2 C L R. 439

451. ———— Order refusing to allow document to be filed.—No appeal lies from the refusal of the Judge of an Appellate Court to allow a fresh document to be filed BECKWITH v KISHTO JEEBUN BUCKSHEE Marsh 278 2 Hay, 286

452. ———— Order compensating defendant for loss of property attached.—*Held* that no appeal lies to the District Court from an order made by a Munsif compensating a defendant for loss of property attached before judgment under s 84 of Act VIII of 1859 TRIKAM GOVARDHAN v DULLABH KUBER 2 Bom 389 2nd Ed, 367

453 ———— Order for compensation on release of attached property —No appeal lies from an award of compensation on release of attached property HUROSOONDUREE DOSSEE v BUNGSEE MOHUN DASS 3 W R. Mis 28

HURO SOONDERY CHOWDHRAIN v BUNGSHEE MOHUN DASS 8 W R. 332

454 ———— Order releasing property from attachment—*Claim to property attached —Civil Procedure Code ss 86 246* —The plaintiff sued to recover a money-debt and applied for attachment of certain property before judgment The application was opposed by the wife of the defendant who claimed an interest in the property She was made a defendant by the Court of first instance which made a decree in favour of the plaintiff for the debt but releasing the property from attachment thus allowing the wife's objection *Held* that notwithstanding the irregularity of thus disposing of the claim by an order contained in the decree such irregularity did not affect the nature of the order releasing the property from attachment and no appeal therefrom lay to the Judge GEORGE v RAM RUTTUN [3 Agra 272

455 ———— Certain property having been attached in execution as belonging to the judgment debtor a portion was claimed by a third party and released from attachment *Held* that no appeal by the judgment debtor lay from the order of release SHAM SOONDER KOONWAR v RUGHOONATH SUHAYE 11 W R. 264

456 ———— No appeal lies from the order of a Court releasing a property from attachment on the ground that it is in the possession of the judgment debtor not on his own account but on account of or in trust for some other person RADHA KISHEN v AMEERUDEEN 11 W R. 204

457 ———— Where property attached in execution is released at the instance of an intervenor under s 246 Civil Procedure Code and retained in his possession the decree holder has no right of appeal IN THE MATTER OF AJOODHYA DAS 12 W R., 354

APPEAL—*continued*

18 ORDERS—*continued*

passed in appeal is final IN RE PARBHU NARAYAN SINGH 3 B L R A C 370 12 W R, 323

434 ——— Order giving possession to purchaser—*Civil Procedure Code 1859 s 264* —No appeal lay from an order of a Court giving possession under s 264 Act VIII of 1859 to a purchaser at a sale in execution of a decree OMIRTO MOYEE DOSSEE v GOOROO DOSS ROY [17 W R., 395

435 ——— Order refusing to grant possession—*Civil Procedure Code 1859 ss 259 263* —No appeal lay from an order refusing to grant possession under ss 259 and 263 Act VIII of 1859 GOPAL CHUNDER GHOSE v RAJ CHUNDER DUTT [2 W R. Mis 9

436 ——— Order admitting claim of dar patnidar—*Civil Procedure Code 1859 s 269* —No appeal lay from an order admitting the claim of a dar patnidar who has intervened under s 269 Act VIII of 1859 JADUB CHURN THAKOOR v BHOLANATH SINGH ROY 5 W R. Mis 51

437 ——— Order on application to review—*Civil Procedure Code 1882 s 629—Appeal from decree as amended* —A second appeal lies against an order of a lower Appellate Court passed under s 629 of the Civil Procedure Code (Act XIV of 1882) where the appeal to the lower Appellate Court has been not from the order allowing a review but from the original decretal order itself as amended by the original Court on the application for review *Than Singh v Chundun Singh I L R 11 Calc 296* distinguished *Semble*—The words of s 629 "an order of the Court for rejecting the application shall be final" *primâ facie* apply to the Court which has passed the original decree but in spirit they would seem properly to apply also to an order of an Appellate Court BALA NATHA v BHIVA NATHA I L R. 13 Bom 496

438 ——— Order rejecting review —*Civil Procedure Code 1859 s 378* —No appeal lies from the order of a Judge rejecting an application for a review of his order dismissing an appeal for default of prosecution CHOWDHRY PUTTUN PERSAD v HUNOOMAN JHA W R. 1864 Mis 20

439 ——— Under s 378 Act VIII of 1859 an order rejecting an application for review of judgment is final CALLY DASS SIRCAR v JANOKEENATH ROY 1 W R. Mis 7

440 ——— Order rejecting application for review of order dismissing execution proceedings for default in payment of process fees—*Civil Procedure Code (Act XIV of 1882) s 244 (c) 540 623 and 629* —That an application for review of an order dismissing an execution case for non-payment of process fees is not an application under s 244 cl (c) of the Code of Civil Procedure but one for review and no appeal lies therefrom PUDMANUND SINGH v DOORGA PERSHAD DOOBEY 4 C W N 39

APPEAL—*continued*

18 ORDERS—*continued*

441. ——— Order disposing of application for review on the merits —Where an application for review is disposed of as upon a re-hearing on the merits an appeal lies from the order so passed. AMANUT ALI v BINDHOO [13 W R., 138

442. ——— Order granting review—*Civil Procedure Code (Act XIV of 1882) s 629* —No appeal lies from an order granting a review of judgment except in the cases set forth in s 629 of the Civil Procedure Code (Act XIV of 1882) BOMBAY AND PERSIA STEAM NAVIGATION COMPANY v S S ZUARI I L R., 12 Bom., 171

443 ——— *Letters Patent High Court cl 15—Judgment —Order granting review of judgment—Civil Procedure Code 1882 s 629* —A second appeal was decided on the 1st June 1888 in favour of the respondents by two Judges of the High Court On the 24th July 1888 an application for review was filed with the Registrar Various reasons prevented the two Judges from sitting together until the month of March 1889 On the 6th March the matter came up before them when a rule was issued calling upon the respondents to show cause why a review should not be granted and made returnable on the 28th March 1889 On that day one of the Judges had left India on furlough and the rule was taken up heard and made absolute by the other of the two Judges sitting alone *Held* that the order was not a judgment within the meaning of cl. 15 of the Letters Patent and that no appeal would lie therefrom the order being final under s 629 of the Code of Civil Procedure *Bombay and Persia Steam Navigation Company v The Zuari I L R 12 Bom 171* and *Achaya v Ratnavelu I L R 9 Mad 253* approved AUBHOY CHURN MOHUNT v SHAMANT LOCHUN MOHUNT I L R. 16 Calc. 788

444 ——— *Order granting review of judgment—Civil Procedure Code (1882) s 629* —No appeal lies from an order granting a review of judgment except as provided by s 629 of the Civil Procedure Code *Bombay and Persia Steam Navigation Co v S S Zuari I L R 12 Bom 171* followed HAR NANDAN SAHAI v BEHARI SINGH [I L R 22 Calc 3

MAHABIR PRASAD v NATHNI THAKUR [1 C W N 338

445 ——— In general final appeal an order for review can only be challenged upon the grounds stated in s 629 of the Civil Procedure Code *Har Nandan Sahai v Behari Singh I L R 22 Calc 3* followed BARODA CHURN GHOSE v GOBIND PROSHAD TEWARY [I L R 22 Calc 984

446 ——— *Civil Procedure Code (1882) ss 626 and 629* —No appeal will lie from an order granting a review of judgment except under the conditions specified in s 629 of the Code of Civil

APPEAL—*continued*

18 ORDERS—*continued*

Procedure *Bombay and Persia Steam Navigation Co. v SS "Zaari" I L R 12 Bom 171* followed. DARYAI BIBI v BADRI PRASAD [I. L. R. 18 All. 44

See CHUNILAL HAJARIMAL v SONIBAI [I. L. R. 21 Bom., 328

447 ——— *Grounds of appeal*—No appeal lies from an order granting a review of judgment except in cases specified in s 629 of the Civil Procedure Code *Bombay and Persia Steam Navigation Company v SS "Zaari" I L R 12 Bom., 171* followed. *Har Nandan Sahai v Behar Singh I L R., 22 Calc 3* and *Baroda Churn Ghose v Gobind Pershad Tewary I L R 22 Calc 984* referred to. That the Court which has granted the review has done so without sufficient reasons is not a valid ground of appeal under s 629 MUNNI RAM CHOWDHRY v BISHEN PERKASH NARAIN SINGH [I. L. R 24 Calc. 878

448 ——— *Civil Procedure Code (1882) ss 626 629 586 and 591—Order granting a review in a suit of Small Cause Court nature valued at less than R500*—In a suit of a nature cognizable by a Small Cause Court and valued at less than R500 an order granting a review was passed by the Appellate Court without recording any reason for it An appeal was preferred against that order to the High Court under s 629 of the Code of Civil Procedure —*Held* that the order was bad being in contravention of the provisions of s 625 of the Code of Civil Procedure —*Held* also upon the objection of the respondent that no appeal lay against the above order that the appeal was permissible under s 629 the provisions whereof are not controlled or superseded by s 591 of the Code Questions raised in an application for review are totally different from those raised in the suit a review can only be granted on special grounds and it may well be that although an appeal is not allowed from the final decree in the suit an appeal is allowable from an order granting a review which could re open the case after it had been disposed of GYANUND ASRAM v BELIN MOHUN SEN I. L. R. 22 Calc 734

See MANICKA MUDALIAR v GURUSAMI MUDALIAR [I L. R. 23 Mad. 496

449 ——— **Order amending decree** —*Correction of clerical mistake in original order*—Where the Court on the application for a review of judgment amends a clerical mistake in its original order the decree drawn up in conformity to this order becomes the final decree and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree JOYKISHEN MOOKERJEE v ATAOOR ROHOMAN I. L. R. 6 Calc, 22 6 C L. R. 575

450 ——— **Order rejecting insufficiently stamped document.**—The question of the admissibility of an insufficiently stamped document once admitted as evidence by a Court can form no valid ground of appeal KHOOB LALL v JUNGEE SINGH I L. R 3 Calc 787 [2 C L. R. 439

451. ——— **Order refusing to allow document to be filed.**—No appeal lies from the refusal of the Judge of an Appellate Court to allow a fresh document to be filed BECKWITH v KISHTO JEEBUN BUCKSHEE Marsh 278 2 Hay 286

452. ——— **Order compensating defendant for loss of property attached.**—*Held* that no appeal lies to the District Court from an order made by a Munsif compensating a defendant for loss of property attached before judgment under s 84 of Act VIII of 1859 TRIKAM GOVARDHAN v DULLABH KUBER 2 Bom 389 2nd Ed. 367

453 ——— **Order for compensation on release of attached property**—No appeal lies from an award of compensation on release of attached property HURDSOONDUREE DOSSEE v BUNGSEE MOHUN DASS 3 W R. Mis 28

HURO SOONDERY CHOWDHRAIN v BUNGSHEE MOHUN DASS 8 W R. 332

454 ——— **Order releasing property from attachment**—*Claim to property attached—Civil Procedure Code ss 86 246*—The plaintiff sued to recover a money debt and applied for attachment of certain property before judgment The application was opposed by the wife of the defendant who claimed an interest in the property She was made a defendant by the Court of first instance which made a decree in favour of the plaintiff for the debt but releasing the property from attachment thus allowing the wife's objection *Held* that notwithstanding the irregularity of thus disposing of the claim by an order contained in the decree such irregularity did not affect the nature of the order releasing the property from attachment and no appeal therefrom lay to the Judge GEORGE v RAM RUTTUN [3 Agra 272

455 ——— Certain property having been attached in execution as belonging to the judgment debtor a portion was claimed by a third party and released from attachment *Held* that no appeal by the judgment debtor lay from the order of release SHAM SOONDER KOONWAR v RUGHOONATH SUHAYE 11 W R. 264

456 ——— No appeal lies from the order of a Court releasing a property from attachment on the ground that it is in the possession of the judgment debtor not on his own account but on account of or in trust for some other person RADHA KISHEN v AMEERUDEEN 11 W R. 204

457 ——— Where property attached in execution is released at the instance of an intervenor under s 246 Civil Procedure Code and retained in his possession the decree holder has no right of appeal IN THE MATTER OF AJOODHYA DASS 12 W R. 354

APPEAL—*continued*

18 ORDERS—*continued*

458 ———— *Suit to establish right—Civil Procedure Code 1877 ss 278 283*—An objection was made to the attachment of certain property in the execution of a decree by the judgment debtor on the ground that such property was in his possession not as his own property but on account of an endowment This objection was one of the nature to be dealt with under s 278 and following sections of Act X of 1877 The Court executing the decree made an order against the decree holder releasing the property from attachment *Held* that such order was not appealable the fact that the objection was made by the judgment debtor notwithstanding and the decree holder's proper remedy was to institute a suit under the provisions of s 283 of Act X of 1877 SHANKAR DIAL *v* AMIR HAIDER [I. L. R. 2 All. 752

459 ———— *Appeal by decree holder*—Where parties holding a decree which declares that they have a lien to be satisfied by the sale of certain property proceed to attach and sell the property and in pursuing this course are met by an objection under Act VIII of 1859 s 246 and that objection is adjudicated unfavourably to them no appeal lies from such adjudication though the parties are at liberty to bring a suit to establish their rights MITTOO LALL *v* MAHTAB KOOERRE [19 W R. 98

460 ———— *Civil Procedure Code 1859 s 246—Act X of 1859 s 106*—Where land is attached in execution of a rent decree and on an application either under Act VIII of 1859 s 246 or under Act X of 1859 s 106 it is released from attachment by order of a Court of competent jurisdiction such order is not subject to appeal and can only be impugned by a regular suit IN THE MATTER OF THE PETITION OF URJOON SAHOY URJOON SAHOY *v* NILMONEE SINGH DEO [20 W R. 90

461. ———— **Order dismissing claim to attached property**—*Civil Procedure Code 1882 ss 281 283—Execution of decree—Objection to attachment*—The heirs of the deceased obligor of a bond were sued thereon on the ground that they were in possession of the property of the deceased and a decree was made in this suit for the recovery of the amount claimed from the property of the deceased In execution of this decree the plaintiff caused certain property to be attached as belonging to the deceased. The defendants objected to the attachment on the ground that the property belonged to them The Court executing the decree proceeded to investigate this objection and finding that the property did not belong to the defendants but to the deceased disallowed it *Held* that the proceedings upon such objection were taken under s. 281 of the Civil Procedure Code and the order disallowing it was therefore not appealable AWADH KUARI *v* RAKTU TIWARI I. L. R. 6 All. 109

462. ———— *Civil Procedure Code 1859 s 240*—Where a claim under s. 246 of Act VIII of 1859 is dismissed there is no appeal from the order of dismissal BUKSHEE *v* BUNGSHEE DHUR 6 W R., Mis. 46

463 ———— **Order on application to add party**—*Civil Procedure Code 1859 s 73*—No appeal lies against an order passed on an application made before decree under s 73 of the Civil Procedure Code except in case of an appeal from the decree itself as provided for in s 363 *Iyaravartani v Ambalavana Pillai 1 Mad 197* does not conflict with this ruling as the petition there was presented in the course of a regular appeal then pending in the High Court MUTHAYAMMAL *v* TIRUMALA GAUNDAN 4 Mad., 22

464. ———— *Civil Procedure Code 1859*—The action of the Court under s 73 Act VIII of 1859 is a matter of discretion and upon a true construction of ss 363 and 350 not a matter of appeal but an appeal will lie after decree against interlocutory orders if they affect the decision on the merits or the jurisdiction of the Court PIRTH NATH SAHOY *v* GOPEE SAHOO 14 W R. 90

See UPENDRA KRISHNA DEB *v* NOBIN KRISHNA BOSE 17 W R. 370 note [3 B L R. O C 113

465 ———— **Order refusing application to add party**—*Civil Procedure Code 1877 s 32*—An order refusing an application under s 32 of Act X of 1877 by a person to be added as a defendant in a suit is not appealable JARMAN BIBI *v* MISRI LAL I. L. R. 2 All. 904

466 ———— **Order rejecting application to add party**—*Civil Procedure Code ss 32 and 588 cl 2*—An order rejecting an application under s 32 of the Civil Procedure Code to be made a party to a suit is not appealable under cl 2 s 588 ABIRUNNISSA KHATOON *v* KOMURUNNISSA KHATOON I. L. R 13 Calc. 100

467 ———— *Civil Procedure Code ss 32 588 (2)—Appeal against order that a plaintiff be made defendant*—An appeal lies under Civil Procedure Code s. 588 (2) against an order under s 32 that a plaintiff be made defendant LAKSHMANA *v* PARAMASIVA [I. L. R. 12 Mad. 489

468 ———— **Order dismissing petition for examination of witness**—*Civil Procedure Code 1859 ss 162 163*—The order of a Court dismissing a petition under ss 162 and 163 Act VIII of 1859 is final But the Court is bound to show on the face of its judgment that judicial discretion has been used and the limit of its powers not exceeded. RAM SURUN SINGH *v* GOOROO DYAL SINGH [1 W R. 83

HARO CHAND PORAMANICK *v* KRISHTO MOHUN GIREE 1 W R. 297

NEEM CHAND DEY *v* ANUND COOMAR ROY CHOWDHRY 7 W R. 147

APPEAL—*continued*

18. ORDERS—*continued*

469 ——— **Order as to expenses of witness**—*Civil Procedure Code 1859 s 191*—An order was made directing the realisation (under s 191 Civil Procedure Code 1859) by attachment and sale of the expenses of a witness after he was discharged without being required to give evidence. A miscellaneous appeal having been filed from the order the High Court issued a rule to show cause why the appeal should not be allowed. On no cause being shown the appeal was filed. BIJOY KISHEN MOOKERJEE v JOY KISHEN MOOKERJEE [12 W R. 430

470 ——— **Order suspending execution for cross-decree**—No appeal lies from the order of a lower Court suspending the execution of a decree pending the result of an enquiry into a cross-decree held by the judgment debtor. SMITH v BULWANT SINGH 2 W R. Mis 24

471 ——— **Order staying execution of decree**—*Civil Procedure Code 1859 s 209*—No appeal lies against an order under the last clause of s. 209 of the Code of Civil Procedure staying the execution of a decree. The High Court however in the exercise of its extraordinary jurisdiction will examine the judicial propriety of such an order. CAMBHIRMAL v CHEJMAL JODHMAL [11 Bom 151

472 ——— *Civil Procedure Code (Act X of 1877) ss 243 244 588*—A decree holder having attached the property of his judgment debtor in execution the latter applied for a stay of execution until the decision of a pending suit brought by him against the judgment creditor. The Court allowed the application continuing the attachment on the property and struck the execution case off the file. The decree-holder appealed to the High Court. *Held* that no appeal lay. NIHAL CHAND alias CHUTTO LALL DASS v LAMESHARI DASEE I. L. R. 9 Calc 214 12 C L R 53

473 ——— *Stay of execution pending suit between decree holder and judgment debtor—Appeal from order staying execution—Civil Procedure Code s 243*—An appeal lies from an order passed under s 243 of the Civil Procedure Code staying execution of a decree pending a suit between the decree holder and judgment debtor. The plaintiff instituted a suit against defendant for recovery of money and other relief which was ultimately dismissed in appeal by the High Court and he was ordered to pay defendant R1 000 as costs of the litigation. Plaintiff then brought this suit against defendant in the Court of the Subordinate Judge of Farukhabad and while it was pending defendant applied to the Court to execute his decree for costs. Plaintiff then applied for stay of the execution and his application was refused by the first Court but granted by the District Court. On appeal by defendant to the High Court *held* that an appeal lay from the order and the Judge's order was correct. *Mithun Bibi v Bu loor Khan 8 W R 392* disapproved. KASSA MAL v GOPI I L R 10 All. 389

APPEAL—*continued*

18 ORDERS—*continued*

474 ——— *Security bond—Civil Procedure Code Act XIV of 1882 ss 545 588*—The Court which passed a certain decree ordered execution thereof to be stayed pending appeal on the debtor's furnishing security to the amount of R40 000 under the provisions of s 545 of the Code of Civil Procedure. The debtor objected to the amount of security required and appealed to the High Court on that ground. The decree holder contended that no appeal lay. *Held* that the order was appealable. *Held* also on the facts that the security required was excessive. UDEYADEETA DEY v GREGSON I. L. R. 12 Calc 624

475 ——— **Order releasing surety for stay of execution**—No appeal will lie from an order by a District Judge releasing a surety from security taken from him by the High Court to enable a decree holder to take out execution of his decree pending an appeal to the Privy Council although it is an improper one. ABEDOONISSA KHATOON v AMEEROONISSA KHATOON [17 W R. 464

476 ——— **Order rejecting application to stay execution etc for want of sanction of Court under s 462**—*Civil Procedure Code s 462—Decree by consent of guardian of minor defendant*—An application to stay execution of and to set aside a decree passed with the consent of the guardian of a minor defendant for want of sanction of the Court under s 462 Civil Procedure Code was rejected. *Held* no appeal lay against the order of rejection. ARUNACHALLAM v MURUGAPPA [I L R 12 Mad. 503

477 ——— **Order rejecting petition for execution by transferee of decree**—*Civil Procedure Code s 232*—A petition by one claiming to be the purchaser at a Court sale of the interest of a decree holder under a decree for execution of the decree was rejected. *Held* no appeal lay from the order rejecting the petition. SAMBASIVA v SRINIVASA I. L. R. 12 Mad. 511

478 ——— **Order refusing stay of execution pending suit between decree holder and judgment-debtor**—*Civil Procedure Code (1882) ss 243 and 588*—An appeal lies from an order refusing stay of execution under the Civil Procedure Code s 243 pending suit between a decree holder and his judgment debtor. LINGUM KRISHNA BHUPATI DEVU v KANDULA SIVARAMAYYA [I L. R. 20 Mad 366

479 ——— **Order refusing application to be declared insolvent**—*Insolvency—Code of Civil Procedure (Act X of 1877) ss 351 588 cl 17*—An order refusing to grant an application to be made an insolvent is appealable under cl 17 s 588 of the Code of Civil Procedure. Such an order must be considered to be one made under s 351. *Juggutjeebun Gooptoo v Harocoomar Pal I L R 5 Calc 719* dissented from. NUBBI BUKSH v CHASNI [I L R. 6 Calc 168 7 C L R. 282

APPEAL—*continued*

18 ORDERS—*continued*

480 ——————— *Civil Procedure Code (Act X of 1877) ss 351 588 cl 17*—There is no appeal from an order made under s 351 of the Code of Civil Procedure refusing to grant an application to be made an insolvent The appeal allowed under s. 588 cl 17 so far as an order under s 351 is concerned is on behalf of the judgment creditor only JUGGUTJEEBUN GOOPTOO v HAROCOOMAR PAL I. L. R. 5 Calc. 719

JUGGOBUN GOOPTA v HURRO KOOMAR PAL [6 C L. R. 135

481. ——————— An appeal lies against an order passed under s 351 of Act X of 1877 although it was an order refusing to declare petitioner an insolvent BAVACHI PACKI v PIERCE LESLIE & Co I. L. R. 2 Mad., 219

482 ——————— *Civil Procedure Code 1877 s 588 (n)*—An order dismissing an application to be declared an insolvent is appealable under s 588 (n) of the Code of Civil Procedure 1877 MUMTAZ HOSSEIN v BRIJ MOHUN THAKOOR [I. L. R. 4 Calc. 888

483 ——————— *Civil Procedure Code 1882 ss 344 588—Insolvent judgment debtor*—A debtor was arrested on civil process He presented a petition to the Court from which process issued, alleging that he was unable to pay the debt and praying to be declared insolvent and to be released. The Court passed an order on the same day directing that he should be released and that the creditor should proceed against his property *Held* that an appeal lay against the order KOMARASAMI v GOVINDU I. L. R. 11 Mad. 136

484. ——— **Order dismissing petition of insolvent debtor**—*Provincial Small Cause Courts Act (IX of 1887) s 24—Insolvency petition in execution of decree in Small Cause suit—Civil Procedure Code ss 344 588*—In proceedings in execution of the decree passed in a Small Cause suit by a District Munsif who had been invested with insolvency jurisdiction the judgment debtors filed a petition under s 344 of the Civil Procedure Code praying that they might be declared insolvents Their petition was dismissed by the District Munsif *Held* an appeal lay to the District Court against the order dismissing the petition VAIKUNTA PRABHU v MOIDIN SAHEB I. L. R. 15 Mad. 89

485 ——— **Appeal against order of a subordinate Court on a petition of insolvency**—*Civil Procedure Code s 589—Civil Procedure Code Amendment Acts (VII of 1888 s 56) (Act X of 1889 s 3)*—The judgment debtor having been arrested in execution of a decree passed by the Small Cause Court at Madras which was transferred for execution to the subordinate Court of South Malabar applied to the District Court to be declared an insolvent The District Court transferred the application for disposal to the subordinate Court and the application was granted on 2 th July 1888 On 5th November 1888 one of the opposing creditors appealed to the High Court *Held* that the appeal did not lie SITHARAMA v VYTHILINGA [I. L. R. 12 Mad. 472

486 ——— **Order refusing to discharge surety for insolvent**—*Civil Procedure Code ss 336 344*—An order refusing to discharge a surety under s 336 of the Civil Procedure Code for an insolvent judgment debtor filing his petition where the surety was entitled to his discharge is not an appealable order BAIMA MAL v JAMNA DAS [I. L. R. 15 All 183

487 ——— **Order releasing from attachment after acquired property of insolvent judgment-debtor**—*Civil Procedure Code (1882) s 357 and s 588 cl 17*—Where some of the scheduled creditors of a judgment-debtor who had been declared an insolvent and in respect of whose property a receiver had been appointed but who had not been discharged presented an application to the Court purporting to be made under s. 357 of the Civil Procedure Code praying for the sale of certain property which had come by inheritance to the judgment debtor and the Court also purporting to act under s. 357 of the Code made an order on such application allowing the property in question to be released from attachment on deposit by the insolvent of one third of the scheduled debts —*Held* that the order was appealable as an order under s. 357 by virtue of s. 588 cl 17 of the Code of Civil Procedure GANESHI LAL v MUSARRAT ALI CIRWAR LAL v MUSARRAT ALI [I. L. R. 16 All. 234

488 ——— **Order giving possession to mortgagor on payment after expiry of time**—*Transfer of Property Act (IV of 1882) s 87—Decree for foreclosure—Mortgagor s application for extension of time*—In a suit on a mortgage a decree for foreclosure was passed a period of three months being fixed for the discharge of the mortgage debt The mortgagor having made default the decree holder applied for and was placed in possession of the property The mortgagor to whom no notice had been given of the decree holder's application then applied for and obtained an extension of time for payment and he made the payment and recovered possession *Held* that the mortgagee was entitled to appeal against the order NARAYANA PEDDI v PAPAYYA I. L. R. 22 Mad. 133

489 ——— **Order on investigation of claim**—*Civil Procedure Code 1859 s 229—Jurisdiction of District Judge*—The plaintiff obtained a decree against *T A* and *J* in a suit the subject matter of which exceeded R5 000 and in part execution thereof attached property worth less than that amount *D* having resisted the execution of the decree The plaintiff s claim was numbered and registered as a suit under s 229 of Act VIII of 1859 Upon investigation the First Class Subordinate Judge made an order staying the execution of the decree The plaintiff appealed to the District Judge who held that no appeal lay to him as the subject matter of the

APPEAL—*continued*

18 ORDERS—*continued*

criminal suit out of which the execution suit arose exceeded Rs 5,000 The plaintiff appealed against this decision to the High Court *Held* that the investigation of the claim under s 2 9 of Act VIII of 1859 was not to be regarded as a fresh suit but was merely a continuation of the criminal suit and that there was therefore no appeal against the order in question to the District Judge BALLOJI TAMAJI v DHOLAPA RAGU I. L. R. 4 Bom. 123

490 ———— **Proceedings in nature of fresh suit**—*Civil Procedure Code (1882) s 331 —Specific Relief Act (Act I of 1877) s 9—Subordinate Judge Jurisdiction of*—A obtained a decree for possession of certain land against *B* and others under s. 9 of the Specific Relief Act He was obstructed by the defendant a third party when he went to take possession Thereupon he applied to the Munsif's Court for the removal of the obstruction and his application was registered as a regular suit under s. 331 of the Code of Civil Procedure The Munsif gave the plaintiff a decree On appeal the Subordinate Judge reversed it Against the order of the Subordinate Judge the plaintiff appealed to the High Court on the ground that the proceedings under s 331 were merely a continuation of the original suit under s. 9 of the Specific Relief Act and as no appeal lay against a decision passed under that section no appeal lay to the Subordinate Judge *Held* that proceedings under s 331 of the Code are in the nature of a fresh suit between the decree holder and a third party and therefore an appeal lay to the Subordinate Judge *Balloji Tamaji* v *Dholapa Raghu I L R 4 Bom 123* distinguished *Muttammal* v *Chinnana Gounden I L R 4 Mad 220* and *Kalima* v *Nainan Kutti I L R 13 Mad 520* referred to NASIR ALI FAKIR v MEHER ALI [I. L. R. 22 Cal. 830

491 ———— **Order for delivery of land**—*Obstruction by mortgagee in possession—Civil Procedure Code 1859 ss 229 231*—On a complaint by a decree holder under s 2_6 of the Civil Procedure Code against a mortgagee in possession of the land and two other persons who resisted the execution of the decree the Munsif passed an order for delivery of possession but without having numbered and registered the claim as a suit as directed by s 229 of the Code which in his opinion did not apply to the claim of a mortgagee in possession and the senior Assistant Judge though of opinion that the Munsif was in error in not proceeding under s 229 ruled that there was no appeal from his order as the claim had not been numbered and registered and investigated. *Held* that the irregular procedure of the Munsif should not prevent the Court from correcting his error and that his order which could only have been made under s 2 9 was subject to appeal under s 231 and should therefore be reversed and the case remanded that the claim might be numbered and registered as a suit and an order passed thereon after the investigation as directed by s 229 of the Code MUSABHI v SHAFUDDIN HISMUDDIN 4 Bom A C 35

492 ———— *Civil Procedure Code ss 328 331—Obstruction to execution of decree—Dismissal of decree holder's petition*—Obstruction was offered to the execution of a decree for partition of certain property by one claiming to be entitled to occupy part of the land in question as a mulgeni tenant The decree holder presented a petition to the Court under Civil Procedure Code s 328 this petition was rejected and the claim was not numbered and registered as a suit *Held* that an appeal lay against the order rejecting the petition GOPALA v FERNANDES I. L. R. 16 Mad. 127

493 ———— **Order numbering and registering as suit objection of obstruction to execution of decree**—*Civil Procedure Code (1882) ss 328 and 331—Complaint made more than a month from the time of the obstruction—Objection with respect to limitation in appeal*—Although no appeal lies against an order passed under s 331 of the Civil Procedure Code (Act XIV of 1882) numbering and registering as a suit a complaint made at a time beyond a month from the time of the obstruction in an application under s 328 such order can be objected to when the final order which is appealable as having the force of a decree under s 331 is appealed against The Judge in appeal is bound to entertain the objection that is then made and to dismiss the application when he finds that it has been wrongly admitted LALA v NARAYAN [I L R 21 Bom 392

494 ———— **Order rejecting claim to possession**—*Civil Procedure Code 1859 s 230*—No appeal lies against an order of the Court refusing to entertain an application under s 230 Act VIII of 1859 by a party other than a defendant who disputes the title of the decree holder FASUL BIBI v MOBARIK ALI [2 B L. R. A. C 303 note 11 W R. 186

495 ———— *Person not party to suit—Civil Procedure Code 1859 s 230*—There is no appeal from an order passed under s 230 Act VIII of 1859 rejecting an application by a person not a party to the suit alleging that he is being dispossessed by the Court Ameen in execution of decree KHELLUT CHUNDER GHOSE v PROSUNNO MOYE DOSSEE W R. 1864 Mis 24
GOLUCK NARAIN DUTT v BISTO PREA DOSSEE [1 W R. 140

496 ———— *Civil Procedure Code 1859 s 230*—Where an application was made to the Civil Court under s 230 of the Civil Procedure Code by the petitioner disputing the right of a decree holder to dispossess him of certain immoveable property and the Civil Judge rejected the application—*Held* that s 231 of the Civil Procedure Code did not give the petitioner a right of appeal to the High Court STRINARA IMMA CHARIYAR v NARASIMMA CHARIYAR 5 Mad. 183

APPEAL—*continued*

IS ORDERS—*continued*

497 ——————— *Civil Procedure Code 1859 s 230*—Where an application for the remedy provided in Act VIII of 1859 s. 230 is refused by a Munsif in the exercise of his discretion no appeal lies against the order of refusal But where the application is admitted and filed the opposite side called upon to meet it and the claim subsequently rejected the order of rejection is a decision between the parties on the merits of the application within the scope of s. 231 from which an appeal lies to the Judge MOOKANDEE MISRAIN *v* SHEO LOCHUN PATTUCK 21 W R. 39

498 ——————— Order allowing claim to possession—*Civil Procedure Code 1859 ss 230 231—Suit under s 15 Act XIV of 1859*—S brought a suit under s. 15 Act XIV of 1859 obtained a decree and took possession. After this *B* applied under s 230 Act VIII of 1859 alleging that he had been in possession and was dispossessed by *S* in execution of a decree against another party The Munsif decreed the case in favour of *B* *Held* that the latter was not a proceeding under the former suit and the decision upon it was appealable under s. 231 Act VIII of 1859 BROHMO MOYEE DABEE *v* BUKKUT SIRDAR 13 W R. 284

499 ——————— Order refusing to set aside an injunction—*Civil Procedure Code ss 496 588 cl 24*—An appeal will lie under s. 588 cl 24 of the Code of Civil Procedure from an order under s 496 of the Code refusing to set aside an injunction *Nabi Buksh v Chaunu I L R., 6 Cal 168* referred to. ZABADA JAN *v* MUHAMMAD TAIAB [I. L. R. 15 All., 8

500 ——————— Order for issue of notice made under s. 494—*Civil Procedure Code ss 494 588*—A petition praying for a temporary injunction in a suit was presented by the plaintiff in a subordinate Court. The Judge refused to pass orders on it without hearing the defendants and ordered notice to issue to them The plaintiff appealed to the District Judge who granted the injunction prayed for —*Held* that no appeal lay from the subordinate Court and that the District Judge had purported to exercise a jurisdiction not vested in him by law LUIS *v* LUI [I. L. R. 12 Mad., 186

501 ——————— Order rejecting plaint as insufficiently stamped.—*A* sued *B* and *C* (i) for a declaration of his title to certain property and (ii) for an injunction restraining *C* from paying and *B* from receiving an allowance of R2,400 a year out of the income of the property in dispute *A* valued each of the reliefs sought at R130 and affixed a Court fee stamp of R20 to the plaint The Court of first instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should be valued at ten times the annual allowance paid by *C* to *B* as provided by s. 7 cl 2, of Act VII of 1870 On appeal to the High Court *held* that the order rejecting the plaint as insufficiently stamped was appealable SARDARSINGJI *v* GANPATSINGJI I. L. R. 17 Bom. 56

502 ——————— Order rejecting plaint for want of jurisdiction—*Civil Procedure Code 1859 s 14*—Whether the Court acting under s. 14 Act VIII of 1859 enquires into and determines the preliminary question of jurisdiction or rejects the plaint the proceeding is open to appeal and if it appears that jurisdiction has been unduly assumed, the subsequent enquiry of right must be set aside as carried on without jurisdiction. MOHESHUR BUKSH SINGH *v* COLLECTOR OF GHAZEEPORE [2 Agra 214

503 ——————— Order returning plaint for presentation in proper Court—*Civil Procedure Code 1877 s 57*—A suit to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court After the suit had been admitted and the parties called on to produce evidence the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge the value of the property in suit being beyond the jurisdiction of a Munsif *Held* that under Act VIII of 1859 the Munsif's order was appealable to the lower Appellate Court and under Act X of 1877 the lower Appellate Court's order to the High Court KALIAN DAS *v* NAWAL SINGH I. L. R., 1 All. 620

504 ——————— *Civil Procedure Code 1877 s 588 and s 57*—*Act XII of 1879 s 2*—Where after the issues in a suit were framed the Court decided that it had no jurisdiction and returned the plaint to be presented in the proper Court —*Held* that in so doing the Court acted under s. 57 of Act X of 1877 and its decision not coming within the definition of a decree in s. 2 of Act XII of 1879 was not appealable as such but was appealable under s 588 of Act X of 1877 as an order ABDUL SAMOD *v* RAJINDRO KISHORE SINGH [I. L. R. 2 All. 357

505 ——————— *Civil Procedure Code 1877 ss 540 588 (6)—Second appeal*—The lower Appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction and ordered that the appellant's appeal be decreed the decision of the Munsif be reversed and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court *Held* that such order could not be regarded as one to which art 6 of s. 588 of Act X of 1877 was applicable That relates to orders returning plaints for amendment or to be presented

APPEAL—*continued*

18 ORDERS—*continued*

to the prop r Court pas ed by a Court of first instance an l n t to an ord r by an Appellate C urt up n an appeal to it from the d cree of a Court of first instance on general grounds The plaintiff s proper course was to have preferred a second appeal BINDE HRI CHAUBEY v NANDU

[I. L. R. 3 All. 456

Contra CHINNASAMI PILLAI v KARUPPA UDAYAN [I. L. R. 21 Mad. 234

506 ———— *Civil Procedure Code (Act XIV of 1882) ss 57 582 588 589—Return of plaint to be presented to the proper Court—Order under Civil Procedure Code s 525*—Where an ord r is made by the l wer Court of Appeal r turning a plaint under s 57 of the Civil Procedure Code by virtue of the p wers conferred on it by s 582 an appeal lies to the High Court under s 589 S 588 does n t prohibit such appeal *Bindeshri Chaubey v Nandu I L R 3 All 456* distinguished. GOOR BUX SAHOO v BIRJ LAL BENKA I. L. R. 26 Calc 275 [3 C W N 243

507 ———— *Civil Procedure Code 1877 ss 57 (a) 562 589—Remand by Appellate Court—Second appeal*—The Court of first instance mad an order returning the plaint in a suit to be presented to the proper Court on the ground that i was n t competent to try such suit On appeal fr m such ord r the Appellate Court h lding that the Court of first instance was competent to try such suit ma l an ord r decreeing the appeal It subsequently made an additional order directing that the case sh uld be returned for re trial On appeal to th High Court from such additional order—*Held* that the appeal would n t lie as it was in reality one from an order passed in appeal from an order returning a plaint which und r the last clause of s 588 of Act X of 1877 was final and n t an appeal from an order remanding a case under s 562 the character of the original order of the Appellate Court not being altered by the pa ng of the additional order KISHNA RAM v NARSING SEVAK SINGH

[I. L. R. 3 All. 855

508 ———— *Civil Procedure Code 1877 ss 57 588 (6)—Institution of suit in wrong Court—Transfer of suit—Power of the Court to which suit s transferred to return plaint to be presented to the proper Court—Jurisdiction*—A District Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it The Court in which the suit was instituted was not the one in which the suit should have been institute l and con equently the Court to which it was transferred made an order dismissing it and directing the return of the plaint for presentation to the proper Court *Held* that such order must be taken to have been passed under s. 57 of the Civil Procedure Code and was therefore appealable under s 588 (6) PACHAONI AWASTHI v ILAHI BAKHSH

[I. L R, 4 All 478

APPEAL—*continued*

18 ORDERS—*continued*

509 ———— **Order allowing amendment of plaint**—*Civil Procedure Code 1877 ss 53 589 (6)*—The plaintiff in a suit applied for the amendment of the plaint The d f ndant obj ct d to the amen lm nt an l a day was fixed by the Court for the admissi n or rejection of the petition of amendment and the determination of the defendant s objecti ns thereto The C urt after hearing the parti s made an order all wing the petiti n of amendment and rejecting the def n dant s objections The defendant appeal d from such order to th High Court *Held* that inasmuch as ord rs amending plaints then and there are n t mal appealable by Act X of 1877 and it was into this category if into any at all that such order must fall such order was n t appealable RAJINDRA KISHORE SINGH v RADHA PRASAD SINGH

[I. L. R. 3 All 854

510 ———— **Order amending decree**—*Civil Procedure Code 1882 s 206*—*Per* OLDFIELD *J*—When an original decree is amended under s 206 of the Civil Procedure Code it as amend d is the decree in the suit and an appeal theref re lies from it under the provi i ns of s 540 when the validity of the amendm nt can b questi n l *Per* MAHMOOD *J*—An order pa sed under s 206 amending a decree is a separate adjudication and is not merely a part of the original decree and cannot al er its date and such an order is not appealable un l r s 588 of the Code RAGHUNATH DAS v RAJ KUMAR

[I L R 7 All 276

SURTA v GANGA I L R 7 All. 411

511 ———— *Decree—Judgment—Objections by respondent to decree—Res judicata—Civil Procedure Code ss 13 540 561 584*—In a suit to obtain p ssessi n of certain property and to set aside a deed called a deed of endowment (wakfnama) on the ground that the defendant had fraudulently obtained its execution the defendant pleaded (i) that the deed was a vali l one and (ii) that she was in possession of the property in satisfaction of a dower debt and her possession coul l not be disturbed so long as the debt remained unsatisfied The Court of first instance held that the deed was invalid but that the d fen dant was entitled to remain in po session of the property till her dower debt was satisfied and the Court pa sed a decree which merely dismissed the suit w th ut embodying the finding as to the deed On appeal by the plaintiff to the District Judge the defendant filed objections und r s 561 of the Civil Procedure Code in regard to the first Court s decisi n that the deed of endowment was invalid The Jud e di missed the plaintiff s appeal aff rming the finding as to d wer an l r fusing to decide the questi n of the validity of the d ed as being unnecessary for disp sal of the claim disall wed the d fen lant s objecti ns The def n lant appealed to the High Court *Held* by the Full B nch (OLDFIELD and MAHMOOD JJ dissenting) that if a decree is up n the face of it entirely in favour of a party to a suit

APPEAL—*continued*

18 ORDERS—*continued*

such decree being the thing which by law is made appealable and nothing else that party has no right of appeal therefrom. If in the judgment of which such decree is the formal expression findings have been recorded upon some issues against that party and he desires to have formal effect given to them by the decree so as to allow of his filing objections thereto under s. 561 of the Civil Procedure Code or of appealing therefrom under s. 540 he must take steps under s. 206 to have the decree properly brought into conformity with the judgment so that there may be matter on the face of it to show that something has been decided against him but if he fails to take this course the decree though in general terms will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself rested The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of as to the plaintiff's right to any portion of the relief sought by him as declared by the decree amount to no more than *obiter dicta* and do not constitute a final decision of the kind contemplated by s. 13 of the Civil Procedure Code *Held* also that in the present case the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial The judgment of STRAIGHT J in *Lachman Singh v Mohan I L R 4 All 497* approved and followed. *Per* OLDFIELD J *contra* that the decree to agree with the judgment and fulfil the requirements of s. 206 of the Civil Procedure Code should contain the material points for determination arising out of the claim and material for the decision thereon that if this has not been done the defect is a good ground of appeal notwithstanding that the decree on its face may be altogether in favour of the appellant and notwithstanding that he may not have applied for amendment of the decree under s. 206 or for review of judgment and that in the present case the defect in the decree would afford a good ground of appeal *Per* MAHMOOD J that inasmuch as the provisions of s. 13 of the Civil Procedure Code relate as well to the trial of issues as to the trial of suits and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon the finding of the first Court upon that issue was not a mere *obiter dictum* but would be binding upon the defendant as *res judicata* notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower that whatever has the force of *res judicata* is necessarily appealable that the word from as used in s. 540 or s. 584 and the expression "objection to the decree in s. 561 refer not only to matters existing upon the face of the decree but also to those which should have existed, but do not exist there and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court and was therefore entitled to file objections to it and for the same reason to appeal to the High Court from the decree of the lower Appellate Court Also *per* MAHMOOD J that it was doubtful whether the reliefs contemplated by ss. 206 and 623 were open to the defendant but that even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal *Anusuyabai v Sakkaram Pandurang I L R 7 Bom 464 Man Singh v Narayan Das I L R 1 All 480 Mohan Lal v Ram Dayal I L R 2 All 843 Nyamat Khan v Phadu Buldia I L R 6 Calc 319* and *Ram Kooer v Bhagwant Kooer 6 W R 19* referred to JAMAITUNNISSA v LUTFUNNISSA I. L. R. 7 All. 606

512. ——— *Decree affirmed on appeal—Amendment of decree by first Court after affirmance—Objection by judgment debtor to execution of amended decree—Appeal from order disallowing objection—Objection allowed on appeal* —The decree of a Court of first instance having on appeal been affirmed by the High Court the first Court altered the decree which had been affirmed intending to bring it into accordance with the judgment of the High Court After the decree had been altered application was made to execute it as altered, but this was opposed by the judgment-debtor on the ground that that was not the decree which could be executed. *Held* by the Division Bench that the order of the first Court disallowing the objection and directing that execution of the decree as altered should proceed could not be regarded as passed under s 206 of the Civil Procedure Code but was an order passed in execution of decree and as such was appealable MUHAMMAD SULAIMAN KHAN v FATIMA [I. L. R. 11 All. 314

513. ——— **Order of remand after former remand.**—There is no appeal from the order of a lower Appellate Court remanding a case a second time on the ground that the former order of remand had not been carried out RADHABULLUB SURMA v ANUNDMOYEE DEBIA [W. R. 1864, Mis 39

514. ——— **Order of remand.**—*Quære*—Whether when a lower Appellate Court reverses a decree of a lower Court on the plea of limitation and remands the case to be tried upon the merits such decision is an order prior to decree from which no appeal will lie MAHOMED ANJOB v GOUREE PERSHAD SHA 6 W. R. 61

515 ——— **Order of remand on special point**—*Reversal of decree on appeal* —In a suit for the enhancement of rent the Collector dismissed the suit. On appeal the Judge held that the rent was liable to enhancement and remanded the case to the Collector to find what rate was equitable *Held* that an appeal lay from the decision of the Judge notwithstanding the remand to find the rates. NEELMONEY SINGH DEO v SHOBHUN BIBEE [Marsh. 600

APPEAL—continued

13 ORDERS—continued

516 ———— Order of remand.—Where the first Court held a suit barred by limitation and on the ground of *res judicata* and the lower Appellate Court (in reversal of that Court's judgment) remanded the case for trial on its merits —*Held* that an appeal lay from the lower Appellate Court's order of remand. KULTUMOONNISSA BIBEE v GOOROO PERSHAD SHAH 7 W R. 331

517 ———————— *Civil Procedure Code (1882) s 562— Preliminary point —Decree in accordance with an award* —Objection was unsuccessfully taken before a District Munsif to the validity of an award on the ground of the arbitrator being interested, and a decree was passed in accordance with the award. The defendant appealed and the Subordinate Judge held that the objection was well founded and should prevail and setting aside the award he remanded the case for trial The plaintiff appealed to the High Court *Held* (1) that the appeal to the High Court was maintainable the decision being one on a preliminary point under s 562 and not a disposal of the case in accordance with the award KRISHNAN CHETTI v MUTHU PALANDI VACHA MAKALI TEVAR I. L. R. 22 Mad. 172

518 ———— Order of remand made without jurisdiction—*Civil Procedure Code (Act XIV of 1882) ss 562 588—Proceedings taken by first Court pending appeal from order*—In a case where neither of the parties desired to have a local investigation though suggested by the Courts the lower Court dealt with the case on the material before it and made a decree On appeal the Appellate Court remanded the case for the purpose of a local investigation being held at the cost in the first instance of the plaintiff The lower Court thereupon made an order that the plaintiff should deposit the costs of the local investigation and on default being made by the plaintiff it dismissed the suit The order of remand was found to be invalid as made without jurisdiction *Held* that all proceedings taken by the Court of first instance after the remand and pending the hearing of the appeal against the remand order were null and void inasmuch as the jurisdiction of that Court to hear the case upon remand depended upon the validity of the remand order An appeal therefore lay from the order of remand notwithstanding the Court of first instance had subsequently made what purported to be a final decree in the case JATINGA VALLEY TEA COMPANY v CHERA TEA COMPANY I L R 12 Calc 45

519 ———— Order remanding case—*Civil Procedure Code s 588 cls 16 and 28 and s 622—Superintendence of High Court*—Land having been sold in execution of decree one claiming that it had been held by the judgment debtor benami for him applied that the sale be cancelled He was not a party to the decree and on that ground his petition was dismissed The Appellate Court was of opinion that it had been wrongly dismissed and remanded the case to be disposed of on the merits *Held* on revision that the order remanding the case was not appealable and consequently that the petition for revision was maintainable TIMMANNA BANTA v MAHABALA BHATTA [I. L. R., 10 Mad. 107

520 ———————— *N W P Rent Act (XII of 1881) s 190—Appeal from Court of Revenue to District Judge—Order of remand by District Judge under s 562 of the Code of Civil Procedure—Civil Procedure Code (1882) s 588 cl 28* —S 190 of Act XII of 1881 makes s. 562 of Act XIV of 1882 applicable to appeals from a Court of Revenue to a District Judge and where in such a case a District Judge has made an order of remand under s. 562 an appeal will lie from such order to the High Court under s 588 cl 28 of Act XIV of 1882 PARTAP SINGH v NARAIN DAS I. L. R. 16 All. 375

521. ———————— *Order of remand—Rule 17 of the Kumaun Rules 1891 made under Scheduled Districts Act (XIV of 1874) s 6—Code of Civil Procedure ss 562 564—Right of appeal against order under s 562*—Where the Deputy Commissioner of Naini Tal decided that a suit was barred by limitation but at the same time also came to a definite decision on each of the other issues and the Commissioner in appeal setting aside the finding as to limitation remanded the case under s 562 of the Code of Civil Procedure —*Held* that under Government Notification No $\frac{6\ 8}{VII-660B}$ dated 27th June 1894 rule 17 an appeal lies from such an order of remand *Muzhar Hossein v Bodha Bibi I L R 17 All 112 L R 22 I A 1* referred to HAFIZ ABDUL RAHIM KHAN v HARI LAL SINGH [I L R 22 All 405

522 ———— Order remanding appeal case for investigation—*Civil Procedure Code 1859 s 363*—No appeal lies from an order of the Judge remanding an appeal case to the Court below for further investigation as to the facts HAROMOHUN MOOKERJEE v SHOONOYANEE MOHUNT THAKOORANEY Marsh 469 2 Hay, 591

523 ———— Order remanding case after local investigation—*Civil Procedure Code 1859 s 363*—An appeal lies from an order remanding a case for re trial after local investigation such order not being one under s 363 JEEBUN KISSEN ROY v DWARKANATH ROY CHOWDHRY [W R. 1864 363

524 ———— Order directing a local investigation —No appeal lies from the order of a Judge directing a local investigation by an ameen BAHADUR ALI v BHABO SOONDUREE DEBIA CHOWDHRAIN 7 W R. 425

525 ———— Order in case on appeal after compromise reported—*Civil Procedure Code 1859 s 363*—An appeal having gone down on remand from the High Court the Zillah Judge considered he was bound to proceed with it notwithstanding a representation made to him by petition that a compromise had been entered into between the parties *Held* that by s 363 of the Civil

APPEAL—*continued*

18 ORDERS—*continued*

Procedure Cod an appeal could not be preferred against this order of the Judge SOROOP NARAIN LANDAH v SECUNDER POREYA 11 W R. 505

526 ——— Order of remand—*Civil Procedure Code 1877 ss 562 586—Suit of the nature cogn able in Small Cause Court*—An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes under 562 of Act X of 1877 remanding the suit for r trial is appealable s 586 of Act X of 1877 notwithstanding as that section applies to appeals from app llate decrees and not to appeals from orders THE COLLECTOR OF BIJNOR v JAFAR ALI KHAN I. L. R. 3 All. 18

527 ——— *Right of second appeal—Suits cogn able by Courts of Small Causes—Act X of 1877 ss 562 586 588 589*—The right of appeal given by ss 588 and 589 of Act X of 1877 from an ord r of remand as contemplated by s 562 is not taken away by s 586 *Collector of Bijnor v Jafar Ali Khan I L R 3 All 18* followed MAHADEV NARSINGH v RAGHO KESHAV [I. L. R. 7 Bom. 292

528 ——— Order of remand in suit cognizable by Small Cause Court—*Civil Procedure Code ss 588 (28) and 586*—In a suit to rec ver Rs38 (being the purchase money f r certain la d) on failure to perform the contract to sell the plaintiff the land the Munsif decided the case on the issue of limitation only and *held* the suit was barred. The Judge held it was not barred and made an orde remanding the case for trial on the other issues. It was objected that the suit being f r a sum less than R 00 and of a nature cognizable by a Small Cause Court no appeal lay against the order of remand *Held* f ll wing *Collector of Bijnor v Jafar Ali Khan I L R 3 All 18* and *Mahadeo Narsingh v Ragho Keshav I L R 7 Bom 292* that the right of appeal conferred by s 588 Civil Proce dure Code is not controlled by s 588 and therefore an appeal lay CHINNATAMBI GOUNDEN v CHINNANA GOUNDEN I L R 19 Mad. 391

529 ——— Order in Small Cause Court suit by Judge without jurisdiction—*Institution in Cou t of Subordinate Judge invested with powers of a Co rt of Small Ca ses—Trial by Subordin te Judge not so invested—Transfer of suit—Jurisdiction—C vil Procedure Code s 25*—A suit of the nature cognizable in a Court of Small Causes was in tituted in the Court of a Subordinate Judge the Judge of which at the time of the in titu ti n of the suit was personally invested with Small Cause C urt jurisdiction. That Judge retired from office without trying the suit and the Di trict Judge d rected his success r wh was not invested with Small Cause Court jurisdiction to try it and he did so *Held* that it must be tak n that the suit was transferred under s. 25 of the Civil Procedure Code to the Court of the Subordinate Judge and that theref re regard being had to the provisions of that cti n that the C urt trying any suit withdrawn thereunder from a Court of Small Causes shall for the purp ses of such suit be deemed a C urt of Small Causes no appeal w uld lie in the case to the District Judge KAULESHAR RAI v DOST MUHAMMAD KHAN [I. L. R., 5 All. 274

530 ——— Interlocutory order in Small Cause Court suit.—Although no appeal lies to the High Court from the final decree made in a suit cognizable by a Small Cause C urt an appeal lies from an interlocutory order made in such a suit by a Dis rict C urt GOLAM HUSEN v MUSA MIYA HAMAD ALI I. L. R. 8 Bom 260

531. ——— Order of remand in Small Cause Court suit—*Civil Procedure Code (Act XIV of 1882) ss 562 586 588 (cl 28) and 589*—A Court in the exercise of appellate jurisdiction passed an order under s 562 of the Civil Procedure Code remanding a case of the Small Cause Court class as described in s 586 *Held* that under the express w rds of the second p rtion of s 589 of the Code an appeal does lie to the High Court fr m such an order KIRTE MOHALDAR v RAMJAN MOHALDAR [I. L. R. 10 Calc 523

532. ——— Order of Small Cause Court in execution—No appeal lies to the High Court from the order of a Small Cause Court in execution MUTTER LALL v RAM DAS [W R 1864 Mis 38

533 ——— Order of Judge refusing to execute Small Cause Court decree.—An appeal lies fr m the order of a Judge refusing to execute a decree of a Small Cause Court DELLAWAR ALI v DABEE PER HAD 11 W R. 203

534. ——— *Order refusing to execute Small Cause Court decree transferred for exe ution to Muns f—Civil Procedure Code 1882 ss 223 228 249 622—Mofussil Small Cause Court A t (XI of 1865) ss 20 21—Execution proceed ngs*—The plaintiff obtained a decree in a Small Cause suit in a subordinate Court in the mofussil and a certificate was granted to him under s. 20 of the Mofussil Small Cause Court Act for the execution of the decree agair t immoveable property of the judg ment debtor in the jurisdiction of a District Munsif He accordingly presented a petition to the District Munsif under s 247 of the Code of Civil Procedure but his petition was di missed *Held* that an appeal lay to the District Court PERUMAL v VENKATARAMA [I. L R., 11 Mad. 130

535 ——— Order of Subordinate Judge in overvalued Small Cause Court suit—*Valuation of suit—Act XI of 1865 ss 5 21—Subordinate Judge invested with the jurisdiction of a Small Cause Court*—A suit was filed in the Court f a F rst Class Subordinate Judge invested with the p wers of a Small Cause Court up to R500 The cla m was for R53 3 as money had and received by the defendant to the plaintiff s use The Subordinate Judge did not deal with th c se under his Small Cause Court jurisdiction but tried it as an ordinary

APPEAL—*continued*

18 ORDERS—*continued*

suit and gave the plaintiff a decree for R411 0 7 On appeal the District Judge was of opinion that the claim had been recklessly overvalued and he held therefore that the suit was one cognizable by a Small Cause Court and that the appeal was barred *Held* reversing the decision of the lower Appellate Court that as the claim or *demand* exceeded R5 0—the pecuniary limit of the jurisdiction of a Court of Small Causes under s 5 of Act XI of 1865—and as the case was not tried under the Act s 21 gave no finality to the decree of the Subordinate Judge which was therefore appealable DAMODHAR TIMAJI GOSAVI v TRIMBAK SAKHARAM I. L R. 10 Bom 370

533 ———— Order declining jurisdiction —An appeal lies from the decision of a Court upon the hearing of a cause that it has no jurisdiction on the ground that the suit has been instituted in the wrong district DHERAJ MAHATAB v MUDOO OODUN MOOKERJEE Marsh. 572

537 ———— Order of Mamlatdar in boundary dispute —In a case where boundaries of land are disputed an appeal from the mamlatdar lies to the Collector A District Judge has no power to entertain such an appeal NARAYAN VAYANKATESH v DHANDU DAMODHAR 4 Bom A C 167

538 ———— Order allowing decree holder to take credit for his decree as purchaser—*Civil Procedure Code 1859 s 270*—Where a second decree holder is himself purchaser of a property sold in execution of his own decree and instead of the money being deposited in Court an order is obtained allowing the decree holder as purchaser to pay the purchase money by his decree being taken as a credit on account of the purchase such order is not open to appeal under s 270 Act VIII of 1859 RAJARAM CHOWDHRY v SEETOLA BUKSH MISSER [7 W R. 113

539 ———— Order directing prosecution for forgery —No appeal lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it GUNGA NARAIN SIRCAR v AZEEZOONISSA BEEBEE 5 W R. Mis 18

ESHAN CHUNDER DUTT v PRANNATH CHOWDHRY [Marsh 270 2 Hay 236

540 ———— Order in execution of decree—*Power of Senior Assistant Judge*—*Held* that a Senior Assistant Judge is not competent to hear an appeal from an order made in the execution of a decree in a case in which he is not competent to hear an appeal from the decree itself NARBHERAM KISANDAS v NAVNIDRAM KUSHIRAM [5 Bom A C 46

541 ———— Order making over proceeds of sale to Official Assignee —No appeal lies from the order of a Judge making over to the official assignee the proceeds of property sold in execution INDUR CHUNDER DOOGAR v THE OFFICIAL ASSIGNEE 11 W R. 100

NEET LALL v MILLER 11 W R 420

APPEAL—*continued*

18 ORDERS—*continued*

542 ———— Order rejecting appeal—*Civil Procedure Code 1859 s 336*—An appeal is not admissible against an order passed under s 336 Act VIII of 1859 IN THE MATTER OF GOURPE SUNKUR 11 W R. 556

543 ———— Order rejecting application to sue as pauper—*Civil Procedure Code 1877 s 588*—No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper COLLIS v MANOHAR DAS I. L R. 1 All. 745

544 ———— Order allowing withdrawal of suit—*Civil Procedure Code 1882 s 373*—*Withdrawal of suit*—*Appeal from order permitting withdrawal*—An order under s 373 of the Civil Procedure Code permitting the withdrawal of a suit with liberty to bring a fresh one not being made appealable by s 588 or being a decree within the meaning of s 2 is not appealable KALIAN SINGH v LEKHRAJ SINGH I L R. 6 All. 211

545 ———— Order directing suit to be re admitted and registered —An order made by a lower Court directing a suit to be re admitted and registered on the file of the Court is not appealable HIRDHAMUN JHA v JINGHOOR JHA [I. L R 5 Calc 711

546 ———— Order of Civil Court on conviction of escape from custody—*Civil Procedure Code 1877 s 651*—*Quære*—Whether a person convicted under s 651 of the Civil Procedure Code of escaping from lawful custody who is sentenced to one month's imprisonment only can under s 588 (29) of that Code appeal EMPRESS v AMAR NATH I. L. R. 5 All 318

547 ———— Order of Collector in execution of decree—*Transfer to Collector*—*Appeal to High Court from orders of Collector*—*Jurisdiction*—*Civil Procedure Code s 320*—Orders passed by a Collector in the exercise of the powers conferred on him under s 320 and the following sections of the Civil Procedure Code relating to the execution of a decree of a Civil Court after transfer of the decree to him under s 320 are not appealable to the High Court *Held* therefore that the order of a Collector disallowing an application by the judgment-debtor that the amount of the decree might be satisfied by the temporary transfer of his immoveable property and ordering the sale of such property and the order of a Collector confirming a sale were not appealable to the High Court MADHO PRASAD v HANSA KUAR MAN KUAR v RAM KISHORE I. L. R. 5 All. 314

548 ———— Order disallowing claim —*S 322B of Civil Procedure Code Act X of 1877*—*Miscellaneous appeal*—An appeal from the decision by which a disputed claim is settled under s 322B of the Code of Civil Procedure Act X of 1877 is cognizable as a miscellaneous appeal i e an

APPEAL—*continued*

18 ORDERS—*continued*

appeal from a decree not passed in a *regular* suit SRINIVASA AYYANGAR *v* PERIA TAMBI NAYAKAR [I L R 4 Mad, 420

549 ——— **Order directing penalty to be enforced under Stamp Act**—*Decision as to penalty not appealable as a decree—Civil Procedure Code (Act VIII of 1859) s 365—Civil Procedure Code Act X of 1877 s 588*—A decision of a Judge directing a penalty to be enforced under the Stamp Act the case being afterwards proceeded with is not appealable as a decree as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court Nor can such a decision be said to be an order as to a fine within the meaning of s 365 of Act VIII of 1859 (with which s 588 of Act X of 1877 cl 20 corresponds) SONAKA CHOWDRAIN *v* BHOOBUNJOY SHAHA [I L R 5 Calc 311

550 ——— **Order dismissing suit on failure to serve summons**—*Civil Procedure Code (Act X of 1877) ss 97 588*—An order under s 97 of the Civil Procedure Code dismissing a suit on it being found that the summons has not been served on the defendant in consequence of the failure of the plaintiff to pay the Court fee leviable for such service is not appealable LUCKY CHURN CHOWDHRY *v* BUDURRUNNISSA I L R 9 Calc 627 [12 C L R 484

551 ——— **Order dismissing suit on failure to give security for costs**—*Civil Procedure Code s 381—Decree—Held* by the Full Bench that an appeal lies from an order passed under s 381 of the Civil Procedure Code dismissing a suit for failure by the plaintiff to furnish security for costs as ordered such order being the decree in the suit WILLIAMS *v* BROWN [I L R 8 All, 108

552 ——— **Order of single Judge of High Court**—*Civil Procedure Code 1877 s 588*—S 588 Act X of 1877 restricting appeals against orders does not apply to prevent an appeal to the High Court from the order of a Judge of that Court HURRISH CHUNDER CHOWDHRY *v* KALI SUNDARI DEBI [I L R 9 Calc 482 12 C L R 511

553 ——— **Order setting aside sale in execution of decree for rent**—*Bengal Tenancy Act (VIII of 1885) s 173*—No appeal lies from an order setting aside a sale under s. 173 of the Bengal Tenancy Act ROGHU SINGH *v* MISRI SINGH I L R 21 Calc 825

HARABANDHU ADHIKARI *v* HARISH CHANDRA DEY PAL 3 C W N 184

554 ——— **Order on further directions varying report of Commissioners under decree for account in partnership suit**—*Time for appeal—Letters Patent cl 15—Civil Procedure Code (Act XIV of 1882) ss 588 591*—A decree was passed in a partnership suit directing (*inter alia*) the taking of an account The Commissioner having taken the account and made his report an order was made on further directions varying it in certain respects Subsequently a final decree was passed founded in part on the order on further directions An appeal was filed against the final decree in which objection was taken to the order on further directions It was contended that no appeal having been filed against the order on further directions as might have been done under s. 15 of the Letters Patent so much of the appeal as arose out of that order had been barred by lapse of time *Held* that the order passed on further directions was not appealable under Chapter XLI of the Civil Procedure Code (Act XIV of 1882) and that it fell therefore under the concluding portion of s 591 of the Civil Procedure Code and any error in it might subsequently be set forth as a ground of appeal against the final decree *Per* JENKINS C J—Assuming that the order on further directions was a judgment within the meaning of s 15 of the Letters Patent and as such appealable the contention of the respondent cannot prevail as that would not deprive the appellants of their right to appeal under the Code JAMSETJI DADABHOY BABIA *v* DADABHOY DAJIBHOY BABIA I L R 24 Bom 302

555 ——— **Order made in the course of execution proceedings and not appealed against**—*Right to raise the question as to its propriety in the appeal against the final order*—A decree having in 1891 been passed in favour of the plaintiff in a suit against a number of defendants for the recovery of land with mesne profits the amount of such mesne profits was ordered to be fixed in execution In 1897 an order was passed declaring that all the defendants were liable jointly and severally for such mesne profits which order was not appealed against Later in the same year a Commissioner was appointed to ascertain the amount of the said mesne profits and in due course a final order in execution was passed by the District Court At the time when the last mentioned order was passed certain of the defendants desired to re open the question of their joint liability but were not permitted to do so *Held* that even assuming that the order declaring the defendants to be jointly and severally liable was one from which an appeal could have been preferred—as to which there might be some doubt—it was a determination of one of the questions which had to be determined before the particular application for execution could be finally disposed of and the question of the propriety of the order was one that need not be at once raised by appeal but could be raised in the appeal against the final order *Caussanel* v *Soures I L R 23 Mad 260* referred to GODAVARI SAMULO *v* GAJAPATI NARAYANA DEO [I L R. 23 Mad 494

556 ——— **Order confirming appointment of head of muths**—*Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor*—The pandaram

APPEAL—*continued*

IS ORDERS—*continued*

of a muth being empowered under a decree to nominate a person to be the head of a subordinate muth subject to the approval of the subordinate Court made a nomination and died before the subordinate Court had come to a determination as to the fitness of his nominee His successor in office was brought on to the record and revoked his nomination and made a fresh nomination The subordinate Court treated the fresh nomination as a nullity and made an order confirming the first The pandaram appealed against this order *Held* (1) that an appeal lay against the order complained of (2) that the person whose nomination had been confirmed was a necessary party to the appeal. GNANASAMBANDA *v* VISVALINGA

[I. L. R. 13 Mad. 338

557 ———— **Order in execution of decree of Privy Council**—*Civil Procedure Code s 610*—Land was put up and purchased in execution of a decree and the sale was confirmed and the purchaser put into possession. On appeal against the order confirming the sale the High Court set the sale aside The purchaser preferred an appeal to the Privy Council pending which he had to give up possession of the land but security was furnished under an order of the Court by persons not parties to the suit for its re delivery to him and for payment of mesne profits in case of his appeal being successful On appeal the Privy Council reversed the order of the High Court The purchaser was accordingly replaced in possession of the land and he applied for execution in respect of the mesne profits against the respondents in the Privy Council and the sureties The Court of first instance dismissed the application as against the sureties and limited the applicant's claim against the others to the net income of the land less the cost of management and allowed him no interest *Held* the order must be taken to have been made under Civil Procedure Code s 610 and an appeal lay therefrom ARUNACHELLAM *v* ARUNACHELLAM I L R 15 Mad 203

558 ———— **Order for pre emption**—*Decree conditional on payment of price stated within a fixed period otherwise suit to stand dismissed—Non payment of pre emptive price—Appeal after expiration of period fixed by decree*—The plaintiff in a pre emption suit obtained a decree in his favour for pre emption of the share in suit on payment of a fixed sum within a period specified in the decree otherwise his suit was to stand dismissed —*Held* that the plaintiff could appeal from such decree after the period prescribed therein had elapsed without his paying in the pre emptive price fixed thereby both as to the correctness of the pre emptive price and as to the reasonableness of the time allowed for payment KODAI SINGH *v* JAISRI SINGH

[I L R. 13 All. 189 376

559 ———————— *Decree conditional on payment of pre-emptive price within a fixed period—Appeal after expiry of such period*—*Held* that plaintiffs in a pre emption suit who had obtained a decree conditioned on payment by them of the pre emptive price within a certain fixed period could after the expiration of such period appeal against such decree on the ground that a condition of the contract out of which their right to pre empt arose had not been embodied in the decree *Kodai Singh v Jaisri Singh I L R 13 All 376* referred to WAZIR KHAN *v* KALE KHAN

[I L R 16 All. 126

560 ———— **Order of Collector confirming sale for arrears of dak cess under Public Demands Recovery Act (Bengal Act VII of 1880)**—A revenue paying talukh was sold for arrears of dak cess under the Public Demands Recovery Act (Bengal Act VII of 1880) Application was made to the Collector to set aside the sale but the application was refused *Held* following the ruling in *Sadhu Saran Singh v Panchdeo Lal I L R 14 Calc 1* that an appeal lay to the Revenue Commissioner against the Collector's order affirming the sale LALA PRYAG LAL *v* JAI NARAYAN SINGH I L R 22 Calc 419

561 ———— **Order setting aside ex parte decree**—*Civil Procedure Code (1882) ss 108 and 591*—The words affecting the decision of the case in s 591 of the Civil Procedure Code mean affecting the decision of the case with reference to the merits of it Where an *ex parte* decree was set aside by an order under s 108 of the Civil Procedure Code and the suit heard upon the merits and dismissed —*Held* that such order was not an order affecting the decision of the case under s 591 and was not appealable under that section CHINTAMONY DAS *v* RAGHOONATH SAHOO

[I L R 22 Calc 981

562 ———— **Order striking off application for execution but maintaining attachment**—*Order not disposing of or affecting execution of decree*—A decree holder in execution of his decree attached certain immoveable property of his judgment debtor but on his taking no other steps to complete the execution of the decree the Court struck off the execution proceedings maintaining the attachment Against this order the decree holder appealed *Held* that inasmuch as the order in question was not a judicial disposal of the application for sale and would not preclude the decree-holder from continuing the execution of his decree an appeal from such order was superfluous and must be dismissed PATTANJI *v* HARI HAR DAT DUBE

[I L R. 17 All. 243

563 ———— **Order refusing to accept deposit on account of sale in execution of decree**—*Civil Procedure Code s 310A*—No appeal will lie from an order passed under s 310A of the Code of Civil Procedure refusing to accept a deposit tendered under that section on the ground that it was too late BASHIR UD DIN *v* JHORI SINGH I L R. 19 All. 140

APPEAL—*continued*

18 ORDERS—*concluded*

564. ——— **Order amending sale certificate**—*Order granting application for review of order—Civil Procedure Code (Act XIV of 1882) s 244—Question relating to execution of decree*—No appeal lies from an order granting an application for the amendment of a sale certificate *Bhimal Das* v *Ganesha Koer* 1 *C W N* 659 approved BUJHA ROY v RAM KUMAR PERSHAD I. L. R. 26 Calc 529 [3 C W N 374

565 ——— **Order rejecting claim of alleged representative of deceased plaintiff and for abatement of suit**—*Civil Procedure Code (1882) ss 366 and 367—Dispute as to right to represent a deceased plaintiff—Right of his adopted son to continue the suit*—The plaintiff in a partition suit in which his brother was defendant died and an application was made on behalf of a boy alleged to have been adopted by the widow of the deceased under his authority that his name be brought on to the record as plaintiff This application was made within six months of the death of the original plaintiff The Court of first instance rejected the application which the defendant opposed on the ground that the boy had not been adopted and dismissed the suit on the ground that it had abated. *Held* that appeals lay against the rejection of the above application and also against the dismissal of the suit *Per Curiam*—A dispute within the meaning of Civil Procedure Code s 367 need not be between persons claiming to represent the deceased plaintiff SUBBAYYA v SAMINADYYAR [I. L. R. 18 Mad. 496

See HAMIDA BIBI v ALI HUSEN KHAN [I. L. R. 17 All. 172

566 ——— **Order rejecting application for suit to abate**—*Civil Procedure Code (1882) s 366*—*Held* that an order rejecting an application that a suit might be declared to have abated by reason of the death of the plaintiff and the invalidity of an application to the Court to bring his legal representative on to the record was not one of the orders contemplated by s. 366 of the Code of Civil Procedure and that no appeal would lie therefrom. BHAGWAN DAS v MAHARAJA OF BHARTPUR [I. L. R. 17 All. 298

19 PROBATE.

567 ——— **Order to suspend probate**—*Succession Act s 265—Civil Procedure Code 1859 s 363*—Where an application for probate has been granted, and an objection being made a subsequent order is passed directing that the case be re-opened, that probate be suspended for a time certain and that the executor bring in his evidence to prove his right to obtain probate—*Held* that no appeal lies from such an order Act X of 1865 s. 263 and Act VIII of 1859 s. 363 discussed. BROJO NATH PAL v DASMONY DASSEE 3 C L. R 589

APPEAL—*continued*

19 PROBATE—*concluded*

568 ——— **Order of District Judge admitting person as caveator**—*Probate and Administration Act (V of 1881) s 86—Civil Procedure Code s 588 cl 2*—S 86 of the Probate and Administration Act (V of 1881) makes the Code of Civil Procedure applicable to orders passed under that Act An appeal therefore lies to the High Court from the order of a District Judge admitting a person as a caveator under s 69 of the Act such an order is appealable under s 588 cl 2 of the Code ABHIRAM DASS v GOPAL DASS [I. L. R., 17 Calc. 48

569 ——— **Order refusing to make person party defendant to an application for probate**—*Probate and Administration Act (V of 1881) s 53 and 86*—S 86 read with s 53 of the Probate and Administration Act (V of 1881) only allows an appeal to the High Court in cases in which an appeal is allowable under the Code of Civil Procedure No appeal therefore lies against an order refusing to make a person opposing probate a party defendant to an application for probate *Abirunnissa Khatoon* v *Komurunnissa Khatoon I L R., 13 Calc 100* and *Karman Bibi* v *Misri Lal I L R 2 All 904*, followed. KHETTRAMANI DASI v SHYAMA CHURN KUNDU [I. L. R. 21 Calc. 539

570 ——— **Order refusing to amend probate**—*Probate and Administration Act (V of 1881) s 86—Succession Act (X of 1865) s 263*—No appeal lies from an order refusing to amend a clerical error in a grant of probate either under s. 86 of the Probate and Administration Act (V of 1881) or s 263 of the Succession Act (X of 1865) *Khettramani Dasi* v *Shyama Churn Kundu I L R 21 Calc 539* referred to GEBINDRA KUMAR DASS GUPTA v RAJESWARI ROY I. L. R. 27 Calc., 5

20 RECEIVERS

571. ——— **Order refusing to remove a receiver**—*Civil Procedure Code (Act X of 1877) ss 2 244 503 540 588—Act XXIII of 1861 s 11*—By a decree in an administration suit *A* was appointed receiver to manage the estate. *A* died and by a subsequent order *B* was appointed receiver One of the defendants in the suit applied to have *B* removed from the office of receiver on the ground of his alleged mismanagement of the estate The application was refused *Held* that the order of refusal was appealable whether the former Code or the present Code of Civil Procedure was deemed to be applicable being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree MITHIBAI v LIMJI NOWROJI BANAJI I. L. R. 5 Bom. 45

572. ——— **Orders submitting person for and confirming nomination as receiver**—*Reference to the District Court—Appealable order—Civil Procedure Code (Act X of 1877) ss 503 504 and 505*—No appeal lies from an order passed under s 505 of the Civil Procedure Code by a

APPEAL—*continued*

20 RECEIVERS—*continued*

Court subordinate to a District Court submitting the name of a person sought to be appointed a receiver together with the grounds for the nomination such order being only a preliminary order or expression of opinion and not an order under s 503 Nor does an appeal lie from the order of the District Court confirming such nomination but the District Court ought when the question is raised to decide on the necessity for the appointment of a receiver the words or pass such other order as it thinks fit in s 503 being sufficient to include that question and not merely to decide the fitness or otherwise of the person nominated to the office of receiver BIBAJAN KOOER v RAM CHURN LALL MAHATA

[I. L. R. 7 Calc. 719 9 C L. R. 203

573 ———— Order refusing to appoint receiver—*Civil Procedure Code 1882 ss 503 588 (24)*—An order refusing to appoint a receiver under s 503 of the Code of Civil Procedure is not appealable SUBRAMANYA v APPASAMI I. L. R. 6 Mad. 355

574. ———— *Civil Procedure Code 1859 s 92*—An appeal did not lie against an order refusing to appoint a receiver under Act VIII of 1859 s 92 EX PARTE IMBICHI PATAMA

[1 Mad. 120

575 ———— Order refusing to appoint a receiver—*Subordinate Judge Power of to appoint—Civil Procedure Code (1882) ss 503 505*—A Subordinate Judge when considering the expediency of the appointment of a receiver is acting under s 503 of the Civil Procedure Code (Act XIV of 1882) as explained by s 505 When he does appoint his order is passed under s 503 and when he refuses to take the necessary step preliminary to appointment his order is also made under that section An appeal lies from such an order made by a Subordinate Judge Circumstances under which a receiver is appointed considered. *John v John L R 2 Ch 578* referred to SANGAPPA v SHIVBASAWA

[I. L. R. 24 Bom 38

576 ———— Order dismissing application for appointment of receiver—*Civil Procedure Code 1877 s 503*—An order made by a Subordinate Judge dismissing an application under s 503 for the appointment of a receiver in a suit pending before him or declining to nominate a receiver is an order under that section and not under s 505 and is therefore appealable under s 588 of the Civil Procedure Code as amended by Act XII of 1879 GOSSAIN DULMIR PURI v TEKAIT HETNARAIN

[6 C L. R. 467

577 ———— *Civil Procedure Code ss 503 505 588—Order rejecting application to appoint receiver—Appealable order*—An order rejecting an application to appoint a receiver is an order passed under s 503 and is therefore appealable under s 588 cl 24 of the Code of Civil Procedure *Subramanya v Appasami I L R 6 Mad 355* overruled. VENKATASAMI v STRIDAVAMMA I. L. R. 10 Mad. 179

See ANONYMOUS CASE

[I. L. R. 10 Mad. 180 note

APPEAL—*continued*

20 RECEIVERS—*concluded*

578 ———— *Order rejecting application for receiver—Civil Procedure Code (Act XIV of 1882) ss 503 505 588 (24) and 589—Bengal North Western Provinces and Assam Civil Courts Act (XII of 1887) s 21*—An appeal lies from an order rejecting an application for a receiver under s 503 of the Code of Civil Procedure and the order on appeal is final under s 589 *Gossain Dulmir Puri v Tekait Hetnarain 6 C L R 467* followed The Court to which such an appeal lies from the order of a Subordinate Judge is under s 21 of Act XII of 1887 the High Court where the value of the suit is above R5 000 and the District Judge's Court in other cases BOIDYA NATH ADYA v MAKHAN LAL ADYA I. L. R. 17 Calc. 680

21 REGULATIONS

579 ———— Beng Reg XV of 1793—*Order refusing application by mortgagor for return of excess payment under Reg XV of 1793*—No appeal lies from an order refusing an application by a mortgagor for the return of excess payment alleged to have been made by him in a proceeding under Regulation XV of 1793 by which he redeemed his mortgage SREEMAN CHUNDER BANERJEE v MODHOO SOODUN ROY 24 W R 17

580 ———— Beng Reg I of 1798—*Order of District Judge—Act XXIII of 1861 s 38*—No appeal was provided from a summary order made by a District Judge under Regulation I of 1798; but such order was open to question in a regular suit Act XXIII of 1861 s 38 gave no right of appeal in such cases but provided merely that the mode of trial and the procedure incidental and ancillary thereto laid down in the Civil Procedure Code should be applied throughout in miscellaneous cases and proceedings HUREENATH KOONDOO v MODHOO SOODUN SAHA 19 W R 122

581. ———— Beng Regs V of 1812 s 26 and V of 1827 s 3—*Order for attachment and manager*—No appeal lay to the High Court from an order passed by a District Judge issuing a precept to the Collector to hold an estate in attachment and to appoint a manager under s 26 Regulation V of 1812 and s 3 Regulation V of 1827 IN THE MATTER OF THE PETITION OF THE COLLECTOR OF FURREEDPORE 12 B L R F B 366

GOOROO DASS ROY v COLLECTOR OF FURREEDPORE

[19 W R. 170 and 20 W R. 262

582 ———— Beng Reg V of 1812—*Order of Collector refusing to make distribution among shareholders*—An appeal did not lie to the High Court from the order of a Collector refusing to distribute amongst the shareholders the amount of their shares of the surplus proceeds of a joint undivided estate attached and administered under Regulation V of 1812 JOGO MOYEE CHOWDHRAIN v THE GOVERNMENT 3 W R. Mis. 17

583 ———— Beng Reg VIII of 1819 s 6—*Order of Civil Court*—There is no appeal

APPEAL—*continued*

21 REGULATIONS—*concluded*

from an order mad by the Civil Court under s 6 of Regulation VIII of 1819 IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ CHOWDHRY

[I. L. R. 1 Calc 383
25 W R. 222

584. ——— Beng Reg III of 1872 s 5 —*Suit referred to Civil Court in Sonthal Pergunnahs Order in* —A decision on an issue or in a suit properly referred to a Civil Court in the Sonthal Pergunnahs under s 5 Regulation III of 1872 was appealable to the High Court under Act VIII of 1859 which was applicable to the Sonthal Pergunnahs. TARINI PROSAD MISSER v MAHAMMAD CHOWDHRY

[6 C L. R. 555

22 SALE IN EXECUTION OF DECREE

585 ——— Order refusing interest in execution of decree —When a sale in execution was set aside and the order directing the return of the purchase money did not also direct the payment of interest thereon —*Held* that there was no appeal from the order of the lower Court refusing to give interest BISHONATH DOSS v AHMED ALI

[W R. 1864 Mis 19

586 ——— Order absolving purchaser from liability for damages on re sale—*Civil Procedure Code 1859 s 254* —A purchaser at a sale in execution of a decree is liable for damages caused by re-sale consequent on his not making the required deposit An appeal lay from the order of the lower Courts absolving the purchaser from liability SREE NARAIN MITTER v MAHATAB CHAND

[3 W R. 3

SOORUJ BUKSH SINGH v SREE KISHEN DOSS

[6 W R. Mis. 126

587 ——— Order making defaulting purchaser liable for difference on re-sale — An appeal lay from an order holding the first defaulting purchaser liable for the difference arising from re sale in execution of decree under s 254 Act VIII of 1859 JOOBRAJ SINGH v GOUR BUKSH LALL

[7 W R. 110

588 ——— *Civil Procedure Code s 254—Sale in execution* —An appeal lay from an order passed on an application under s 254, Act VIII of 1859 to make a defaulting purchaser liable for the loss occasioned by a re sale LAM DIAL v RAM DAS I. L. R. 1 All. 181

589 ——— Order under s 254 Civil Procedure Code 1859 —No appeal lay to the Judge from an order passed by a subordinate Court under s 254, Act VIII of 1859 BINDA DABEE DOSSEE v GOPEE SOONDEREE DOSSIA

[6 W R. Mis. 82

590 ——— Order refusing refund of price to purchaser—*Sale of immoveable property set aside—Civil Procedure Code s 315* —No appeal lies from an order refusing a refund of price to a purchaser the sale to whom has been set aside under s 315 of the Civil Procedure Code

APPEAL—*continued*

22 SALE IN EXECUTION OF DECREE —*continued*

Soudagar Mal v Abdul Rahman Khan Weekly Notes 1890 p 85 Tapesri Lal v Deoki Nandan Rai Weekly Notes 1890 p 89 and *Ram Dial v Ram Das I L R 1 All 181* referred to *Baijnath Sahai v Moheep Narain Singh I L R 16 Calc 535* dissented from RAHIM BAKHSH v DHURI I. L. R. 12 All. 397

591. ——— Order on defaulting purchaser to make good such deficiency—*Default of purchaser at sale in execution—Deficiency in price arising on re sale—Civil Procedure Code ss 2 293 540 588* —No appeal lies from an order under s. 293 of the Code of Civil Procedure directing a defaulting purchaser at a sale in execution of a decree to make good the loss happening on a re sale occasioned by his default. *Ram Dayal v Ram Das I L R 1 All 181* and *Baijnath Sahai v Moheep Narain Singh I L R 16 Calc 535* dissented from *Soudagar Mal v Abdul Rahman Khan Weekly Notes 1890 p 85 Rahim Bakhsh v Dhuri I L R 12 All 397* followed. So *held* by EDGE C J MAHMOOD and KNOX JJ STRAIGHT J dissenting DEOKI NANDAN RAI v TAPESRI LAL I. L. R. 14 All. 201

ILAHI BAKHSH v BAIJ NATH

[I. L. R., 13 All., 569

592. ——— Order under *Civil Procedure Code (Act XIV of 1882) s 293 on defaulting purchaser to make good deficiency on re sale—Second appeal—Sale in execution of decree—Civil Procedure Code (Act XIV of 1882) ss 244 313—Misdescription of property in proclamation of sale* —Both an appeal and a second appeal lie from an order under s 293 of the Civil Procedure Code directing a defaulting purchaser at an execution sale to make good the deficiency of price happening on a re sale owing to his default *Sree Narain Mitter v Mahatab Chand 3 W R 3 Sooruj Buksh Singh v Sree Kishen Doss 6 W R Mis 126 Joobraj Singh v Gour Buksh Lall 7 W R 110 Baijnath Sahai v Moheep Narain Singh I L R 16 Calc 535* and *Amir Baksha Sahib v Venkatachala Mudali I L R 18 Mad 439* followed. *Deoki Nandan Rai v Tapesri Lal I L R 14 All 201* referred to and discussed In this case it was held on appeal reversing the decision of the lower Courts that under the circumstances the purchaser was not liable for the deficiency KALI KISHORE DEB SARKAR v GURU PROSAD SUKUL

[I. L. R. 25 Calc. 99
2 C W N 408

RAJENDRA NATH ROY v RAM CHARAN SINHA

[2 C W N 411

593 ——— *Civil Procedure Code 1882 s 311—Rejection of application to restore to file petition to set aside sale dismissed for default* —An application under s 311 of the Code of Civil Procedure to set aside a sale in execution of a decree having been dismissed for default the petitioner applied to the Court to restore the application

APPEAL—*continued*

22. SALE IN EXECUTION OF DECREE —*continued*

to the file The Court having rejected this application the petitioner appealed against this order *Held* that no appeal lay *Vingappa v Gangawa I L R 10 Bom., 433* followed RAJA v SRINIVASA I. L. R. 11 Mad. 319

594. ——— **Order rejecting an application for restoring to the file an application to set aside a sale in execution of a decree**—*Civil Procedure Code (XIV of 1882) ss 311 588 (8)*—No appeal lies from an order rejecting an application to restore to the file an application to set aside a sale under s 311 of the Civil Procedure Code which has been dismissed for default SUJA UDDIN v REAZUDDIN I. L. R. 27 Calc 414

595 ——— **Order refusing to admit petition to set aside a sale**—*Civil Procedure Code 1859 s 256*—Under s 256 of Act VIII of 1859 the order of a Civil Court refusing to admit a petition against a sale was final LALL GOBINDLAL v BURZIN 2 Hay 111

596. ——— **Order affirming rejection of petition for reversal of sale in execution of decree**—*Civil Procedure Code 1859 s 257*—Under s 257 Act VIII of 1859 no appeal lay from the order of a lower Appellate Court affirming the order of the lower Court rejecting a petition for the reversal of a sale in execution on the ground of irregularity RAJ NARAIN KOER v INDER CHUNDER BABU W R 1864 Mis 39

MUDDUN MOHUN ROY CHOWDHRY v RAM CHUNDER GOOPTO 2 W R. Mis 41

597 ——— **Order setting aside sale for irregularity**—Under s 257 Act VIII of 1859 the order of a Judge on appeal setting aside a sale of immoveable property on the ground of irregularity was final unless under s 35 Act XXIII of 1861 the Judge was shown to have acted without jurisdiction KOOLDEEB SINGH v JUGGURNATH SINGH [2 W R. Mis 19

BHUJUN RAM TEWAREE v LALLA AJOODHYA PERSAD 2 W R Mis 29

MUDUN MOHUN ROY CHOWDHRY v RAM CHUNDER GOOPTO 2 W R Mis 41

MAHOMED HOSSEIN v AFZUL ALI [B L R. Sup Vol. Ap 1 W R. F B 83 Marsh 296

ABDOOL KUREEM v OOGHAN LAL [6 W R. Mis 119

598 ——— An order setting aside a sale on the ground of irregularity where an order has been passed by the Court executing the decree postponing the sale but the sale has taken *place in consequence of the order arriving too late* is not appealable MAIJHA SINGH v JHOW LAL [6 N W 354

599 ——— *Civil Procedure Code 1859 s 257*—Where the lower Court allowed an objection and makes an order setting aside the sale such order according to s 257 Act VIII of 1859 was final IN THE MATTER OF THE PETITION OF OODIUT ZUMAN 8 W R 109

600 ——— **Order setting aside sale**—*Civil Procedure Code 1877 s 588 (m)—Execution of decree—Application to set aside sale of immoveable property—Auction purchaser*—*Held* that although the auction purchaser may not apply under s 311 of Act X of 1877 to have a sale set aside he yet may be a party to the proceedings after an application has been made under that section and then if an order is made against him he can appeal from such order under s 588 (m) of Act X of 1877 KANTHI RAM v BANKEY LAL [I L R. 2 All, 396

601. ——— *Civil Procedure Code 1877 s 588 (m)—Execution of decree—Auction purchaser*—Where after a judgment debtor has applied under s 311 of Act X of 1877 to have a sale set aside the auction purchaser is made a party to the proceedings and the sale is set aside the auction purchaser can appeal against the order setting aside the sale *Kanthi Ram v Bankey Lal I L R 2 All 396* followed GOPAL SINGH v DULAR KUAR [I. L. R 2 All. 352

602. ——— *Review of judgment*—An application under s 311 of Act X of 1877 to set aside a sale in execution of a decree having been made by the judgment debtor the Court executing the decree (Subordinate Judge) disallowed the objections and passed an order confirming such sale The judgment debtor subsequently applied to the Subordinate Judge for a review of judgment The Subordinate Judge without recording his reasons for granting such application and without recording an order granting such application irregularly proceeded at once to pass an order setting aside such sale without cancelling the previous order confirming it *The auction purchaser appealed to the District Judge* That officer treating the appeal as one from an order granting an application for review of judgment entertained it and set aside the Subordinate Judge s second order *Held* that the District Judge was not justified in entertaining such appeal such order not being one granting an application for review but one setting aside a sale and as such not appealable BHAIRON DIN SINGH v RAM SAHAI [I. L. R. 3 All. 316

603 ——— *Order setting aside a sale Appeal from—Civil Procedure Code 1882 ss 312 and 588 cl 16*—An appeal does not lie from an order setting aside a sale passed under s 312 para 2 of the Civil Procedure Code (Act XIV of 1882) SAKHARAM VITHAL v BHIKU DAYRAM [I. L. R. 11 Bom. 603

604. ——— **Order confirming sale**—*Civil Procedure Code 1877 s 310—Sale in execution of decree of share of undivided estate—Confirmation of sale in favour of co sharer—Appeal by auction purchaser*—A share of undivided immoveable property was put up for sale in execution of a decree and was knocked down to *M* Before it

APPEAL—*continued*

23 OBJECTIONS BY RESPONDENT —*continued*

626 ——— Where in the course of the hearing of an appeal the appellant desired to withdraw in order to avoid the decision of a question raised by the respondent at the hearing —*Held* that under s 348 of the Civil Procedure Code the respondent was entitled to have the case heard and determined. VENKATARAMANAIYA v KUPPI [3 Mad. 302

627 ——— *Held* that objections under s 348 Act VIII of 1859 can only be heard when the opposite party being appellant prosecutes his appeal and not when he withdraws from it BAHADUR SINGH v BHUGWAN DOSS [1 Agra 23

SHAMA CHURN GHOSE v RADHA KRISTO CHAKLANUVIS 14 W R. 210

628 ——— *Right of respondent to have objections decided* —An appellant finding after the hearing had commenced that his appeal was hopeless claimed the right of withdrawing the appeal in order to prevent the objections filed under s 561 of the Civil Procedure Code (XIV of 1882) by the respondent against the decree from being heard. *Held* that after the hearing of an appeal has commenced the Appeal Court is seized of the respondent s objections and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined DHONDI JAGANNATH v THE COLLECTOR OF SALT REVENUE I. L. R. 9 Bom. 28

629 ——— Where an appeal was dismissed upon the application of the appellant himself made before the hearing —*Held* that the respondents who had filed objections to the decree of the Court of first instance under s 561 of the Civil Procedure Code had no claim to have their objections heard notwithstanding the dismissal of the appeal *Coomar Puresh Narain Roy* v *Watson & Co 23 W R 229* and *Dhondi Jagannath* v *The Collector of Salt Revenue I L R 9 Bom 28* referred to MAKTAB BEG v HASAN ALI I. L. R 8 All 551

630 ——— *Civil Procedure Code (1882) s 561—Withdrawal of appeal—Failure of objections* —If an appeal in which objections have been filed under s 561 of the Code of Civil Procedure is withdrawn the objections cannot be heard *Bahadoor Singh* v *Bhugwan Dass 1 Agra 23 Ram Pershad Ojha* v *Bharosa Kuncar 9 W R 328 Shama Churn Ghose* v *Radha Kristo Chaklanuvis 14 W R 210 Puresh Narain Roy* v *Watson & Co 23 W R 229 Suthai Dayalji* v *Raghunathji Vasanji 10 Bom 397 Dhondi Jagannath* v *Collector of Salt Revenue I L R 9 Bom 28* and *Maktab Beg* v *Hasan Ali I L R 8 All 551* referred to JAFAR HUSAIN v RANJIT SINGH I L R. 17 All. 518

631. ——— Dismissal of appeal for default—*Civil Procedure Code 1859 s 348* —Where an appeal is dismissed for default the hearing of objections under Act VIII of 1859 s 348 cannot be allowed to proceed. BARODA KANT BHUTTACHARJEE v PEAREE MOHUN MOOKERJEE 23 W R. 57

APPEAL—*continued*

23 OBJECTIONS BY RESPONDENT —*continued*

632 ——— Dismissal of appeal for want of necessary parties—*Civil Procedure Code (Act XIV of 1882) s 561—Right of respondent to have memorandum of objections heard* —The plaintiff sued to recover possession of lands demised on kanom in Malabar The defendants were the representatives of the mortgagee and one (defendant No 20) who claimed title to part of the land sought to be recovered As to the last mentioned part of the land the plaintiffs obtained a decree for a portion of it only The plaintiffs preferred an appeal bringing on to the record only defendant No 20 who preferred a memorandum of objections The appeal was dismissed for the reason that the mortgagee's representatives were not joined *Held* that the appeal had been heard within the meaning of Civil Procedure Code s 561 and accordingly that the memorandum of objections should be heard KOMBI ACHEN v KOCHUNNI [I. L. R. 21 Mad. 352

633 ——— What objections may be taken—*Civil Procedure Code 1859 s 348* —S 348 in no way restricted respondents as to the points on which they may by way of cross appeal object to the decision appealed against HUNOOMAN SINGH v SUDDOLALL W R. 1864 232

MUDHOO MOKEE DABEE v GUNGA GOBIND MUNDLE W R 1864 299

634 ——— Objection on ground of limitation—*Civil Procedure Code 1859 s 348* —The first Court held that the plaintiff s suit was barred by the law of limitation but the decision was reversed on appeal and the case was remanded by the lower Appellate Court for trial on the merits The first Court then gave a decree for the plaintiff but on appeal the lower Appellate Court dismissed the suit on the merits The plaintiff preferred a special appeal to the High Court *Held* it was competent to the defendant on such appeal under s 348 of the Civil Procedure Code to raise the objection that the suit was barred by the law of limitation IN THE MATTER OF THE PETITION OF HIMMAT BAHADUR [B L. R. Sup Vol 429 5 W R. 91

See RAYEEKISHOREE DOSSEE v BONOMALLEE CHURN MYTEE 10 W R 209

KISHEN CHUNDER GAEN v SREESHTEE DHUR KHATTAH 8 W R. 208

635 ——— *Civil Procedure Code s 561—Dismissal of appeal as barred by limitation—Objections not entertainable* —The entertainment of objections under s 561 of the Civil Procedure Code is contingent and dependent upon the hearing of the appeal in which such objections are taken and when that appeal itself fails is rejected or dismissed without being disposed of upon the merits the objections cannot be entertained either RAMJIWAN MAL v CHAND MAL I. L. R. 10 All. 587

636 ——— Objection on ground of jurisdiction—*Civil Procedure Code 1859 s 348* —An appeal from an order dismissing a suit for want

APPEAL—*continued*

23 OBJECTIONS BY RESPONDENT
—*continued*

of jurisdiction was not such an appeal as is contemplated by s. 348 Act VIII of 1859 and on such an appeal the respondent was not entitled to go into the merits. RAMESKHAPERSHAD MOOKERJEE v LAR LOUR W R. F B 86

637 ———— **Objections against party not appealing**—A respondent in taking advantage of the provisions of s 348 of the Civil Procedure Code can only take such objections as have reference to the party appealing If he wishes to raise objections against parties who do not appeal he must do so by independent appeal GANESH NARAYAN DURANG AGTE v GANGADHUR RAMKRISHNA [6 Bom A. C 244

638 ———— *Appeal only partly in respondent's favour—Civil Procedure Code s 348*—If a decree is passed partly in favour of and partly against a plaintiff and one of the defendants alone appeals as against the decree in favour of the plaintiff making a co-defendant a respondent there is no reason why the latter should appear or interest himself in the result nor why the plaintiff should be allowed at the hearing to raise objections to his suit having been dismissed against the other defendant GOONOMONEE DOSSIA v PARBUTTY DOSSIA [10 W R 326

639 ———— *Civil Procedure Code 1859 s 348*—In a suit to recover possession of certain land against *A* who claimed to be its proprietor in which *J B* who claimed to be a raiyat was made co-defendant plaintiff obtained a decree against the former but his suit as against the latter was dismissed *A* appealed from the decree and during the course of the appeal the plaintiff was allowed to take a cross appeal with regard to the dismissal of his suit against *J B* *Held* that the cross appeal should not have been admitted ANWAR JAN BIBEE v AZMUT ALI 15 W R 26

640 ———— *Civil Procedure Code 1859 s 348*—S 348 Act VIII of 1859 was wide enough to empower an Appellate Court on cross appeal to re open the whole case and assess damages on defendants who had been acquitted in the original suit and who were not parties to the appeal ANUND CHUNDER GOOPTO v MOHESH CHUNDER MOZOOMDAR 1 W R. 229

641 ———— **Altering decree on appeal where respondent makes no objection**—Where in the lower Appellate Court no objection to the decree of the Court of first instance was urged by the plaintiff (respondent) it is not competent to such Court to disturb the decree by giving him a larger sum than that awarded by the Court of first instance APEE v HEERA NUND 2 N W 44

642. ———— **Altering decree on appeal where respondent takes no objection**—*Civil Procedure Code 1859 s 348*—In a suit to establish title to three annas and a fraction of an estate plaintiff having obtained a decree for two annas appealed but the lower Appellate Court reduced the share allotted to the plaintiff *Held* that as no question of the share to be awarded was raised before the lower Appellate Court by the defendant under s 348 Code of Civil Procedure that Court should not have interfered with the decision in the way it did. PITOORAJ v OOJAGUR SINGH 15 W R., 227

643 ———— **Objections by opposite parties in same interest**—*Appeal by defendant from dismissal of suit—Cross objection by plaintiff*—Where a plaintiff's suit is dismissed and a defendant appeals seeking no relief whatever but acting in the same interest with the plaintiff the latter is not entitled, by way of cross appeal under s 348 to argue that his suit was wrongly dismissed SABEETOOLLAH MEAH v ROHIM DEWAN [9 W R. 273

644. ———— **Objections by opposite parties in separate appeals**—Both parties appealed from the decree of the Court of first instance and both the appeals were dismissed by the lower Appellate Court The plaintiff appealed to the High Court from the decree of the lower Appellate Court dismissing his appeal whereupon the defendant took objections to the decree of the lower Appellate Court dismissing his appeal *Held* that such objections could not be entertained GANGA PRASAD v GAJADHAR PRASAD I. L R. 2 All. 651

645 ———— **Finding in favour of respondent who had not appealed or objected**—*Right of respondent to benefit by such finding*—*H* sued *B* for arrears of rent alleging that the annual rent payable by the latter was R212 1 0 The Court of first instance gave *H* a decree based on the finding that the annual rent payable by *B* was R94 *H* appealed, and the lower Appellate Court gave him a decree based on the finding that the annual rent payable by *B* was R128 12 0 *B* appealed to the High Court from the lower Appellate Court's decree *H* did not appeal from that decree neither did he take any objections thereto under s 561 of Act X of 1877 STUART C J and OLDFIELD J before whom such appeal came for hearing remanded the case to the lower Appellate Court for a fresh determination of the question as to the amount of annual rent payable by *B* The lower Appellate Court then found that the annual rent payable by *B* was R212 1 0 *Held* by STUART C J (OLDFIELD J dissenting) that such second finding of the lower Appellate Court should be accepted and the amount awarded by its decree be enlarged accordingly notwithstanding *H* had not appealed from that decree or preferred objections thereto BIKRAMJIT SINGH v HUSAINI BEGAM [I. L R. 3 All. 643

646 ———— **Objections which could not have been taken on appeal**—*Incidental decision of issue*—The plaintiff sued the defendants for compensation for the wrongful taking of the fruit on a tree which he alleged belonged to him The defendants set up as a defence that the fruit on such tree had not been removed and that such tree belonged

APPEAL—*continued*

23 OBJECTIONS BY RESPONDENT —*continued*

to them. The Court of first instance dismissed the suit on the ground that the fruit on such tree had not been removed but found incidentally that such tree belonged to the plaintiff The plaintiff appealed from the decree of the Court of first instance and the defendants objected to the decree contending that such tree belonged to them *Held* that inasmuch as the Court of first instance did not in deciding that such tree belonged to the plaintiff decide a question substantially in issue it did not decide in this matter against the defendants within the meaning of s 561 of the Civil Procedure Code and as the decree was limited to dismissing the suit the defendants as respondents were not qualified to take an objection which they could not have taken by way of appeal and therefore the Appellate Court was not warranted by law in entertaining the objection taken by the defendants BALAK TEWARI v KAUSIL MISR I L R. 4 All. 491

647 ———— Objection by party improperly made respondent—*Extent of respondent's right* —A obtained a decree for possession of land against B and for costs against B C D and others defendants in the suit C and other defendants appealed against this decree so far as it awarded costs against them making A and D respondents to the appeal Under s 561 D objected to that part of the decree which awarded possession of the land to A *Held* on appeal that it was open to D although improperly made a party to the appeal by C against A to take objection to the rest of the decree TIMMAYA MADA v LAKSHMANA BHAKTA I L R. 7 Mad. 215

648 ———— Objections on appeal as to costs —*Procedure—Notice of objections* —The Court of first instance found for the defendants on the merits and passed a decree in their favour without costs The defendants appealed against that part of the decree which disallowed them their costs The plaintiff filed a notice of objections to the decree on the merits as required by s 561 of the Code of Civil Procedure (XIV of 1882) The lower Court of Appeal varied the decree by allowing the defendants their costs of suit and held that the plaintiff was not entitled to file any objections *Held* that the Court of Appeal was in error in holding that the plaintiff's objections could not be entertained. S 561 of the Code gives the respondent the power of taking any objection to the decree at the hearing of an appeal which he could have taken by way of appeal provided he has filed a notice of his objections not less than seven days before the date fixed for the hearing of the appeal and this power is independent of whether an appeal lies on a mere question of costs KAMAT v KAMAT I L R 8 Bom 368

649 ———— Unsuccessful intervenors —*Civil Procedure Code 1859 s 348* —Unsuccessful intervenors (defendants) who have not appealed can not raise questions under s. 348 Act VIII of 1859 BIPRO PERSHAD MITTER v KANYE DEYEE 1 W R 341

APPEAL—*continued*

23 OBJECTIONS BY RESPONDENT —*continued*

650 ———— Co-respondents —A defendant or respondent cannot be heard by way of cross appeal under s 348 Act VIII of 1859 as against a co defendant or co respondent TARUCK NATH ROY v TABOORUNISSA CHOWDHRAIN 7 W R. 39

651 ———— *Civil Procedure Code 1859 s 348* —A respondent making a cross appeal can take objection to any part of the judgment of the first Court adverse to him to which the appellant can answer and which affects the appellant's interests only but the cross appeal of a respondent does not open up any question between himself and his co respondents for they cannot be allowed to interplead The law gives a respondent a right to raise objections at the hearing of the appeal but under s. 348 Civil Procedure Code reasonably construed the contest is between two parties equally interested and not with third parties MAHBOOB ALI v ZUB BANOO BIBEE 9 W R. 78

652 ———— *Civil Procedure Code 1859 s 348* —Plaintiff sued two tenants and his co sharer for joint rents His suit was dismissed and the dakhilas produced by the tenant defendants were declared to be false The latter appealed making the former and his co sharer respondents Plaintiff then appeared and made a cross appeal under s 348 Act VIII of 1859 *Held* that plaintiff had no *locus standi* to entitle him to make a cross appeal against his co sharer upon the appeal of the tenant defendants ANUNTO DOSS SEIN v RAM JOY SEIN 11 W R. 435

653 ———— *Whether a respondent can prefer a cross objection against another respondent—Civil Procedure Code (1882) s 561* —In a suit for possession of land the Court of first instance decreed the plaintiff's suit in part against the defendants Some of the defendants appealed to the High Court without making the other defendants party respondents. The plaintiffs preferred a cross objection under s 561 of the Code of Civil Procedure The non appealing defendants were added as respondents by an order of the High Court to the effect that they might be made parties without prejudice to any objection that might be urged on their behalf at the hearing of the appeal The non appealing defendants at the hearing of the appeal contended that they were wrongly made parties and that the plaintiffs could not urge their cross objection as against them *Held* that as a general rule the right of a respondent to urge cross objections should be limited to his urging them against the appellant and it is only by way of exception to this general rule that one respondent may urge a cross objection against another respondent the exception holding good among other cases in those in which the appeal of some of the parties opens out questions which cannot be disposed of completely without matters being allowed to be opened up as between co respondents; but as there was nothing exceptional in this case the plaintiffs were not allowed to urge their cross-objections against the

APPEAL—*continued*

23 OBJECTIONS BY RESPONDENT —*continued*

non appealing defendants BISHUN CHURN ROY CHOWDHRY v JOGENDRA NATH ROY [I. L. R. 26 Calc 114

654. ——— *Civil Procedure Code 1859 s 348* —A plaintiff (respondent) may take an objection under s 348 against defendants who have not appealed but who are *pro forma* brought in as co respondent RAM LALL MOOKERJEE v TARRA SOONDUREE DEBIA [W R. 1864 3

Contra HOSSAIN BUKSH PUTOOAH v BAROO BEPAREE 5 W R 49

655 ——— *Civil Procedure Code 1859 s 348* —One defendant cannot take an objection under s. 348 on the appeal of a defendant BUBRODA SOONDUREE DOSSEE v NOBO GOPAL MULLICK W R 1864 294

See KHEMUKURREE DOSSEE v NILAMBUR MUNDUL 2 W R. 227

GUDHADHUR BANERJEE v MONMOHINEE DOSSEE [7 W R 368

KISHEN CHUNDER v CHUNDRABOLLY DOSSEE [2 Hay 180

656 ——— *Absence of co respondent—Civil Procedure Code 1859 s 348* —The lower Appellate Court was held to be justified in refusing to enter into an objection raised by the respondent under Act VIII of 1859 s 348 in the absence as a party to the appeal of one of the parties interested in the decision of the first Court MOIZZUNNISSA v MOOBAREE DHUR DEY 22 W R 314

657 ——— *Absence of co respondent—Cross appeal by only some of respondents* —A question having arisen in the execution of a decree as to assessing wasilat the first Court held that the decree holders were entitled to wasilat of a 2 anna 13 gundah share The Judge held on the appeal of some of the judgment debtors that the decree holders were entitled to 1 anna 10 gundah share and rejected the objections raised by the decree holders under s 348 Civil Procedure Code *Held* that the Judge was wrong in amending the Munsif's decree as to the share as the objection was not taken in the Court of first instance and that he was bound to dispose of the objections taken by the decree holders under s 348 and if there was any difficulty arising from the absence of some of the judgment debtors he ought to have directed that they should be made respondents PRAN KISHORE DEB v MAHOMED AMEER 21 W R. 338

658 ——— *Objection against absent co-respondent* —An objection by way of cross appeal cannot be taken against a co respondent who is not present in Court and so unable to answer the objection of the cross appellant LALL CHAND v KUDMOO KOONWAR 7 W R 532

659 ——— **Allowing objection not taken**—*Civil Procedure Code 1859 s 348—Court Fees Act 1870 s 16* —The principle that an Appellate Court should not go beyond the subject matter of the appeal applies to an objection called a cross appeal under s 348 which enables the respondent to take any objection to the decision of the lower Court which he might have taken if he had preferred a separate appeal The joint effect of this section and of Act VII of 1870 s 16 is to place the respondent in the position of a cross appellant in so far that he must before the hearing specify his matter of objection and must pay into Court the Court fee attaching thereto An Appellate Court was held to have acted without authority and to have contravened the Court Fees Act in having voluntarily suggested what it thought to be an error of the Court below and allowed the respondent to take it as an objection giving effect to the objection subject to the payment of the Court fee stamp SHARODA SOONDUREE DEBEE v GOBINDMONEE *alias* BROJO SOONDUREE DEBEE 24 W R. 179

660 ——— **Objections by pauper respondent**—*Civil Procedure Code 1882 s 561* —Objections by a respondent to a decree under s 561 of the Code of Civil Procedure cannot be filed *in formâ pauperis* *Babaji Hari* v *Rajaram Ballal I L R 1 Bom 75* followed NARAYANA v KRISHNA I. L. R 8 Mad. 214

661. ——— *Civil Procedure Code 1882 s 561* —A plaintiff who has obtained leave to sue *in formâ pauperis* and has been successful in obtaining a decree for a portion of his claim but has failed as to the other portion is not entitled on an appeal by the defendant to be heard *in formâ pauperis* on cross appeal as to the portion of his claim decided against him in the lower Court IN THE MATTER OF BROJESHWARI DASI v GUROO CHURN DAS I. L R 11 Cal 735

662 ——— **Objections filed by respondent**—*Civil Procedure Code (1882) s 561—Letters Patent—Appeal —Held* that s 561 of the Code of Civil Procedure is not applicable to appeals under s 10 of the Letters Patent LAUSALIA v GULAB KUAR I L R 21 All. 297

24 GROUNDS OF APPEAL

663 ——— **Objections to order of remand in appeal from final decree**—*Civil Procedure Code 1859 s 335 1877 1882 s 541* —It is competent to an appellant appealing from the final judgment and decree to include in his appeal any legal grounds of objection against a prior decretal order of remand MIZAJOOL NISSA v BUNSHEE DHUR 1 N W 193 Ed 1873 277

664 ——— *Appellant not allowed to raise in appeal a contention inconsistent with the case relied upon in the Courts below—Variance between pleading and proof—Practice* —An appeal cannot be maintained upon a ground inconsistent with the case insisted on in the Courts below notwithstanding that the new ground may be one that might have been brought forward in the

APPEAL—*continued*

24 GROUNDS OF APPEAL—*concluded*

first instance as an alternative In a suit between the widows of two brothers deceased the plaintiff's title rested on this that her and the defendant's late husbands respectively having been the sons of the same father had therefore been sapindas to each other so that the plaintiff as the widow of the one would be the heir of the other expectant on the death of his widow In this character she sued to have set aside an adoption made by the defendant The Courts however found that the plaintiff's husband was an illegitimate son and not a sapinda and the suit was dismissed The plaintiff now appellant on findings of fact that both the sons were illegitimate urged that though they could not inherit from their father they yet could succeed to the estate of one another *Held* that this contention was so inconsistent with the case made below that it was now inadmissible *Srimati Dasi* v *Lalanmani 2 B L R P C 61 11 W R P C 27* referred to and followed GAJAPATHI RADHIKA v VASUDEVA SANTA SINGARO
[I L R. 15 Mad. 503
L R. 19 I A 179

25 DISMISSAL OF APPEAL

665 ———— Power of the lower Court to amend decree after dismissal of appeal—*Civil Procedure Code (1882) ss 551 and 577—Practice*—The dismissal of an appeal under s 551 of the Civil Procedure Code (1882) leaves the decree of the lower Court untouched neither confirmed nor varied nor reversed and it remains the decree of the lower Court which can amend it in order to bring it into accordance with its judgment BAPU v VAJIR
I. L. R. 21 Bom. 548

666 ———— Effect of dismissal of appeal—*Civil Procedure Code 1882 s 551—Amendment or alteration of decree—Power of the High Court to amend decree of lower Court improperly drawn—Civil Procedure Code (1882) ss 206 and 551—Practice*—The order of dismissal of an appeal under s 551 of the Civil Procedure Code being a final determination of and an adjudication on the questions raised in the appeal is a decree and in this respect there is no distinction between an appeal which is dismissed under s 551 of the Civil Procedure Code and an appeal which is dismissed under any other section of the Code after full hearing *Royal Reddi* v *Linga Reddi I L R 3 Mad 1* referred to When an appeal is dismissed under s 551 of the Civil Procedure Code or in the case of a second appeal when the decree is one of dismissal the effect practically is to make the decree which is confirmed the final decree to be executed in the suit and the High Court making such order has power to amend the decree of the lower Court which has been in effect confirmed by it so as to bring it in conformity with the judgment which is also confirmed. UMA SUNDARI DEVI v BINDU BASHINI CHOWDHRANI
[I. L. R. 24 Calc. 759

667 ———— Confirmation of decree on appeal—*Civil Procedure Code (1882) s 551*—The decision of the Full Bench in *Pichuvayyangar* v *Seshayyangar I L R 18 Mad 214* that the jurisdiction of a Court of first instance to amend a decree under s 206 of the Civil Procedure Code is ousted by the confirmation of that decree on appeal applies equally to second appeals dismissed under s. 551 of the Code and to second appeals tried after notice to the respondent MUNISAMI NAIDU v MUNISAMI REDDI
[I. L. R. 22 Mad., 293

APPEAL—*concluded*

25 DISMISSAL OF APPEAL—*concluded*

APPEAL IN CRIMINAL CASES

See APPEAL TO PRIVY COUNCIL—CRIMINAL CASES I Ind. Jur O S 61
[1 W R. P C 13 9 Moore's I. A. 168
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See ASSESSORS I. L. R. 3 Calc., 765

See INCOME TAX ACT 1860
[2 N W., 113

See CASES UNDER JUDGMENT—CRIMINAL CASES

See LIMITATION ACT 1877 ART 155
[I. L R 15 Mad. 414

See SUPREME COURT BOMBAY
[3 Moore's I. A. 468 488

1 ACQUITTALS APPEALS FROM

1. ———— Appellate judgment of acquittal—*Criminal Procedure Code 1872 s 272*—The words appellate judgment of acquittal in Act X of 1872 s 272 were meant to include all judgments of an Appellate Court by which a conviction is set aside GOVERNMENT OF BENGAL v GOKUL CHUNDER CHOWDHRY
[24 W R. Cr 41

2 ———— Time for appealing—*Criminal Procedure Code 1872 s 272—Act XI of 1874 s 23—Limitation*—Under s 272 of the Code of Criminal Procedure as amended by s 23 of Act XI of 1874 an appeal against an acquittal presented by the Government six months after the date of the judgment complained of was barred by lapse of time even though the six months expired on the day the amending Act became law The amended s 272 should be read by itself and not as a clause of the ordinary Statute of Limitations EX PARTE THE GOVERNMENT OF BOMBAY IN THE MATTER OF REG v DORABJI BALABHAI
11 Bom 117

3 ———— *Criminal Procedure Code (Act X of 1872) s 272—Limitation Act X of 1871 s 5 cl b and sch II art 153*—An

APPEAL IN CRIMINAL CASES—*continued*

1 ACQUITTALS APPEALS FROM—*continued*

appeal by the Local Government under s. 272 Criminal Procedure Code was within time if presented within six months from the date of acquittal The sixty days rule did not apply EMPRESS v JYADULLA I. L. R. 2 Cal. 436

4. ——— Appeal by Local Government from judgment of acquittal—*Criminal Procedure Code (Act X of 1882) s 417* – Under the Code of Criminal Procedure (Act X of 1882) the Local Government have the same right of appeal against an acquittal as a person convicted has of appealing against his conviction and sentence and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided. IN THE MATTER OF THE PETITION OF THE DEPUTY LEGAL REMEMBRANCER QUEEN EMPRESS v BIBHUTI BHUSAN BIT

[I. L. R. 17 Calc., 485

5 ——— Officer appointed to prefer appeal—*Judgment of acquittal—Conviction of culpable homicide on charge of murder*—On the trial by a jury of a person on a charge of murder the jury found the accused not guilty of the offence of murder but convicted him of culpable homicide not amounting to murder The Sessions Judge although he disagreed with the verdict declined to submit the case to the High Court under s 263 of the Criminal Procedure Code The Local Government thereupon directed the Legal Remembrancer to appeal under s 272 of the Code and in pursuance of this direction an appeal was preferred by the Junior Government Pleader *Held* that the appeal was duly made *Held* further that the judgment passed by the Court of Session following the verdict of a jury acquitting the prisoner was a judgment of acquittal within the meaning of s 272 *Held* also that there being an acquittal on the charge of murder the appeal lay EMPRESS v JUDOONATH GANGOOLY I. L. R. 2 Calc 273

6 ——— Appeal upon facts from verdict of a jury—*Criminal Procedure Code (Act X of 1882) ss 417 418 423*—Under the provisions of Act X of 1882 no appeal at the instance of the Local Government lies from an order of acquittal in a case which has been tried by a jury when the questions involved are purely questions of fact for such an appeal to lie it must be supported upon a ground which is covered by s 418 GOVERNMENT OF BENGAL v PARMESHUR MULLICK

[I. L. R. 10 Calc 1029

7 ——— Ground for setting aside acquittal on appeal—*Criminal Procedure Code 1872 s 272*—It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not coincide and has acquitted accused persons, that an appeal by the Local Government must necessarily prevail or that the High Court should be called upon to disturb the ordinary course of justice by putting in force the arbitrary powers conferred on it by s 272 of the Criminal Procedure Code The doing so should be limited to those instances in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public *Held* therefore the Local Government having appealed from an original judgment of acquittal of a Sessions Judge that as such judgment was an honest and not unreasonable one of which the facts of the case were susceptible such appeal should be dismissed EMPRESS OF INDIA v GAYADIN I. L. R. 4 All. 148

8 ——— Appeal by Local Government from judgment of acquittal—*Queen Empress v Gayadin I L R 4 All 148* followed by BRODHURST J as to the principle applicable to the determination of appeals preferred by the Local Government from judgments of acquittal *Per* EDGE C.J—In capital cases where the Local Government appeals under s 417 of the Criminal Procedure Code from an order of acquittal it is generally speaking undesirable that the prisoner's fate should be discussed while he remains at large and the Government should in such cases apply for the arrest of the accused under s 427 of the Code *Per* EDGE C.J and STRAIGHT J—Every case as it arises must be decided on its own facts and not on supposed analogies to other cases *Queen Empress v Gayadin I L R 4 All 148* distinguished. QUEEN EMPRESS v GOBARDHAN

[I. L. R. 9 All. 528

9 ——— *Criminal Procedure Code (1882) s 417—Appeal by Government*—An appeal on behalf of Government in the exercise of the powers conferred by s 417 of the Code of Criminal Procedure should not be entertained when the judgment appealed from is based upon facts and the conclusions of the Court are such as may reasonably be arrived at upon the facts found *Empress of India v Gayadin I L R., 4 All 148* referred to QUEEN EMPRESS v ROBINSON

[I. L. R. 16 All. 212

10 ——— *Criminal Procedure Code (1882) s 417—Appeal by Government from an acquittal on the same footing as an appeal from a conviction*—In the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and a right of appeal against a conviction so far as the power of the Court to deal with the facts is concerned In both cases the appellant has to satisfy the Court that there exists some good and strong ground apparent on the record for interfering with the deliberate determination of a Judge who has had all the evidence taken before him and has arrived at that determination with that great advantage in his favour *Queen Empress v Gayadin I L R 4 All 148* and *Queen Empress v Gobardhan I L R., 9 All 528* referred to QUEEN EMPRESS v PRAG DAT

[I. L. R. 20 All. 459

11. ——— *Penal Code (Act XLV of 1860) ss 96 et seq—Right of private defence—Presumption—Pleadings*—Held that an

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APPEAL IN CRIMINAL CASES —*continued*

1 ACQUITTALS APPEALS FROM—*continued*

accused person who at his trial has not pleaded the right of private defence but has raised other pleas inconsistent with such a defence cannot in appeal set up a case founded upon the evidence taken at his trial that he acted in the exercise of the right of private defence neither is the Court competent to raise such a plea on behalf of the appellant *Queen Empress* v *Prag Dat I L R 20 All 459* referred to QUEEN EMPRESS v TIMMAL [I L R. 21 All. 122

12 ———— **Acquittal by Sessions Judge where he might have convicted under different section of Penal Code**—*Criminal Procedure Code 1872 s 272*—Where the Sessions Judge might upon appeal have convicted the defendants under a different section of an Act from that under which they were convicted by the Magistrate but instead of doing so he acquitted them —*Held* upon appeal by the Local Government that it was not a case which called for the interference of the High Court ANONYMOUS CASE IN THE MATTER OF THE PETITION OF THE GOVERNMENT PLEADER 7 Mad. 339

13 ———— *Criminal Procedure Code 1872 s 272*—Where a person was convicted by a Magistrate under s 409 of the Penal Code for committing criminal breach of trust in the capacity of a public servant and was acquitted by the Sessions Court on appeal on the ground that the breach of trust was not committed in such capacity and the facts proved constituted the offence of criminal breach of trust the High Court on the appeal of Government directed a new trial by the Magistrate on charges under s 406 of the Penal Code under the provisions of s 272 of Act X of 1872 The Court concurred in the view taken by the High Court in an *Anonymous case 7 Mad 339* that the powers under s 272 should be exceptionally exercised QUEEN v DUKARAN 7 N W 196

14 ———— **Difference of opinion between assessors**—*Criminal Procedure Code 1872 s 272—Setting aside order of acquittal*—In a case tried by assessors in which the accused was charged with culpable homicide not amounting to murder he was acquitted by the Sessions Judge and one of the assessors, while the other assessor was for a conviction The Government of Bengal having appealed under s 272 Code of Criminal Procedure the High Court on a consideration of the evidence set aside the order of acquittal and convicted the accused of the offence charged. GOVERNMENT OF BENGAL v HANEEF FAKEER 23 W R. Cr 50

15 ———— **Conviction by assessors but acquittal by Judge**—*Criminal Procedure Code 1872 s 272—Conviction and sentence to death by High Court*—Where the assessors found a prisoner guilty but the Judge acquitted him the High Court on an appeal under s 272 Criminal Procedure Code 1872 reversed the Judge's decision of acquittal and sentenced the prisoner to death QUEEN v HRIDAY PATRO 26 W R. Cr 1

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1 ACQUITTALS APPEALS FROM—*continued*

16 ———— **Appeal from refusal of Judge to add new charges**—*Appeal from interlocutory order—Framing additional charges—Criminal Procedure Code 1882 s 417—Penal Code ss 206 423 424*—At the commencement of a trial before a Court of Session on a charge under s 206 of the Penal Code the Public Prosecutor applied to the Court to frame new heads of charge under ss 423 and 424 of the Code The Sessions Judge postponed passing any final decision upon this application until it became apparent that the charge under s 206 was not sustainable on the evidence to be adduced by the prosecution After hearing the evidence for the prosecution on this charge the Sessions Judge without going into the defence or recording the opinions of the assessors passed an order of acquittal At the same time he rejected the application for framing new heads of charge holding on the authority of *Queen Empress* v *Appa I L R 8 Bom, 200* that he had no power to frame any new charges in addition to the original charge He was also of opinion that the dismissal of a complaint which the prosecutor had previously filed against the accused on the very charges which were sought to be added was also a sufficient ground for rejecting the application The Local Government appealed to the High Court against the order of acquittal At the hearing of the appeal it was contended on behalf of the Crown that the Sessions Judge was wrong in refusing to frame additional charges as sought by the Public Prosecutor The accused's counsel objected to this point being raised by Government in an appeal against an order of acquittal *Held per* TELANG J (1) that under s 417 of the Code of Criminal Procedure (Act X 1882) it was not open to Government to appeal to the High Court on the ground of the Sessions Judge's refusal to add new charges or against any other interlocutory order made during the trial (2) That the Sessions Judge ought to have finally disposed of the application for framing additional charges at the very commencement of the trial when it was made especially because it did not purport to be based on any facts other than those contained in the depositions recorded by the committing Magistrate QUEEN EMPRESS v VAJIRAM I. L. R. 16 Bom. 414

17 ———— **Power of Court to order arrest pending appeal**—*Criminal Procedure Code 1872 s 272 (1882 s 427)*—In an appeal under s 272 of Act X of 1872 the High Court has power to order the accused to be arrested pending the appeal. THE QUEEN v GOBIN TEWARI [I. L. R. 1 Calc. 281

EMPRESS v MANGA I. L. R. 2 All. 340

EMPRESS v KARIM BAKSH I. L. R. 2 All. 386

18 ———— **Exercise of jurisdiction on appeal by Government—Grounds of objection**—*Criminal Procedure Code (1882) s 477—Practice*—*Per* RANADE J—The High Court in exercising jurisdiction in the matter of appeals against acquittals should confine its exercise to the

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1. ACQUITTALS APPEALS FROM—*concluded*

particular grounds of objection which are raised by Government against the acquittal complained of QUEEN EMPRESS v KARIGOWDA
[I. L. R., 19 Bom. 51

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19 ——— Act XI of 1846—*Appeal to the High Court—Scheduled Districts Act (XIV of 1874)—Rule 44 of rules framed under s 3 of Act XI of 1846—Agent to Governor in Khandesh District*—The accused were convicted under s 201 of the Penal Code (Act XLV of 1860) of an offence committed in the village of Gulamba in the Mehwas Estate of Nal in the Khandesh District and sentenced by the Agent to the Governor each to suffer rigorous imprisonment for five years The Agent tried the case under the rules framed under Act XI of 1846. The accused appealed to the High Court under rule 44 of the rules framed under s. 3 of Act XI of 1846 *Held* that the appeal did not lie to the High Court but 44 was *ultra vires* as no power was given by Act XI of 1846 to Government to confer appellate powers on the Sadar Foujdari Adalat as was practically done by the rule Act XI of 1846 being repealed in the Mehwasi villages by Act XIV of 1874 rule 44 could not be continued either by the notification published in the *Bombay Government Gazette* for 1879 Part I p 116 or by the notification published in the *Bombay Government Gazette* for 1887 Part I p 19 QUEEN EMPRESS v SARYA I. L. R., 15 Bom 505

20 ——— Act XXXVII of 1855—*Conviction by Commissioner of Sonthal Pergunnahs*—No appeal lies to the High Court under Act XXXVII of 1855 from a conviction by the Deputy Commissioner of the Sonthal Pergunnahs. QUEEN v BOY DONAUTH MOOKERJEE 17 W R. Cr 11

21. ——— s 4 cl. 1—*Sonthal Pergunnahs—Scheduled Districts Act XIV of 1874*—Under s 4 (cl 1) of Act XXXVII of 1855 (which is still in force in the Sonthal Pergunnahs) all sentences passed in criminal cases are final DULAB DAT RAI v NIJABAT HOSEIN
[I. L. R. 12 Calc 536

22. ——— Act II of 1864 s 29—*Appeal from sentence of Political Resident at Aden to High Court Bombay in criminal case arising in Perim*—A prisoner charged with having committed murder in the island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death he appealed to the High Court of Bombay By the Aden Act II of 1864 s 29 it is provided that no appeal shall lie from an order or sentence passed by the Resident in any criminal case The High Court however admitted the appeal being doubtful as to whether the above provision applied to cases arising in the island of Perim QUEEN EMPRESS v MANGAL TEKCHAND
[I. L. R., 10 Bom., 258

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2 ACTS—*continued*

23 ——— Act XIV of 1868 s 11 Order of conviction under—There is no appeal from a conviction under s 11 Act XIV of 1868 for a registered prostitute neglecting to appear for examination. IN RE MUKTA BIBEE
[17 W R., Cr 11

24. ——— Bombay Cotton Frauds Act (IX of 1863) Order under—*Quære*—Whether an appeal lay notwithstanding s 411 of the Criminal Procedure Code 1861 in a case of conviction under s 2 of the Bombay Cotton Frauds Act (IX of 1863) and sentence of one month s rigorous imprisonment with an order for confiscation of the cotton REG v JIVAN USMAN 3 Bom Cr 12

25 ——— Bombay Ferries Act (XXXV of 1850) Order of Magistrate under—*Bom Reg XIX of 1827 s 14*—An appeal lay from the summary determination of the Magistrate of a zillah under s. 16 of Act XXXV of 1850 (an Act for regulating the Bombay Ferries) to the Sessions Judge Such appeal need not be preferred within eight days under s 14 of Regulation XIX of 1827 REG v MALHARI LAUJI 6 Bom Cr 45

26 ——— Burma Courts Act (XVII of 1875) s 35—*Transfer of case from Sessions Judge—Criminal Procedure Code 1872 s 64—Power of Special Court at Rangoon—Burma Courts Act XVII of 1875 s 35*—The Special Court of British Burma has power to entertain an appeal from a sentence of death or other sentence passed by the Judicial Commissioner in a case transferred by him to his own Court from that of the Sessions Judge under the powers conferred by s 64 of the Code of Criminal Procedure and s 35 of Act XVII of 1875 (the Burma Courts Act) the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner EMPRESS v TSIT OOE I. L R. 4 Calc, 667

27 ——— Cattle Trespass Act (I of 1871)—*Award of compensation under Cattle Trespass Act I of 1871 s 22*—No appeal lies from an award of compensation passed under s 22 Act I of 1871 IN RE GUNESH PERSHAD 3 N W, 200

28 ——— s 22—*Appeal from an order awarding compensation for illegal seizure of cattle—Code of Criminal Procedure (Act X of 1882) ss 404 407*—No appeal lies from an order passed under s 22 of the Cattle Trespass Act (I of 1871) awarding compensation for illegal seizure of cattle QUEEN EMPRESS v RAYA LAKHMA I. L. R., 10 Bom 230

DHIKU v DENONATH DEB *alias* DINU
[I. L. R. 15 Calc 712

IN RE KHADAR KHAN I. L. R. 11 Mad. 550

QUEEN EMPRESS v LAKSHMI NARAYAN
[I. L. R. 19 Mad. 238

29 ——— Income Tax Act (IX of 1869) s 25—No appeal lay to a Sessions Judge from the order of a Magistrate fining a defaulter

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2 ACTS—*concluded*

under s 25 of the Income Tax Act IX of 1869 QUEEN v MUDHOO DUTT 14 W R Cr 71

30 ———— **Police Act (V of 1861) Convictions under** —Convictions under the Police Act (V of 1861) are appealable like other convictions When the appellants are convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by s 411 of the Code of Criminal Procedure the appeal lies to the Sessions Court QUEEN v THAKOOR DOSS [5 W R Cr 22

31. ———— **Presidency Magistrates Act (IV of 1877) s 41**—*Prosecution Sanction of Judge to* —No appeal lay from the order of a Judge directing a prosecution under s 41 of the Presidency Magistrates Act IN THE MATTER OF THE PETITION OF JANOKEY NATH ROY I L R., 2 Calc 466

32. ———— **s 167** —Where a person has on his own plea been convicted on a trial held by a Presidency Magistrate an appeal to the High Court on the ground that the conviction was illegal and therefore also the sentence does not lie according to the provisions of s 167 of the Presidency Magistrates Act No IV of 1877 albeit that the Magistrate has sentenced the person to imprisonment for a term exceeding six months or to a fine exceeding two hundred rupees EMPRESS v JAFAR M TALAB I L R. 5 Bom. 85

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33 ———— **Effect of repeal of Act**—*Criminal Procedure Code (Act X of 1872) s 36—Act X of 1882 s 408* —On the 9th of December 1882 a person was convicted under ss 457 and 109 of the Indian Penal Code and sentenced to three years rigorous imprisonment by a Deputy Magistrate in Assam exercising special powers under s 36 of the old Code of Criminal Procedure (Act X of 1872) The new Code of Criminal Procedure came into force on the 1st of January 1883 The prisoner presented an appeal to the High Court from the conviction and sentence above mentioned on the 23rd of January 1883 *Held* by FIELD J (MITTER J expressing no decided opinion) that the case was governed by s. 408 of the new Code of Criminal Procedure and that no appeal lay to the High Court PONGAI v THE EMPRESS I. L. R. 9 Calc. 513 [12 C L R. 500

34. ———— **Order of Deputy Commissioner**—*Criminal Procedure Code 1872 s 36 and s 270—Omission to get sanction of Sessions Judge* —Where a Deputy Commissioner's order required under Act X of 1872 s 36 the sanction of the Sessions Judge the High Court had no jurisdiction to entertain an appeal from it until so sanctioned QUEEN v SHAM SOONDER DASS 25 W R Cr 18

35 ———— **Conviction by Deputy Commissioner under Criminal Procedure Code 1872, s. 36** —*Quære*—Whether where a person had been convicted by a Deputy Commissioner invested under s 36 of Act X of 1872 and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to which such Deputy Commissioner was subordinate and such sentence had been confirmed accordingly an appeal lay to the High Court against such conviction and sentence EMPRESS OF INDIA v NADUA [I. L. R. 2 All. 53

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3 CRIMINAL PROCEDURE CODES 1861 1872 1882 1898—*continued*

36 ———— **Order sanctioning entertainment of complaint**—*Case under ss 468 469 Criminal Procedure Code 1872* —No appeal lay to the District Judge from an order of a subordinate Court according sanction to the entertainment of a complaint in cases in which such sanction was required by ss 468 and 469 of Act X of 1872 IN THE MATTER OF THE PETITION OF BULWUNT RAI 6 N W 124

37 ———— **Order sanctioning prosecution**—*Criminal Procedure Code s 195—Revision* —No appeal lies from an order granting or refusing to grant sanction to prosecute under s. 195 of the Criminal Procedure Code The proceeding under s 195 of the Code of Criminal Procedure by which such an order may be set aside is a proceeding in revision and not by way of appeal MEHDI HASAN v TOTA RAM I. L. R. 15 All 61

See QUEEN EMPRESS v GANESH RAMKRISHNA [I. L R. 23 Bom. 50

38 ———— **Sentence by officer in Non Regulation District**—*Criminal Procedure Code 1869 ss 445A 445C* —An appeal from a sentence passed by an officer in a Non Regulation district invested with the powers mentioned in s 445A Act VIII of 1869 lay under s 445C to the High Court only QUEEN v LUNTRO SINGH [14 W R. Cr 18

39 ———— **Trial held by officer with special powers**—*Criminal Procedure Code (Act VIII of 1869) ss 445A and 445C—Deputy Commissioner—Act X of 1872 ss 36 and 270* —The right of appeal to the High Court given by s 445C of the Criminal Procedure Code to persons convicted on a trial held by an officer invested with the power described in s 445A was confined to cases in which the officer has exercised that power QUEEN v DHONA BHOOYA 5 B L R. F B 658 [14 W R. Cr 33

40 ———— **Right of appeal to the High Court by a person other than a European British subject jointly tried with such subject**—*Criminal Procedure Code 1882 ss 401 452* —A person not being a European British subject who is tried before a District Magistrate jointly with a European British subject cannot claim under s. 452 of the Code of Criminal Procedure (Act X of 1882) the right of appeal to the High Court which is exclusively reserved to such European British subject IN RE SOLOMON I. L. R. 14 Bom 160

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3 CRIMINAL PROCEDURE CODES 1861 1872 1882 1898—continued

41. ———— Illegal conviction—*Appeal on the merits*—No appeal upon the merits can be entertained from a conviction which was based on no legal evidence and which was absolutely bad in law *Queen v Mohesh Chunder Chuttopadhia 2 W R Cr 13* distinguished. QUEEN v POORNO CHUNDER DOSS 8 W R, Cr 59

42. ———— Order for additional evidence by Appellate Court—*Criminal Procedure Code 1861 s 422*—When an Appellate Court under s. 422 of the Code of Criminal Procedure directed a Court of first instance to take additional evidence an appeal on the merits to the High Court was not thereby given I RO v NANTAMRAM UTTAMRAM 6 Bom Cr 64

43 ———— Order for additional evidence by Sessions Judge—*Criminal Procedure Code (Act VIII of 1869) s 422—Act X of 1872 s 282*—Upon an appeal from a sentence passed by a Magistrate the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. Such evidence having been taken by the Magistrate the case was returned to the Appellate Court The Sessions Judge then disposed of the case in the manner prescribed by s 419 of the Criminal Procedure Code On an application by the prisoner to the High Court to be allowed to appeal on the merits of the case under s 408 Act XXV of 1861—*Held* no appeal lay to the High Court on the merits IN THE MATTER OF THE PETITION OF DHANOBAR GHOSE 6 B L R 483
[15 W R Cr 33

44. ———— Judgment of Sessions Judge confirming illegal sentence of Magistrate—The Assistant Magistrate having decided a case without examining the witnesses for the defence named by the prisoners the Sessions Judge on appeal ordered the evidence of those witnesses to be taken by the Assistant Magistrate Their depositions having been returned to him the Sessions Judge proceeded to deal with the case under s 422 of the Code of Criminal Procedure and convicting all the prisoners confirmed the judgment and sentence passed by the Assistant Magistrate *Held* that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate s judgment and sentence) was in substance an original judgment and that under s 408 an appeal lay from it to the High Court upon the merits QUEEN v MOHESH CHUNDER CHUTTOPADHIA
[2 W R Cr 13

45 ———— Taking of additional evidence by Appellate Court—*Dismissal of Appeal—Accused s right of appeal from such dismissal—Code of Criminal Procedure (Act V of 1898) s 428*—Where an Appellate Court has under s 428 of the Code of Criminal Procedure taken additional evidence the accused whose appeal has been dismissed by such Court has no right of appeal to the High Court QUEEN EMPRESS v I AHAK
[I. L. R. 27 Calc 372
4 C W N 497

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3 CRIMINAL PROCEDURE CODES 1861 1872 1882 1898—continued

46 ———— Order for fine and imprisonment not in alternative—*Criminal Procedure Code 1869 s 411*—S 411 of the Criminal Procedure Code 1869 must be construed strictly and will only apply to cases in which either imprisonment or fine has been awarded by the sentence and not to cases in which both punishments are awarded by one sentence In the latter case therefore there was a right of appeal ANONYMOUS CASE
[1 N W Ed. 1873 302

47 ———— Decision of jury as to nuisance—There was no right of appeal from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance under s 308 of the Code of Criminal Procedure was reasonable and proper SHITARAM v I AMANAND
[16 W R Cr 66

48 ———— Order of Sessions Judge fining assessor under Criminal Procedure Code 1861 s 354—The order of a Sessions Judge under s. 354 of the Code of Criminal Procedure fining an assessor was not appealable IN THE MATTER OF THE PETITION OF GOUR SHURUN DASS
[8 W R Cr 83

49 ———— Order of Sessions Court for detention on refusal to give security—*Criminal Procedure Code 1872 s 508*—No appeal lay from the order of a Sessions Court fixing a period of detention under Act X of 1872 s 508 for an accused party refusing to furnish security QUEEN v ROGHOO DOME 24 W R Cr 12

50 ———— Order for detention on refusal to give security for good behaviour—*Code of Criminal Procedure (Act X of 1882) s 123*—No appeal lies to the High Court from an order passed by a District Magistrate under the provisions of s 123 of the Criminal Procedure Code and on reference by the Magistrate confirmed by the Sessions Judge under the same section requiring a person to be detained in prison until he should provide security for his good behaviour CHAND KHAN v THE EMPRESS I. L R 9 Calc 878

51. ———— Order requiring security for good behaviour—*Criminal Procedure Code 1872 ss 267 and 286 illus (d)*—Under ss 267 and 286 illus (d) Act X of 1872 there was no appeal to the High Court from an order passed by a Magistrate of the district requiring a person to give security for good behaviour QUEEN v NUJUAH
[22 W R 68

52 ———— Decision of Bench of Magistrates—*Summary Procedure—Criminal Procedure Code (Act X of 1872) chap XVIII*—No appeal lay to a District Magistrate from the decision of a Bench of Magistrates composed of an Assistant Magistrate with second class powers and two or more Honorary Magistrates in a case tried under chap XVIII of the Criminal Procedure Code 1872 IN

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3 CRIMINAL PROCEDURE CODES 1861 1872 1882 1898—*continued*

THE MATTER OF THE PETITION OF HAVILDAR ROY HAVILDAR ROY v JAGU MEAN
[I. L. R. 9 Calc. 96 11 C L. R. 423

53 ———— Decision of Bench of Magistrates with second class powers—*Conviction* —An appeal lies under s 407 of the Code of Criminal Procedure from a conviction by a Bench of Magistrates invested with second or third class powers QUEEN EMPRESS v NARAYANASAMI
[I. L. R., 9 Mad., 36

54. ———— Order for maintenance of illegitimate child—*Criminal Procedure Code 1861 s 316* —*Held* (MARKBY J dissenting) that no appeal lay from the order of a Magistrate under s. 316 of Act XXV of 1861 directing a man to pay a monthly allowance for the support of his illegitimate child. QUEEN v GOLAM HOSSEIN CHOWDHRY
[2 Ind. Jur N S 88 7 W R. Cr 10

55 ———— Order for recognizance to keep peace—*Criminal Procedure Code 1861 ss 209 280 424* —There was no appeal to the Sessions Court from an order made by a Magistrate under s 409 of the Criminal Procedure Code 1861 requiring a penal recognizance to keep the peace under s 280 The Court of Session may however in such a case under s. 434 of the Code call for and examine the record of the Court below and if it shall be of opinion that the order of the Magistrate is contrary to law refer the proceedings for the orders of the High Court REG v BHASKAR K KHARKAR
[3 Bom. Cr 1

56 ———— Order of Magistrate levying penalty for forfeiture of recognizances to keep the peace—*Criminal Procedure Code 1872 s 502* —A first class Deputy Magistrate decided that a bond for keeping the peace had been forfeited and proceeding under s 502 of the Criminal Procedure Code levied the penalty An appeal was entertained from this order by the Sessions Judge of South Arcot and the order was reversed. A petition was then presented under s 294 of the Criminal Procedure Code praying the High Court to reverse the order of the Sessions Judge *Held* that the order of the first class Deputy Magistratre was not open to appeal The effect of the penultimate clause of s 502 considered. ANANTHACHARRI v ANANTHACHARRI
[I. L. R. 2 Mad. 169

57 ———— Order dismissing complaint—*Appeal by prosecutor from order of dismissal* —In a case of dismissal of complaint by a Deputy Magistrate it was held that a prosecutor had no right of appeal but ought to have moved the Magistrate to procure under s. 434 of the Code of Criminal Procedure a reversal by the High Court of the order of dismissal LYALL & Co v SAM MUNDLE W R. 1864 Cr 23

58 ———— Order of Magistrate refusing to recall witness for prosecution.—No appeal lies to the Sessions Court from the order of the

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3 CRIMINAL PROCEDURE CODES 1861 1872 1882 1898—*continued*

Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross examination IN THE MATTER OF THE PETITION OF BELILIOS BELILIOS v QUEEN 19 W R. Cr, 53

59 ———— Order of Sessions Judge imposing fine on witness under s. 228 Penal Code—*Insult to Judge* —An appeal lay against an order of the Sessions Court imposing a fine upon a witness under s 228 of the Penal Code for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding Where the High Court on appeal were satisfied that the witness did not intend to insult the Judge the order was set aside QUEEN v CHAPPU MENON 4 Mad. 146

60 ———— Order for imprisonment—*Consolidation of separate sentences—Criminal Procedure Code (Act XXV of 1861) s 411 (Act X of 1872 s 273)* —*A* was convicted of offences under ss. 143 447 and 211 of the Penal Code and sentenced by the Magistrate to one month s imprisonment for each offence *Held* that under s 411 of Act XXV of 1861 there was no appeal The separate sentences could not be taken together and combined into one sentence so as to give a right of appeal QUEEN v NAGARDI PARAMANIK
[1 B. L. R. A. Cr 3 10 W R. Cr., 3
QUEEN v MOBLY SHEIKH 6 W R. Cr 51

61. ———— Sentence of fine and imprisonment—*Criminal Procedure Code 1861 s 411* —*Held* that no appeal lay where the sentence of imprisonment and of further imprisonment in default of payment of a fine does not in the aggregate exceed the term of one month. REG v SHANKAR VENKAJI 3 Bom Cr 15

62. ———— Appeal from sentence of Presidency Magistrate—*Criminal Procedure Code (Act X of 1882) s 411* —No appeal lies from a sentence of six months rigorous imprisonment and a fine of R200 or a further period of three months simple imprisonment passed by a Presidency Magistrate SCHEIN v THE QUEEN EMPRESS
[I. L R. 16 Calc 799

63 ———— *Criminal Procedure Code (1882) s 411—Appeal from a conviction by a Presidency Magistrate—Sentence* —S 411 of the Code of Criminal Procedure (Act X of 1882) does not allow an appeal in the case of a conviction by a Presidency Magistrate where the sentence inflicted is six months rigorous imprisonment and a fine of R125 or in default a further period of three months' rigorous imprisonment. *Schein v Queen Empress I L R 16 Calc 799* followed QUEEN EMPRESS v HARI SAVBA I. L. R. 20 Bom. 145

64. ———— Appealable sentence—Costs of complaint in Criminal Court order on accused to pay—*Criminal Procedure Code s 413 —Fine—Court Fees Act (VII of 1870) s 31* —An

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3. CRIMINAL PROCEDURE CODES 1861 1872 1882 1898—continued

order passed by a Magistrate under s. 31 of the Court Fees Act, directing an accused person to pay to the complainant the Court fee paid on the petition of complaint, is no part of the sentence so as to make it a sentence of fine within the terms of s. 413 of the Code of Criminal Procedure and an order therefore sentencing an accused person to 14 days rigorous imprisonment and to pay the costs is not appealable MADAN MANDUL v HARAN GHOSE

[I. L. R. 20 Calc. 687

65 ———— **Order as to restoration of immoveable property**—*Criminal Procedure Code (Act X of 1882) ss 404 520 522—Jurisdiction of Appellate Court to reverse such an order*—There is no appeal from an order restoring possession of immoveable property under s 522 of the Criminal Procedure Code (Act X of 1882) nor can such an order be regarded as an integral part of the judgment appealed from so as to stand or fall according as the judgment is upheld or reversed. *Basudeb Surma Gossain v Naziruddin I L R 14 Calc 834 Queen Empress v Fattah Chand I L R 21 Calc 499 In re Annapurna Bai I L R 1 Bom 630* and *Rodger v Comptoir D Escompte de Paris L R 3 P C 465* referred to RAM CHANDRA MISTRY v NOBIN MIRDHA

[I. L. R. 25 Calc. 630
2 C W N 225

66 ———— **Order for punishment for separate offences**—*Criminal Procedure Code 1872 s 273—Addition of sentences*—Where a person is charged with two separate offences in one trial the amount of the whole punishment awarded for the two offences must be regarded as one sentence for the purpose of determining whether an appeal lies under s 273 of the Code of Criminal Procedure or not IN THE MATTER OF THE EMPRESS v HARADHAN TAMULI

[3 C L R. 511

67 ———— **Cases tried together of which some are appealable and some not**—*Criminal Procedure Code 1861 s 411*—Where several persons were tried together and convicted under s 147 of the Penal Code of rioting and two of them were sentenced to pay each a fine of R 0 or in default of payment to undergo rigorous imprisonment for a month and the others were sentenced to a severer punishment the Sessions Judge entertained an appeal by all the prisoners being of opinion that the test under s 411 of the Code of Criminal Procedure as to whether a case is appealable is the maximum sentence passed in it *Held* that an appeal only lay in the cases of those who had been more severely sentenced and the High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had been only fined R50 and restored the original sentences passed upon them REG v KALUBHAI MEGHABHAI 7 Bom. Cr 35

68 ———— **Transfer of territory from one Presidency to another Effect of on right of appeal**—*Criminal Procedure Code 1861, s 408—24 & 25 Vict c 104—Letters Patent 1862 cl 26—Bom Reg II of 1827 s 16 cl 2*—*Held* that there was nothing in the manner in which the district of North Canara was detached from the Madras Presidency and annexed to the Presidency of Bombay to prevent the Code of Criminal Procedure from operation therein as if it had always formed a part of the Presidency of Bombay or to deprive a convict found guilty by the Sessions Judge of the district on the 18th September 1862 of the right of appeal which he then would have had to the High Court by virtue of s 408 of the Criminal Procedure Code and of 24 & 25 Vict c 104 and the Letters Patent (1862) cl 26 Giving an appeal to the High Court from a district is not subjecting that district to the Regulations within the meaning of Regulation II of 1827 (Bom) s 16 cl 2 REG v VYANKATSVAMI 2 Bom 112 2nd Ed., 106

APPEAL IN CRIMINAL CASES —continued

3 CRIMINAL PROCEDURE CODES 1861 1872 1882, 1898—concluded

4 PRACTICE AND PROCEDURE

69 ———— **Appeal preferred after time**—*Criminal Procedure Code 1861 s 415*—An appeal preferred out of time and without any explanation of the delay may be rejected at once under s 415 of the Code of Criminal Procedure QUEEN v HULLODHUR GHOSE 5 W R. Cr 40

70 ———— **Computation of time for appeal**—*Time for obtaining copy of sentence or judgment Deduction of*—In computing time within which it is competent to a defendant to appeal against the sentence of a Magistrate the number of days taken by the Court to prepare a copy of the sentence should be omitted QUEEN v TOTI CHENGAN

[6 Mad. 349

71 ———— **Right to appear by mooktear**—*Criminal Procedure Code Act X of 1872 s 278*—An appellant in a criminal case has a right to appear and be heard by a mooktear EMPRESS v SHIVRAM GUNDO I. L. R. 6 Bom 14

72 ———— **Presentation of petition of appeal**—A petition of appeal in a criminal case may be presented to the Appellate Court by any person authorized by the appellant to present it IN THE MATTER OF SUBBA AIYALA

[I. L. R. 1 Mad. 304

73 ———— *Presentation of appeal—Criminal Procedure Code (1882) s 419*—The Criminal Procedure Code s 419 requires that a criminal appeal shall be delivered to the proper officer of the Court either by the appellant or his pleader Where a petition of appeal was not presented to the Court but was deposited in a petition box kept for the convenience of parties within the Court precincts and intended for the deposit of papers for the Court —*Held* that it had not been presented and was rightly returned for legal presentation QUEEN EMPRESS v VASUDEVAYYA

[I L R 19 Mad, 354

APPEAL IN CRIMINAL CASES —*continued*

4. PRACTICE AND PROCEDURE—*continued*

74 ——— *Presentation of appeal petition by the clerk of the appellant's pleader—Criminal Procedure Code (1882) s 419*—Presentation of an appeal petition by the clerk of the appellant's pleader is equivalent to a presentation by the pleader himself when it is signed by him and he is duly authorized. QUEEN EMPRESS *v* KARUPPA UDAYAN I. L. R. 20 Mad., 87

75 ——— *Criminal Procedure Code (Act X of 1882) s 419—Presentation of criminal appeal*—A petition of appeal under the Criminal Procedure Code is not duly presented when having been signed by a pleader it is handed in by a person who is not his clerk and over whose conduct and actions he has no control. QUEEN EMPRESS *v* PAMASAMI I. L. R. 21 Mad. 114

76 ——— *Criminal Procedure Code s 419—Petition of appeal Presentation of*—A petition of appeal sent by post is not presented to the Court within the meaning of Criminal Procedure Code s 419. QUEEN EMPRESS *v* ARLAPPA [I. L. R. 15 Mad. 137

77 ——— **Notice of appeal**—*Criminal Procedure Code 1872 ss 278 279—Pleader Notice to*—The fact that the pleader of the accused is present in Court when an order is made admitting an appeal does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal. IN THE MATTER OF GOPAL CHUNDER MUNDLE 10 C. L. R. 57

78 ——— **Power of Appellate Court to dispose of appeal in absence of the appellant**—*Criminal Procedure Code ss 420 421 422 and 423—Appeal preferred by appellant in jail*—Where an appeal preferred under s 420 of the Criminal Procedure Code has been admitted by the Appellate Court and notice has been properly given under s 422 and the record of the case has been sent for and perused under s 423 the Appellate Court is competent under the last mentioned section to dispose of the appeal though the appellant is not present and is not represented by a pleader. The only limitation placed by s 423 on the powers of the Appellate Court is that the Court before disposing of the appeal must peruse the record and if the appellant is present or is represented by a pleader the appellant in person must be heard or the pleader must be heard. So *held* by the Full Bench (MAHMOOD J dissenting). *Held* by MAHMOOD J *contra* that the principles of *audi alteram partem* and *ubi jus ibi remedium* and the provisions of s. 422 of the Code as to notice of appeal imply that where an appeal is admitted and not summarily rejected under s 421 the appellant must have a real opportunity of being heard that in the passage in s. 423 "after perusing the record and hearing the appellant or his pleader if he appears" the word "he" refers to the pleader and must not be read as "either of them" that in any case the words "if he appears" make it a condition precedent to the disposal of an appeal under the section that the appellant is heard or at least has the choice of appearing that the word "appears" refers to the *personal* appearance of the appellant and that an appeal which has been admitted cannot be disposed of unless the appellant is before the Appellate Court or can be heard within the meaning of s 423. *Semble per* MAHMOOD J but the High Court in appeal is competent to send for a criminal to appear before it to explain a difficulty in his case. QUEEN EMPRESS *v* POHPI I. L. R. 13 All. 171

79 ——— **Duty of Court to fix date of hearing**—*Criminal Procedure Code 1872 s 278*—A general notice posted in a Sessions Court house that appeals will be heard for admission only on the first Court day after the date of presentation of the appeal is not a compliance with the requirement of s 278 of the Code of Criminal Procedure *viz* that a reasonable time shall be fixed within which the appellant his counsel or agent may appear and be heard in support of the appeal. MALAN *v* THE QUEEN I. L. R. 5 Mad. 11

80 ——— **Rejection of appeal for non appearance**—*Criminal Procedure Code 1872 s 278*—When a criminal appeal has been rejected without hearing the appellant's pleader and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made for the pleader's non appearance it is open to the Appellate Court to re hear the appeal on its merits. ANONYMOUS 7 Mad. Ap 29

81 ——— **Omission to fix time for hearing**—*Criminal Procedure Code 1872 s 278*—When the Appellate Court did not fix a reasonable time for the appearance of the appellant or his counsel as required by s 278 Act X of 1872 the error was held to invalidate the proceedings. IN THE MATTER OF THE PETITION OF HURI PERSHAD [24 W. R. Cr 60

82 ——— **Power of Court on appeal**—*Stolen property—Criminal Procedure Code ss 517 520*—An order passed under s 517 of the Code of Criminal Procedure may be revised by a Court of Appeal although no appeal has been preferred in the case in which such order was passed. QUEEN EMPRESS *v* AHMED [I. L. R. 9 Mad. 448

83 ——— **Powers of Appellate Court to alter finding of Court of first instance**—*Criminal Procedure Code s 423*—Where the Court of Session had tried convicted and sentenced an accused person under s. 409 of the Penal Code and the High Court was of opinion that the conviction was not sustainable under that section the Court refused to alter the finding under s 423 of the Criminal Procedure Code to a conviction for some other offence for which the accused had not been charged or tried. QUEEN EMPRESS *v* IMDAD KHAN [I. L. R. 8 All. 120

84. ——— *Alteration of conviction on appeal*—When on appeal against a

APPEAL IN CRIMINAL CASES —*continued*

4 PRACTICE AND PROCEDURE—*continued*

conviction for one offence it became apparent that alth ugh there was not sufficient evi lence to supp rt the convicti n there was evidence which might have led to the conviction of the appellants f r an es enti ally different offence with which they had not been charged the Court declined to consi ler that evidence with a view to altering the convicti n of the appel lants. *Queen Empress* v *Parbati Weekly Notes 1897 p 130* referred to QUEEN EMPRESS v YUSUF [I. L. R. 20 All. 107

85 ———— **Power of single Judge on Appellate Side**—*Rule 30 Jan 1 65*—A Judge of the High Court sitting alone on the Appellate Side has the power to hear and dispose of appeals in criminal cases. QUEEN v CHANDRA JUGI [9 B L. R. 6 17 W R. Cr 47

86 ———— **Power to hear appeals**—*Criminal Procedure Code 1861 ss 14 and 412—Officer to hear criminal matters—Magistrate of District*—Government may by proclamation d clare and direct that an Assistant Collector in charge of the Collectorate during the absence of the Collector shall be during that period the officer in charge with the executive administration of the district in criminal matters and such officer being within the mean ing of s. 14 of the Criminal Procedure C de the Magistrate of the district may hear appeals from subordinate Magistrates under s 412 of the Code REG v BHAISHANKAR HARIRAM 3 Bom Cr 18

87 ———— *Concurrent jurisdiction of Magistrate*—*Held* that the power conferred upon the Magistrate *F P* at Broach to hear appeals did n t exclude the jurisdiction which the Magistrate of the district had by law and that the proceedings in any case in which a prisoner has appealed from the decisi n of a subordinate Magis trate to the District Magistrate must be forwarded to the latter REG v UMTHA BUGNATH [5 Bom. Cr 8

88 ———— **Powers of Appellate Court in disposing of appeal**—*Appellant bound to show gr und for interferen e—Criminal Procedure Code ss 421 423*—A c n icted pers n appealing is not in the same p siti n bef re the App llate Court as he is before the Court trying him he must satisfy the Appellate Court that there is sufficient ground for interfering with the order of conviction and if no such ground is shown it is the duty of the Appellate Court not to interfere EMPRESS v SAJI WAN LAL I. L. R. 5 All. 386

89 ———— **Powers of Appellate Court in cases of trial by jury when there has been misdirection**—*Criminal Procedure Code (1882) ss 418 423 and 537*—An accused in a trial by jury is entitl d to the verdict of the jury on questions of fact and where a verdict is vitiated owing to misdirection by the Judge the Appeal Court has no option but to set asid the verdict and direct a re trial Were the App al Court to go into the facts in such a case it would be substituting the decision of the Judges of that Court for the

APPEAL IN CRIMINAL CASES —*continued*

4 PRACTICE AND PROCEDURE—*continued*

verdict of the jury who have the opportunity of seeing the demeanour of the witnesses and weighing the evid nce with the assistance which this affords whereas the Judges of the Appeal Court can only arrive at a decision on the p rusal of the evidence *Makin* v *Attorney General of New South Wales L R (1894) A C 57* referred to S 537 of the Code of Criminal Procedure does not warrant an Appeal Court in a case where there has been misdirection in a charge to a jury going into the evidence with a view to decide whether there is sufficient evidence to justify a conviction Under s 418 an appeal in a case tried by a jury lies on matters of law only and the Appeal Court has no power to try the accused on matters of fact The word erroneous in cl (*d*) of s 423 must not be read as wrong on the facts but must be read in connecti n with the words that foll w as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a mis understanding of the law WAFADAR KHAN v QUEEN EMPRESS I L R. 21 Calc 955

90 ———— **Power of the Appellate Court to alter a finding of acquittal into one of conviction**—*Criminal Procedure Code (1882) s 423*—The Appellate Court can under the provisions of s 423 of the Criminal Procedure Code in an appeal from a conviction alter the finding of the lower Court and find the appellant guilty of an offence of which he was acquitted by that Court QUEEN EMPRESS v JABANULLA [I. L R 23 Calc. 975

91. ———— **Powers of Appellate Court —Enhancement of sentence**—*Criminal Procedure Code (1882) s 420 (b) (3)—Alteration from fine to impr sonment*—*Held* that the alteration by an Appellate Court of a sentence of a fine of R50 or in default two m nths simple imprisonment to a sentence of six months rigorous imprisonment was an enhancement of the sentence and as such prohibited by s 423 of the Code of Criminal Procedure *Queen Empress* v *Dansang Dada I L R 18 Bom 751* referred to QUEEN EMPRESS v LACHMI KANT [I. L. R. 18 All. 301

QUEEN EMPRESS v DANSANG DADA [I L R 18 Bom 751

92 ———— *Criminal Procedure Code (1882) s 423 (b) (3)—Penal Code (Act XLV of 1860) ss 147 and 379—Jurisdiction of Magistrate*—In a case where the accused were con victed by a Deputy Magistrate of the offence of riot ing under s 147 and theft under s 379 of the Penal Code and sentenced to four m nths for the first and two months f r the latter offence but on appeal the District Magistrate considering the case to be one of theft rather than rioting abandoned the sentence under s 147 but upheld the conviction under s 379 of the Penal Code and sentenced them to six months rigorous imprisonment —*Held* that what the District Magis trate had in effect done was to enhance the sentence under s 379 of the Penal Code which be had no

APPEAL IN CRIMINAL CASES
—*continued*

4 PRACTICE AND PROCEDURE—*continued*

power to do under s 423 cl (*b*) sub-s (*3*) of the Code of Criminal Procedure RAMZAN KUNJRA *v* RAM KHELAWAN CHOWBE I. L. R. 24 Calc 316

ARPIN SHEIK *v* AROBDI DATIA
[I. L. R., 24 Calc. 317 note

93 ———— *Criminal Procedure Code (1882) s 423—Conviction and sentence on two separate charges—Retention of sentence where conviction on one of the charges in reversed*—Where an accused person is convicted and sentenced on two separate charges the Appellate Court has no power in appeal to maintain the whole sentence when it reverses the conviction on one of the charges as to do so is in effect to enhance the sentence QUEEN EMPRESS *v* HANMA
[I. L. R. 22 Bom. 760

94 ———— Power of Appellate Court to order a re trial—*Criminal Procedure Code (V of 1898) s 423 cl (b)*—A conviction and sentence under s 211 of the Penal Code by a Magistrate having jurisdiction to try the case was on appeal set aside and a new trial under the same section was directed by the Sessions Judge It was contended that the power to order a new trial under s 423 cl. (*b*) of the Criminal Procedure Code could only be exercised when the conviction and sentence were set aside for want of jurisdiction in the trying Magistrate *Held* that there is nothing in s 423 cl (*b*) of the Code to limit the power of an Appellate Court to order a re-trial *Queen Empress* v *Maula Buksh I L R 15 All., 205* and *Queen-Empress* v *Jabanulla I L R 23 Calc 975* followed *Queen Empress* v *Sukka, I L R 8 All 14* disapproved of SATIS CHANDRA DAS BOSE *v* QUEEN EMPRESS
I. L. R., 27 Calc. 172
[4 C W N 166

95 ———— Appellate Court Duty of—*Presumption*—*Per* WHITE *J*—The sound rule to apply in trying a criminal appeal where questions of fact are in issue is to consider whether the conviction is right and in this respect a criminal appeal differs from a civil one In the latter case the Court must be convinced before reversing a finding of fact by a lower Court that the finding is wrong PROTAB CHUNDER MUKERJEE *v* EMPRESS
[11 C L. R., 25

96 ———— *Duty of Appellate Court trying criminal appeal*—If the Judge of the Appellate Court has any doubt that the conviction is a right one whatever the original Court has done the Judge of the Appellate Court should discharge the accused. In this respect the duty of an Appellate Court in criminal cases is not similar to that of an Appellate Court in civil cases In the latter case the Court must be satisfied before setting aside an order of the lower Court that the order is wrong *Protab Chunder Mukerjee* v *Empress 11 C L R 25* followed. MILAN KHAN *v* SAGAI BEPARI I. L. R., 23 Calc, 347

APPEAL IN CRIMINAL CASES
—*continued*

4 PRACTICE AND PROCEDURE—*continued*

97 ———— *Evidence not given in lower Court—Opinion of Judge as to credibility of witnesses*—The High Court declined on appeal to receive evidence which was available on the trial below when the prisoner deliberately elected not to give evidence in reply to the case made against him *Per* MARKBY *J*—It is not the duty of the High Court in appeal to try a prisoner *de novo* upon the recorded depositions The Court is bound in forming its conclusions as to the credibility of the witnesses to attach great weight to the opinion which the Judge who heard them has expressed upon that matter QUEEN *v* MADHUB CHUNDER GIRI
[21 W R. Cr 13

98 ———— Jurisdiction of High Court to dispose of cases after holding jury have been misdirected—*Criminal Procedure Code (Act V of 1898) ss 298 299 423—Re-trial—Quære*—Whether in setting aside a conviction on the ground of misdirection to the jury the High Court has any power to re try the case having regard to s. 423 Criminal Procedure Code SADHU SHEIKH *v* EMPRESS 4 C W N 576

99 ———— Appeals from conviction on trials by jury—Appeals from convictions on trials by jury where illegal evidence has been admitted should be dealt with on the same principles as appeals in which there has been a misdirection by the Judge or an omission on his part to give the jury proper directions REG *v* RAMASWAMI MUDLIAR 6 Bom. Cr 47

100 ———— Improper admission of evidence—*Discharge of prisoner on appeal—Conviction set aside*—Where the High Court on appeal found the evidence against a prisoner insufficient to support the conviction and would if the case had been before them on the facts have reversed the conviction if the case had been tried without a jury they ordered the verdict to be set aside and the prisoner to be discharged though where a verdict is set aside on appeal they can order a new trial QUEEN *v* MAHIMA CHANDRA DAS
[6 B. L. R., Ap 108 15 W R., Cr, 37

101 ———— Evidence—*Procedure on appeal*—*Evidence taken before the Magistrate but* not used at the trial cannot be referred to on appeal QUEEN *v* WAZIRA
[8 B L. R. Ap 63 17 W R. Cr 5

102 ———— Right of complainant to be heard as respondent on appeal.—In criminal cases a complainant cannot claim as of right to be heard as a respondent in appeal The matter is in each case in the discretion of the Court ANONYMOUS 7 Mad. Ap 42

103 ———— Difference of opinion between Judges of Division Bench—*Letters Patent cl 36—Criminal Procedure Code (Act XXV of 1861) s 420*—When a criminal appeal is heard by two Judges sitting as a Division Court and they differ in opinion the opinion of the senior Judge must prevail under s 36 of the Letters Patent of the

APPEAL IN CRIMINAL CASES
—*continued*

4. PRACTICE AND PROCEDURE—*continued*

High Court of 1865 notwithstanding s 420 of the Criminal Procedure Code QUEEN v KAZIM THAKOOR 2 B L R, F B 35 10 W R Cr 45

104 ———— Alteration of charge and conviction of graver offence —It is not competent to an Appellate Court to find a prisoner on appeal guilty of a graver offence than that with which he was charged at his trial unless an opportunity is afforded to the accused of defending himself against the charge so altered. IN THE MATTER OF DWARKA MANJHEE 6 C L R 427

105 ———— Stay of proceedings—Power of High Court—*Stay of criminal proceedings—Perjury—Forgery* —When a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery the High Court has no power on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined. IN THE MATTER OF THE PETITION OF LAMPRASAD HAZRA B. L R., Sup Vol, 426

RAM PARSHAD HAZAREE v SOOMATHRA DABEA [5 W R, Mis 24

106 ———— Death of Appellant—Abatement of appeal—*High Court Power of revision of* —The Code of Criminal Procedure gives no right to the heir devisee executor or any other representative of a deceased convict, to lodge an appeal or continue and prosecute an appeal already lodged. (KEMBALL J dissenting)—The appeal lodged by a convict abates on his death The High Court nevertheless may call for and examine the record of the case with a view to revision and rectification and may make such order thereon as it may consider just EMPRESS v DONGAJI ANDAJI [I L R 2 Bom 564

107 ———————— *Criminal Procedure Code (1882) s 431—Appeal by accused against conviction—Power of revision by High Court* —Two persons M and N were convicted of criminal breach of trust and each was sentenced to one year's rigorous imprisonment and fine of R1 000 Both prisoners filed an appeal to the High Court N died pending his appeal On M s appeal the High Court passed an order acquitting him and reversing his conviction and sentence Thereupon one of the relatives of the deceased N applied to the High Court to set aside the conviction and sentence passed in his case and order the fine to be refunded *Held* that on N s death his appeal abated under s 431 of the Code of Criminal Procedure (Act X of 1882) As the case turned on the appreciation of evidence the High Court declined to interfere in the exercise of its revisional jurisdiction referring the legal representatives of the deceased to the Governor in Council for redress IN RE NABISHAH I L R 19 Bom. 714

108 ———— Rejection of appeal—*Criminal Procedure Code 1872 s 278—Act XI of 1874 s 26* —When the Appellate Court rejects an appeal under Act X of 1872 s 278 it is prohibited by Act XI of 1874 s 26 from enhancing the sentence AKOOL SIRCAR v PARTAMA 24 W R, Cr 29

APPEAL IN CRIMINAL CASES
—*concluded*

4. PRACTICE AND PROCEDURE—*concluded*

109 ———— Right to withdraw appeal. —A petition of appeal presented for admission may be withdrawn. IN THE MATTER OF CHUNDER NATH DEB 5 C L R 372

110 ———————— *Quære*—Whether a petition of appeal against a conviction can be withdrawn after the Appellate Court has perused the evidence IN THE MATTER OF DWARKA MANJHEE [6 C L R, 427

APPEAL TO PRIVY COUNCIL. Col

See LIMITATION ACT 1877 s 5 [I L R 15 All. 14

See LIMITATION ACT 1877 s 12 [I L R 10 Mad., 373 I L R 15 Mad. 169

See CASES UNDER LIMITATION ACT 1877 ART 177

See CASES UNDER PRIVY COUNCIL PRACTICE OF

———— Order granting or refusing—
See CASES UNDER LETTERS PATENT HIGH COURT CL 15

1 CASES IN WHICH APPEAL LIES OR NOT

(a) APPEALABLE ORDERS

1. ———— Order of High Court dismissing Munsif—*Beng Reg V of 1831 s 26 cl 2* —An order of the High Court at Calcutta under s 26 cl 2 of Bengal Regulation V of 1831 dismissing a Munsif for corruption in the exercise of his functions as Judge is final and there is no jurisdiction in the Judicial Committee to admit a special appeal therefrom IN THE MATTER OF SREE MOHUN GHUTTUCK 13 Moore s I A 343

APPEAL TO PRIVY COUNCIL —continued

1 CASES IN WHICH APPEAL LIES OR NOT —continued

2 ——— **Decision as to admissibility of special appeal**—*Act III of 1843*—By Act III of 1843 the decision of a single Judge of the Sudder Court of Bombay as to the admissibility of a special appeal was final so far as the Sudder Court was concerned but the Act did not extend to take away the right of appeal to the Privy Council. MODEE KAIKHOOSROW HORMUZJEE *v* COOVERBAEE

[4 W R., P C 94 6 Moore's I. A., 448

3 ——— **Award under Act XVIII of 1848**—*Administration of private estate of Nawab of Surat—Statutes 7 & 8 Vict c 69 3 & 4 Will IV c 41*—An Act of the Legislature of India—(XVIII of 1848)—empowered the Governor in Council of Bombay to administer the private estate of the late Nawab of Surat and it was by s. 2 enacted "that no Act of the said Governor of Bombay in Council in respect of the administration to, and distribution of such property from the date of the death of the said Nawab should be liable to be questioned in any Court of law or equity." No provision was made for an appeal from the Governor's decision. In pursuance of the power conferred by this Act the Government agent at Surat to whom the matter was referred made an award distributing the estate in certain shares among the heirs of the deceased which award was confirmed by the Governor in Council. On an application by a claimant dissatisfied with the award to the Judicial Committee for leave to appeal from the Governor in Council's confirmation of the award,—*Held* that the award was not such a judicial act as to come within the operation of s 3 of the Statute 3 & 4 Will. IV c 41 or the 7 & 8 Vict., c 69 and could not be entertained by the Judicial Committee without a special reference to them by the Crown under s 4 of the Statute 3 & 4 Will. IV c 41 IN RE NAWAB OF SURAT 5 Moore's I. A., 499

4. ——— **Order under Act XL of 1858.**—An Appeal from an order under Act XL of 1858, appointing a person to be guardian of a minor and manager of his property bears no value and cannot be carried to Her Majesty in Council PEAREE DAYE *v* HURBUNS KOER 14 W R., 298

5 ——— ***Order rejecting application* for review**—An appeal lies to the Privy Council under s. 39 of the Charter of the High Court from an order rejecting an application for a review of judgment. The petition of appeal must be presented within six months from the date of the said order NAZUR ALI KHAN *v* OJOODHYARAM KHAN

[1 W R. Mis 13

AMEEROONISSA BEGUM *v* INDERJEET KOONWAR

[5 W R., Mis., 17

6 ——— **Order confirming sale in execution**—*Order made on appeal—Letters Patent cl 39—24 & 25 Vict c 104 s 15*—Certain property having been sold in execution of a decree the judgment-debtor applied to have the sale set aside. This application was rejected but a review of the order rejecting it was subsequently granted, and the sale set aside and an application by the auction purchaser for the cancelment of the order setting aside the sale was refused. Thereupon the purchaser applied by petition to the High Court praying that the order made on review might be reversed. In his petition he submitted that "the sale ought to have been confirmed when the application of the judgment-debtor to have it set aside was first rejected, but the petition did not contain a formal prayer for confirmation of the sale. A rule however was granted, calling on the judgment-debtor to show cause why the order reversing the sale should not be set aside and the sale confirmed, which rule after argument was made absolute. The judgment-debtor having obtained leave to appeal to the Privy Council from the order making the rule absolute the purchaser objected that such order was not appealable under cl. 39 of the Letters Patent 1865 on the ground that it was not an order "made on appeal" *Held* that as the purchaser had obtained a rule calling on the judgment-debtor to show cause why the sale should not be confirmed, and had allowed that rule to be made absolute he could not contend that the order making the rule absolute was not an order made on appeal. *Semble*—Orders made by the High Court under s. 15 of 24 & 25 Vict c 104 are subject to appeal to the Privy Council HURDEO NARAIN SAHU *v* GRIDHARI SINGH

[13 B L R. 103

GRIDHARI SINGH *v* HURDEO NARAIN SAHU

[21 W R. 263

7 ——— **Order rejecting review**—*Order made on appeal—Letters Patent cls 39 and 42*—An order rejecting a review of judgment is not an "order made on appeal" within the meaning of cl. 39 of the Letters Patent of the High Court. In cases of appeal made under cl. 42 of the Letters Patent the Court ought not in transmitting the proceedings connected therewith, also to send such proceedings as applications for review of the judgment of the High Court and the orders of the Court thereupon. ENAYET HOSSEIN *v* POUSHAN JEHAN 1 B. L. R., F B., 1 10 W R., F B., 1

8. ——— ***Difference of opinion between Judges of Division Bench of High Court***—*Letters Patent 1865 ss 15 and 39*—An appeal lies directly to the Privy Council from the decree of a Division Bench of the High Court on an appeal from the mofussil although the Judges differed, and upon the points of difference a further appeal to the High Court is given under cl. 15 of the Letters Patent. IN THE MATTER OF THE PETITION OF THE COURT OF WARDS ON BEHALF OF THE RAJA OF DARBANGA

[7 B. L. R. 730 16 W R., 191

9 ——— **Letters Patent cl. 39**—*Appeal from decision of High Court Appellate Side*—Cl 39 of the Letters Patent of 1865 does not rest for its authority on the 24 & 25 Vict., c 104 and was not inserted in pursuance of that Act

APPEAL TO PRIVY COUNCIL—*continued*

1 CASES IN WHICH APPEAL LIES OR NOT—*continued*

consequently any power which it gives to admit an appeal to the Privy Council from a decision of the High Court on its Appellate Side is not one of the powers which the High Court is, by the first part of s. 9 of 24 & 25 Vict c 104 commanded to exercise IN THE MATTER OF THE PETITION OF FEDA HOSSEIN I. L. R., 1 Calc. 431

10 ——— Interlocutory judgment—*Letters Patent cl 40—Question of practice—Order for inspection of documents* —No appeal lies under s. 40 of the amended Letters Patent of the High Court to the Privy Council from an interlocutory judgment or order of a Judge of the High Court until such judgment or order has been subjected to an appeal to the High Court under cl 15 of the Letters Patent except in those cases in which by reason of the number of the Judges who have made such order an appeal under cl 15 is given directly to the Privy Council *Semble*—The High Court will not in the exercise of its discretion allow an appeal to the Privy Council upon a mere question of practice such as an order for the inspection of documents. SONBAI v AHMEDBHAI HABIBHAI [9 Bom 398

11 ——— Interlocutory decree—*Civil Procedure Code (Act XII of 1882) s 595—Final decree—Practice* —Where the High Court reverses the decree of the Court below and remands the case for re trial on the merits and for a new decree to be passed by the Court below no appeal lies as a matter of right under s 595 of the Code of Civil Procedure (XIV of 1882) to the Privy Council albeit the value of the subject matter admittedly exceeds R10 000 as such a decree of the High Court is not a final but an interlocutory decree In such a case a certificate should first be obtained under cl ( ) of the section that the case is a fit one for appeal to Her Majesty in Council ISHVARGAR BUDHGAR v CHUDASAMA AMARSANG I. L. R. 8 Bom 548

12 ——— Interlocutory order—*Civil Procedure Code 1877 s 595 cl (a)—Final order* —An order of the High Court directing execution to proceed is not a final decree judgment or order within the meaning of cl (a) s 595 of the Code of Civil Procedure Act X of 1877 and therefore no appeal lies from it to the Privy Council JOGESHUR SAHAI v MURACHO KOOER [1 C L R. 354

13 ——— *Civil Procedure Code 1877 ss 594 596*—The District Judge of Ghazipur recalled to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Shahabad and disallowed an application for the execution of the decree which had been preferred to that Judge The High Court on appeal from an order of the District Judge annulled his order as void for want of jurisdiction and remitted the case in order that the application might be disposed of on its merits directing that the record of the case should be returned to the Subordinate Judge of Shahabad On an application for leave to appeal to Her Majesty in Council from the order of the High Court —*Held* that such order was in the nature of an interlocutory order and was not one from which the High Court could or ought to grant leave to appeal to Her Majesty in Council LALAK DHARI RAI v PADHA PRASAD SINGH [I. L. R. 2 All. 65

14. ——— Final decree or order—*Civil Procedure Code (Act X of 1877) ss 595 600*—An order in a partnership suit for account refusing to allow the plaintiffs to have their accounts taken in a particular manner suggested by themselves unless they would consent to give certain credits in their accounts to the defendants is not a final decree within the meaning of cl (b) of s 595 of the Civil Procedure Code although the effect of such order may be to make it impossible for the plaintiffs to proceed further in the case and consequently an appeal from such an order of the High Court to the Queen in Council does not lie ABEN SHA v CASSIRAO BABA SAHEB I. L. R. 6 Bom 260

15 ——— *Civil Procedure Code 1877 s 595 (a)— Final decree* —Certain persons interested in an award applied under s 525 of the Civil Procedure Code to have it filed in Court The Court made an order under s 526 that the claim of the plaintiffs be decreed The defendants appealed to the High Court from this decree The High Court held that the appeal would not lie and suggested to the plaintiffs to apply to the lower Court to give judgment according to the award and a decree to follow it Thereupon the plaintiffs made an application to the lower Court of the nature suggested but styled it one for review of judgment The lower Court granted the so called review of judgment The defendants appealed from the order of the lower Court contending that the review of judgment had been improperly granted On the 23rd June 1880 the High Court held that the order of the lower Court was not appealable not being one passed on review of judgment but on an application to give judgment and decree in accordance with an award which had been filed in Court The defendants applied for leave to appeal to Her Majesty in Council from the order of the High Court of the 23rd June 1880 *Held* that such order was not a final decree within the meaning of s 595 (a) of the Civil Procedure Code and therefore it was not appealable to Her Majesty in Council RAMADHIN MAHTON v GANESH I. L. R. 4 All. 238

16 ——— *Civil Procedure Code s 595—Application for leave to appeal to Privy Council—Order dismissing suit on preliminary issue* —The plaintiff in a suit to recover certain property set up an adoption The Court of first instance held that the adoption was not proved and dismissed the suit without *trying the issues* framed with reference to other allegations in the pleadings On appeal by the plaintiff the High Court passed

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1 CASES IN WHICH APPEAL LIES OR NOT —*continued*

a decree setting aside the decree of the Court of first instance declaring the alleged adoption to be established and remanding the suit for the trial of the remaining issues The defendants sought to appeal to Her Majesty in Council against the decree of the High Court The defendants application was refused on the ground that that decree was not a final decree and no appeal lay TIRUNARAYANA v GOPALASAMI I. L. R. 13 Mad., 349

17 ——— *Civil Procedure Code 1882 s 595—Order directing accounts to be taken—Decree not final—Application for leave to appeal* —Where a decree has been made directing accounts to be taken but there is nothing so special in the case as to bring it under cl (c) of s 595 of the Civil Procedure Code (Act XIV of 1882) leave to appeal to the Privy Council will not be given RAHIMBHOY HUBIBBHOY v TURNER [I. L. R. 14 Bom. 428

18 ——— *Prerogative right of Crown to admit appeal where leave to appeal refused by High Court—Final decree—Meaning of final in s 595 of Civil Procedure Code (XIV of 1882)—Civil Procedure Code s 601—Procedure* —Where a decree directing the taking of accounts which the defendant contends ought not to be taken at all decides in effect that if the result should be found to be against the defendant he is liable to pay the amount the decree is final within the meaning of s 595 of the Civil Procedure Code (XIV of 1882) for the purpose of appeal On the ground that a decree for an account was not final within that section the High Court refused under s 601 to grant the defendant s certificate On his application for special leave to appeal to Her Majesty in Council not by way of an appeal from the local Court s refusal but asking for the exercise of the prerogative right to admit an appeal —*Held* that as leave could be granted on any other ground should any appear beside s the ground that the Court had refused the certificate without good cause while leave could also be granted on the latter ground if established to make this application was perhaps, more convenient than to appeal from the order of refusal *Held* also that the real question in this suit having been the liability of the defendant to account to the plaintiff upon several claims the decree had decided this against the defendant in such a way that although the account had not been taken the decree was final within s 495 RAHIMBHOY HABIBBHOY v TURNER I. L. R. 15 Bom 155 [L. R. 18 I. A. 6

19 ——— *Order refusing to appoint receiver in a suit—Civil Procedure Code (1882) s 595—Letter Patent of the High Court ss 39 and 40* —There is no appeal to Her Majesty in Council against an order refusing the appointment of a receiver in a suit. Such order does not finally decide any matter which is directly in issue in the cause in respect to the right of the parties, and is not final within the meaning of cls. (a) and (b) of s. 595 of the Civil Procedure Code and s. 39 of the Letters Patent; nor is the matter a special case falling within the terms of cl (c) of s. 59 of the Code or s 40 of the Letters Patent *Justices of the Peace for Calcutta v Oriental Gas Company 8 B L R 433 Lutf Ali Khan v Asgur Reza I L R 17 Calc 455 Kishen Persad Pandey v Tiluckdhari Lall I L R 18 Calc 182* and *Rahimbhoy Habibbhoy v Turner I L R 15 Bom 155 L R 18 I A 6* referred to CHUNDI DUTT JHA v PUDMANUND SINGH BAHADUR I. L. R. 22 Calc, 928

20 ——— *Order of remand on issue finally deciding whole case—Refusal of certificate of leave to appeal to Her Majesty in Council—Civil Procedure Code (1882) ss 562 565 595 600 and 601* —An order comprising the decision of the Appellate High Court upon a cardinal issue in a suit that issue being one that goes to the foundation of the suit and that can never while this decision stands be disputed again is a final decree for the purposes of appeal to the Queen in Council notwithstanding that there may be subordinate inquiries yet to be made in disposing of the suit *Rahimbhoy Habibbhoy v Turner I L R 15 Bom 155 L R 18 I A 6* referred to and followed. The certificate of which the grant was part of the procedure in the admission of such an appeal was refused by the High Court on the ground that the proposed appeal was from an order remanding a suit under s 562 Civil Procedure Code and that orders of remand under that section were by the practice of the Court treated as not final within s 595, cl (a) That practice is probably correct but here the order only purported to be under s. 562 which was not applicable The first Court had not disposed of the suit upon a preliminary point so as to have exclud d evidence of facts appearing to the Appellate Court essential and s 565 appeared to be applicable rather than s 562 The Appellate Court had reversed once for all the decision of the first Court upon an issue as to the making and validity of a will which issue governed the whole case MUZHAR HOSSEIN v BODHA BIBI I. L. R. 17 All. 112 [L. R. 22 I. A. 1

21. ——— **Decree affirming the decision of the Court immediately below**—*Decree dismissing an appeal to the High Court for default of prosecution—Civil Procedure Code (Act XIV of 1882) s 596* —*Held* that a decree of the High Court dismissing an appeal for want of prosecution—the appellants not having supplied their counsel with materials upon which to argue the appeal when it was called on for hearing—was a decree affirming the decision of the Court immediately below within the meaning of s 596 of the Code of Civil Procedure BENI RAI v RAM LAKHAN RAI [I. L. R. 20 All. 367

22. ——— **Cancellation of notification on the ground of error**—*Pleadership examination—Notification of a candidate having qualified—Civil Procedure Code chap XLV* —A

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candidate at an examination for pleaderships a mistake in the computation of his marks having been made was erroneously declared qualified for admission as a vakil of the High Court by a Government notification The mistake having been discovered such notification was so far as he was concerned cancelled. He then petitioned the High Court in the matter and was informed by it that his name must be excluded from such notification as he had not qualified by obtaining the requisite number of marks. The candidate having applied for leave to appeal to Her Majesty in Council,—*Held* that chap XLV of the Civil Procedure Code had no application and the matter was not one in which the High Court was concerned to grant or refuse leave to appeal to Her Majesty in Council IN THE MATTER OF THE PETITION OF SAKHNANDAN LAL

[I. L. R. 6 All, 163

23 ———— **Order remanding suit for re-trial**—*Privy Council s Appeals Act VI of 1874—Letters Patent N W P s 31—Interlocutory order—Order remanding case for re trial*—*Held* that the High Court has not any power under Act X of 1877 or cl. 31 of the Letters Patent N W P., to grant leave to appeal to Her Majesty in Council from an order of the Court remanding a suit for re-trial. The provisions of cl 31 of the Letters Patent are repealed by the Code and Act VI of 1874 which preceded it TETLEY v JAI SHANKAR

[I. L. R. 1 All 726

24. ———— **Power to admit appeal**—*Privy Council's Appeals Act (II of 1863) s 1—Act XXXII of 1871 s 18—Subordinate Court*—The words Court of highest civil jurisdiction in any Province" in Act II of 1863 have reference to the general jurisdiction of the Courts and not to the finality of their decisions in particular cases A Court which, under the provisions of Act XXXII of 1871 is a subordinate Court has no authority under Act II of 1863 to admit an appeal to Her Majesty in Council even where its decision is final HARDOE BUX v JAWAHIR SINGH I. L. R. 3 Calc 522

(b) SUBSTANTIAL QUESTIONS OF LAW

25 ———— **Power of Indian Legislature**—*Act VI of 1874 s 5—Letters Patent 1865 cl 39—24 & 25 Vict c 104 s 9—24 & 25 Vict c 67 (Indian Councils Act) s 22*—The provision in s. 5 of Act VI of 1874 that where there are concurrent decisions on facts the case must in order to give a right of appeal to the Privy Council involve some substantial question of law is not *ultra vires* of the power of the Indian Legislature as being a curtailment of the jurisdiction given to the High Courts by the Letters Patent 1865 cl 39 S 22 *of 24 & 25 Vict c 67 must be read with ss 9* and 11 of 24 & 25 Vict c 104 By the express words of s 9 all previously existing powers were reserved to the High Court provided the Letters Patent did not interfere with them and as to these powers the Governor General in Council is expressly empowered to legislate Even if therefore the power to admit an appeal to the Privy Council were conferred by the Letters Patent under the authority of 24 & 25 Vict c. 104 it was not being a new power subject to the legislative control of the Governor General in Council The *ratio decidendi* in *The Queen v Meares 24 B L R 106* dissented from IN THE MATTER OF THE PETITION OF FEDA HOSSEIN I. L. R. 1 Calc 431

26 ———— **Question of law arising on evidence**—*Act VI of 1874 s 5—Substantial question of law*—The substantial question of law which by s 5 Act VI of 1874, the appeal to the Privy Council must involve in order to give an appeal in a case where the decree appealed from affirms the decision of the Court below is not limited to a question of law arising out of the facts as found by the Courts from whose decisions it is desired to appeal A question of law arising on the evidence taken in the case is without reference to the findings of the lower Courts sufficient to found an appeal MORAN v MITTU BIBEE

[I. L. R. 2 Calc 228

27 ———— **Form of judgment**—*Substantial question of law—Civil Procedure Code 1882 s 574*—The judgment of the High Court in a first appeal was as follows — This appeal must in my opinion be dismissed with costs and the judgment of the first Court affirmed and I do not think it necessary to say more than that we agree with the Judge s reasons The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s 574 of the Civil Procedure Code had not been complied with —*Held* by the Full Bench that the objection involved no substantial question of law and that the application for leave to appeal must therefore be rejected SUNDAR BIBI v BISHESHAR NATH I. L. R. 9 All. 93

28 ———— **Concurrence of two Courts on facts**— *Affirming judgment of lower Court —Civil Procedure Code (Act XIV of 1882) s 596 —Substantial question of law—Case disposed of on facts*—Where the issues in a case involved questions both of law and fact and the Subordinate Judge had decided against the plaintiff on two issues of fact sufficient for the disposal of the case without trying the other issues the High Court found on those two issues substantially in favour of the plaintiff but raised a further question of fact on the evidence and decided that against him coming finally to the same conclusion on the facts as the Subordinate Judge though not agreeing with him in all his findings or in the reasons on which they were based —*Held* on an application for leave to appeal to the Privy Council that the High Court did not affirm *the judgment of the lower Court* within the meaning of s 596 of the Civil Procedure Code *Held* also even assuming the judgment of the lower Court was affirmed by the High Court that there were

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substantial questions of law in the case which entitled the plaintiff to appeal notwithstanding that such questions might be immaterial to the decision of the case IN THE MATTER OF THE PETITION OF ASHGHAR REZA. ASHGHAR REZA v HYDER REZA
[I. L. R., 16 Calc 287

GOPINATH BIRBAR v GOLUCK CHUNDER BOSE
[I. L. R. 16 Calc, 292 note

29 ———— **Confirmation of decree of lower Court**—*Civil Procedure Code (1882) s 596—Substantial question of law* —*Per* JARDINE J—Where the High Court in appeal has confirmed the decree of the lower Court and has taken substantially the same view of the facts and where upon the facts as found by both Courts no question of law arises leave to appeal to the Privy Council should be refused. *Per* RANADE J—There is a distinction between the confirmation of a decree and the affirmation of the decision and findings of the Courts of first instance by the High Court The substantial question of law referred to in s 596 of the Code of Civil Procedure (Act XIV of 1882) need not directly arise out of the concurrent findings of fact but it is enough if it is involved in those findings and can if the appeal is allowed be raised in the course of the argument IN RE VISHWAMBHAR PANDIT I. L. R. 20 Bom. 699

30 ———— **Rejection of application to take additional evidence on appeal**—*Civil Procedure Code ss 568 596* —The rejection of an application under s 568 to an Appellate Court to take additional evidence on appeal cannot be said to involve any substantial question of law within the meaning of s 596 of the Code so as to give the right to an appeal to the Privy Council IN THE GOODS OF PREM CHAND MOONSHEE UPENDRA MOHAN GHOSE v GOPAL CHANDRA GHOSE
[I. L. R 21 Calc 484

31. ———— **Non production of succession certificate at the proper time**—*Succession Certificate Act (VII of 1889) s 4—Order granting application for execution of decree* —The representative of a decree-holder applied for execution of a decree without producing before the Court a certificate of succession as required by Act No. VII of 1889 s. 4 The Court to which the application was made granted execution The judgment debtor appealed to the High Court by which the order of the lower Court was sustained upon production before it (the High Court) of the necessary certificate of succession *Held* that an objection that the said application for execution was improperly granted by reason of the non production of the succession certificate before the lower Court did not raise a substantial question of law within the meaning of s 596 of the Code of Civil Procedure so as to warn the High Court in granting leave to appeal to Her Majesty in Council SHUJA ALI KHAN v RAM KUA I. L. R 20 All. 118

32. ———— **Malicious prosecution Suit for**—*Difference between trial in England by jury and in India without one—Concurrent judgments on facts* —The only question involved in a case for malicious prosecution is a question of fact In England the jury would find the facts and the Judge would draw the inference from the findings of the jury but where as in India the case is tried without a jury there is only a question of fact to be determined by one and the same person There was accordingly no substantial question of law in the case and the High Court granted the certificate allowing the appeal under a misapprehension MODY v QUEEN INSURANCE CO 4 C W N 781

(c) CONCURRENT JUDGMENTS ON FACTS

33 ———— **Finding of facts not concurrent but in effect the same**—*Case in which no question of law is involved—Civil Procedure Code 1882 ss 596 600* —Where there is no point of law involved in a case the mere fact that the finding of the Appellate Court does not in terms coincide with the finding of the Original Court is not sufficient where the findings of fact of the two Courts are in effect the same to give a right of appeal to the Privy Council notwithstanding that the value of the suit is more than R10 000 *In the matter of the petition of Ashghar Reza I L R 16 Calc 287* distinguished. THOMPSON v CALCUTTA TRAMWAYS COMPANY
[I. L. R. 21 Calc 523

34. ———— **Concurrence of two Courts in deciding fact**—*Civil Procedure Code (1882) s 596—Restriction of power in India to grant leave to appeal to Her Majesty in Council* —Where the decree of an Appellate Court has affirmed the decision of the Court immediately below it upon an issue of fact and no substantial question of law is involved no appeal is open under s 596 of the Code of Civil Procedure and leave to appeal should not be granted by the High Court in such a case NIRBHAI DAS v RANI KUAR I. L. R. 18 All. 274

35 ———— **Original Court s decision on fact affirmed by the first Appellate Court**—*Question of fact—Question of law not arising—Civil Procedure Code (1882) s 596* —The Appellate High Court had by the decree now appealed from affirmed upon the evidence the decision of the High Court in the original jurisdiction as to the fact on which the judgment depended *viz* whether the defendant had attained full age at the time when he had executed the first of two mortgages for the foreclosure whereof the suit was brought No question of law either as to the construction of documents or any other point was raised. *Held* that the present appeal could not be entertained See *Nirbhai Das v Rani Kuar I L R 16 All 274* TULSI PERSHAD BHAKT v BENAYEK MISSER I. L. R. 23 Calc 918
[L. R 23 I. A 102

(d) VALUATION OF APPEAL.

36 ———— **Suit for possession and mesne profits.**—Where a plaintiff sued for possession of property with wasilat and did not (it being

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under the rules unnecessary for him to do so) includ the wasilat in the valuation of the suit and the suit was valued at R5 515 but with the wasilat would have been valued at over R10 000 — *Held* that on appeal from a decree in favour of the plaintiff there was matter in dispute in excess of R10 000 ANONYMOUS 1 Ind. Jur O S 58

GOOROO DAS ROY *v* GHOLAM MOWLAH [Marsh., 24 1 Hay 103

37 ——— Appeal as to portion of property—*Portion under R10,000* — An appeal to the Privy Council involving a question of demand respecting property which on the whole is of the value of more than R10 000 is admissible although the portion of the property to which the appeal relates is below that value ONOOROOP CHUNDER MUKERJEE *v* PERTAB CHUNDER LAUL [6 W R Mis 4

38. ——— Undervaluation of suit Omission to object to —Where a defendant having the means of proving the real value of property made no objection to the plaintiff's under valuation and also herself in special appeal knowingly under valued the property by valuing the subject matter at R675 —*Held* that she could not be heard to represent the real value of the property to be over R10 000 for the purpose of securing admission for an appeal to Her Majesty in Council IN THE MATTER OF BHUGGOBUTTY DEBIA 14 W R. 62

39 ——— Decision to govern other similar suits by same party—*Subject-matter of suit below appealable value—Practice—Leave to appeal* —Leave to appeal to the Privy Council granted where the appeal though valued at less than R10 000 involved indirectly questions respecting property of the value of R10 000 inasmuch as the judgment of the High Court would govern the decision in other suits which the plaintiff intended to bring on precisely the same grounds and in respect of which precisely the same questions would arise as had arisen in the suit sought to be appealed ANANDA CHANDRA BOSE *v* BROUGHTON 9 B L R 423

40 ——— Conflicting claims to waters of flowing stream—*Court Fees Act 1870 s 7* —In ascertaining whether or not there ought to be an appeal to the Privy Council the High Court has only to look at the value of the question at issue in the litigation. In a case of conflicting claims with regard to the waters of a flowing stream the matter at issue so far as regarded the applicant having been to have her lands irrigated in the way she claimed, the value of that matter according to s 7 of the Court Fees Act VII of 1870 was held to be the extent to which her interests would be determined if that right could not be established AJNAS KOOER *v* LUTEEFA 18 W R. 21

41. ——— Appeal as to portion of property—*Letters Patent cl 39*—The High Court refused under s 39 of the Charter to open so wide a door to appeal as to allow it in a case involving less than R10 000 only because the whole property which would be reduced in value in the event of the appeal proving successful was worth not less than R10 000 IN THE MATTER OF THE PETITION OF BEEDNATH SAHOO BEEDNATH SAHOO *v* GOPEE SAHOO 19 W R. 191

42. ——— Proof of real value of property in suit where stamp duty has been paid on a less amount. —Where the suit was one in which the stamp originally paid was upon an amount very much less than R10 000 and the whole course of the litigation and the stamps paid throughout had reference to that valuation though the property was really of the value of R10 000 the Court upon the strength of a former decision in the Privy Council Department refused the application for leave to appeal to Her Majesty in Council *Quære*—Can the mere payment of a stamp calculated on an undervaluation with reference to the rule in Act XXVI of 1867 schedule art 11 note (*a*) be treated as of itself a fraud which *ipso facto* deprives a party of his right of appeal? LEKHRAJ ROY *v* KANHYA SINGH 18 W R 494

On a petition to the Privy Council in the same case for leave to appeal it was held that a party who in observance of the rules of valuation prescribed by the stamp law of the country in which he sues has paid stamp duty upon a sum lower than the appealable amount is not thereby precluded from obtaining leave from the Courts of that country to appeal to Her Majesty in Council if he can show that the value of the property in dispute does reach the appealable amount LEKHRAJ ROY *v* KANHYA SINGH [L. R 1 I A 317

43 ——— Decree indirectly involving question of title to property over R10 000 —Three different plaintiffs claiming through the same original title to be the owners of a certain mehal sued the same defendant in separate suits for possession and for the mesne profits of their respective shares The defence raised being the same in each case the suits were heard together the result being that in both the lower Courts and in the High Court the plaintiffs obtained a decree for their claims The aggregate value of the three suits amounted to more than R10 000 though the value of each suit was under that sum The defendant applied to be allowed to appeal in each case to Her Majesty in Council *Held* that he was entitled to have each of the three cases admitted under the second clause of s 596 of Act X of 1877 as the decree in each case involved indirectly a question of title to property of the amount or value of R10 000 ASHANULLA *v* KAROONAMOYI CHOWDHRY ROHINI CHOWDHRANI *v* KISHEN GOBIND DAS 4 C L. R 125

44. ——— Concurrent decisions on facts—*Grounds of appeal—Act VI of 1874 s 5* —Where there were two concurrent decisions on facts an application to appeal to the Privy Council was refused, the right of appeal from a decision of the

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High Court on its Appellate Side simply on the ground that the subject matter of the suit was above R10 000 having been taken away by Act VI of 1874 s 5 IN THE MATTER OF THE PETITION OF FEDA HOSSEIN I. L. R. 1 Calc 431

45 ——— **Appeal in two suits together over appealable value**—*Civil Procedure Code (Act X of 1877) s 596—A and B purchased* the same properties deriving title through different persons The value of the properties with mesne profits was over R10 000 *B* granted two patni leases of the properties to different persons *A* was therefore obliged to bring two suits for the recovery of the properties and the value of the subject matter in each suit was less than R10 000 *Held* that an appeal would lie to the Privy Council JOOGULKISHORE *v* JOTENDRO MOHUN TAGORE [I. L. R. 8 Calc 210

46 ——— **Question of law in suit under appealable value**—*Amount under R10 000—Civil Procedure Code (Act XIV of 1882) ss 595 596 600*—Leave to appeal to Her Majesty in Council granted in one of six suits directed to be heard together although the amount involved in such suit was under the appealable value there being an important question of law which did not arise in the five other suits the suit however involving other questions of law common to all the six suits such suits having been by agreement of counsel heard upon the same evidence and concluded by the same judgment five of such suits being appealable as of right and the aggregate amount in the six suits being considerably more than the appealable value BYJNATH *v* GRAHAM [I. L. R., 11 Calc. 740

47 ——— **Appealable value—Suit for restitution of conjugal rights**—*Valuation of Suit—Suit conducted up to appeal as if properly valued—Jurisdiction—Consent of parties*—A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction *Golam Rahman v Fatima Bibi I L R 13 Calc 232* followed *Held* therefore that no appeal lay as of right to Her Majesty in Council in such a suit although the suit had been valued at R25 000 and that valuation had been relied on by the defendant who had appealed to the High Court from the decision of the first Court which had gone against him MOWLA NEWAZ *v* SAJIDUNNISSA BIBI I. L. R. 18 Calc. 378

48 ——— **Value of the subject matter of the suit**—*Civil Procedure Code s 596—Madras Civil Courts Act (Madras Act III of 1873) s 14*—The Civil Courts Act (Madras Act III of 1873) does not control the construction of Civil Procedure Code s 596 and under that section the real market value of the matter in dispute is the test as to whether or not an appeal lies to the Privy Council PICHAYEE *v* SIVAGAMI [I. L. R. 15 Mad. 237

49 ——— **Value of property affected by decree**—*Civil Procedure Code (1882) s 596*—In an application for leave to appeal to Her Majesty in Council the value of the property ostensibly affected by the decree sought to be appealed was below R10 000 but it appeared that the suit in appeal in which the said decree had been passed was connected with another suit relating to the same property in which a decree had been passed which was the subject of another similar application and that the aggregate value of the two decrees was much above R10 000 and that it could not be known which of such decrees would affect which specific portion of the property in question *Held* that under the above circumstances the application under consideration should be granted under the last paragraph of s. 596 of the Code of Civil Procedure IN THE MATTER OF THE PETITION OF KHWAJA MUHAMMAD YUSUF I. L. R. 18 All 196

50 ——— **Burma Courts Act (XI of 1889), s 40**—*Burma Civil Courts Act (XVII of 1875) s 49—Probate and Administration Act (V of 1881) ss 3 and 86—Code of Civil Procedure (1882) ss 595 and 614*—No appeal lies to the High Court from a final decree passed by the Recorder of Rangoon in the exercise of Original Civil Jurisdiction where the value of the subject matter of the suit is above ten thousand rupees, but an appeal lies to Her Majesty in Council A decree passed by the Recorder of Rangoon in a suit for grant of probate of a will is a final decree passed by him in the exercise of Original Civil Jurisdiction ESSOF HASSHIM DOOPLY *v* FATIMA BIBI *alias* MAH LOH [I. L. R. 24 Calc. 30
1 C W N 8

51. ——— **Order in execution of decree**—An appeal lies to Her Majesty in Council from an order passed by the High Court in a case of execution of decree in which the amount involved exceeds R10 000 VELAETY BEGUM *v* RUGHONATH PERSAD B. L. R. Sup Vol. 747
[2 Ind. Jur N S 263 8 W R. 147

52. ——— *Execution of decree of Privy Council*—An appeal will lie as of right from the order of a single Judge of the High Court as to execution of a decree of the Privy Council where the property is over R10 000 LEELANAND SING *v* LUCKIMPUR SINGH BAHADUR [5 B. L. R. 605

LEELANUND SING *v* LUCKMESSUR SINGH [14 W R. P C 23

53 ——— **Final order passed on appeal by the High Court**—*Civil Procedure Code 1877 ss 244 595*—An order passed on appeal by the High Court determining a question mentioned in s. 244 of Act X of 1877 is a final decree within the meaning of s 595 of that Act. *Held* therefore where such an order involved a claim or question relating to property of the value

APPEAL TO PRIVY COUNCIL —continued.

1 CASES IN WHICH APPEAL LIES OR NOT —concluded

of upwards of ten thousand rupees and reversed the decisions of the lower Courts that notwithstanding the value of the subject matter of the suit in which the decree was made in the Court of first instance was less than that amount such order was appealable to Her Majesty in Council RAM KIRPAL SHUKUL v RUP KUAR I. L. R. 3 All. 633

2 PRACTICE AND PROCEDURE

(a) LEAVE TO APPEAL

54. ———— Petition of appeal—*Act VI of 1874 ss 5 7 and 9—Practice* —The petition of appeal to the Privy Council should distinctly state what the substantial question of law is that it is proposed to submit to the Privy Council Petitions on the Original Side should be signed by counsel and on the Appellate Side by counsel or a pleader ALI AKBAR v ABDUL LATIF SHUBU 12 Bom. 8

55 ———— Appeal presented without security bond—*Rule of 7th December 1858* —The High Court has no authority to receive a petition of appeal to England tendered without the usual security bond duly registered as provided by the 8th Rule of the 7th December 1858 IRSHAD SEIN v RAJENDRA KISHORE 7 W R. 338

56 ———— Appeal in forma pauperis—An application to appeal to the Privy Council *in formâ pauperis* may be made to the High Court on unstamped paper and accompanied by a certificate of counsel that there is a reasonable ground of appeal the usual security for costs being given and the costs of translation deposited IN THE MATTER OF THE PETITION OF JOWAD ALI 8 W R. 4

† 57 ———— *Effect of on right to appeal to Privy Council without leave —Quære*—Whether the leave given by the Courts in India to a party to sue *in forma pauperis* would enable him to prosecute the appeal to the Privy Council without obtaining the leave of the Privy Council MUNNI RAM AWASTY v SHEO CHURN AWASTY [7 W R. P C 29 4 Moore's I. A 114

58 ———— Ground for delay in applying—*Ground for refusing to admit petition of appeal* —An application for permission to appeal to the Privy Council was presented on the last day of the six months allowed for such appeals and with it was deposited not the sum which had been estimated as the cost of translating printing and transmitting the record but the estimate less the charges of printing nothing being deposited as the cost of transcription The petition was accordingly refused. *Held* that the petitioner had no right to amend the estimate made by the clerk of the Privy Council Department still less to amend it in the way he did and that the plea of oversight was not sufficient to excuse him for non compliance with the rules of Court or to admit his application beyond the prescribed time IN THE MATTER OF THE PETITION OF GOUR SURN DASS [19 W R, 305

APPEAL TO PRIVY COUNCIL —continued

2 PRACTICE AND PROCEDURE—continued

(b) TIME FOR APPEALING

59 ———— Calculation of period of limitation.—In calculating the period of six months allowed for appealing to the Privy Council the date on which the decree was pronounced or dated should be excluded. IN THE MATTER OF THE PETITION OF RAMANOOGRA NARAIN 13 W R. P C 17

60 ———— Power of Supreme Court to grant leave after expiration of time —The Supreme Court at Madras admitted an appeal to the Privy Council after the expiration of six months from an original decree *Held* that the Court was not authorized to grant such leave to appeal by the Madras Charter of 1800 EAST INDIA COMPANY v SYED ALLY 7 Moore's I. A 555

61. ———— Closing of Court for vacation—*Privy Council Rules* —The High Court has no power to allow an appeal to Her Majesty in Council when the petition is not presented within six calendar months from the date of the decree complained of When the six months expired during the Durga Pooja vacation and the petition of appeal was presented on the first day the Court resumed its sittings —*Held* that the petition was too late and leave could not be given to appeal TAMVACO v SKINNER 1 B L. R. O C 39

62. ———— If the period within which an appeal is required by law to be filed expires while the High Court is closed for the vacation parties are allowed to file their petitions of appeal on the first open day after the vacation LUCHMUN CHUNDER SINGH v KALEECHURN SINGH [12 W R 293

63 ———— *Time for appealing—Civil Procedure Code s 599—Limitation Act s 12 sch II art 177—Period of limitation for admission of an appeal to Privy Council* —On a petition for leave to appeal to the Privy Council presented on the 8th April it appeared that the period of six months from the date of the decree to be appealed against had expired on the 23rd of March if the time occupied by the petitioner in getting a copy of the decree was to be computed in that period *Held* that the petition was barred by limitation *Per Curiam* —It is not at all clear that the word ordinarily in s 599 of the Code of Civil Procedure does not refer to the circumstances referred to in the second paragraph of that section *viz* when the last day happens to be one on which the Court is closed LAKSHMANAN v PERYASAMI [I. L. R. 10 Mad. 373

64 ———— Review Pendency of application for —When an application to review a judgment is rejected by the High Court the six months allowed for appeal to Her Majesty in Council run from the date of the judgment and not from that of the order rejecting the review SOUDAMINEE DOSSEE v DHERAJ MAHATAB CHAND [B L. R. Sup Vol. 585 6 W R. Mis 102

65 ———— Date of decree—*Appeal from Vice Admiralty Court of Bengal—Rule 35 of Vice*

APPEAL TO PRIVY COUNCIL *—continued*

2 PRACTICE AND PROCEDURE—*continued*

Admiralty Rules —By rule 35 of the rules respecting appeals from the Vice Admiralty Courts abroad made and ordained by King William IV in Council in pursuance of the Statute 2 Will IV in c 51 all appeals from the decrees of Vice Admiralty Courts are to be asserted within fifteen days after the date of the decree *Held* that the words after the date of the decree mean after the date when the decree is pronounced by the Admiralty or Vice Admiralty Court as the case may be not the date when the decree is reduced to writing and signed. On the 23rd July 1880 the High Court in its Appellate Jurisdiction modifying a decree of the High Court as a Court of Vice Admiralty in a cause of damage by collision referred it to the Registrar to assess the damages that had been incurred in reference to one of the ships both of which were held to be in fault The parties went without protest before the Registrar for that purpose the impugnants also having taken out process to compel the appearance of the promovents before him and the damages were assessed with the consent of both parties at a certain amount On the 2nd September 1880 a notice of appeal was given on behalf of the impugnants and was recorded as asserted pursuant to rule 35 above referred to *Held* that the appeal was not within time more than fifteen days having elapsed after the decree before the appeal was asserted According to the law laid down in the Vice Admiralty Courts the proceedings taken before the Registrar were themselves sufficient also to prevent an appeal as of right THE OWNERS OF THE SHIP BRENHILDA *v* THE BRITISH INDIA STEAM NAVIGATION COMPANY I. L. R. 7 Calc 547

66 ———— Deposit of costs of appeal *—Act VI of 1874 ss 8 and 11 cl b—Limitation Act 1871 s 5—Closing of the Court—Deposit of money for expenses of appeal—Power of High Court to enlarge time* —The petitioners had obtained a certificate on the 1st of September to appeal to Her Majesty in Council from a decision passed against them by the High Court on the 4th of May Accordingly the period during which they were required to deposit the amount for the translation of the record under s 11 cl (*b*) of Act VI of 1874 expired on the 4th of November The offices of the Court re-opened after the vacation on the 23rd October but the Benches did not begin to sit till the 15th November On the last mentioned date the petitioner brought in the money and it was refused by the officer of the Court as being too late *Held* that it was rightly refused and that the Court had no power to grant permission to deposit it after the prescribed time IN THE MATTER OF THE PETITION OF LALLA GOPEE CHUND I. L. R. 2 Calc. 128

67 ———— *Act VI of 1874 s 11—Power to enlarge time—Practice* —The requirements of s. 11 Act VI of 1874 as to the deposit of costs, are not absolutely imperative The Court has power in its discretion to modify them and when the period for making the deposit expires on a day when the offices of the Court are closed it is a reasonable exercise of that discretion to allow the deposit to be made on the day they re open IN THE MATTER OF THE PETITION OF SOORJMUKHI KOER [I. L. R. 2 Calc 272

68 ———— Dismissal of appeal for default in deposit of security and in transcribing record—*Act VI of 1874 ss 11 14 and 15* —On an application to stay proceedings in an appeal to the Privy Council which had been presented on 2nd July 1874 from a decision of the High Court on its Original Side it appeared that no deposit had been made by the appellant to defray the costs of transcribing etc as provided by s 11 Act VI of 1874 that no steps had been taken to prosecute the appeal and that no security had been deposited for the costs of the respondent since the petition of appeal was presented The Court granted a rule calling on the appellant to show cause why the proceedings on appeal should not be stayed and on his not appearing to show cause ordered that the appeal should be struck off the file THAKOOR KAPILNATH SAHAI *v* THE GOVERNMENT I. L. R 1 Calc 142

69 ———— *Failure to give security—Power to enlarge time—Act VI of 1874 ss 5 and 11* —An intending appellant to the Privy Council who held a certificate under Act VI of 1874 s 5 having failed to give the requisite security and deposit within the six weeks prescribed by s 11 an order was passed to strike off his application to appeal As however the defendant in the Court below who would have been respondent in the appeal had filed an appeal under the Letters Patent s 15 against the grant of the certificate the applicant contended that the six weeks would not begin to run until such appeal was finally disposed of *Held* that there was no ground for this contention as the appeal did not operate as a stay of proceedings nor remove the record to any other Court *Held* that the Court had no jurisdiction to enlarge the time specified in s 11 PUNEENDRO DEB ROY KUT *v* JOGENDRO DEB 23 W R. 220

70 ———— Deposit of security—*Civil Procedure Code 1882 s 602—Extension of time for giving security* —The time allowed by s 602 of the Civil Procedure Code for giving the security and making the deposit required by that section may be extended. FAZUL UN NISSA BEGUM *v* MULO [I. L. R. 6 All. 250

71 ———— *Extension of time for security in appeal—Civil Procedure Code (Act X of 1877) s 602* —The words in s 602 of Act X of 1877 relating to the time within which security is to be given are directory only and although they are not to be departed from without cogent reason the Court from which the appeal is preferred has the right of extending the time In this case a satisfactory explanation having been given of delay in giving security until after the time limited by the above section had expired —*Held* that the Court had rightly exercised discretion in extending the time *In the matter of the petition*

APPEAL TO PRIVY COUNCIL
—continued

2 PRACTICE AND PROCEDURE—continued

of Soorjmukhi Koer I L R 2 Calc 272 approved Burjore v Bhagana
[I. L. R. 10 Calc. 557 L. R. 11 I. A 7

72. ———— Enlargement of time for making deposit of costs of appeal—*Time for appealing—Civil Procedure Code ss 600 602*—The Court may enlarge the time for making the deposit required by Civil Procedure Code s 600 for cogent reasons under the rule in *Burjore v Bhagana L R 11 I A 7 I L R 10 Calc 557* but those reasons must be such as would lead the Court to believe that the party was diligent in due time to be prepared to lodge the deposit within the limited period and that he was prevented from doing so not owing to absence and the difficulty of getting funds but owing to some circumstances accidental or other wise over which he had no control or owing to mistake which the Court would consider not unreason able or caused by negligence PANGASAYI v MAHA LAKSHMAMMA I. L. R. 14 Mad. 391
VENKATACHALAM v MAHALAKSHMAMMA
[I. L. R. 14 Mad. 392 note

73 ———— Security for costs of respondent—*Civil Procedure Code (Act XIV of 1882) ss 603 and 610—Right of surety to dispute validity of security bond notwithstanding admission of appeal*—Notwithstanding the admission of an appeal to Her Majesty in Council under s 603 of the Code of Civil Procedure a surety is not precluded from questioning the validity of the security bond in execution proceedings inasmuch as he was not a party to the order of the High Court GIRINDRA NATH MUKERJEE v BEJOY GOPAL MUKERJEE
[I. L. R. 26 Calc 246
3 C W N 84

74. ———— Appeal struck off for want of prosecution—*Civil Procedure Code (Act XIV of 1882) ss 598 599 600*—*A* on the 8th September 1885 filed his petition of appeal to Her Majesty in Council against a decree obtained against him by *B* on the 19th May 1885 On the 11th September 1885 *A's* attorney received for approval from the Registrar the usual draft notice calling upon *B* to show cause why the case was not a fit and proper one for appeal to Her Majesty in Council this draft notice was never returned as approved or otherwise to the Registrar and no further steps were taken to *prosecute the appeal* On the 1st April 1886 *B* applied to have the appeal struck off for want of prosecution *Held* that he was entitled to the order MOORAJEE POONJA v VISRANJEE VISENJEE
[I. L. R. 12 Calc 658

75 ———— Delay in transmission of appeal—*Power of High Court*—Until a petition of appeal to the Privy Council presented to the High Court has been admitted and allowed a party has no right of appeal to the Privy Council If the petition is allowed to remain on the file of the Court and is not prosecuted within a reasonable time the Court has power to order its removal from the file GOBARDHAN BARMONO v MANO BIBI
[3 B L R. O C 128 S C on appeal
5 B L R 76 14 W R. O C 34

76 ———— Appeal admitted after time—*Power to reject appeal*—In a case where the period within which an application for leave to appeal to England expired during the Dusserah vacation and the application was presented on the first day of the Court sitting after the vacation when though notice was served under the rules—no cause being shown to the contrary—the appeal was admitted and the applicant allowed to incur large costs for translation and transcription and the record was nearly ready for transmission—*Held* that the plea of limitation could not at this stage be heard in bar to the admission of the appeal and that the High Court was bound to allow it to go on subject to the orders of the Privy Council RAJ KISHEN SINGH v HURO SOONDUREE DABEE 15 W R. 255

77 ———— Power of High Court to consolidate appeals or admit time expired appeals—The High Court has no power to consolidate appeals to the Privy Council or to admit appeals to the Privy Council in cases in which the time for filing an appeal has expired such consolidation or admission cannot be made without the permission of the Privy Council PRAN NATH ROY CHOWDHRY v KASHEENATH CHOWDHRY 2 W R. Mis 26

See MAHOMED MUDSUR v RAM LAL ROY
[6 W R Mis 50

78 ———— Power of High Court to restore appeal—After an appeal to Her Majesty in Council has been dismissed for default or for any reason removed from the file of the High Court under the law or under the rules of the Court it is in the discretion of the High Court to restore the appeal after the period of six months allowed for preferring such appeals has expired IN THE MATTER OF THE PETITION OF RADHA BINODE MISSER
[B L R Sup Vol. 730

RADHA BINODE MISSER v KRIPAMOYEE DEBIA
[7 W R. 531

Contra IN RE BOLAKUN 8 W R. Mis 121

79 ———— *Appeals struck off for default in making deposit*—The High Court has no authority to restore appeals to Her Majesty in Council dismissed or struck off the file for default in making deposit IN THE MATTER OF THE PETITION OF SREEKANT ROY 7 W R. 74

(c) MISCELLANEOUS CASES

80 ———— Papers forwarded with record—*Review*—Where an application for review was rejected and no appeal to the Privy Council was filed against the order of rejection papers filed with the application for review will not be forwarded with the record to the Privy Council on the appeal of the case FUKEERUDDEEN MAHOMED AHSAN CHOWDHRY v NAJUMUNISSA CHOWDHRAIN
[2 B L R. A C 264 11 W R. 145

APPEAL TO PRIVY COUNCIL —*continued*

2 PRACTICE AND PROCEDURE—*concluded*

81 ——— **Translation of account books and papers**—*Costs*—Where it was impossible to say whether certain account books and papers were material or relevant or even were part of the evidence in the case the High Court declined to put the appellant in an appeal to England to the expense of translating and transcribing them but gave the respondent the option of translating them at his own expense with a view to their being sent to England as an appendix to the record leaving it to the Privy Council in the event of the respondent being successful to make any order they pleased as to the costs of translation IN THE MATTER OF THE PETITION OF RAJ COOMAR BABOO DEO NUND SINGH [7 W R. 90

82 ——— **Evidence**—*Exhibits marked for identification afterwards marked as admitted on both sides by Bench Clerk—Certificate by Court as to the endorsement on exhibits—Record of appeal to the Privy Council*—In an application for a certificate that a limited meaning should be placed upon endorsements made by the Bench Clerk on certain exhibits printed in the paper book in a suit which had gone on appeal to the Privy Council the Court considering the reasons for the application to have arisen from the nature of the case and from the contentions on either side left the matter to be dealt with by their Lordships of the Judicial Committee at the same time directing its order to be forwarded to the Privy Council RATTAN KOER v CHOTAY NARAIN SINGH [I L R. 21 Cal. 476

83 ——— **Translation of deeds**—Razeenamas and safeenamas as well as security bonds connected with appeals to England need not be in English MAHOMED TUKEE CHOWDHRY v LUCHMEPUT SINGH DOOGUR 7 W R. 291

84 ——— **Appeal Pendency of effect of**—*Legal disability—Right to sue*—The pendency of an appeal to England does not put the party who subject to that appeal is the owner of an estate under a legal disability to bring a suit in that character against third parties PRAHLAD SEN v RAJENDRA KISHORE SINGH [2 B L R. P C 111 12 W R. P C 6

85 ——— **Agreement not to appeal**—*Application to stay proceedings*—Where an appeal is preferred contrary to an agreement not to appeal application to stay the proceedings should be made before the case is prepared for hearing AMIR ALI v INDERJIT KOER 9 B L R. 460

3 STAY OF EXECUTION PENDING APPEAL

86 ——— **Stay of execution before appeal admitted Practice**—*Civil Procedure Code (1882) s 603 and 604*—Where a petition for leave to appeal to the Privy Council from a decree of the High Court has been presented the High Court may grant a stay of execution of its decree although the appeal has not yet been admitted under s 603 of the Civil Procedure Code (Act XIV of 1882) JANBAI v SALE MAHOMED JAFFERBHOY [I L R. 19 Bom 10

87 ——— **Security against party in possession**—*Beng Reg XVI of 1797 s 4*—Within six months after decree and prior to the admission of an appeal therefrom to England the Sudder Court on an *ex parte* application without notice issued an execution order putting the decree holder in possession This was done without calling for security as provided by s 4 Bengal Regulation XVI of 1797 The appellant on the admission of the appeal applied to the Sudder Court for security from the party in possession pending the appeal but that Court held that as the decree holder was in possession under an execution order which could not be appealed from they had no power to interfere On petition the Judicial Committee under the circumstances and on affidavit of waste made an order declaring that it was competent to the Sudder Court to require security to be given for protection of the property pending the appeal notwithstanding execution of the decree had issued and gave permission to the appellant to apply to the Sudder Court with an intimation of that opinion JARIUTOOL BUTOOL v HOSEINEE BEGUM 10 Moore s I A. 196

88 ——— *Beng Reg XVI of 1797 s 4*—The plaintiff obtained a decree for possession of a zamindari which was reversed on appeal by the High Court The plaintiff then appealed to the Privy Council Under such circumstances the High Court has no power under s 4 Regulation XVI of 1897 to order security to be taken from the defendant (respondent) in the appeal to the Privy Council for the due performance of such orders as the Privy Council may pass in the appeal or to suspend the decree reversing the decision of the first Court NILKISEN THAKOOR v BEER CHUNDER THAKOOR GOSSAIN 2 W R Mis 23

89 ——— The High Court cannot interfere to require security from a party who has formally been put in possession of the property in dispute in execution of a decree where execution was taken out before an appeal to the Privy Council was preferred and admitted. HURO SOONDUREE DEBIA v STEVENSON 5 W R Mis 13

90 ——— **Security**—*Failure to furnish security—Beng Reg XVI of 1797 s 4*—In the case of an appeal to the Privy Council the Court has no power on failure of both parties to furnish security as required by s 4 Regulation XVI of 1797 to attach any property held by the appellant beyond that decree KHOROO LALL v KANT LALL [5 W R. Mis 37

91 ——— *Beng Reg XVI of 1797 s 4*—When an appeal to the Privy Council has been admitted all that the High Court can do is to proceed under s 4 Regulation XVI of 1797 to stay the execution of the decree on the appellant giving security for the due performance

APPEAL TO PRIVY COUNCIL
—*continued*

3. STAY OF EXECUTION PENDING APPEAL
—*continued*

of the decree of the Privy Council But the Court cannot continue an attachment of money made under Regulation II of 1806 during the pendency of the suit in the Zillah Court after the decree of the Zillah Court has been reversed by the High Court on appeal IN RE PETITION OF RAMNATH CHOWDHRY [6 W R Mis., 17

92. ——— In the case of an appeal to the Privy Council security to the extent of the whole sum decreed need not always be taken from the decree-holder When security is taken for less than the full amount decreed the decree holder should be restrained from issuing process of execution with a view to realizing any sum in excess of the amount for which security is given. MOLKA v SUMPUT KOONWAR 6 W R., Mis 62

93 ——— The Zillah Court decreed a suit in plaintiff s favour On appeal the High Court reversed the judgment and remanded the case making no order as to the costs of the appeal. Against such remand an appeal was preferred to Her Majesty in Council The Zillah Court however proceeded with the case and eventually dismissed the whole suit and the defendant applied to execute the decree for his costs *Held* that in such circumstances the High Court was not competent under s. 4 Regulation XVI of 1797 (the last mentioned decree not having been appealed to it) to suspend execution of decree or to direct the taking of security IN THE MATTER OF THE PETITION OF ONOOROOP CHUNDER MOOKERJEE [6 W R Mis 45

94 ——— When an appellant to the Privy Council applies to the High Court to stay execution of the decree on giving security and action is taken by the Court on such application a Principal Sudder Ameen has no authority without the direction of the High Court to make an order on an application to execute the decree though the judgment debtor should have failed to give security DEBEE PERSHAD v UMURTH NATH CHOWDHRY [8 W R. 275

95 ——— *Power of High Court* —The High Court can on cause shewn require security from a decree holder who has been put in possession in execution of decree against which an appeal has been preferred to the Privy Council and is still pending It is not imperative on the High Court under such circumstances to take security from the decree holder in possession unless it be shewn that the party in possession is making waste or is so embarrassed by debt that the estates are likely to be seized by creditors in satisfaction of their claims or unless some other good cause be given SOORAJ MONEE DAYEE v SUDDANUND MOHAPATTUR [12 W R. 296

96 ——— *Widow s interest* —A judgment-debtor who had been permitted to retain possession of disputed property pending an appeal to England on furnishing security for mesne profits and costs deceased and the widow offered her life-interest in his estate as security *Held* that as her interest was only temporary it could not be accepted as competent security PHOOL KOER *alias* KANAYA KOER v DABEE PERSAUD [12 W R. 187

97 ——— *Beng Reg XVI of 1797 s 4* —When an appeal is preferred to Her Majesty in Council from a decree of the High Court the security to be taken from the decree holder must be regulated by s 4 Regulation XVI of 1797 the practice being to calculate for an amount sufficient to meet the mesne profits which are to go to his hands from the date of his obtaining possession to the probable date of the eventual execution of the decree of the Privy Council which period is generally taken to be three years AMEEROONISSA KHATOON v DUNNE 14 W R. 361

98 ——— *Beng Reg XVI of 1797 s 4* —Application for decree holder pending decision of appeal to the Privy Council to give security refused AINSLIE J following the Full Bench ruling in *the case of Rajkissen Sing B L R Sup Vol 605 6 W R Mis 111* and PAUL J (whilst declining to follow that ruling) considering the application premature because merely put on the file of the High Court without the appeal being submitted BURRA LALL v THE COURT OF WARDS [16 W R. 289

99 ——— *Sufficiency of security* —The High Court having ordered a judgment debtor pending an appeal to the Privy Council to furnish security within two months he put in a petition in the Zillah Court on the last day allowed by the order tendering a darpatni mehal as security and on the day following gave an unregistered security bond The Judge rejected the bond *Held* that the bond was not required to be registered until the security had been accepted and that the Judge should have directed an investigation into the goodness and sufficiency or otherwise of the property tendered DUNNE v AMEEROONISSA KHATOON [13 W R 41

100 ——— The decree holder (respondent to England) was required immediately to elect between furnishing security and drawing the sum deposited by the appellant on account of wasilat and costs and (upon her failure to do so) allowing the appellant to obtain a refund of the deposit upon giving the like security A party who seeks to obtain security after the decree has been executed must shew special circumstances (*e g* waste or improper dealing with the property) before the Court can grant such an order JUGGOO LALL OOPADHYA v JANKEE BIBEE 17 W R. 521

101. ——— *Beng Reg XVI of 1797 s 4* —In a suit in which an appeal to the Privy Council from a decree of the High Court has been admitted and is still pending the Court of original jurisdiction which made the decree first appealed

APPEAL TO PRIVY COUNCIL
—continued

3 STAY OF EXECUTION PENDING APPEAL
—continued

from has jurisdiction to issue execution Although as a general rule the High Court will take security under s 4 Regulation XVI of 1797 before allowing execution of a decree while there is an appeal to the Privy Council pending yet the Court may under certain circumstances allow execution without taking security Where the lower Court is informed that there has been an appeal to Her Majesty in Council from the decree which it is asked to execute the lower Court should in the exercise of its discretion allow time to the parties to apply to the High Court to stay execution or to require security from the party left in possession before issuing execution unless it should see danger of the property being made away with in the interval LOCH J differed. WISE v RAJKRISHNA ROY **B. L. R. Sup Vol. 541 6 W R., Mis 84**

102 ———— *Beng Reg XVI of 1797 s 4*—The plaintiff obtained a decree for possession of part of a zamindari in the Court below and in execution obtained possession on giving security On appeal by the defendants to the High Court the decree was reversed and restitution ordered Plaintiff then appealed to the Privy Council and applied to the High Court to be left in possession upon his former security *Held* that s 4 Regulation XVI of 1797 did not apply and the plaintiff was not entitled either to keep possession or to require the defendants to give security but the defendants were entitled to restitution of the property without security whether the judgment of the High Court ordered restitution or not but that it was within the discretion of the Court to call upon the defendants to give security for costs if any awarded by the decree of reversal IN THE MATTER OF THE PETITION OF RAJKISSEN SINGH **[B L. R. Sup Vol. 605 6 W R. Mis., 111**

103 ———— *Beng Reg XVI of 1797 s 4*—The plaintiffs in execution of a decree which had been affirmed by the High Court on appeal obtained possession of the land decreed and realized their costs The defendant afterwards filed an appeal to the Privy Council against the decree of the High Court After admission of the appeal he applied that the plaintiffs might be called upon to furnish security *Held* that under s 4 Regulation XVI of 1797 the application could not be entertained. JOYNARAIN PATTUK v PURSICK MOHUN BANERJEE **[B. L. R. Sup Vol. 744 8 W R. 144**

104 ———— **Order for security to be furnished by respondent in Privy Council** *—Order made after decree appealed against —Liability for mesne profits of persons giving security—Civil Procedure Code s 608—Revocation of surety—Contract Act (IX of 1872) s 130—Construction of security bond*—The present plaintiff purchased land brought to sale in execution of a decree and was put in possession The sale was set aside by the High Court and the purchaser was ousted. He preferred an appeal to the Privy Council and the High Court directed that security be given for the mesne profits and the due delivery of the property without waste in the event of the appeal being successful The present defendants furnished security and executed a document under which the plaintiff who had succeeded in the Privy Council now sued to enforce his rights It appeared that after the date of the instrument abovementioned a payment was made from the income of the property in satisfaction of a decree obtained by the zamindar against the present plaintiff for arrears of poruppu previously accrued due *Held* (1) that the order of the High Court requiring security to be furnished was not *ultra vires* and that the instrument abovementioned was enforceable (2) that the defendants who had given no personal guarantee were not competent to put an end to the security under the provisions of the Contract Act relating to revocation of a surety (3) that on the right construction of the instrument the period for the profits of which the defendants were chargeable was that between the date of the instrument and the date of the decision of the Privy Council (4) that the defendants should be credited with the amount paid in satisfaction of the decree for poruppu NARAYANAN CHETTI v ARUNACHELLAM CHETTI **I. L. R. 19 Mad., 140**

105 ———— **Security by party in possession**—*Mad Reg VIII of 1818*—After an appeal had been asserted from a decree of the Sudder Court at Madras the appellant applied to that Court under s 4 Regulation VIII of 1818 and the Circular Order of the 21st September 1826 for an order calling on the respondents who had been in possession of the estates in dispute before the institution of the suit to give security as prescribed by that Regulation The Sudder Court refused the application as not being within the provisions of the Regulation On petition the Judicial Committee declined to interfere as there was no allegation of waste by the respondents in the petition *Quære*—Whether there was any jurisdiction in the Judicial Committee under s 4 of Madras Regulation VIII of 1818 to call for security from the respondent when put in possession NAGALUTCHMEE UMMAL v GOPOO NADARAJA CHETTY **[6 Moore s I. A. 309**

106 ———— **Procedure where decree holder attempts to execute it.**—Procedure where there is an order of Court to stay the execution of a decree obtained by a party who has appealed to the Privy Council from another decree against himself if the holder of the decree which is appealed against attempts to execute it. DWARKANATH ROY v WOOMASOONDUREE DASSEE **14 W R. 329**

107 ———— **Power of Civil Court in mofussil.**—A Civil Court in the mofussil has no power to stay execution in cases where an appeal has been made to the Privy Council against a decree of the High Court MUTTEALAUMMAL v CHELLAYAMMAL **5 Mad. 98**

APPEAL TO PRIVY COUNCIL —continued

3 STAY OF EXECUTION PENDING APPEAL —concluded

108 ———— **Restoration of property pending appeal**—The Court has power under s. 608 Civil Procedure Code to stay execution of a decree of the High Court in a suit subsequently appealed to Her Majesty in Council *Quære*—Where the Court has power to order restitution of possession of property already taken in execution of its own decree pending an appeal to the Privy Council ASHANTULLA v KAROONAMOYI CHOWDHRY ROHINI CHOWDHRANI v KISHEN GOBIND DASS [4 C L R 125

4 EFFECT OF PRIVY COUNCIL DECREE OR ORDER

109 ———— **Effect of order of Privy Council dismissing suit on power of High Court to make orders in suit**—*Petition for the amendment of an order in Council dismissing a suit—Receiver's liability to account—Rights as between the Administrator General and executors transferring estate to him and the petitioner interested in the estate—Act II of 1874 s 31*—A Court having appointed a receiver in a suit has authority incidental to its jurisdiction to order him to account although the suit may be no longer pending The estate is in its hands and the receiver is its officer and the dismissal of the suit by an Appellate Court does not alter that state of things The original Court in such a case may permit parties interested to intervene on questions as to the accounts and may deal with costs and other matters. In a suit by a plaintiff interested in the estate wholly based on the alleged illegality of its transfer by the executors named in the will of a Hindu to the Administrator General (Act II of 1874 s 31) decrees were made by the High Court Original and Appellate in the plaintiff s favour The Judicial Committee however held the transfer legal and the suit brought against the Administrator General and the executors as co-defendants was dismissed *Held* on the plaintiff s petition for such modification of the order dismissing the suit as would maintain what had been ordered below relating to the accounts thereby enabling the High Court to bring matters in dispute to an end that there were no grounds for the amendment. Their Lordships opinion was that the High Court would not be deprived of any jurisdiction in that respect by the dismissal of the suit. If it should be necessary to the carrying out of the transfer that the Administrator General should take proceedings he could do so To make orders upon the Court s receiver was within its powers and either the receiver or the executors could be called to further account without the petitioner being met by the defence of prior adjudication of the matter (s 13 of the Code of Civil Procedure) IN THE MATTER OF THE PETITION OF PREM LALL MULLICK ADMINISTRATOR GENERAL OF BENGAL v PREM LALL MULLICK I L R 22 Calc 1011 [L R 22 I A 203

APPEAL TO PRIVY COUNCIL —concluded

5 CRIMINAL CASES

110 ———— **Right of appeal**—No right of appeal to the Privy Council exists in any matter of criminal jurisdiction and the High Court has no power to grant leave in such a case IN THE MATTER OF GOOROO DASS ROY 18 W R 407

IN THE MATTER OF AMEER KHAN [18 W R 407 note

111 ———— **Case referred under s 404 Criminal Procedure Code 1869**—*Letters Patent 1865 s 41*—The High Court has no power under cl 41 of the amended Letters Patent of 1865 to grant leave to appeal to Her Majesty in Council from an order made or decision given in a criminal case referred by a Magistrate under s 404 of the Code of Criminal Procedure REG v REAY [7 Bom Cr 77

112 ———— **Question of law or practice**—*Ground for leave to appeal*—In criminal cases the High Court will not in general grant leave to appeal to the Privy Council unless some important question of law or practice or jurisdiction is involved Considerations that guide the Court in granting leave to appeal in such cases stated and instances in which such leave has been granted mentioned REG v PESTANJI DINSHA 10 Bom 75

113 ———— *Penal Code (Act XLV of 1860) s 124A*—The accused who was the editor proprietor and publisher of the *Kesari* newspaper was charged under s 124A of the Penal Code (Act XLV of 1860) with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles etc in the *Kesari* in its issue of the 15th June 1897 At the close of the Judge s charge to the jury counsel for the first accused asked that the following points might be reserved for the decision of the Court under s 434 of the Criminal Procedure Code (Act X of 1882) viz —(1) Whether the order for the prosecution was sufficient under s 196 of the Criminal Procedure Code (2) Whether the High Court had power in the absence of a sufficient order to accept the commitment of the accused under s 532 of the Criminal Procedure Code and to proceed with the trial (3) Whether the meaning given to the term disaffection by the Judge in his charge to the jury was correct The Judge declined to reserve the above points The first accused having been convicted applied to a Full Bench under cl 41 of the Letters Patent 1865 for a certificate that the case was a fit one for appeal to the Privy Council The points upon which he desired to appeal were those which his counsel at the close of the trial asked the Judge to reserve as above stated The Full Bench refused to grant the certificate QUEEN EMPRESS v BAL GANGADHAR TILAK I L R 22 Bom 112

APPEARANCE

———— **Default in**—

See CASES UNDER APPEAL—DEFAULT IN APPEARANCE

APPEARANCE—*continued*

See CIVIL PROCEDURE CODE 1882 ss 98 99 (1859 s 110)
See CASES UNDER CIVIL PROCEDURE CODE ss 102 AND 103
See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS
See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE
[I. L. R. 1 Calc 476

———— sufficient to prevent ex parte decree

See CASES UNDER CIVIL PROCEDURE CODE 1882 s 108 (1859 s 119)

APPELLANT

———— Death of—

See CASES UNDER ABATEMENT OF SUIT—APPEALS
See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
[I. L. R. 2 Bom. 564
I. L. R. 19 Bom. 714

See LIMITATION ACT 1877 ART 171
[3 C L. R. 440

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS
[I. L. R. 21 Bom 102
I. L. R. 20 Mad. 51

See CASES UNDER REPRESENTATIVE OF DECEASED PERSONS

See RIGHT OF APPEAL
[I. L. R. 12 All. 200
I. L. R. 22 Bom 718

———— in jail—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
[I. L. R. 13 All. 171

———— Poverty of—

See SECURITY FOR COSTS—APPEALS
[18 W R. 102
I. L. R. 7 All. 542
I. L. R. 8 All. 203
I. L. R. 13 Bom 458
I L. R. 21 Calc. 526

———— Substitution of—

See PRIVY COUNCIL, PRACTICE OF—SUBSTITUTION OF APPELLANT
[I. L. R. 17 Calc 693

APPELLATE COURT

APPELLATE COURT—*continued*

See CASES UNDER APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE
See CASES UNDER PRIVY COUNCIL PRACTICE OF
See CASES UNDER REMAND
See CASES UNDER SPECIAL APPEAL.

———— Power of to make decree in respect of parties not appealing

See CASES UNDER CIVIL PROCEDURE CODE 1882 s 544 (1859 s 337)

1 GENERAL DUTY OF APPELLATE COURTS

1. ———— High Court Practice of—*Appeal on questions of fact—Credibility of witnesses* —The High Court sitting in appeal on questions of fact was guided by the same rules as those of the Privy Council when they sat upon motions for a rule for new trials from the old Supreme Court The High Court sitting in appeal will not disturb a judgment upon a question as to the credibility of witnesses unless it be manifestly clear from the probabilities attached to certain circumstances in the case that the Court was wrong in the conclusion drawn from such evidence The High Court sitting in appeal will look upon the decree of a Judge as to facts in the same light as the verdict of a jury and though some of the reasons given for the conclusion arrived at be erroneous the High Court in appeal will not say that the decree is against the weight of evidence if sufficient reason for such decree still remain HEERALALL CHUCKERBUTTY *v* MOHESH CHUNDER GHOSAUL 1 Hyde 105

2 ———— Privy Council Practice of—*Appeal on questions of fact*—The rule of the Privy Council not to disturb a judgment of a Court in India upon a question of fact unless it is clear from the probabilities of the case that the judgment is wrong however necessary as regards a Court of Appeal far removed from India would hardly be extended as one equally necessary and applicable with the same strictness to a Court of Appeal in India SARODA SOONDERY *v* TINCOWRY NUNDY [1 Hyde 223

3 ———— Question of fact Ground for disturbing finding on.—*Held* on examination of the evidence that the lower Appellate Court ought not to have disturbed the distinct finding of the

APPELLATE COURT—*continued*

1 GENERAL DUTY OF APPELLATE COURTS —*continued*

lower Court as it had upon what appeared to be mere conjecture LAL MAHOMED BIFARI v SHOHA BEWA 11 C L R 104

4. ——— **Jurisdiction where appeal is barred** —When an appeal is barred by law an Appellate Court cannot interfere in any matter legitimately arising out of the case unless there is want of jurisdiction. KURUM CHAND KOLEEAH v HUREE MOHUN GHOSE 2 W R Mis 45

5 ——— **Presumption of correctness of judgment appealed from**—*Duty of Judge* —A Judge of appeal is not in the position of an arbitrator who has to look at the evidence on both sides and determine which is preferable He has to deal with the decision of a properly constituted Court which if not shown to be erroneous ought to be affirmed. SHETABDEE BISWAS v MOLAMDEE MUNDUL 25 W R 30

6 ——— **Presumption as to facts found by lower Court**—*Omission to file objections under Civil Procedure Code s 561* —Where a decree is in favour of the respondent the Appellate Court is not entitled to accept the facts found by the Court of first instance as incontestably proved merely because the respondent has not filed any cross-objections to the decree under s 561 of the Code of Civil Procedure (Act XIV of 1882) BHAGOJI v BAPUJI I. L. R. 13 Bom. 75

7 ——— **Credibility of witnesses**—In cases turning on the credibility of witnesses the Appellate Court gives great weight to the decision of the Courts below WOMESH CHUNDER ROY v DEENDAYAL PORAMANICK 2 Hay 12

8 ——— Where credit has been given to witnesses by the Court of first instance before which they have been examined the Appellate Court is not at liberty to say that it disbelieves them without stating reasons HOYMO DASSEE v SREE KISSEN KUNDY 14 W R 58

9 ——— *Dealing with documentary evidence* —Where a Munsif pronounces an opinion as to the authenticity of certain documents the lower Appellate Court must assume that he did his duty and looked into each and every one of them before pronouncing such opinion On a question of simple credit to be given to a witness an Appellate Court having before it merely written depositions is not authorized to set aside the opinion of the Court of first instance which heard the witness and recorded that his demeanour was not satisfactory GOPEE NATH MOOKERJEE v BODDHUMUNT MAL [25 W R 26

See NOBIN CHUNDER POOSHALEE v RUNGO CHUNDER CHATTERJEE 25 W R 363

10 ——— **Method of dealing with questions of fact in appeal.**—In dealing with questions of fact which turn entirely upon evidence given on the trial the High Court ought not merely to consider whether the lower Court has come to the same conclusion as that to which it should have

APPELLATE COURT—*continued*

1 GENERAL DUTY OF APPELLATE COURTS —*continued*

come if it had originally heard the witnesses but before reversing the decision it ought to be satisfied that the Court was clearly wrong OOTUM v MULLICK GHOLAM HOSSEIN 2 Hay 359

11. ——— **Point taken in appeal but not argued by pleader** —Where a point is taken on appeal the Appellate Court should consider and decide it although the vakil may omit to argue it DADA VALAD VALLI v BAVASHA VALAD KASAM [6 Bom A C 9

12 ——— **Duty of Judge to hear comments on evidence** —It is the duty of the Judge of an Appellate Court to allow the parties or their pleaders to submit the evidence to him at the hearing in open Court and to make upon the evidence so submitted every comment and found upon it every argument they may think necessary LALLA JUGGESHUR SAHOY v GOPAL LALL 15 W R 54

13 ——— **Duty of Appellate Court to direct examination of witnesses before reversing decree**—*Dismissal of suit by first Court without examining defendant s witnesses—Reversal of decree on appeal* —Where a Court of first instance considering it unnecessary to examine certain witnesses for the defence dismissed the suit, and the lower Appellate Court disbelieving the evidence of those witnesses for the defence who were examined allowed the plaintiff s appeal —*Held* that before doing so the lower Appellate Court should have afforded the defendants an opportunity of supplementing the evidence which they had given in the first Court by the testimony of those witnesses whom that Court had declared it unnecessary to hear and that the case must be regarded as one in which the first Court had refused to examine the witnesses tendered by the defendants The Court directed the first Court to examine the defendant s witnesses and having done so to return their depositions to the lower Appellate Court which was to replace the appeal upon its file and dispose of it KHUDA BAKHSH v IMAM ALI SHAH I. L. R. 9 All. 339

14 ———**Duty of Appellate Court to call the remaining witnesses before reversing the decree of first Court**—*Dismissal of case in first Court without hearing all the witnesses* —The Subordinate Judge having heard all the witnesses for the plaintiff and some of the witnesses for the defendant intimated that he did not consider it necessary for the defendant to call any more evidence He then dismissed the suit On appeal by the plaintiff the Judge upon the recorded evidence reversed the decree and allowed the plaintiff s claim The defendant appealed to the High Court contending that the lower Court ought not to have found against him without allowing him an opportunity to call the witnesses whose evidence had been dispensed with by the Subordinate Judge *Held* (reversing the decree of the lower Appellate Court and remanding the case) that the lower Appellate Court ought not to have reversed the decree of the first Court without allowing the defendant to give the evidence which the

APPELLATE COURT—*continued*

1 GENERAL DUTY OF APPELLATE COURTS —*concluded*

first Court declined to take ARJUN RAMCHANDRA SHETKARPE v SHANKAR VISHRAM SHENVI GHURAYE
[I. L. R 22 Bom, 253

2 EXERCISE OF POWERS IN VARIOUS CASES

(a) GENERAL CASES

15 ———— Discretion Exercise of—*Discretion capriciously exercised—Error of law* — The discretion vested in a Court of Justice must be exercised in a sound and reasonable manner and a capricious and unreasonable exercise of discretion on the part of a Court of first instance is an error in law which it is the duty of an Appellate Court to correct LENDSE v MALSE 3 Bom. A C 94

16 ———— *Appellate Court s power to interfere with exercise of discretion* —When an appeal against an order based on facts is given from a subordinate to a superior Court the discretion vested in the former is absorbed in the latter and it is the duty of the superior Court to weigh the facts which form the basis upon which the subordinate Court proceeds and arrive at its own independent conclusion and this is so notwithstanding that the subordinate Court exercised its discretion after a proper enquiry and due consideration of the facts put before it and not capriciously or with prejudice KIRANI AHMEDULA v SUBABHAT
[I. L. R. 8 Bom 28

17 ———— *Costs — Miscarriage or mistake* —An Appellate Court will not interfere with the discretion of a lower Court as to costs unless satisfied that there has been some miscarriage or mistake LUCHMUN RAM UNOOJ v WATSON W R. 1864 146

DESAJI LAKHMAJI v BHAVANIDAS NAROTAMDAS
[8 Bom. A C 100

KESHAVRAM KRISHNA JOSHI v BHAVANJI BIN BABAJI 8 Bom., A C 142

KAPPUSVAMIAYYAN v NANNUVAYYUN
[1 Mad. 74

18. ———— *Costs — Action on contract—Verdict for less than R1,000—Certificate under Act XXVI of 1864 s 9* —Where in an action in the High Court founded on contract a verdict was found for the plaintiff for a sum less than R1 000 and the Judge who tried the case awarded costs without certifying under s 9 Act XXVI of 1864 that the action was fit to be brought in the High Court —*Held* that the Court might supply the omission on appeal NOBOCOOMAR DASS v KEWATA MEO 10 B L. R. 358

KEWATA MEO v NOBOCOOMAR DOSS
[10 W R. 207

19 ———— *Discretion of Judge—Refusal to admit appeal—Limitation* — Where the law leaves a matter within the discretion of a Court and the Court after proper enquiry and due consideration has exercised the discretion in a sound and reasonable manner the High Court will not interfere with the conclusion arrived at even though it would itself have arrived at a different conclusion Consequently where a District Judge after due enquiry refused to admit an appeal presented after the time prescribed by the Statute of Limitations the High Court would not interfere with his order RANCHODJI v LALLU
[I L R. 6 Bom. 304

20 ———— Question of limitation—*Appeal* —*B* sued *M* and *T* for money due on a bond and on the 27th April 1877 obtained a decree against *T* the suit against *M* being dismissed *T* applied for a review of judgment and *B* also made a similar application On the 25th May 1877 *T* s application was granted and on the 16th July 1877 *B* s was rejected On the 29th June 1878 the Court re heard the suit against *T* and dismissed it *B* appealed making *T* and *M* respondents and impugning in his memorandum of appeal the decree of the 27th April 1877 as well as that of the 29th June 1878 The Appellate Court assuming that the appeal was one from the decree of the 27th April 1877 preferred beyond time admitted it after time and after hearing the case on its merits gave a decree against *M* and dismissed the suit as regards *T* *Held* that the Appellate Court erred in assuming that the appeal was from the decree of the 27th April 1877 and that it was at liberty to admit it beyond time the appeal being from the decree of the 29th June 1878 that decree being the one which had brought *B* before that Court as an appellant and that the Appellate Court was not competent on an appeal from the decree of the 29th June 1878 to reconsider the merits of the case against *M* the appeal from the decree of the 27th April 1877 being barred by limitation and that decree and the decree of the 29th June 1878 being separate and distinct and not appealable in one memorandum of appeal from the latter decree MOTI BIBI v BIKANU I. L. R. 2 All. 772

21. ———— An Appellate Court can *ipso motu* raise the question of limitation for the first time where it appears on the face of the plaint that the suit is barred MOZAFFUR ALLY v GIRISH CHANDRA DAS
[1 B L. R. A. C 25 10 W R. 71

(b) SPECIAL CASES

22. ———— Analogous cases—*Joinder of causes—Cases in which evidence is similar* —A number of cases having been instituted against the same defendant and relating to the same matter the plaintiff in one of them applied to both the lower Courts to have them all tried together pointing out particularly that the documentary evidence in one of the other cases was necessary and should be made use of in the trial of his case This application was refused by the first Court and the lower Appellate Court decided the case of the applicant upon evidence recorded with it and disposed of the others as governed

APPELLATE COURT—*continued*

2 EXERCISE OF POWERS IN VARIOUS CASES—*continued*

by that judgment. *Held* that all the cases should have been tried together but as the Judge failed to comply with the application to do so he should have tried each case separately on its merits NEHAL SINGH v ALI AHMED 15 W R. 110

23 ———— *Cases in which evidence is similar* —A Judge should not without the consent of the parties allow his judgment in one case to govern his decision in another even if the subject of dispute is of a similar nature and the evidence similar in character when the parties are not the same and the subject matter of the suit is different. SOORENDRANATH ROY v HEERAMONEE GHOSE 15 W R 342

24. ———— **Appeal** — *Civil Procedure Code 1877 1882 s 582 (Act XXIII of 1861 s 37)—"Powers — Jurisdiction* —S 37 of Act XXIII of 1861 did not apply to cases where the subject which was being dealt with by the Court was not the actual appeal itself and could not therefore be rightly treated as standing in an analogous position to that of the original suit itself and further that the same section had not the effect of making s 7 of the same Act applicable to cases where the Appellate Court had passed an order under ss 5 and 6 dismissing the appeal *Semble*—The word powers in s 37 of Act XXIII of 1861 was not synonymous with and did not comprehend jurisdiction. KALIKRISHNA CHANDRA v HARIHAR CHUCKERBUTTY [1 B L R. A C 156 10 W R 160

25 ———— *Memorandum of appeal—Memorandum of appeal insufficiently stamped—Court Fees Act ss 6 28—Levy of stamp duty* —When a memorandum of appeal is insufficiently stamped the deficient stamp duty should be levied by the Appellate Court CHENNAPPA v RAGHUNATHA I L R. 15 Mad 29

26 ———— *Civil Procedure Code (1882) s 543—Memorandum of appeal containing scandalous matter—Duty of the Appellate Court* —A memorandum of appeal presented to a District Court alleged *inter alia* actual partiality against the Judge whose decree was in question The memorandum was returned for amendment on the ground that it contained language disrespectful to the Court of first instance The appellant s pleader presented the appeal memorandum unamended stating that he wished to rely in the appeal on the passages objected to and asking that the Court would if necessary strike them out The District Judge thereupon rejected the memorandum of appeal under Civil Procedure Code s 543 It appeared that the objectionable portions of the memorandum were separable from the rest —*Held* on appeal to the High Court against the order rejecting the appeal to the District Court. *Per* SUBRAMANIA AYYAR *J*—The District Judge should have ordered the objectionable matter to be expunged and then to have admitted the appeal *Per* MOORE *J*—(Holding that the statement which accompanied the memorandum of appeal on its re-presentation contained expressions amounting to contempt of Court) the District Judge should have returned the appeal memorandum and have refused to receive it until the objectionable remarks had been expunged ZAMINDAR OF TUNI v BENNAYYA I. L. R. 22 Mad. 155

27 ———— **Power to separate suits misjoined** — An Appellate Court has jurisdiction under s. 37 Act XXIII of 1861 to separate misjoined suits and to try them separately SHOROOP CHUNDER PAUL v MOTHOOR MOHUN PAUL CHOWDHRY 4 W R. 109

28 ———— **Withdrawal of suit on appeal** — An Appellate Court has under this section power to allow a suit to be withdrawn GREGORY v DOOLEY CHAND 14 W R. O C 17

29 ———— **Arbitration Reference to**—*Act VIII of 1859 ss 312 and 313—Act XXIII of 1861 s 37* —An Appellate Court has no power even by consent of parties to refer a case to arbitration under the arbitration sections of Act VIII of 1859 which apply only to Courts of original jurisdiction nor is such power conferred on an Appellate Court by s. 37 Act XXIII of 1861 JUGGESSUR DEY v KRITARTHOMOYEE DOSEE [12 B L R. F B 266 21 W R. 210

Contra RUSSOOL BIBEE v JAN ALI CHOWDHRY [12 B L R. 267 note 17 W R. 31

CHIRANJI LAL v JAMNA DAS 7 N W 243

Quære—Whether it can HACHUN BANOO v ABDUL HAKIM 19 W R. 321

30 ———— *Civil Procedure Code 1877 s 582* —Under s 582 of the Civil Procedure Code a Court of Appeal has the power with the consent of the parties of referring to arbitration matters in dispute in an appeal *Juggessur Dey v Kritarthomoyee Dossee 12 B L R F B 266 21 W R 210* dissented from IN THE MATTER OF SANGARALINGAM PILLAI [I. L R. 3 Mad. 78

31 ———— *Semble* —An Appellate Court has the power to refer a case to arbitration at the instance of the parties under s 582 of the Code of Civil Procedure 1882 *In re Sangaralingam Pillai I L R 3 Mad 78* cited *Juggessur Dey v Kritarthomoyee Dossee 12 B L R 266* cited and distinguished. BHUGWAN DASS MARWARI v NUND LALL SEIN [I. L R. 12 Calc., 173

32 ———— *Power to refer to arbitration a case on appeal—Civil Procedure Code 1882 s 582* —Under s 582 of the Civil Procedure Code an Appellate Court has power to refer a case before it to arbitration if the parties wish it to be referred *In re the petition of Sangaralingam Pillai I L R 3 Mad 78* and *Bhugwan Dass Marwari v Nund Lal Sein I L R 12 Calc 173* followed

APPELLATE COURT—*continued.*

2. EXERCISE OF POWERS IN VARIOUS CASES—*continued.*

SURESH CHUNDER BANERJEE *v.* AMRITA CHURN M[illegible] I. L. R., 18 Calc., 507

33. ———— **Attachment, Order of**—*S[illegible] [illegible] order [illegible] attachment made by another Court.*—[illegible] Court other than a Court of Appeal or a High Court acting under s. 622 of the Civil Procedure Code can discharge an order of attachment made by another Court. K[illegible] L[illegible] NARAYAN *v.* K[illegible] [illegible] NARAYANDAY NAMBUDRI.

[I. L. R., 4 Mad., 131

34. ———— **Award of Ameen**—*Power of [illegible] [illegible] award of wasilat [illegible] confirmed by lower Court.*—After obtaining a judgment for possession the judgment-creditor sued for wasilat. After decree, an enquiry was made into the amount of wasilat, and on the return of an Ameen the decree-holder being present and the [illegible] party not appearing, the Court made an order for the payment of the sum therein mentioned. [illegible] the judgment-debtor appealed and [illegible] that the award must be corrected by [illegible] to which he was entitled. On his application being refused, he appealed to the Judge, who remanded the case with a view to its being ascertained whether any and what amount should be de[illegible] *Held* that the Judge should not have interfered with the award of wasilat, which was a final award so far as the Appellate Court was concerned. P[illegible] B[illegible] *v.* [illegible] ROY CHOWDHRY

[14 W. R., 180

35. ———— **Caste, Question of, Evidence on.**—[illegible] questions of caste, a lower Appellate Court has [illegible] to come to a finding based on history or the custom of the country. R[illegible] DASS M[illegible] *v.* B[illegible] DASS MAHARAJA

[14 W. R., 364

36. ———— **Decree**—*Error in terms of lower Court—Power to [illegible] decree [illegible] lower Court [illegible]—[illegible] Rent Recovery Act [illegible]*—A summary suit by a landlord to enforce the acceptance of a pottah under the Madras Rent Recovery Act [illegible] not be dismissed [illegible] the Appellate Court [illegible] the pottah tendered was not a proper pottah. The Appellate Court ought to pass a decree which the Court of first instance should have passed. V[illegible] *v.* KARUNA

I. L. R., 11 Mad., 33

37. ———— **Issues**—*[illegible] Civil Procedure Code [illegible] 567—[illegible] lower Court.*—When an Appellate Court has made an order for issues under s. 566 of the Code of Civil Procedure [illegible] [illegible] must be made to the same Court and such Court [illegible] the appeal for [illegible]. [illegible] NARAIN SINGH *v.* JHANDA

[I. L. R., 13 All., 3[illegible]3

38. ———— **Jurisdiction**—*Subordinate Court [illegible] without jurisdiction—[illegible] [illegible]*—Where [illegible] High Court [illegible] Court [illegible] [illegible] particular subordinate Court and that Court acts without jurisdiction in the trial of a suit or an appeal or [illegible] the High Court has power as an Appellate Court to set aside the proceedings of such subordinate Court. *H[illegible] Ram v. H[illegible] Lal, I. L. R., 4 A[illegible], 2[illegible]* and *T[illegible] Ram v. L[illegible] [illegible] Weekly Notes 188[illegible] p. [illegible]* overruled. JWALA PRASAD *v.* SAHIB RAM . I. L. R., 13 All., 575

39. ———— **Local investigation, Interference with result of.**—An Appellate Court should not interfere with the result of a local investigation or enquiry except upon very clearly defined and sufficient grounds. SARAT SUNDARI DEBI *v.* PROSONNO COOMAR TAGORE 6 B. L. R., 677

15 W. R., P. C., 20

M[illegible] D[illegible] SAHEB *v.* M[illegible] B[illegible]-DEE SAHEB . . . . 15 W. R., 423

40. ———— **Decree after**—*Ground for reversal by Appellate Court.*—An Appellate Court ought not to reverse the decision of a first Court based upon very careful inspection of the land in dispute, except upon a very clear and strong opinion upon the evidence, and upon recording sufficient and satisfactory reasons for such opinion. B[illegible] B[illegible] *v.* D[illegible] NARAIN B[illegible] DEO 18 W. R., 432

41. ———— **Plaint**—*Order [illegible] file new [illegible]—[illegible] of suit.*—An Appellate Court, having set aside the whole of the proceedings, including the plaint, directed that a new plaint be presented in a proper Court. *Held* that this order equivalent to directing the plaintiff to institute a new suit was wrong, and that with [illegible] alternative of having leave to withdraw the suit and bring a new one, the suit should have been dismissed. L[illegible] *v.* B[illegible]

[I. L. R., 9 All., 131 L. R., 13 I. A. 134

42. ———— *Civil Procedure Code, s. 57—Return of plaint when Court has no jurisdiction.*—An Appellate Court is not bound to return the plaint under all circumstances where lack of jurisdiction appears. YACOOB *v.* M[illegible] SINGH

[I. L. R., 11 Mad., 482

43. ———— **Plaint, Amendment of**—[illegible]—A plaint cannot be amended in an Appellate Court. ABDUL GAFFUR *v.* NUR BANU

[I. B. L. R., A. C., 75 10 W. R., 111

44. ———— *Appellate Court, power to amend plaint—Suit for rent converted into one for ejectment—Variance between plaint and proof—Civil Procedure Code, [illegible] ss. 53 and 57.*—An amendment of a plaint which materially transforms the nature of the claim cannot be made under s. 53 of the Code, and certainly not in appeal. S. 53 permits amendment of the plaint before judgment and not after. The [illegible] powers conferred on Appellate Courts by s. 57 do not authorize such a material transformation of a suit in appeal. BA[illegible] MAHADAJI *v.* [illegible] BALKRISHNA I. L. R., 13 Bom., 303

APPELLATE COURT—*continued*

2 EXERCISE OF POWERS IN VARIOUS CASES—*continued*

45 ———— *Objection for defect in plaint* —An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint COLVIN COWIE *v* ELIAS 2 B L R A C 212 11 W R 40

46 ———— *Striking names out of plaint and amending issues—Merits of case Error not affecting—Act VIII of 1859 s 350* —Four plaintiffs sued as partners but it was found during the trial that they were not all partners at the time the cause of action accrued and the Judge thereupon amended the issue which had been raised on that point and raised the question whether the plaintiffs were or were not partners and it being decided in the negative the Judge ordered two of the plaintiffs names to be struck out of the plaint and he gave a decree in favour of the other plaintiffs *Held* that the Judge acted rightly in amending the issue but that he should have done so without striking the names of the plaintiffs out of the plaint Such an error is an error in an interlocutory order not affecting the merits of the case and therefore under s 350 Act VIII of 1859 not a ground for reversing the decree on appeal EAST INDIAN RAILWAY COMPANY *v* JORDAN

[4 B L R O C 97 14 W R O C 11

47 ———— *Remand—Civil Procedure Code 1877 s 562* —An Appellate Court is not empowered by Act X of 1877 to order or allow a plaint to be amended or to remand a case under s 562 of that Act for the purpose of such amendment FARZAND ALI *v* YUSUF ALI I L R 2 All 669

48 ———— *Waiver of defect in plaint in Court below—Ground for dismissal* —In a case in which although the plaint mentioned no overt act justifying the plaintiff s request for a declaration of title and still it appeared on the admitted facts of the case that there was a cause of action and the Court of first instance adjudicated on the merits and passed a decree in favour of plaintiffs —*Held* that it was too late for the lower Appellate Court to dismiss the claim on the ground of the above defect in the plaint SHOME DUTT CHOWDHRY *v* SURB NARAIN CHOWDHRY 24 W R 242

49 ———— *Amendment of record on appeal* —A second plaintiff was added in the Court below but no amendment was made in the record and the suit was dismissed with costs An appeal being brought the original plaintiff failed to pay the costs was made insolvent and the Official Assignee declined to proceed with the appeal It was objected that the appeal ought to be dismissed there being no appellant on the record but the Court allowed the appeal to proceed and the amendment order by the Court below to be effected KEDAR NATH DOSS *v* PROTAB CHUNDER DOSS

[I L R 6 Calc 626 8 C L R 238

50 ———— *Dismissal or withdrawal of case* —Where the Court of Appeal sets aside the whole of the previous proceedings in a suit it cannot direct a new and amended plaint to be filed but must give the plaintiff the alternative of having his suit dismissed or of withdrawing it with leave to bring a new action LEDGARD *v* BULL

[L R 13 I A 134
I L R 9 All 191

51 ———— An amendment of a plaint ought not to be allowed on appeal if by so doing the defendant is likely to be precluded from pleading limitation and where no leave to amend was asked for in the Court of first instance MALLIKARJUNA *v* PALLAYA I L R 16 Mad 319

52 ———— *Objection not taken to plaint—Ground for dismissal of suit—Suit for declaratory decree without asking consequential relief* —A suit should not be dismissed by an Appellate Court on the ground of its being one asking merely for a declaratory decree and no consequential relief where that objection has never been taken by the defendants to the suit The plaintiffs should in such a case be allowed an opportunity of amending their plaint LIMBA BIN KRISHNA *v* RAMA BIN PIMPLU I L R 13 Bom 548

53 ———— *Suit for declaration of title without asking for possession* —Where a person brings a suit merely for declaration of his title without seeking to recover possession although he may be in physical possession the Appellate Court will not grant an opportunity to amend the plaint if the plaintiff had already such an opportunity and did not avail himself of it *Limba bin Krishna* v *Rama bin Pimplu I L R 13 Bom 548* distinguished RAJ NARAIN DAS *v* SHAMA NANDO DAS CHOWDHRY

[I L R 26 Calc 845
4 C W N 162

3 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL

54 ———— Evidence Act 1855 s 57—*Rehearing of ex parte case on fresh evidence* —Where a Court of first instance sets aside its own *ex parte* judgment and after a new trial in which it takes fresh evidence as well as admits that originally recorded again gives plaintiffs a decree it is the duty of the lower Appellate Court to enquire under s 57 of Act II of 1857 whether independently of the evidence originally recorded there was sufficient to justify the decree ROSUL SINGH *v* KISHOREE LALL 8 W R 499

55 ———— Evidence sufficient for judgment—*Civil Procedure Code 1859 s 353* —When parties have had an opportunity of putting in such evidence as they consider sufficient to entitle them to a judgment upon the material issues of the case the evidence ought to be held sufficient under s 353 Civil Procedure Code to enable the Appellate Court to pronounce a satisfactory judgment ZAHRAH *v* BHUGWAN DASS

[16 W R 211

56 ———— Consideration of evidence in ex parte case —Where a party fails to file a

APPELLATE COURT—*continued*

3 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued*

memorandum of objections under s 351 Act VIII of 1859 the Appellate Court is not at liberty to decide the case *ex parte* without considering the evidence WOOMESH CHUNDER ROY *v* JOYARDUN HAJRA 15 W R. 235

57 ———— **Appeal against part of decree**—*Duty of Judge*—Where a plaintiff dissatisfied with so much of the decision of the first Court as is adverse to him appeals making the party in whose favour the decree is made the sole respondent the Judge of the Appellate Court has only to determine whether as between the appellant and respondent the order of the first Court is correct KISHORE SINGH *v* POOKHUN SINGH

[10 W R. 432

58 ———— **Adjudication on evidence**—*Suit for contribution where shares were not specified*—In a suit for contribution on account of Government revenue which was decreed by the first Court but dismissed by the lower Appellate Court because the plaint did not specify the shares of the different shareholders—*Held* that the lower Appellate Court was bound to adjudicate upon the evidence BHONO BIBEE *v* PALLAN GAZEE

[11 W R. 131

59 ———— **Evidence improperly admitted in lower Court.**—The lower Appellate Court was not competent to reject the documentary evidence which had been admitted by the Court of first instance merely because it had been admitted after the first hearing of the case or after the date on which it had been ordered to be produced HONOOMAN SINGH *v* FELL 3 Agra 148

60 ———— **Decision in lower Court on merits**—*N W P Rent Act 1881 s 20*—In a suit instituted in the Court of an Assistant Collector under cl (*h*) s. 93 of the N W P Rent Act an objection was taken that the plaintiffs not being recorded shareholders the suit was not maintainable in the Revenue Court The objection was allowed but the Court at the same time disposed of the case on the merits and dismissed the suit On appeal the lower Appellate Court affirmed the decree on the ground that the Revenue Court had no jurisdiction in the matter *Held* that as there were materials on the record for the determination of the suit the Judge should with reference to s. 20 of the Rent Act have disposed of the appeal on the merits. *Debi Saran Lal* v *Debi Saran Upadhia I L R 6 All 2[illegible]* referred to SHEO PRASAD *v* ANRUDH SINGH

[I. L. R. 6 All. 440

61. ———— **Additional evidence on appeal**—*Evidence excluded by lower Court because it had [illegible] evidence*—A Court of first instance might not because it is satisfied upon the evidence which one of the parties has given to prevent him from putting upon the proceedings all the evidence that he wishes to give so that he may have his case brought fairly before the Appellate Court. Where a party has thus been prevented in the first Court and the evidence on the record is not deemed sufficient by the Appellate Court the latter Court does wrong if it refuses to receive the evidence which has been excluded in the way indicated. BRIJ SOONDAR ROY *v* KAIMOONNISSA 23 W R. 63

62 ———— *Civil Procedure Code 1859 s 355 Court taking evidence under*—A lower Court in taking evidence ordered under s 355 Act VIII of 1859 acts in a ministerial capacity RAM JOY SURMAH *v* PRANKISHEN SINGH BURODA DEBIA *v* PRANKISHEN SINGH PROSNODA DEBIA *v* PRANKISHEN SINGH

[2 W R. 80

63 ———— *Time for making application*—An application to give additional evidence should be made when the case first comes before the Appellate Court It is too late to make such an application when the case has been remanded and has come back for final disposal *per* ARNOULD C J ARDESHIR DHANJIBHAI *v* COLLECTOR OF SURAT

[3 Bom A. C 118 at p 123

64 ———— *Power of Appellate Court—Discretion of Court*—It is within the discretion of a lower Appellate Court to allow the parties an opportunity to adduce fresh evidence if it is satisfied that the interests of justice require that course DAMOODUR DASS *v* RITOO SINGH

[24 W R. 325

65 ———— *Evidence insufficient*—Where the evidence upon the record is not sufficient to enable the Appellate Court to pronounce a judgment upon regular appeal it may require the Court against whose decree the appeal is made to take additional evidence defining the points to which such evidence is to be confined in order to enable the Appellate Court finally to determine the case NARASIMHARAV KRISHNARAV *v* ANTAJI VIRUPAKSH 2 Bom. 64 2nd Ed. 61

66 ———— *Civil Procedure Code s 355—Evidence taken in lower Court insufficient*—Where a Munsif without framing issues or examining the plaintiff passed a decree in his favour upon an admission made by the defendant and upon inspection of a document that was upon the record of a former suit but the Judge on appeal reversed the decree of the Munsif on account of the insufficiency of evidence the document in his opinion not being admissible—It was held that the Judge ought not to have reversed the Munsif's decree without first exercising his power of taking fresh evidence under s 355 of the Code of Civil Procedure APPA VALAD KASHINATH *v* VITHOBA VALAD TUKARAM 6 Bom. A. C., 88

67 ———— *Civil Procedure Code 1859 ss 3[illegible] 35[illegible]*—Where defendant appealed in a suit to recover arrears of rent in which the genuineness of the kabuliat was in issue and the defendant asked the Deputy Collector to summon certain

APPELLATE COURT—*continued*

8 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued*

witnesses to prove that he had been paying at a particular rate the Judge ought under s 356, Act VIII of 1859 to have directed the Deputy Collector to send up either the witnesses or their evidence and under s. 357 to have directed the evidence to be confined to the rate and time of payment and the rent to which the payment had been appropriated. MOHUN MUNDUR v BRIJ BHOOKUN SINGH 9 W R., 127

68. ——— *Omission to call evidence in lower Court*—A suit to recover money having been commenced against *P* and others an attachment was applied for and certain goods supposed to be the defendants' were attached by order of the Court. Two other persons coming forward and claiming the attached goods as their property plaintiffs concluded them to be partners with the original defendants, and made them also defendants The lower Court at the trial held that the proof of partnership failed. *Held* on appeal that the plaintiffs case could not at this stage be supplemented by examining parties whom the plaintiffs did not think fit to call or by books which they did not produce in the Court below VELAET ALI KHAN v MATADEEN [10 W R. 402

69 ——— *Fresh evidence—Civil Procedure Code s 568*—An appellant who had ample opportunity of giving evidence in the Court below and elected not to do so but to rest his case on the evidence as it stood, ought not to be allowed at the stage of appeal to give evidence which he could have given below RAM DAS CHAKARBATI v OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY I. L. R., 9 All. 366

70 ——— *Application to put in evidence on appeal which applicant refused to produce in lower Court*—The plaintiffs had applied, during the hearing of the case in the Court of first instance for the production of certain books of account of the defendants The defendants resisted the application and the Court refused to order the books to be produced. The suit having been dismissed the plaintiffs appealed and in the Court of Appeal the defendants applied to be permitted to put in evidence the books which they had refused to produce —*Held* that the evidence could not be admitted. MONOHUR GANESH TAMBEKAR v LAKHMIRAM GOVINDARAM [I. L. R., 12 Bom 247

71. ——— *Reversing decision without fresh evidence*—Defendant having purchased a decree caused the judgment debtor's (*B* s) rights and interest in certain property to be sold in execution and bought them himself Plaintiff who had purchased one *B* s rights and interest in a 4 annas share of the property intervened; but his intervention having been rejected in the summary department he sued to set aside the summary order and to establish his vendor's right in the property The vendor having admitted the sale to the plaintiff the first Court thought it unnecessary to examine the witnesses to and the writer of the deed of sale and, finding the plaintiff in possession, decreed the suit. This decision was reversed on appeal *Held* that the lower Appellate Court did wrong in presuming collusion between *B* and his vendee (the plaintiff) and ought not to have rejected the deed without examining the writer and witnesses; and that it should have decided whether plaintiff was in possession at any time under the deed of sale RAM LALL JHA v ISSUR CHUNDER DEY 10 W R., 451

72. ——— *Admission of fresh documentary evidence*—The Appellate Court should not send for and admit fresh documentary evidence which has not been put in by either party in the lower Court. DWARKANATH SHAHA v RAM LOCHUN BISWAS 10 W R. 92

73 ——— *Civil Procedure Code 1859 s 355—Additional evidence after review*—Where a lower Appellate Court admitted a review with the object of taking into consideration a material issue which it had omitted to consider at the trial —*Held* that having admitted the review on grounds independent of fresh evidence it was competent for the Court under s 355 Act VIII of 1859 to admit fresh evidence if required to enable it to pronounce a satisfactory judgment or for any substantial cause BEHAREE LALL NUNDEE v TROYLUCKHO MOYEE BURMONEE 12 W R. 223

74. ——— *Civil Procedure Code 1859 s 355*—The true interpretation of s 355 Act VIII of 1859 is that when a Court sees that by some inadvertence or mistake a party has not produced some evidence which he was capable of adducing and that he is likely to be prejudiced by that omission or mistake which was simply unintentional undesigned and accidental the Court will allow such further evidence to be taken GOWHUR ALI KHAN v SAKHEENA KHANUM 15 W R. 507

75 ——— *Civil Procedure Code 1859 s 355—Appeal from ex parte decree*—The Court declined on appeal from an order rejecting an application under s 119 Act VIII of 1859 to set aside an *ex parte* decree to receive an affidavit which had not been previously tendered and held that s 355 was not meant to have application to such a case as this but to empower the Court of Appeal at its discretion to receive evidence upon issues of facts which had been tried in the Court of first instance LESLIE v ALLENDER

[17 W R. 390

76 ——— *Civil Procedure Code 1859 s 355—Error in law*—In a suit for ejectment on the ground that defendant was holding over after the expiration of his lease the defendant s vakil deposed on oath in the first Court that the defendant had no documents whatever and that those he once had were burnt When the case came before the Subordinate Judge on appeal he permitted the defendant to file a new piece of evidence *viz* a pottah which was alleged to have escaped the general destruction. *Held* that the admission of the pottah on the mere *ipse dixit* of the defendant was a substantial error in law even though plaintiff neither

APPELLATE COURT—*continued*

3 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued*

admitted nor denied the document; that the Subordinate Judge had no right to admit the pottah under the circumstances; and that if he had he was wrong in deciding the case upon it without taking evidence as to its genuineness SERAJOOL HUQ v KERAMAT OLLAH 10 W R, 88

77 —— *Civil Procedure Code 1859 s 355—Evidence excluded by first Court*—When the first Court was satisfied with the evidence produced and therefore did not allow the plaintiff to produce all his evidence and the Appellate Court does not think the evidence sufficient it ought to allow the plaintiff on appeal to call the evidence excluded by the first Court. BRIJO SOONDAR ROY v KAMROONNISSA 23 W R. 03

78 —— *Improper reception of evidence—Remand*—When a lower Court disposes of a case upon the merits as proved by evidence not legally admissible against the defendants and the Appellate Court considers it proper to allow the plaintiff to adduce further evidence it may either take such further evidence itself or send the case back to the lower Court to take such evidence RAMJOY CHUNDER MOJOOMDAR v PURAN KISHEN SINGH [W R. F B., 124

79 —— *Discovery of fresh evidence—Application for review*—The High Court decided a case irrespective of certain documents brought forward by a party at the hearing of the appeal and afterwards rejected an application for a review of that judgment In an application to the Privy Council for special leave to bring in those documents—*Held* that further evidence ought not to be admitted under s 355 Act VIII of 1859; that there was great danger in the Court of ultimate appeal lightly introducing evidence which had not been under the consideration of the Courts below and which the parties had had no means of testing GOBIND SUNDARI DEBIA v JAGADAMBA DEBIA 3 B. L. R. P C, 25

80 —— *Civil Procedure Code s 568*—The test as to whether additional evidence shall be received in an Appellate Court under s 568 of the Code of Civil Procedure depends upon the question whether or no the Appellate Court requires the evidence to enable it to pronounce judgment or for any other substantial cause, as to this the Appellate Court is to be the sole judge IN THE GOODS OF PREM CHAND MOONSHEE UPENDRA MOHAN GHOSE v GOPAL CHUNDRA GHOSE [I. L. R. 21 Calc. 484

81 —— *Reasons Record of—Power to take fresh evidence—Discretion of Court*—The power given to the High Court by the Code of Civil Procedure of taking of its own motion original evidence anew should be exercised very sparingly; and when exercised, it is desirable that the reasons for exercising it should always be recorded or minuted by the Court in the proceedings SREEMANCHUNDER DEY v GOPAL CHUNDER CHUCKERBUTTY [7 W R. P C 10 11 Moore's I. A 30

GUNGA GOBIND MUNDUL v COLLECTOR OF 24 PERGUNNAHS 7 W R. P C 21 [11 Moore's I. A 345

JUGGOBUNDHOO DEB v GOLUCK CHUNDER HALDAR 10 W R 228

JOOG MAYA DEBIA v RAM CHUNDER CHATTERJEE 10 W R., 378

82. —— *Reasons for taking fresh evidence*—*Held* that the lower Appellate Court should state most fully and clearly its reasons for calling for fresh evidence; but that in point of law it was sufficient if that Court considered the matter and stated that such reasons existed without mentioning what they were SHIB CHUNDER MAHTOON v KASHEENATH KURMOKAR 12 W R. 345

83 —— *Sufficiency of reasons for taking fresh evidence*—Where an Appellate Court received additional evidence recording only that the papers were material and important there was held to be no sufficient compliance with the proviso of s. 355 Civil Procedure Code which requires the reasons for admitting additional evidence to be stated JUGGUT INDUR BUNWAREE v BHUBO TARINEE DASSEE 14 W R., 10

84 —— *Reasons for taking fresh evidence*—Additional evidence cannot be admitted in appeal without some substantial reason being recorded in the proceedings SNADDEN v TODD FINLAY & Co 7 W R. 313

85 —— *Reasons for taking fresh evidence*—The provision in the Code of Civil Procedure which requires Judges who admit fresh evidence on an appeal to record their reasons though not a condition precedent to the reception of the evidence is yet one that ought at all times to be strictly complied with. GUNGA GOBIND MUNDUL v THE COLLECTOR OF THE 24 PERGUNNAHS [7 W R., P C, 21 11 Moore's I. A 345

SREEMAN CHUNDER DEY v GOPAL CHUNDER CHUCKERBUTTY [7 W R. P C 10 11 Moore's I. A 28

HURPERSHAD v SHEO DYAL [L. R. 3 I. A 259 26 W R. 55

LOWA JHA v BISSESHUR SINGH 11 W R. 6

CHARDON v AJEET SINGH 12 W R. 53

DANEE PERSHAD v LALLA JOGGESSUR DASS [11 W R. 47

86 —— Where the evidence of a defendant has been taken by the Court of first instance so imperfectly that the lower Appellate Court cannot pass a satisfactory judgment between the parties it is competent to the Judge of that Court under the provisions of s. 355 Civil Procedure Code to have the defendant fully examined

APPELLATE COURT—*continued*

3 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued*

before himself but not to remand the case for re hearing and re-trial If he examines the defendant he is bound to record his reasons for so doing in order that the High Court may be enabled on appeal to decide whether or not the new evidence has been rightly admitted. MOHESH CHUNDER DASS v MADHUB CHUNDER SIRDAR 13 W R. 85

87 ——— *Civil Procedure Code 1859 s 355—Reasons for sending for document on appeal*—Where a Judge sends for a map or other document he is bound to record his reasons for doing so according to the provisions of the Civil Procedure Code and the evidence so obtained must be taken and received by him in the presence of the parties in open Court and afterwards kept on the record It is not competent to him under s 355 merely of his own discretion to send for a document for personal inspection irrespective of the parties to the suit. GUNPUT ROY v RAM DEOUR ROY [21 W R. 416

88 ——— *Civil Procedure Code 1859 s 355—Suit for arrears of rent*—Where in a suit for arrears of rent tenancy was acknowledged but the rate of rent questioned by tenant and the Subordinate Judge not feeling satisfied with the documents purporting to show the rents during three years called for the documents relating to payment of rent during three earlier years—*Held* that the Subordinate Judge was justified in requiring this further evidence because though such evidence should rarely be called it was within the discretion of an Appellate Court to do so giving its reasons for the course which it pursued. SHOOKRAH SKAIKH v NUND COOMAR BANERJEE [25 W R. 246

89 ——— *Civil Procedure Code 1882 s 568*—Where the lower Appellate Court allows additional evidence to be taken though it is not satisfied that the evidence is necessary under cl (*a*) or cl (*b*) of s 568 of the Code of Civil Procedure the High Court will interfere but where this does not appear to be the case and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken the High Court will not interfere HAFIZ ABDUL KURIM v SRI KISSEN RAIA [I. L. R 11 Calc 139

90 ——— *Civil Procedure Code 1882 s 568*—The provision in s 568 of Act XIV of 1882 as to an Appellate Court recording its reasons for admitting additional evidence is directory merely and not imperative GOPAL SINGH v JHAKRI RAI I. L. R. 12 Calc 37

91 ——— *Civil Procedure Code 1859 s 355—Reasons for taking fresh evidence*—Where the first Court refused the plaintiff s application to summon five of his witnesses notwithstanding that it postponed the case for ten days although fifteen other of the witnesses were present the High Court held that the first Court s omission to summon the witnesses was under the circumstances a sufficient reason within Act VIII of 1859 s 355 for the lower Appellate Court to send for them and take their evidence ABELAKH ROY v GUGGUN BHUGGUT 22 W R. 269

92 ——— *Record of reasons*—In a suit for possession of certain lands under a howla tenure khas possession of which for some generations was alleged no special documentary title was set up in the plaint but one of the plaintiffs in his deposition referred the title to a particular pottah which he said had existed and had been lost in the time of his grandfather Two of the defendants were the zamindars of the talukh in which the howla tenure was said to exist and had transferred their proprietary right to the other two defendants The zamindars did not defend the suit and were not examined in the Court of first instance The lower Appellate Court considered it necessary for the proper decision of the case to examine the zamindars and relying mainly on their evidence reversed the decision of the Munsif and gave a decree in favour of the plaintiff *Held* on appeal that the lower Appellate Court had sufficiently recorded its reasons within the meaning of s 355 of Act VIII of 1859 for requiring the additional evidence that it was right in so doing and that although no special title had been set up in the plaint the decree which was given on the evidence in favour of the plaintiffs could not be reversed in special appeal RADHANATH DHUBI v RAMGOBIND PAL 3 B L R. A C 218
RADHANATH DHOOPEE v LUCKHEE KANT PAL [12 W R. 224 note

93 ——— *Reasons for taking fresh evidence*—Where the plaintiff himself is present the lower Appellate Court may in its discretion examine him if it considers his evidence material The requirements of the law are sufficiently fulfilled if the Court records that it considers his examination necessary HAFIZA v AZHUR HOSSEIN 13 W R. 328

94 ——— **Improper admission of evidence**—*Evidence Act (II of 1855) s 57*—An Appellate Court should not receive evidence though alleged to be material and important which has not been produced in the lower Court without substantial reason for its non production. The High Court refused to reverse a decision on the ground of the improper admission of evidence JOGADINDRA BANWARI GOBIND v BHOBOTARINI DASI [5 B L R. Ap 54

95 ——— *Omission to give reasons for admitting it*—Where evidence has been taken by an Appellate Court in the presence of parties or their agents it should not be rejected on appeal merely because the Court omitted to record its reason for admitting it BHUGWAN CHUNDER GHOSE v RAJCOOMAR GOHO [13 W R. 303

96 ——— **Rejection of document in first Court on the ground of want of registration**—*Subsequent registration and presentation*

APPELLATE COURT—*continued*

3 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued*

to Appellate Court —The plaintiff as purchaser at a Court's sale sued in 1871 for possession of certain immoveable property and tendered in evidence a sale certificate dated 20th September 1865 The first Court decided against the plaintiff on the ground among others that the certificate was not registered though registration of it was compulsory On the 9th February 1875 the plaintiff filed an appeal in the High Court against that decree and on the 26th July 1875 applied to that Court for permission to give in evidence a new certificate of sale issued on the 1st February 1875 regarding the same property as that to which the certificate of the 20th September 1865 related *Held* by the High Court that as the new certificate was issued after the first Court had made its decree the High Court ought not to receive it or to suggest or facilitate any application to the lower Court for a review of its decree on documentary evidence which had no existence when that Court made such decree LALBHAI LAKHMIDAS *v* KAMALUDIN HUSEN KHAN 12 Bom. 247

97 ——— *Civil Procedure Code 1882 s 568—Production of additional evidence in Appellate Court* —Circumstances under which an Appellate Court will not allow additional evidence to be produced at the hearing of an appeal under s 568 of the Civil Procedure Code NADIAR CHAND SINGH *v* CHUNDER SIKHUR SADHU [I. L. R. 15 Calc., 765

98 ——— *Evidence on appeal —Civil Procedure Code s 142A—Document rejected as inadmissible but allowed to remain on the record* —Where a document tendered in evidence in a Court of first instance was rejected as inadmissible but was nevertheless allowed to remain on the record of the case —*Held* that the mere fact of the document remaining on the record did not make it evidence in the Appellate Court but it must be tendered as evidence in the Appellate Court and accepted thereby HAR GOBIND *v* MONI BAHU [I. L. R. 14 All. 356

99 ——— *Civil Procedure Code (1882) s 568* —The test as to whether additional evidence should be received in an Appellate Court under s 568 of the Civil Procedure Code depends upon the question whether or not the Appellate Court requires the evidence to enable it to pronounce judgment or for any other substantial cause as to this the Appellate Court is to be the sole judge IN THE GOODS OF PREM CHAND MOONSHEE. UPENDRA MOHAN GHOSE *v* GOPAL CHANDRA GHOSE [I. L. R. 21 Calc. 484

100 ——— *Civil Procedure Code (1882) s 568—Remand—Direction by Appellate Court to take further evidence* —In a suit on a hypothecation bond the plaintiff relied in bar of limitation on endorsements of part payments appearing on the bond. The Court of first instance held that the endorsements were genuine The Court of first appeal remanded the suit for further evidence to be taken with regard to the endorsements and directed

APPELLATE COURT—*continued*

3 EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*concluded*

the Court to record an opinion on the question of the handwriting of the endorsements and held upon the return of the evidence that the endorsements were forgeries and dismissed the suit *Held* that the additional evidence was legally taken and admitted under s. 568 SHRINIVASACHARIAR *v* PANGAMMAL [I. L. R. 18 Mad. 94

101. ——— *Remand to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Civil Procedure Code (1882) s 568* —In a second appeal the High Court set aside the decrees of the lower Courts on the ground that certain issues raised in the suit were not considered by those Courts and remanded the case to the lower Appellate Court for a proper decision of the case The lower Appellate Court took evidence on the issues not tried before and came to findings of fact on that evidence *Held* that the lower Appellate Court tried the case not as an original case but as an appeal and acting under the powers given to it took fresh evidence BENI PERSHAD KUARI *v* NAND LAL SAHU [I. L. R. 24 Cal. 98

102. ——— *Civil Procedure Code (1882) ss 562 568 569—Additional evidence by Appellate Court—Invalidity of order reversing decree of lower Court on account of exclusion of evidence* —A trial took place in the Court of a District Munsif who heard evidence decided issues and passed a decree On an appeal being preferred the Subordinate Judge reversed the decree and remanded the suit for re trial on the ground that certain documentary evidence which had been tendered by a defendant had been excluded, and plaintiffs' witnesses who had been cited in the list had not been wholly examined. On an appeal being preferred against that order —*Held* that s 562 of the Code of Civil Procedure was inapplicable to such a case and that the proper and only legal course for the Subordinate Judge to take under the Code of Civil Procedure was to act either under s 568 or s 569 by himself taking the evidence which he considered to have been wrongly excluded or to direct the District Munsif to take it *Perumbra Nayar v Subrahmanian Pattar I L R 23 Mad 445* distinguished. SESHAN PATTAR *v* SESHAN PATTAR [I. L. R. 23 Mad. 447

4 REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW

(*a*) UNSTAMPED DOCUMENTS

103 ——— Unstamped documents—*Admission of unstamped document in evidence—Act X of 1862 ss 15 and 17—Objection made on appeal —Act VIII of 1859 s 350* —When the Court of first instance admitted without objection unstamped receipts in evidence but the Judge on appeal rejected the documents and reversed the decision of the lower Court,—*Held* that the documents once received

APPELLATE COURT—*continued*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued*

without objection were wrongly rejected and the decision below wrongly reversed on appeal as the irregularity was not one affecting the merits of the case under s. 350 Act VIII of 1859 and that the Court had no power to receive the documents on payment of the stamp duty and penalty under s 17 Act X of 1862. LALJI SING v AKPAM SEN [3 B L R A C 235 12 W R 47

CURNESS v SHEOCHURN SAHOO [W R 1864 184

104. ———— *Document admitted in Court below*—An Appellate Court has no right to refuse to admit on technical grounds a document which has been received and read in the Court below without objection AKBUR ALI v BHYEA LAL JHA I L R 6 Calc 666 7 C L R 497

MOHABEER DOSS v LALLA ROY 1 W R 12

GOUR SURN DAS v KANHY SINGH [2 W R 237

CRAWLEY v MALING 1 Agra 63

HUR CHUNDER GHOSE v WOOMA SOONDUREE DOSSEE 23 W R 170

ROY LUCHMEEPUT SINGH v MOSHURUFF ALI [25 W R 80

KASHEE NATH MOOKERJEE v MOHESH CHUNDER GOOPTO 25 W R 168

NEM ROY v LALMUN ROY 25 W R 376

105 ———— *Document admitted in Court below*—Where a document was admitted in evidence by the Court of first instance without any objection by the parties but the Assistant Judge on appeal held it inadmissible because it was insufficiently stamped although no objection was made to it in the memorandum of appeal—*Held* that the Assistant Judge ought not to have excluded it from his consideration. KASTUR BHAVANI v APPA [I L R 5 Bom 621

106 ———— *Document admitted or rejected in Court below*—The decision of the Court of first instance as to the admissibility of a document subject to the payment of stamp duty is final and cannot be reviewed by the Appellate Court LAKSHMI NARAYANA AIYAR v SUPPARA GAUNDAN [2 Mad 321

107 ———— *Document not sufficiently stamped admitted in evidence by lower Court*—A Court of first instance having admitted in evidence a document improperly stamped the Appellate Court cannot question its admissibility SHIDDAPA v IRAVA I L R 18 Bom 737

108 ———— *Question of liability to stamp*—It is open to an Appellate Court to consider the question whether a document which the Court of first instance has declared liable to be stamped under Act X of 1862 is properly so liable SUBBAYA PILLAI v SRINIVASA PILLAI DURGA PILLAI v SRINIVASA PILLAI. CHELLA PILLAI v SRINIVASA PILLAI 3 Mad 71

109 ———— The fact that the document was received in evidence without a stamp is no reason for reversing the decision in appeal CURRIE v MUTU RAMEN CHETTY [3 B L R A C 126 11 W R 520

110 ———— Where title deeds of land had been deposited by a debtor with the Bank of Bengal and a letter was given authorizing the Bank to sell the land and apply the proceeds in liquidation of a debt then existing and due to the Bank the Court declined to entertain the question whether the document relied on was one requiring a stamp as being a matter not affecting the merits of the case or the jurisdiction of the Court IBRAHIM AZIM v CRUICKSHANK [7 B L R 653 16 W R 203

111. ———— *Ground for reversal of decision*—An Appellate Court has no power to reverse the judgment of a Court of first instance merely on the ground that the document on which the suit was based did not bear a stamp at all SRINATH SAHA v SARODA GOBINDO CHOWDRY [5 B L R Ap 10

112 ———— *Improper admission in evidence of unstamped document—Irregularity not affecting the merits of the case—Civil Procedure Code 1859 s 350*—Where a Court of first instance treating an unstamped promissory note the after stamping of which was inadmissible as a bond received such instrument in evidence on payment of the stamp-duty chargeable on it as a bond and of the penalty—*Held* that the reception of such instrument by such Court being an irregularity not affecting the merits of the case was no ground for reversing the decree of such Court when the same was appealed from AFZAL UN NISSA v TEJ BAN [I L R 1 All 725

113 ———— *Admission by first Court of document unstamped*—The provisions of the Stamp Law by which unstamped or insufficiently stamped documents are excluded were framed primarily in the interests of the Government revenue but were never intended to create or put an end to the rights of the parties Where a document is admitted by the first Court as not requiring a stamp its admissibility cannot be questioned in appeal ENAYET OOLLAH v MEAJAN 16 W R 6

114. ———— *Admission of unstamped document on payment of penalty*—A plea that a deed of sale filed had been originally unstamped and that the lower Court was incompetent to supply the deficiency of the stamp by paying the penalty in the appellate stage of the case was overruled. RAM SARUN SAHOO v VERYAG MAHTON [25 W R, 554

115 ———— *Stamp Act s 50—Document admitted as duly stamped*—Where a

APPELLATE COURT—*continued*

4 REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued*

document has been admitted in evidence as duly stamped such admission can only be called in question by the Appellate Court under s 50 of the Indian Stamp Act REFERENCE UNDER STAMP ACT 1879

[I. L. R. 8 Mad. 564

116 ———— *Civil Procedure Code 1877 s 578—Unstamped hundi admitted in lower Court*—Suit by payee against drawer upon a hundi drawn in British India upon a person at Colombo The hundi was not stamped when drawn Objection taken to its admission in evidence by defendant was allowed by the Munsif but plaintiff was permitted to sue for the amount due upon the original consideration The suit was dismissed on the ground that no consideration was proved. Upon appeal the District Judge held that the hundi did not require a stamp as it was not intended to operate in British India and admitted the hundi in evidence as a business letter admitting responsibility and found that there was consideration *Held* upon second appeal that the hundi having been admitted in evidence though contrary to law by the District Judge no objection could be taken to the decree in second appeal upon that account RAMASAMI v RAMASAMI I. L. R. 5 Mad. 220

117 ———— *Question of stamp duty*—Where the objection is taken for the first time in special appeal that a document which according to Act X of 186_ ought to have been stamped has been admitted by both the lower Courts unstamped the High Court is bound to take notice of the objection (although not one of the grounds set forth in the petition of appeal) and to require payment of the stamp duty and penalty or to reject the document ADINARAYANA SETTI v MINCHIN 3 Mad. 297

118 ———— *Court Fees Act s 28*—If a document which ought to bear a stamp under the Court Fees Act has been used in the High Court and the mistake or inadvertence which permitted its reception in a lower Court without being properly stamped comes to light in the High Court any Judge of that Court may under s 28 of the Court Fees Act direct that it should be properly stamped. CHEDI LAL v KIRATH CHAND

[I. L. R. 2 All. 682

119 ———— *Application insufficiently stamped—Court Fees Act (VII of 1870) ss 6 28—Application for review*—On the 26th January 1889 an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888 The application was insufficiently stamped and the Munsarim endorsed on it stamp insufficient On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp On the 2_th April 1889 the deficiency pointed out by the Munsarim was made good. On the _6th May the Judge admitted the application on the applicant paying the Court fee payable on an application presented on or after ninety days from the date of the decree *Held* that s 6 and the first paragraph of s 28 of the Court Fees Act (VII of 1870) were applicable that there was no mistake or inadvertence within the meaning of the second paragraph of s 28 that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; and that there was no presentation within ninety days of an application which could have been received MUNRO v CAWNPORE MUNICIPAL BOARD . I. L. R. 12 All. 57

120 ———— *Penalty*—*Held* that an objection may properly be taken in a Court of first appeal to an unstamped document and such Court is bound to entertain the objection and may direct that the document be stamped and the penalty imposed. SAFDAR ALI KHAN v LACHMAN DASS

[I. L. R., 2 All. 554

121. ———— Stamp Act 1869 s 20 and sch II arts 5 and 11—*Stamp duty—Penalty tender of*—An Appellate Court has no authority to direct the reception of an unstamped document to which the provisions of s 20 of the Stamp Act (XVIII of 1869) apply unless the amount of stamp duty and prescribed penalty was tendered when the document was first offered in evidence and rejected. CHAMPABATY v BIBI JIBUN

[I. L. R. 4 Calc. 213

GOUR PERSHAD LAL v LALLA NUND LAL

[7 W R. 439

122. ———— Stamp Act 1879, s 34, proviso III—*Admission of documents in evidence—Unstamped promissory note admitted as a bond on payment of stamp duty and penalty*—The plaintiff sued to recover the amount due on three khatas. The defendant objected that the khatas were not duly stamped. The Subordinate Judge held that the instruments were bonds and as such admitted them in evidence on payment of the proper stamp duty and penalty under s 34 proviso I of the Stamp Act (I of 1879) At a subsequent stage of the same suit his successor in office was of opinion that the khatas in question were promissory notes that as such they could be stamped only at the date of their execution and that they had been illegally admitted in evidence under s. 34 proviso I He accordingly dismissed the suit On appeal the District Judge agreed with the Subordinate Judge that the instruments sued on were promissory notes but held that after they had once been admitted in evidence on payment of the stamp duty and penalty the question of their admissibility could not be subsequently raised in the suit under proviso III to s. 34 of the Stamp Act (I of 1879) He therefore reversed the decree of the Subordinate Judge and remanded the case for trial on the merits Against this order of remand defendants appealed to the High Court *Held* that the promissory notes having been once admitted in evidence could not afterwards be rejected on the ground of their not being duly stamped. DEVA CHAND v HIRA CHAND KAMARAJ I. L. R. 13 Bom., 449

APPELLATE COURT—*continued*

4 REJECTION OF ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued*

123 ———— Stamp Act 1879 s 34—*Instrument admitted as duly stamped—Appellate Court s power to quest on the admission*—Where a Court of first instance has admitted a document in evidence as duly stamped s. 34 cl 3 of the Stamp Act (I of 1879) precludes the Appellate Court from questioning the admission of such document If the Appellate Court considers the document to be insufficiently stamped it can only proceed under s 50 of the Act. GURUPADAPA BIN IRAPA v NARO VITHAL KULKARNI I. L. R. 13 Bom 493

(*b*) VALUATION OF SUIT ERROR IN

124. ———— Valuation of suit—Error in valuation of suit—*Civil Procedure Code 1859 s 350*—An error in the valuation of a claim is not an error defect or irregularity which affects the merits of the case and an Appellate Court is restrained by s 350 of the Code of Civil Procedure from ordering the reversal of a decree on account of any such error which does not also affect the jurisdiction of the Court which originally tried the suit NANSA BIN BIBA v BABA BIN BAHIRU 1 Bom. 163

SUBAH ROY v BALDEO SINGH 24 W R. 225

125 ———— *Error in valuation*—An error in a matter of stamp is no ground for appeal and is no reason for interfering with the decision of the Court below under s 350 of the Code of Civil Procedure SHOWDAMINEE DOSSEE v RAM ROODRO GANGOOLY 8 W R. 367

MAHOMED SHAHA v LALL MAHOMED [15 W R. 179

126 ———— Undervaluation—*Dismissal—Remand*—If a lower Appellate Court finds a suit to have been undervalued when its proper value would have placed it beyond the jurisdiction of the Court of first instance where it was instituted it should dismiss the case and not remand it with a view to the deficient stamp duty being made up AUGOPURA CHOWDHRY v MEAH BIBEE [10 W R. 207

127 ———— *Supplemental plaint where suit was undervalued—Irregularity*—Where a suit was remanded to a Munsif s Court and on the defendants objecting that the plaint had been undervalued an order was made by the Court that the plaintiff should in some shape or other put in the additional amount of stamp duty and a supplemental plaint with the required stamp was accordingly put in and received the irregularity was not considered to have affected the merits of the case or to call for a reversal of the Munsif s decision GUDDADHUR BANERJEE v PREMOMOYEE DEBIA 10 W R. 286

128 ———— *Civil Procedure Code 1859 s 350*—In a suit in a Munsif's Court it was found after issues had been fixed and some evidence recorded that the claim had been under valued and that the proper valuation would carry it beyond the jurisdiction of the Munsif The plaint was accordingly returned and additional stamps having been filed the case was tried by the Principal Sudder Ameen The Judge on appeal held that the plaint had been illegally returned by the Munsif and that the act of the Principal Sudder Ameen in proceeding to try the case was illegal He accordingly dismissed the suit *Held* with reference to s 350 Act VIII of 1859 that the Judge was wrong in reversing the decree of the Principal Sudder Ameen. RAM GUTTY v GOONO MONEE DEBIA 11 W R. 177

129 ———— A lower Appellate Court was held to have done right in dismissing a suit on the ground of undervaluation although the plaint had been admitted and acted on by the first Court without objection by the parties MEWA LALL v BEHAREE LALL 14 W R. 195

130 ———— *Civil Procedure Code 1859 s 350*—S 350 Act VIII of 1859 did not prohibit a Court of Appeal from modifying or reversing a decision of a lower Court on the ground of undervaluation of the suit if the proper valuation would have taken it beyond the jurisdiction of the Court HUBER PANDEY v BASSOO [11 W R. 257

131. ———— *Civil Procedure Code 1859 s 350*—An Appellate Court is restrained under s 350 Act VIII of 1859 from reversing a decree on account of any error in the valuation of a claim which does not also affect the jurisdiction of the Court which originally tried the suit RAMESSUR DYAL SING v RAJ KISHORE SINGH [13 W R. 325

132. ———— Dismissal of suit for insufficient stamp—*Act VIII of 1859 ss 31 and 350*—Where a defendant after the case had been gone into on the merits set up that the suit had been undervalued and the Court of first instance found in favour of the plaintiff on that issue but the lower *Appellate Court was of a contrary opinion and* dismissed the suit—*Held* that the lower Appellate Court should before dismissing the suit on that ground have allowed the plaintiff the option of supplying the necessary stamps as the first Court would have done under s 31 Act VIII of 1859 In any case the order of the first Court was not one affecting the merits of the case or jurisdiction of the Court and therefore under s 350 Act VIII of 1859 the suit could not be dismissed on appeal upon that ground. WAJID ALI KHAN v LALA HANUMAN PRASAD 4 B L. R. A C 139 [12 W R 484

133 ———— *Insufficient stamp—Return of plaint—Act VIII of 1859 s 30—Jurisdiction*—*Held* on special appeal that the lower Appellate Court was right in setting aside the proceedings of the Munsif on the ground that the property in suit was valued at an amount beyond

APPELLATE COURT—*continued*

4 REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued*

his jurisdiction but the plaintiff was entitled to have the plaint returned to him that he might present it with the proper additional stamp before the proper Court JADU v HIFAZAT HOSSEIN [5 B L R Ap 15

EDOO v HIFAZAT HOSSEIN 13 W R 358

134. ——— *Undervaluation—Civil Procedure Code 1859 s 31*—Where a petition of appeal had been filed time allowed for the issue of notice and a day fixed for hearing it was held to be the duty of the Judge under s 31 Act VIII of 1859 on finding that the petition was inadequately stamped to give the appellant an opportunity of filing the proper stamp NUSSERUT ALY CHOWDHRY v MAHOMED KANOO SIRDAR 11 W R 145

135 ——— Court Fees Act 1870 s 12—*Erroneous decision of Munsif as to valuation of suit*—Where a Munsif ruled erroneously that a suit instituted in his Court had been correctly valued and it appeared that if the suit had been correctly valued, the Munsif would not have had jurisdiction to entertain it the lower Appellate Court having regard to cl 2 s 12 of the Court Fees Act VII of 1870 ordered that the appeal should be decreed and the plaint retained until the plaintiff should pay the additional stamp duty when the suit would be made over to the Subordinate Judge for re-trial *Held* that the order was a proper one BROJO COOMAR SEN v ESHAN CHUNDER DAS [3 C L R, 79

136 ——— *Civil Procedure Code 1877 s 578—Error or irregularity—Court fees—Appeal*—The refusal of a plaintiff respondent to make good a deficiency in Court fees in respect of his plaint when called upon to do so by the Appellate Court is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit MEHDI HUSAIN v MADAR BAKHSH I. L. R., 2 All. 889

137 ——— *Plaint insufficiently stamped—Court Fees Act (VII of 1870) s 12—Civil Procedure Code (Act X of 1877) s 578*—A suit was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken either by the defendants or by the Court that the plaint was insufficiently stamped The defendants appealed on the merits and the District Judge being of opinion that the stamp on the plaint was inadequate called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken and the question rightly decided in the Court of first instance *Held* on second appeal that the order of the Judge was properly made under s 12 cl 2 of the Court Fees Act VII of 1870 *Kala Chand Sen v Anund Kristo Bose 22 W R 433* dissented from S 578 of the Civil Procedure Code explained. SHAMA SOONDARY v HURRO SOONDARY [I. L. R., 7 Calc. 348 8 C L R. 528

138 ——— *Court Fees Act 1870 s 12—Memorandum of appeal—Stamp—Suit for recovery of land and money*—In deciding the amount of stamps to be borne by the memorandum of appeal the High Court is not bound by the decision of the Court of first instance as to the stamp on the plaint MOTIGAVRI v PRANJIVANDAS [I. L. R., 6 Bom. 302

139 ——— *Court Fees Act VII of 1870 s 12—Stamp—Plaint—Undervaluation—Rejection—Finality of decision*—The decision of the Court of first instance that a plaint is undervalued is binding upon the Court of appeal reference or revision but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp BAI ANOPE v MULCHAND GIRDHAR [I. L. R. 9 Bom. 355

140 ——— ss 10 12 28—*Order requiring additional Court fee on claim passed subsequent to decree—Decree prepared so as to give effect to subsequent order—Civil Procedure Code ss 54 55 584*—A Judge after disposing of an appeal on the 1st March 1883 again took it up and on the 21st March 1883 directed the appellant to pay additional Court fees on her memorandum of appeal On the 2nd May 1883 the appellant paid the additional Court fees under protest and a decree was then prepared bearing date the 1st March 1883 but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May *Per* MAHMOOD *J*—That as soon as the Judge had passed the decree of the 1st March 1883 he ceased to have any power over it and was not competent to introduce new matters not dealt with by the judgment that the order of the 21st March and the deposit of the 2nd May whether right or wrong were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883 and that the decree was *ultra vires* to that extent and was therefore liable to correction in second appeal under s. 584 of the Civil Procedure Code The powers conferred by ss 54 (*a*) and (*c*) and 55 read with s 582 of the Civil Procedure Code or by s 12 of the Court Fees Act (VII of 1870) read with cl (ii) of s 10 are intended to be exercised before the disposal of the case and not after it has been decided finally so far as the Court is concerned. The powers conferred by s 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court-fees relates and even assuming that they can be so exercised such an order though it may be subject to such rules as to appeal or revision as the law may provide cannot be given effect to by making insertions in an antecedent decree *Per* OLDFIELD *J*—That the Court had power

APPELLATE COURT—*continued*

4 REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*concluded*

to make the order it did inasmuch as the collection of Court fees was no part of a Judge s functions in the trial of a suit which could be said to have ceased with its determination and the provisions of the Court Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt filing or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped MAHADEI *v* RAM KISHEN DAS **I. L. R. 7 All. 528**

5 ERRORS AFFECTING OR NOT MERITS OF CASE.

141. ——— **Delivery of judgment out of Court**—*Error in procedure—Civil Procedure Code 1859 s 350*—In a suit for possession of land the Judge after hearing the evidence and admitting the documents on both sides intimated that he should examine the place to satisfy himself with respect to the boundaries He did make such examination the defendant attending but the plaintiff being absent and he afterwards delivered his judgment in favour of the defendant out of Court *Held* that the mere circumstance that the judgment was delivered out of Court did not constitute error under s 350 Act VIII of 1859 and was no ground of appeal NILMONEY SINGH DEO *v* BHOBANY CHURN PANDA **[Marsh. 327 2 Hay 305**

142 ——— **Omission to decide limitation**—*Error or defect in decision of case*—An omission to decide a question of limitation though not raised in the grounds of appeal is an error or defect in the decision of the case on the merits SADUJI KESRAJI *v* RAJSANGJI JALMSANGJI **[2 Bom. 169 2nd Ed. 162**

143 ——— **Admission of invalid document**—*Civil Procedure Code 1859 s 350—Bom Reg XVIII of 1827 s 10—Objection to validity of document unstamped*—An objection to the validity of a document under Bombay Regulation XVIII of 1827 s 10 as distinguished from its inadmissibility in evidence or from a prohibition to Courts of Justice or public officers to act upon it is an objection on the merits under Act VIII of 1859 GIRDHAR NAGJISHET *v* GANPAT MOROBA **[11 Bom. 129**

144 ——— **Order without jurisdiction**—*Civil Procedure Code 1859 ss 350 351 355*—Every order passed by a Court is not void for want of jurisdiction simply because it is illegal—*e g* where a Court remands a case under s 351 Act VIII of 1859 instead of following the provisions of s 355 Such an order is not necessarily an error affecting the decision on the merits JOWAD ALI *v* HOSSEIN BIBEE **8 W R, 207**

APPELLATE COURT—*continued*

5 ERRORS AFFECTING OR NOT MERITS OF CASE—*continued*

145 ——— **Decree passed without jurisdiction**—*Reversal or modification of decree—Civil Procedure Code 1859 s 350*—Where the proceedings and the decree passed by a lower Court were without jurisdiction—*Held* (SPANKIE J dissenting) that s 350 of the Code of Civil Procedure did not apply as the judgment of the High Court could not be for reversing or modifying the decree of the lower Court there being no decree to reverse or modify BIJEE KOOER *v* DAMODHUR DASS **5 N W 55**

146 ——— **Trial on different issue and reversal in Appellate Court.**—A suit having been decreed in favour of plaintiff in the Court of first instance where it was tried on a certain issue the decree was reversed in the Appellate Court where it was tried on a different issue Plaintiff upon this objected in special appeal that he had been misled by the issue framed in the first Court and but for it would have adduced evidence to prove his case *Held* that if plaintiff had any evidence to offer upon the issue tried in the Appellate Court he should have moved the Judge to allow him the opportunity of offering it and that there was no error of law in the proceedings of the lower Appellate Court ESHAN CHUNDRA SEIN *v* DHONAYE **11 W R. 61**

147 ——— **Irregular verification of plaint**—*Civil Procedure Code 1882 ss 51 578*—A defect in signature of the plaint or the absence of signature where it appears that the suit was in fact filed with the knowledge and by the authority of the plaintiff named therein may be waived by the defendant or if necessary cured by amendment at any stage of the suit and, having regard to s 578 of the Civil Procedure Code is not a ground for interference in appeal BASDEO *v* SMIDT **I. L. R. 22 All. 55**

148 ——— **Admission of illegal evidence**—*Civil Procedure Code 1859 s 350*—The objection that papers were admitted as evidence which were not legally admissible is not ground sufficient under s 350 of the Code of Civil Procedure to warrant a decree being reversed or modified or a case being remanded when it is admitted that there was other evidence to support the lower Court s finding and the insufficiency of such other evidence is not alleged in the grounds of appeal. KENARAM SHAMUNT *v* GOPEENATH GEEREE **10 W R. 130**

149 ——— **Splitting cause of action**—Where the lower Courts allowed a plaintiff erroneously to bring separate suits where he ought to have brought only one—*Held* that as the separate suits against the co-proprietor were instituted simultaneously the error in splitting up the claim against him did not affect the merits and accordingly the decree was affirmed. VITHU *v* NARAYAN DABHUL RAR **[5 Bom., A. C 30**

150 ——— **Multifariousness**—*Causes of action over some of which lower Court had jurisdiction—Duty of Judge to try these*—A suit was brought against six defendants the cause of action against five of them being unconnected with the

APPELLATE COURT—*continued*

5 ERRORS AFFECTING OR NOT MERITS OF CASE—*continued*

cause of action against the sixth. The Assistant Judge in whose Court the suit was brought tried one of the causes of action over which he had jurisdiction but refused to try the other over which he had no jurisdiction In appeal the District Judge refused to enter into the merits of either on the ground of the misjoinder of the causes of action *Held* that the District Judge was bound to enter into the merits of the claim over which the Court of first instance had jurisdiction it not being affected by the error in the misjoinder of the two claims SAMSUDDIN PIRJADE v GUNPATRA JAGANNATH [7 Bom A C 19

See RUKMINI BURMONIA v FOODUN KOOMAREE BURMONIA 23 W R. 408

151. ———— Misjoinder of causes of action—*Property wrongly attached—Joint suit by holders of two shares to have their shares declared not liable to attachment—Civil Procedure Code s 578—Amendment of plaint*—A decree holder in execution of a decree against one *G L* attached a house as belonging to *G L* and his two sons forming a joint Hindu family The sons objected that the house had previously been partitioned and was held by them and their father in separate shares but their objection was disallowed They then brought a joint suit for a declaration that their respective portions of the house were not liable to attachment in execution of a decree against their father No objection was taken to the frame of that suit and the Court of first instance gave the plaintiffs a decree on the finding that partition had in fact taken place prior to the suit in which the defendant judgment creditor had obtained his decree On appeal by the judgment creditor the lower Appellate Court dismissed the suit entirely on the grounds of misjoinder of causes of action The plaintiff appealed to the High Court *Held* on these facts that the plaintiffs should have been allowed to amend their plaint by striking out the name of one of them and that though there was irregularity in the procedure such irregularity did not affect the merits of the case or the jurisdiction of the Court within the meaning of s. 578 of the Code of Civil Procedure BEHARI LAL v KODU RAM [I. L. R. 15 All. 380

152. ———— Misjoinder of parties and causes of action—*Error not affecting merits—Civil Procedure Code 1882 s 578*—*Held per* MITTER *J* (PIGOT *J* dissenting) that as regards the objection to the suit for misjoinder and under s 44 of the Code of Civil Procedure the Appeal Court was precluded by s 578 of the Code from reversing the decree of the lower Court as the error (if an error at all) could not affect the merits of the decision MOKUND LALL v CHOBAY LALL [I. L. R. 10 Calc. 1061

153 ———— Misjoinder of parties—*Irregularity affecting merits—Civil Procedure Code (1882) s 578*—In appeal it was contended by the respondents in support of the decree made by the Court below dismissing the claim of the plaintiff No 2 that the claim was liable to dismissal by reason of its involving the misjoinder of plaintiffs with different causes of action This objection had been raised in the written statement and the Court was asked to raise an issue on the point In answer to this contention it was urged by the appellants that as the respondents went to trial upon the merits it was not open to them to urge any objection like this to the frame of the suit on appeal *Held* that it was open to the respondents to raise the objection as to misjoinder in appeal *Tarinee Churan Ghose* v *Hunsman Jha 20 W R 240* distinguished *Smurthwaite* v *Hannay L R (1894) A C 494* referred to MOHIMA CHANDRA ROY CHOWDHRY v ATUL CHANDRA CHAKRAVARTI CHOWDHRY I. L. R. 24 Calc. 540

154 ———— *Misjoinder of plaintiffs—Error of procedure*—The misjoinder of plaintiffs which does not produce error in the decision of the case on its merits is not a ground for the reversal of a decree on special appeal *Semble*—That such misjoinder is not a ground for the reversal of a decree in regular appeal Where the widow of *H* a Mahomedan and his two daughters brought a joint suit for their respective shares of the estate of *H* which were awarded to them jointly —*Held* that this was an error of procedure which did not affect the merits of the case MIYA GULAM NABI v KHARANBIBI [6 Bom A. C 177

155 ———— *Misjoinder—Objection to declaratory decree—Civil Procedure Code 1859 s 350*—A lower Appellate Court has no power to reverse the decree of a Court of first instance on the ground of misjoinder of parties After a Court of competent jurisdiction has exercised its discretion under s. 15 Act VIII of 1859 and passed a declaratory decree it does not lie within the power of a Court of Appeal under s 350 of that Act to set aside the decree upon an objection which does not affect the merits and which was not taken at the time when the decree of the first Court was passed RAM KANAYE CHUCKERBUTTY v PROSSUNO COOMAR SEIN [13 W R. 176

156 ———— *Non joinder of plaintiff's undivided brother—Suit by mortgagee against sons of a deceased judgment debtor—Decree against members of joint family—Parties Non joinder of—Civil Procedure Code (1882) s 578*—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October 1877 The decree provided for payment of the secured debt in various instalments by May 1895 The mortgagor died in 1883 having discharged part of the debt. The decree holder having attached certain family property in execution the mortgagor's two younger sons who had not been born at the date of the above decree objected that their shares were not liable to attachment This objection prevailed the Court expressing the opinion that the matter in controversy should be determined in a regular suit The other defendants in the suit of 1877 had both died in the interval one of them leaving infant sons.

APPELLATE COURT—*continued*

5 ERRORS AFFECTING OR NOT MERITS OF CASE—*continued*

The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891 describing himself being allowed to amend his plaint as managing coparcener and representative of the joint family A plea of non joinder was raised *inter alia* on the ground that the plaintiff had an undivided brother —*Held* that since the plaint (as amended) shewed that the plaintiff sued as managing member of his undivided family the omission to join his brother was a merely formal error and was not fatal to the suit RAMAYYA v VENKATARATNAM I. L. R. 17 Mad. 122

157 ———— Order adding party to suit—*Civil Procedure Code 1859 s 363*—An order adding a party to a case is not one affecting the merits in the sense of s 363 but where such order is made without postponing the case (s 73) for a reasonable time it is a very important matter KOOMARA OOPENDRA KRISHNA DEB v NOBIN KRISHNA BOSE 17 W R. 370 note

UPENDRA KRISHNA DEB v NOBIN KRISHNA BOSE 3 B L R. O C 113

158 ———— Rescission of order on same day as made without notice to one of the parties—*Adjournment—Civil Procedure Code 1859 s 146*—Where an order was regularly made by a Munsif under Act VIII of 1859 s 146 granting time to the parties adjourning the hearing and fixing a day for the further hearing but was rescinded on the same day on the application of the defendant and the case tried on the following day when all the evidence which the plaintiff was entitled to produce was not before the Court—*Held* that as it was not shown that the rescinding order was regularly and properly made there was a defect in the procedure and a defect in law which might most materially have affected the decision on the merits BISHEN PERKASH SINGH v PUTTUN GEER CHELA [20 W R. 3

159 ———— Decree against agent instead of principal—*Suit brought in name of agent instead of corporate body—Civil Procedure Code 1859 s 350*—Where a decree makes a party liable who is not liable (*e g* an agent instead of the corporate body whose agent he is) the error is one affecting the merits within the meaning of s 350 Civil Procedure Code NUBEEN CHUNDER PAUL v STEPHENSON 15 W R. 534

160 ———— Technical error—*Ground for reversing judgment*—The lower Appellate Court is not justified in reversing a decision of the Court of first instance for a technical error unless that error has affected the decision of the case on the merits The best test to ascertain whether an erroneous interlocutory order has affected the ultimate decision on the merits is to see whether the Court would have come to the same decision had the erroneous order not been passed. PRAN NATH BHADOORY v SREE KANT LAHOREE 2 C L R. 257

161 ———— Filing appeal without copy of decree—*Cure of irregularity*—The appellant filed an appeal against the judgment of the Court of first instance without a copy of the decree Subsequently the decree of the Court of first instance was filed within the time allowed for appeal and accepted by the Judge *Held* that the irregularity was cured and the appeal should not have been dismissed on the ground of such irregularity TULLEE v RAM PERSHAD 2 Agra 34

162 ———— Improper exercise of discretion in granting declaratory decrees—*Civil Procedure Code 1882 s 578*—The awarding of declaratory relief as regulated by s 42 of the Specific Relief Act is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint and the prayer of the plaintiff that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit and, entering into the merits of the case arrives at right conclusions and awards a declaratory decree such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised and that such improper exercise of discretion under s 42 of the Specific Relief Act has no higher footing than that of an error defect or irregularity not affecting the merits of the case or the jurisdiction of the Court within the meaning of s 578 of the Civil Procedure Code This does not imply that even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily and in a manner grossly inconsistent with judicial principles the Court of Appeal would have no power to interfere *Ram Kanaye Chuckerbutty* v *Prosunno Coomar Sein 13 W R 175 Sadut Ali Khan* v *Khajeh Abdool Gunnee 11 B L R 203 Sheo Singh Rai* v *Dakho I L R 1 All 688* and *Damoodar Surmah* v *Mohee Kant Surmah 21 W R 54* referred to SANT KUMAR v DEO SARAN I. L. R. 8 All. 365

163 ———— Error in allowing wrong party to begin—*Suit on bond—Right to begin—Civil Procedure Code 1877 s 578*—The defendants in a suit on a bond admitted the execution of the bond but denied that they had received as the bond recited they had done at the time of execution the consideration for it The Court of first instance irregularly allowed the plaintiff to call witnesses to prove that the consideration had been paid at the time of the execution of the bond. They proved, however that it had not been paid at the time of the execution but if paid at all at some subsequent time The plaintiff gave no further evidence of payment and the Court of first instance, without calling on the defendants dismissed the suit The lower Appellate Court held that the defendants should have been required to begin under the circumstances and reversed the decree of the Court of first instance and gave the plaintiff a decree *Held* that it was doubtful having regard to the provisions of s 578 of Act X of 1877 whether it was competent for the lower Appellate Court to reverse the decision of the Court of first instance; but even if it were the lower Appellate

APPELLATE COURT—*continued*

5 ERRORS AFFECTING OR NOT MERITS OF CASE—*continued*

Court should have not ignored what had taken place but should have dealt with the case on appeal in the shape it came before it MAKUND v BAHORI LAL [I L R 3 All, 824

164 ———— **Omission to state reasons for decision**—*Civil Procedure Code 1877 s 578* —In a suit to recover possession of certain immoveable property alleged to have been purchased by the plaintiff from a Hindu widow who claimed to have held the same as heir of her husband the defendant who was the mother of the husband contended *inter alia* that the alleged purchase and sale were invalid by reason that she herself was entitled to maintenance out of the property The first Court gave the plaintiff a decree and this decree was affirmed on appeal by the District Judge who however gave no reasons of his own for his judgment but merely adopted those of the lower Court *Held* that having regard to the nature of the case and the simplicity of the point for determination the fact of the District Judge having omitted to state his reasons did not amount to such an error of law within the meaning of s. 857 of the Code of Civil Procedure as affected the merits of the case or the jurisdiction of the Court ROHIMONI DABI v ZAMIRUDDIN 8 C L R 597

165 ———— **Objection by one of several parties**—*Civil Procedure Code 1877 s 578—Irregularity not affecting the merits or jurisdiction—Misjoinder* —Where one party alone objected to the frame of the suit and the defect (of misjoinder and multifariousness) did not affect the merits of the case or the jurisdiction of the Court the lower Appellate Court ought not regard being had to s 578 of Act X of 1877 to have reversed the decree of the Court of first instance by reason of such defect KALLIAN SINGH v GUR DAYAL I L R 4 All 183

166 ———— **Error in frame and valuation of suit**—*Civil Procedure Code 1877 s 578—Co sharers Suit by some of several—Error not affecting jurisdiction or merits* —The plaintiffs in this suit alleging that they were co sharers of a certain village that certain land situate in such village was the property of the co-sharers and that such land had been improperly sold by the persons occupying it to one of the co sharers sued the vendors and the purchaser and the other co-sharers for possession of their share of such land and the setting aside of the sale so far as their share was concerned and valued the suit according to their share *Held* that the error in the frame and valuation of the suit inasmuch as it did not affect the jurisdiction of the Court in which the suit was instituted or the merits of the case was not under s 578 of the Civil Procedure Code a ground on which the Appellate Court should have reversed the decree of the Court of first instance. *Unnoda Persad Roy* v *Erskine 12 B L R 370* distinguished. PARAM v ACHAL I. L. R 4 All 289

167 ———— **Dismissal of suit for under valuation**—*Civil Procedure Code 1877 s 578 —Irregularity affecting merits* —A Munsif after hearing the evidence on both sides found that the suit had been undervalued but instead of returning the plaint under s 57 he dismissed the suit *Held* that such dismissal was a matter affecting the merits of the case and which the Appellate Court could deal with under s 578. BHUDESWAR CHOWDHRY v GAURI KANT NATH I. L. R 8 Calc, 834

168 ———— **Institution of suit in wrong Court**—*Civil Procedure Code 1882 s 578*—Per MAHMOOD J —The institution of a suit in a Court of higher grade than the Court which is competent to try it is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by s 578 of the Civil Procedure Code and the irregularity is not one which affects the merits of the case or the jurisdiction of the Court within the meaning of that section. NIDHI LAL v MAZHAR HUSAIN [I. L R 7 All 230

169 ———— *Institution of suit in Subordinate Judge's Court instead of Munsif's Court—Civil Procedure Code 1882 s 578* —The words not affecting the jurisdiction of the Court in s 578 of the same Code mean not affecting the competency of the Court to try The error in instituting a suit in a Subordinate Judge's Court instead of in that of the Munsif is not an error which affects the jurisdiction of the former Court within the meaning of s 578 MATRA MONDAL v HARI MOHUN MULLICK *alias* MOTHURA MOHAN MULLICK [I L R 17 Calc 155

170 ———— **Suit brought on behalf of minor without authority**—*Civil Procedure Code 1882 s 37—Minors Act Bombay (Act XX of 1864)* —In a suit brought by the Political Agent, Southern Mahratta country as administrator of the estate of the Chief of Madhol who was described in the plaint as being 19 years of age to eject the defendants from certain lands belonging to the Chief situated in the Satara district it was found on preliminary objections taken by the defendants that the Political Agent had no authority to institute the suit he being neither a certificated guardian of the Chief under the Bombay Minors Act XX of 1864 nor a recognized agent under s 37 of the Civil Procedure Code *Held* also that the irregularity of the Political Agent s suing for the Chief without authority was one affecting the merits of the case though not the jurisdiction of the Court. If the Political Agent was not properly representing the Chief he had no *merits* no rights as against the defendants The District Judge was therefore right in reversing the decree of the first Court —s. 578 of the Code of Civil Procedure having no application to the present case VENKATRAV BAJE GHORPADE v MADHAVARAV RAMCHANDRA [I L R. 11 Bom 53

171 ———— **Omission to appeal from order**—*Civil Procedure Code 1852 s 591* —S 591 of the Code enables the Court when dealing with an appeal from a decree to deal with

APPELLATE COURT—*continued*

5 ERRORS AFFECTING OR NOT MERITS OF CASE—*continued*

any question which may arise as to any error defect, or irregularity in any order affecting the decision of the case though an appeal from such order might have been and has not been preferred. *Googlee Sahoo v Premlall Sahoo I L R 7 Calc 148* referred to. HAR NARAIN SINGH v KHARAG SINGH [I. L. R. 9 All. 447

172. ———— Permission to relative to sue Proof of—*Act XL of 1858 s 3—Civil Procedure Code ss 440 578*—In a suit conducted on behalf of a minor by a relative the absence of the certificate of guardianship required by s. 3 of the Bengal Minors Act (XL of 1858) is not a fatal defect; and the fact of the Court allowing such a suit to proceed must be taken as implying that the necessary permission has been given Even if such permission has not in fact been given the irregularity is covered by s. 578 of the Civil Procedure Code *Bhaba Pershad Khan v The Secretary of State for India in Council I L R 14 Calc 159* followed. PARMESHAR DAS v BELA I. L. R. 9 All. 503

173 ———— Declaratory decree—*Specific Relief Act (I of 1877) s 42—Civil Procedure Code s 578*—An improper or irregular exercise of the discretionary power conferred by s 42 of the Specific Relief Act (I of 1877) does not in itself constitute sufficient ground for the reversal of a decree which is not open to objection on the ground of jurisdiction or of the merits of the case being covered by s 578 of the Civil Procedure Code *Sant Kumar v Deno Saran I L R 8 All 365* referred to MUHAMMAD MASHUK ALI KHAN v KHUDA BAKSH [I. L. R. 9 All. 622

174. ———— Allowing assignee of decree to go on with execution though he has made no formal application for execution. —Where the Court allows the assignee of a decree to proceed with the execution even if he has omitted to make a formal application for execution it is an error of procedure and not one affecting the merits of the case DWAR BUKSH SIRKAR v FATIK JALI I. L. R. 26 Calc. 250 [3 C W N 222

175 ———— Exclusion of evidence—*Ground for reversal of decision—Civil Procedure Code 1882 s 578*—The exclusion of evidence in the lower Court is not sufficient ground for reversing that Court s decree unless the Appeal Court comes to the conclusion that the evidence refused if it had been received ought to have varied the decision DESOUZA v PESTANJI DHANJIBHAY I. L. R. 8 Bom. 408

176 ———— Error in rejecting documents already admitted—*Order of remand—Civil Procedure Code 1882 s 578*—Where in a suit to recover the amount due on three khatas the first Court found they were bonds and admitted them *on payment of stamp* duty and penalty under s 34 of the Stamp Act but at a subsequent stage of the suit his successor in office was of opinion that they were promissory notes and that therefore they not being stamped could not have been legally admitted in evidence and accordingly dismissed the suit and the District Judge held that after they had once been admitted in evidence on payment of the penalty the question of their admissibility could not be raised and remanded the suit for trial on the merits —*Held* that under s 578 of the Code of Civil Procedure *(Act XIV of 1882) the High Court could not interfere* with the order of remand as it was not one which affected the merits of the case or the jurisdiction of the Court DEVACHAND v HIRACHAND KAMARAJ [I. L. R., 13 Bom 449

177 ———— Execution of document by a pardanashin lady—*Refusal of her application as defendant for the issue of a commission to take her evidence—Civil Procedure Code (Act XIV of 1882) ss 383 390—Irregularity not affecting merits of case—Civil Procedure Code (Act XIV of 1882) s 578*—The Court of first instance rejected an application made under chap XXV of the Civil Procedure Code for the issue of a commission to take the evidence of a Mahomedan pardanashin lady the defendant in the suit which was brought against her on a mortgage bond the execution of which she had denied in her written statement The Courts below concurred in finding that there was sufficient evidence of the execution of the document by the pardanashin lady with full knowledge of its contents From their judgments it appeared that if the defendant had been examined on commission and had given her testimony in support of her written statement it would not have been believed and in their Lordships opinion it could not reasonably have prevailed *Held* that the error alleged by the appellant to have occurred in the refusal of the Court to issue the commission (whether *or not it would have been better to have issued* it) was at all events no valid ground of appeal The evidence taken on the commission could not have affected the merits of the case within s 578 of the Civil Procedure Code AKIKUNNISSA BIBI v RUP LAL DAS I. L. R. 25 Calc. 807 [2 C W N., 566

178 ———— Refusal of Court to summon witnesses—*Civil Procedure Code (1882) ss 159 and 578*—Where an application to a Civil Court for witnesses to be summoned has been refused on the ground that the applicant had negligently or with intention to delay the hearing postponed the making of his application for a summons until a time when it would be impossible to obtain the attendance of the witnesses at the hearing and the refusal is made one of the grounds of appeal against the decree in the suit —*Held* that s. 578 of the Code of Civil Procedure would apply if the irregularity in refusing the application did not affect the merits of the case If it did affect the merits of the case the ground of appeal would be a good one BHAGWAT DAS v DEBI DIN [I. L. R. 16 All., 218

179 ———— Execution of decree against representative of debtor—*Civil Procedure*

APPELLATE COURT—*continued*

5 ERRORS AFFECTING OR NOT MERITS OF CASE—*concluded*

Code (1882) ss 234 248 and 578—Application by decree holder for execution of decree by substitution on death of the judgment debtor to the Court where the decree has been transferred—A decree was transferred to another Court for execution. Pending the proceedings one of the judgment debtors died On an application to that Court by the judgment creditor to execute the decree against the legal representative of the deceased judgment-debtor a notice was issued under s 248 of the Code of Civil Procedure The legal representative objected that the Court had no jurisdiction to entertain the application and that the application should have been made under s 234 of the Code to the Court that passed the decree *Held* that even assuming that an application under s 234 to the Court which passed the decree was a necessary preliminary to proceedings under s 248 by the Court executing the decree the omission to make it was only an irregularity which did not affect the merits of the case and under s 578 the order of the Court of first instance should not have been reversed on account of such irregularity SHAM LAL PAL v MODHU SUDAN SIRCAR

[I. L. R. 22 Calc. 558

180 ——— Illegal order of remand—*Civil Procedure Code (1882) s 578—Irregularity affecting the merits*—Where a District Court reversed the District Munsif s decree and remanded the case for a revised finding on the merits —*Held* that this procedure was *ultra vires* and illegal and that as the irregularity might have affected the merits of the case s 578 Civil Procedure Code was inapplicable MALLIKARJUNA v PATHANENI

[I. L. R. 19 Mad. 479

181. ——— Jurisdiction of a Court where a decree has been transferred for execution to substitute the name of the transferee of the decree—*Civil Procedure Code (1882) ss 232 and 578—Whether an order passed without jurisdiction can be cured by the provisions of s 578 of the Civil Procedure Code*—An application by the transferee of a decree for execution after substitution of his name can be entertained only by the Court which passed the decree and the Court to which the decree has been transferred has no jurisdiction to entertain it *Sheo Narain Singh v Hurbuns Lall 14 W R 65 Nakoda Ismail v Kassam 9 Bom H C 46* and *Kadir Bakhsh v Ilahi Bakhsh I L R 2 All 293* referred to In a case where a decree has been transferred to another Court for execution and that Court orders the execution to proceed after substitution of the name of the transferee of the decree the said order is one passed without jurisdiction and can be set aside on appeal notwithstanding the provisions of s 578 of the Civil Procedure Code *Sham Lal Pal v Modhu Sudan Sircar I L R 22 Calc 558* distinguished AMAR CHUNDRA BANERJEE v CHRU PROSUNNO MUKERJEE

I. L. R. 27 Calc. 488

APPELLATE COURT—*continued*

6 INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT

182 ——— Power of on appeal ex parte—*Act XXIII of 1861 s 37—Power to remand*—An Appellate Court hearing an appeal *ex parte* in the absence of the respondent cannot *suo motu* raise points in favour of the respondent but must confine its decision to the question raised by the appellant DURGA PRASAD v KHAIRATI

[I L R. 1 All. 545

183 ——— Making different case for appellant from that which he makes for himself in first Court—*Practice*—A Judge is not permitted to make on appeal a different case for the appellant from that which he alleged for himself in the Court of first instance KACHUBHAI v KRISHNABAI

I L R. 2 Bom 635

184 ——— Travelling beyond record —An Appellate Court should not ordinarily travel beyond the record or take up points which are not the subject of appeal before it KASHINATH ROY CHOWDHRY v ROY DWARKANATH CHUCKERBUTTY

[7 W R. 61

185 ——— Decision of case on issue not raised in Court below —A lower Appellate Court is not justified in determining an appeal on an issue which was not raised between the parties in the Court of first instance USTOORUN v MOHUN LALL

[21 W R. 333

PRANKISHORE DEB v MAHOMED AMEER

[21 W R. 336

RUKMINI BURMONIA v FOODUN KOOMAREE BURMONIA

23 W R. 408

186 ——— Decision on issue not taken in Court below—*Want of evidence for decision*—No issue was taken in the Court of first instance on the question whether an agreement was void for champerty An issue was raised on this question by the Appellate Court and (no evidence being taken) was decided in favour of the defendant *Held* on special appeal that unless it was manifestly apparent on the face of the proceedings that the agreement was against morality or public policy the Appellate Court ought not to have held it void. RAMRAV KHANDERAV v GOVIND PANDSHET

[6 Bom, A.C 63

187 ——— Raising issue without cross appeal—*Appeal from decree partly in favour of appellant*—When a decree gives title to land to defendant and right of way to plaintiff and plaintiff alone appeals the Appellate Court must not raise an issue as to right of way without cross appeal from defendant SOOKHANUNDAMOYEE DEBIA v BANEY MADHUB MOOKERJEE

1 W R. 73

188 ——— Giving relief not asked for—*Civil Procedure Code 1859 s 331*—An Appellate Court exceeds its authority in giving a plaintiff relief he does not ask although under Act VIII of 1859 s. 331 the Court may decide an appeal before it on other grounds than those stated in the memorandum of appeal That section does not entitle the Court to go beyond the subject matter

APPELLATE COURT—*continued*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT —*continued*

of appeal SHARODA SOONDUREE DABEE *v* GOBIND MONEE *alias* BROJO SOONDUREE DABEE [24 W R. 179

189 ———— Alteration of decree on appeal—*Defendant not objecting to decree on appeal* —Where the defendant does not appeal against or object to the amount awarded by the first Court to the plaintiff it is not open to the Appellate Court to reduce it NAYANCHANDRA *v* NARIAN [I. L. R. 4 Bom. 293

190 ———— Improper procedure—*Suit by raiyat for rent* —In a suit by a raiyat against a zamindar for rent the Court of first instance gave the plaintiff a decree for a part of his claim The plaintiff appealed against the disallowance of the residue. The Judge on appeal reversed the decree and dismissed the suit although no objection was made by the defendant to the judgment of the Court below merely saying that a claim for rent by a raiyat against a zamindar was absurd On appeal to the High Court the decree of the Judge was reversed and the original decree established. HEM CHUNDER *v* AHMED REZA Marsh. 332 2 Hay 429

191. ———— Rejection of appeal —*Quære* —Whether after registering and admitting an appeal and causing notice to be served an Appellate Court can reject the appeal as not being filed within the prescribed time SECRETARY OF STATE FOR INDIA IN COUNCIL *v* MUTU SWAMY [4 B L. R. Ap 84 13 W R., 245

192. ———— Raising questions on second appeal.—The question of due diligence on the part of a judgment creditor can be gone into on a second appeal KADUMBINI DABYA *v* KOYLASH CHUNDER PAL CHOWDHRY [I. L. R. 6 Calc 554 8 C L R. 19

193 ———— Ex parte decree passed when summons had not been served in sufficient time —Where an *ex parte* decree was passed against the defendant and it appeared that the writ of summons had not been served upon him in sufficient time to enable him to appear and answer the Appellate Court reversing the order of the Court of first instance directed the *ex parte* decree to be set aside and ordered a new trial CHANBASAPPA BIN SANGAPPA *v* MAINBA BIN MAHADSHET [7 Bom. A C 138

194. ———— Grounds of appeal—*Content on abandoned in lower Court* —An appellant in regular appeal may not at the hearing raise a contention of law expressly abandoned by him in the Court below and not contained in the memorandum of appeal PABITRA DASI *v* DAMUDAR JANA [7 B L. R. 697 24 W R. 397 note

195 ———— Finding of Court not appealed against —A finding of the first Court not appealed against cannot be interfered with by the Appellate Court KALEE DAS ROY *v* KHIRODA SOONDUREE DEBIA 16 W R. 300

APPELLATE COURT—*continued*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT —*continued*

196 ———— Presumption of correctness of judgment of lower Court—*Grounds for interference with* —An Appellate Court ought not to interfere with the judgment of the lower Court until perfectly satisfied that the conclusion arrived at by the Court below is erroneous It is a presumption of law that the judgment appealed against is right until the contrary is shown and when there is a doubt about it the benefit of that doubt should be given by the Appellate Court to the respondent TAYUBUN NISSA BIBI *v* KUWAR SHAM KISHORE ROY [7 B L. R. 621 15 W R. 228

197 ———— Judgment of lower Court —*Grounds for reversal of—Defect in investigation —Insufficient finding* —An Appellate Court should find some sufficient and significant facts before it reverses a judgment of the lower Court and should show a proper basis for its conclusions ANISUL FUTWA *v* CHANDO 8 B L. R. Ap 3

198 ———— *Grounds for reversal* —An Appellate Court is bound to state its reasons for reversing the decision of a lower Court MAHADEO OJHA *v* PARMESWAR PANDAY [2 B L R. Ap 20

LALLA SOOKLALL SING *v* BUSSOODHUN NOOR ALLY *v* LALLA SOOKLALL SING [W R. 1864 347

199 ———— Appeal on full Court fee from decree dismissing suit in part—Remand of whole case though no cross appeal or objections preferred—*Civil Procedure Code ss 562 578—Practice—Dismissal of whole suit on remand—High Court competent in second appeal to consider validity of remand order not specifically appealed—Civil Procedure Code ss 544 561* —A plaintiff whose suit had been decreed in part appealed from so much of the first Court's decree as was adverse to him and stamped his memorandum of appeal with a stamp which would have covered an appeal from the whole decree The defendant did not appeal or file cross objections The lower Appellate Court remanded the whole case to the first Court under s 562 of the Civil Procedure Code the plaintiff not appealing under s. 588 (28) from the order of remand. The first Court then dismissed the whole suit and on appeal by the plaintiff the lower Appellate Court confirmed the decree On a second appeal to the High Court *held* (i) that the High Court was competent to consider the validity or propriety of the order of remand though it had not been specially appealed against (ii) that the order of remand was *ultra vires* so far as it related to that part of the first Court's decree which was favourable to the plaintiff the lower Appellate Court not having jurisdiction in the absence of any appeal or objections by the defendant to disturb that part of the decree (iii) that the order of remand was not made valid by the subsequent appearance of the plaintiff before the first Court or by the appeal from the first Court's decree on the remand and (iv) that the case was not

APPELLATE COURT—*continued*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT —*continued*

covered by s 578 of the Code *Per* MAHMOOD *J* — S 544 had no application to the case that section relating only to cases where one or more of the parties arrayed on the same side appealed against a decree passed on ground common to all and not cases where either of two opposite parties appealed from a part of the decree upon a Court fee sufficient for an appeal from the whole *Moheshur Sing* v *Bengal Government 7 Moore's I A 283 Forbes* v *Ameeroo nissa Begum 10 Moore s I A 340* and *Mukhun Lal* v *Sree Kishen Sing 12 Moore s I A 157* referred to CHEDA LAL *v* BADULLAH

[I. L. R. 11 All., 35

200 ———— **Application to set aside sale in execution of decree—Court reversing lower Court on evidence taken before necessary party was added**—*Superintendence of High Court—Civil Procedure Code s 622* —A person alleging himself to be the undivided brother and as such the legal representative of a deceased judgment debtor applied to have set aside a sale of certain property alleged by him to be joint family property which had taken place in execution of the decree He did not make the purchaser a party to such application The Court of first instance dismissed the application On appeal the Appellate Court made the purchaser a party to the proceedings and holding that there was irregularity in conducting the sale reversed the order of the Court of first instance *Held* that the Appellate Court was wrong in so holding upon evidence recorded by the Court of first instance when the purchaser was not a party to the proceedings and the order of the Appellate Court was set aside under s 622 of the Code SUBBARAYADU *v* PEDDA SUBBARAZU I. L. R., 16 Mad. 476

201. ———— **Want of cause of action**—*Grounds for rejecting plaint—Civil Procedure Code (Act X of 1877) s 53* —In a suit for confirmation of possession and declaration of title in respect of land where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiff s title but from the proceedings in the original cause it was established that before the suit was brought there was a dispute existing between the parties as regards the title and that a decree in favour of the plaintiffs had been passed by the original Court on the merits of the case —*Held* that though the plaint might have been rejected in the first instance under s 53 of the Civil Procedure Code on the ground that it did not disclose any cause of action it was too late for an Appellate Court to reverse the decree solely on that ground without being satisfied that no such cause of action was established on the evidence SHAH AHMED SUJAD *v* TAREE RAI I. L. R. 7 Calc. 343

202. ———— **Power of the Court of Appeal to vary decrees appealed from in consequence of circumstances occurring subsequently to the date of such decrees**—*Partition suit—Death of a co parcener pendente lite* —When the decree of a subordinate Court is under appeal to the High Court it is open to the High Court to vary it either in points in which it is erroneous or in respect of matters occurring subsequently to the date of such decree which are admitted The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his co parceners) The decree was affirmed on appeal The defendants filed a second appeal in the High Court but before it was decided one of the defendants died. The plaintiff at the hearing of the second appeal claimed a larger share in the family property than he had been awarded by the decree of the Courts below *Held* that he (plaintiff) was entitled to a share in that of the co parcener who died *pendente lite* and that the decree appealed from ought to be varied accordingly SAKHARAM MAHADEV DANGE *v* HARI KRISHNA DANGE

[I. L. R., 6 Bom 113

203 ———— **Power to vary decree as made in the lower Court**—*Decree confined to rights in issue between parties—S 565 of the Code of Civil Procedure 1877* —After the trial of issues raising the question whether the plaintiff was or the defendants were entitled to zamindari rights in certain mehals a decree was made affirming the title of the plaintiff the evidence in support of the defendant s case being discredited, and the latter were declared by the decree to be the plaintiff s under tenure holders of the said mehals. This was modified on appeal by the declaration that the defendants are patnidars of the same mouzahs *Held* that it was unnecessary on this appeal to consider whether the Appellate Court was right in its conclusion that the defendants were patnidars because upon the case which had been set up for the defendants and upon the issues framed and tried in the lower Court the Appellate Court could not properly make such a declaration the defendants could not be in a better position than they would have been in had they claimed to be patnidars in which case an issue as to that title would have been framed and tried. S 565 of Act X of 1877 does not enable an Appellate Court to declare a right in favour of one of the parties where no issue has been fixed on the point and the right has not been set up in the lower Court OFFICIAL TRUSTEE OF BENGAL *v* KRISHNA CHANDRA MOZUMDAR

[I. L. R. 12 Calc., 239 L. R. 12 I. A 166

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL

(*a*) GENERAL CASES

204. ———— **Objection allowed to be raised and overruled.**—As a general rule objections not taken in the lower Court ought not to be allowed to be set up in the Appellate Court but where the Judge in appeal had allowed such an

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

objection to be taken and had overruled it the High Court allowed it to be raised in special appeal and being of opinion that it was a valid objection reversed the decision of the Court below DINDAYAL PARAMANIK v SURENDRANATH ROY

[3 B L R A C 78 note 10 W R 77

205 ——— **Plea sought to be raised that was not taken in the memorandum of appeal**—*Civil Procedure Code s 51?* —S 51_ of the Code of Civil Procedure was intended to confer upon the Court a power exerciseable by it alone It was not intended to enable an appellant to take the respondent by surprise by urging matter of which he had no notice BANSIDHAR v SITA RAM

[I L R, 13 All 381

206 ——— **Objection to procedure**—The errors of procedure of the Court of first instance are not to be remedied when they have not been made a ground of complaint before the lower Appellate Court ANERUP CHANDRA MUKHOPADHYA v HIRAMANI DASI 3 B L R Ap 38

ONOOROOP CHUNDER MOOKERJEE v HEERA MONEE DOSSEE 11 W R 418

207 ——— **Objection based on Full Bench ruling**—An objection that the judgment of the Court of first instance is erroneous under a ruling of the Full Bench of the High Court not taken before the lower Appellate Court will not be allowed to be taken in special appeal NARATTAM DASS CHOWDHRY v POSOPYARI CHOWDHRAIN

[3 B L R A C 271

208 ——— *Held* that a fresh ground could not be taken in appeal which had not been taken below though based upon a Full Bench ruling KASIMUDDI KHANDKAR v NADIR ALI 2 B L R A C, 265 11 W R 164

But *see* HYES v MONEEROODDEEN AHUNG

[24 W R 6

BONOMALEE BAGADAR v KYLASH CHUNDER MOZOOMDAR 24 W R 72

209 ——— **Objection based on point of law**—*Second appeal*—An objection based upon a point of law may be made in second appeal provided it does not involve the taking of any additional evidence on matters of disputed facts GAVDAPPA v GIRIMALLAPPA I L R 19 Bom 331

210 ——— **New point**—*Discretion of Court*—On second appeal the appellant should not be allowed to raise an entirely new point if it is one for the right determination of which it is necessary to go into evidence which has not been produced in the lower Courts or unless it is a pure point of law going into the question of the jurisdiction of the lower Courts and capable of being determined without the consideration of any evidence other than that on the record and even if it fall within the above exception it is purely discretionary with the Court whether to consider it or not FAKIR CHAND AUDHIKARI v ANUNDA CHUNDER BHUTTACHARJI

[I L R 14 Cal 586

211 ——— **Objection which if taken might have been cured.**—An objection which if taken might have been cured and which has not been taken in the Court below cannot be taken in the Court of appeal DHURM DASS PANDEY v SHAMA SOONDERY DEBIA

[6 W R P C 43 3 Moore s I A 229

212 ——— **Objection taken too late**—A point not taken in either of the lower Courts was disallowed as being too late when taken for the first time at the hearing of the special appeal MAHADAJI v VYANKAJI GOVIND I L R 1 Bom 197

RAMABAI SAHEB PATVARDHAN v APPA

[12 Bom 13

CHUNDEE CHURN ROY v RAM COOMAR DUTT

[7 W R 413

BUNSEE LALL v AOLADH AHSAN

[22 W R 552

213 ——— **Allowing objections**—The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts BHUBAN CHANDRA SHOME v PAMDYAL SHAMANTA

[5 B L R Ap 62 14 W R 55

RAMTARAK KARATI v DINANATH MANDAL

[7 B L R 184
24 W R 414 note

214 ——— **Objection apparent on pleadings**—The High Court can raise and adjudicate upon certain points in special appeal when they are apparent on the face of the pleadings even though the parties to the suit are silent ENAET HOSSEIN v KUREEMOONISSA 3 W R 40

215 ——— **Objection involving point of mixed law and fact**—*Second appeal*—An objection involving a point of law as well as of fact if not taken in the Court below cannot be entertained in second appeal VASANJI HARIBHAI v LALLU AKHU I L R 9 Bom 285

216 ——— **Question of mixed law and fact raised for first time in Appellate Court**—*Objection taken for first time on appeal*—*Semble*—When a question raised before the Appellate Court is a mixed one of law and fact and one which was not raised before the Court of first instance it is doubtful whether the Appellate Court should allow it to be raised. UMRAO BIBI v MAHOMED ROJABI I L R, 27 Calc. 205

[4 C W N, 78

217 ——— **Objection not taken on cross appeal**—*Remand*—An objection not taken in cross appeal before the lower Appellate Court cannot be taken in special appeal but if the case be remanded for new trial such objection may then be taken before the Court of first instance DURGARAM ROY v NARSING DEB

[2 B L R A C 254

DOORGARAM ROY v NUROSINGH DEB

[11 W R 134

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

218 ——— **Omission to prefer appeal against remand order**—*Objection to its legality on special appeal*—The omission of a party to prefer an appeal against an order of remand does not preclude him from questioning its legality when it comes up in special appeal from the subsequent decision passed after remand MAGARAM OJHA v NILMONEE SINGH DEO 13 B L R. 198 [21 W R. 326

219 ——— **Objection taken but not pressed.**—Where an objection taken in the grounds of appeal is not pressed at the hearing of the case it cannot be raised again in special appeal NOBO KRISTO SIRCAR v KALACHAND DOSS [12 W R. 470

SOORJO KANT BANERJEE v KRISTO KISHORE PODDAR 14 W R. 423

220 ——— **Want of opportunity to raise objection.**—A defendant is entitled to take in the Appellate Court an objection which he had no opportunity of taking until the case was heard in appeal LOWA JHA v BISSESHUR SINGH [11 W R. 6

221. ——— **Objection by pro formâ defendant**—A *pro formâ* defendant cannot be allowed to raise in appeal objections which he neglected to raise in the suit DEOKEENUNDUN ROY v KALEE PERSHAD W R. 1864 Mis 34

As to taking objections for the first time *see* also MANIRUDDEEN AHMED v PAM CHAND [2 B L R. A C 341

NAIMUDDA JOWARDAR v SCOTT MONCRIEFF [3 B L R. A C 283

NYEMODDEE JOWARDAR v MONCRIEFF [12 W R. 140

NANOO ROY v JHOOMUCK LALL DASS [12 B L R. 292 note 18 W R. 376

GOUR KISHORE DUTT v AKBUR [22 W R. 489

SHEO GOBIND RAWUT v ABHAY NARAIN SINGH 5 B L R. Ap 17

(*b*) SPECIAL CASES

222 ——— **Adoption**—*Objection to invalid adoption*—An objection (that an adoption was invalid because the party adopted was the eldest son of his natural father) was rejected in special appeal because not urged in the lower Courts at any stage of the trial and not specifically taken in the petition of special appeal JOY TARA DOSSEE CHOWDHRAIN v ROY CHUNDER GHOSE 1 W R. 136

223 ——— *Omission of performance of ceremonies*—*Held* that as no objection to the omission of any of the usual ceremonies of adoption or to the age of the adopted son was taken before the lower Court its decision was not open to those objections when taken on appeal DURYAO SINGH v KARUN SINGH 1 Agra 81

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

224. ——— **Objection to share taken on adoption**—*Objection on appeal to extent of share awarded to adopted son*—In a suit by an adopted son to recover his share in his adoptive father's estate a son having been born to the adoptive father subsequently to the plaintiff's adoption the Court of first instance awarded the plaintiff a fourth share of the property in dispute The defendant appealed to the District Court but in appeal raised no question as to the extent of the share awarded to the plaintiff On second appeal to the High Court *it was contended that in any event the plaintiff was* only entitled to a fifth share *Held* that under the circumstances and having regard to the nature of the question the point might be taken in second appeal on behalf of the defendant and the High Court varied the decree by awarding the plaintiff a fifth share instead of a fourth share but ordered the appellant (defendant) to bear his own costs of the appeal. GIRIAPA v NINGAPA I. L. R. 17 Bom. 100

225 ——— **Alienation**—*Alienation by member of Mitakshara family*—*Invalidity of alienation*—*Proof of consideration*—A father having executed a deed conveying certain ancestral property to two persons (*D* and *B*) who alienated it to several others his son sued to have the conveyances by *D* and *B* set aside on the ground that the deed given by the father was benami and that *D* and *B* never had possession The suit was dismissed by both the lower Courts *Held* that as plaintiff went to trial in the Courts below upon one issue only as whether *D* and *B* were ever really in occupation he was not entitled in special appeal to complain that evidence had not been taken as to the passing of consideration money *Held* that as no issue was raised in the lower Courts which could have been the foundation for a declaration of right the non decision of a claim to such a declaration could not be made a ground of special appeal *Held* that where the question whether the alienation of certain property by the father without the son's consent was valid under the Mitakshara law was not raised in the lower Courts such invalidity could not be admitted as a ground of objection in special appeal for it necessarily involved an issue of fact PURJAG DUTT v BROJO KOONWAR [9 W R. 503

BENODE PATNAIK v DOYANIDHEE BULLIOR SINGH 9 W R. 493

226 ——— **Appeal**—*Objection that no appeal lies*—The High Court refused to entertain an objection (not taken till the close of the appellant's argument) that the amount in appeal being less than R5 000 no appeal would lie CHUNDER NATH MISSER v SIRDAR KHAN 18 W R. 218

227 ——— **Attachment**—*Invalidity of attachment*—An objection that an attachment under s 210 of Act VIII of 1859 was invalid because the formalities required by s 239 had not been complied with was not allowed to be taken on appeal

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

it not having been raised in the Courts below RAM KRISHNA DAS SUROWJI *v* SURFUNNI SA BEGUM [I. L. R. 6 Calc. 129

228 ——— Award—*Objection that arbitrators had no power to administer other than usual oath* —Where on a reference to arbitration the arbitrators had made an award founded on the evidence of the defendant after he had by agreement been sworn on the Koran, and an objection was taken that the arbitrators had no power to administer such oath and that the award was invalid —*Per* PEARSON J (SPANKIE J doubting) that as the objection was one which vitally affected the procedure of the arbitrators, it could not be ignored although it was not preferred in the lower Courts and was not to be found in the memorandum of special appeal WALIULLA *v* GHULAM ALI I. L. R. 1 All. 535

229 ——— *Objection to validity of award* —Where objection to the validity of the award on the ground that it was made beyond the time allowed was not taken by the defendant in the first Court —*Held* that he was not thereby estopped from raising the objection for the first time in appeal inasmuch as it was not shown that in the first Court he was aware of the defect or had done anything to imply consent to extension of the time CHUHA MAL HARI RAM [I. L. R. 8 All. 548

230 ——— Coverture—*Plea of coverture—Execution of decree* —The plea of coverture not allowed to be raised against a decree holder because not taken when she first sought to execute the decree KIRKBY *v* DILLON [1 N W Ed. 1873 243

231 ——— Custom—*Objection as to custom against inheritance* —In a suit by a Hindu widow for possession and declaration of title —*Held* that defendant could not be allowed to come in and urge for the first time on appeal that by a family custom or koolachar females were excluded from inheriting DOORGA PERSHAD SINGH *v* DOORGA KOONWAREE [13 W R 10 9 B L. R. 306 note

232 ——— Damages Measure of—*Mode of calculation of damages* —*Held* that as the defendant had made no objection to the manner in which the plaintiff had calculated damages in the Courts below the question could not be gone into on special appeal McDONALD *v* RAJARAM POY [3 B L. R Ap 28 11 W R, 371

233 ——— Decree Form of —An objection as to the form of a decree not allowed to be taken in the first time on special appeal MOHESSUR BUKSH SINGH *v* MUTHOORAPERSHAD [8 W R., 515

234 ——— Defence not raised in the lower Court—Declaratory decree Suit for —*Objection to declaratory decree* —*B J* a Hindu widow made a will disposing of property of which under an award she had only the use during her life and to which the plaintiff her son was entitled after her death While she was still living the plaintiff filed this suit praying that the will might be declared invalid The defendants were the testatrix and those who took under the will While the suit was pending the testatrix died The Subordinate Judge passed a decree in plaintiff s favour and declared the will invalid. The defendants appealed and contended for the first time in appeal that the allegations in the plaint *viz* that the will was in their favour and that they (the defendants) were interested in denying the plaintiff s title as reversioner did not constitute a case in which in the exercise of a sound judicial discretion a declaratory decree ought to be made *Held* that as the objection was taken for the first time in appeal it would be unjust to allow the defendants to benefit after they had failed to resist *G* s claim on the merits MAGANLAL PURUSHOTTAM *v* GOVINDLAL NAGINDAS I. L. R. 15 Bom 697

See BOMBAY BURMAH TRADING CORPORATION *v* SMITH I L R. 17 Bom 197

235 ——— Enhancement—*Waiver of objection* —In a suit for enhancement of rent where defendant pleaded Bengal Act VIII of 1869 s 4 plaintiff referred in both the lower Courts to a chittee to prove variation of rent but it was found that the terms of the chittee barred enhancement *Held* that it was not open to plaintiff in special appeal to object that the chittee had not been proved. LALLA BANEE PERSHAD *v* LALLA DABEE PERSHAD [24 W R. 435

236 ——— *Service of notice* —In a suit for enhancement of rent it was objected on behalf of the defendant in special appeal that service of notice had not been proved. *Held* the question was one of fact and the objection ought therefore to have been taken in the Court of first instance DUMAINE *v* UTTAM SINGH [5 B L. R. Ap 44 13 W R. 462

237 ——— *Objection to want of notice of enhancement* —An objection that no notice of enhancement had been served though not taken in the Court below was allowed to be taken on appeal THEKMEE BELDAR *v* RAM KISHEN LALL 15 W R. 71

But not a technical objection to the form of notice SHEEE GOPAUL MULLICK *v* DWARKANATH SEIN [15 W R. 520

SHAMA SOONDUREE DEBIA *v* DEGUMBUREE DEBIA [21 W R. 368

though *see* WOOMA CHURN DUTT *v* GRISH CHUNDER BOSE 17 W R. 32

RAM PUTTUN GHOSE *v* PROSUNNO NATH BHUTTACHARJEE 20 W R. 203

238 ——— *Informality of notice of enhancement* —Where a notice of enhancement though informal was sufficient to inform the raiyat of the landlord s intention to increase the rent

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

to the rates paid for similar lands in places adjacent and the notice was accepted by the raiyat and treated by him in the lower Court as a notice under cl 1 s 17 Act X of 1859 it was held that the informality could not be objected to for the first time in the High Court in special appeal KASHEENATH DEB v SHIBESSUREE DEBIA 8 W R. 503

239 ———— *Suit to contest enhancement—Irrigation expenses* —*Held* that in a suit for enhancement the plea of increased expense on account of irrigation cannot be admitted for the first time in special appeal KUNCHUN SINGH v SHEORAJ [1 Agra Rev 7

240 ———— *Objection not taken before as being unnecessary* —A suit for enhancement of rent was defended on two grounds the first of which was overruled but the second succeeded and the suit was dismissed Plaintiff appealed and the second ground having been overruled in appeal the respondent (defendant) again put forward the objection which had been overruled by the first Court *Held* that under the circumstances it was not too late for him to take that objection TAREE MAHTOON v RAM SAHOY SINGH [25 W R. 110

241. ———— Evidence—*Time for objection to evidence* —It is the duty of the party who wishes to object to evidence to object in the first instance and not to delay doing so until the case is before the High Court in special appeal SEETUL PERSHAD MITTER v JUNMEJOY MULLICK [12 W R. 244

242. ———— *Objections to evidence as not being the best* —Objections to evidence as not being the best evidence should not be allowed to be taken on special appeal AJUDH BEHAREE SINGH v RAM RAJ TEWAREE 18 W R. 105

LOCHUN SINGH v HET NARAIN SINGH [24 W R. 232

243. ———— *Objection to mode of recording evidence* —The objection that the depositions of the witnesses were not taken in the manner prescribed by the Code of Civil Procedure but only notes of the evidence is not one which can be taken in special appeal LALL MAHOMED v PEER NUZIR 18 W R. 112

244. ———— *Documents though inadmissible admitted in first Court by consent—Documents not objected to in first Court—Appeal* —Judgments not *inter partes* though not conclusive as *res judicata* are admissible in evidence under s. 13 of the Evidence Act (I of 1872) to show the conduct of the parties or particular instances of the exercise of a right or admissions made by the parties or their predecessors in title or to identify property or to show how it has been previously dealt with Where parties to a suit in order to save delay or expense or for any other reason have agreed or not objected to the admission of certain evidence given in some former proceedings although it is not strictly admissible and the first Court has allowed this to be done it is not open to the Appellate Court to take objection to such a procedure and exclude the evidence LAKSHMAN GOVIND v AMRIT GOPAL [I. L. R. 24 Bom, 591

245 ———— *Objection as to admissibility of evidence* —It being objected in special appeal that the decision of the lower Appellate Court was based on documents which were neither admissible as legal evidence nor had any bearing on the point to be decided —*Held* that though the objection to the admissibility of the evidence ought to have been taken in the Court in which the evidence was tendered yet coming in such a shape as it did it could not be got over *Held* also (MITTER J *dissentiente*) that as defendant has succeeded in special appeal on an objection which he should have taken before he ought to pay his own costs in this appeal even should he succeed ultimately (the case being remanded) and that it is not the exclusive duty of a Court but that of pleaders also to see whether evidence tendered is legally admissible MUNRAKHUN ROY v JUGGUT DOSS 10 W R. 124

246 ———— *Objection as to admissibility of evidence* —The reception of papers and documents by the lower Appellate Court unless objected to at the time cannot be made a ground of special appeal RASH BEHARI SINGH v NABAYI PODDAR 3 B. L. R. A C 99 [11 W R. 465

247 ———— *Objection as to admissibility of evidence* —Where no objection had been taken as to the admissibility of documentary evidence —*viz* a decree and other proceedings in regard to that decree which had been made use of by the opposite party —an Appellate Court has no jurisdiction to exclude it Where defendant allows without objection a purchaser of a plaintiff's interest in the suit to substitute his name on the record under an order of Court he cannot afterwards contend that the suit is thereby abated. BIR CHANDRA ROY MAHAPATTER v BANSI DHAR ROY MAHAPATTER [3 B L. R. A. C 214

248 ———— *Evidence received without objection* —Where a deposition made in another suit to which special appellant was not a party was admitted and used by the first Court without any objection on the part of the special appellant it was held that he could not be allowed to object to it in special appeal Where the lower Appellate Court's judgment is good and its adjudication of a plaintiff's right has been based on a sound principle the High Court will not allow a new point to be taken in special appeal which was not taken in either of the Courts below WAZEER JEMADAR v NOOR ALI 12 W R. 33

249 ———— *Objection to validity of document* —Before an objection to the validity of a document filed as evidence in a case can be admitted as a ground of special appeal it must be shown

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

to have been mad at every stage in the Courts below JOYKI HEN MOOKERJEE v I AJKISHEN MOOKERJEE [12 W R. 315

250 ———— Where a party in the first Court raises the question that a document is not genuine it is open to him to take in the Appellate Court any ground in support thereof although the same may not have been taken in the first Court HAIMABATI DASI v GOVINDA CHANDRA GHOSH [3 C W N 695

251. ———— *Objection to evidence wrongly received* — An objection to the effect that the Court of first instance had given judgment on the strength of a document which ought to have been registered was not admitted in special appeal as it had not been raised either in the first Court or in the lower Appellate Court JOYGOPAL MOZOOMDAR v THAKOMONEE DABEE 11 W R 381

252. ———— *Evidence wrongly received without objection* —Objection as to reception of evidence not before objected to dis allowed on special appeal GODAYI JOARDAR v MEARS 10 W R. 50

RUGHOONATH PERSHAD v HUREE MOHUNT [10 W R. 37

CHADEE SINGH v BEHARLE TEWAREE [10 W R. 91

MUKDOOMUNNISSA v NOKHY SINGH [24 W R 296

ANAR MOLLAH v HILLS 10 W R. 139

KISSEN KAMINEE DOSSEE v RAM CHUNDER MITTER 12 W R 13

PROTAP CHUNDER BOROOAH v COLLECTOR OF GOWALPARA 22 W R. 216

253 ———— **Objection to unregistered document**—*Regular appeal* —*Held* that the Court is bound in regular appeal to entertain an objection that a document is invalid for want of re gistration even though no objection may have been raised to its admissibility in the Court below BASAWA GURBASAWA v KALKAPA [I. L. R. 2 Bom 489

254. ———— *Held* that as the plea as to the inadmissibility of a document as evidence for want of registration was not specially taken in the Court below it could not be allowed in a special ap peal GRISH CHANDRA ROY CHOWDRY v AMINA KHATUN 3 B L.R. Ap 121

255 ———— *Costs* —Whether the lower Appellate Court wrongly gave effect to an unregistered bond which by reason of its being unregistered was not admissible in evidence no objec tion being taken by the parties to its being admitted — *Held* that the objection must prevail when taken for the first time in special appeal but the party taking it was not entitled to the costs of the appeal OOMA TOOL FATIMA v GHUNNOO SINGH 19 W R. 23

256 ———— **Objection that document is improperly stamped.**—The plaintiff ap pealed to the Judge against a dismissal of his suit who reversed the decision of the Court below and gave the plaintiff a decree The defendant there upon appealed to the High Court on the ground that a document had been admitted in evidence in support of the plaintiff s case which did not bear a proper stamp *Held* that the defendant having omitted to take the objection before the Judge could not appeal on this ground. I AMBEEM LAL v ABLUCKH SINGH Marsh. 267 2 Hay 148

257 ———— **Objection to document as evidence not raised in lower Court** —If no objection is taken in the Court of first instance to the reception of a document in evidence it is not within the province of the Appellate Court to raise or recognize it in appeal CHIMNAJI GOVIND GODBOLE v DINKAR DHONDEV GODBOLE I. L. R. 11 Bom. 320

258 ———— **Refusal to examine wit nesses** —A Court of first instance being satis fied that plaintiff s case could not be established refused to examine defendant s witnesses The lower Appellate Court differing from the Munsif gave plaintiff a decree *Held* that although the Munsif had committed a great irregularity still as that point was not raised in the lower Appellate Court it could not be taken in special appeal COORCO DASS AKHOOLEE v PORAN MUNDLE 12 W R. 363

259 ———— An objection that the Court had refused to examine witnesses if not brought before the Appeal Court cannot be raised on special appeal OSMAN SINGH v CHUMMUN MAHTOO 15 W R 67

260 ———— It is too late to make an objection for the first time in second appeal that a certain witness for whose evidence no applica tion had been made in the Courts below ought to have been examined by the Appellate Court SOMASHEKH ARA v SUBHADRAMAJI I. L. R. 6 Bom 524

261. ———— **Refusal to take evidence** —Where the Court refuses to take evidence offered that fact should be made the ground of regular appeal and not first set up in special appeal LALLA DEBEEDEN v SHEO GHOOLAM SINGH [2 N W 206

262 ———— **Execution of decree**—*Mode of execution—Discretion of Court* —When the mode of execution has not been specifically objected to in the Court below the High Court will not interfere DWARKANATH DASS BISWAS v UNNODA CHURN DASS 8 W R. 318

263 ———— *Objection that decree cannot be executed in portions* —A decree cannot be executed in aliquot parts but where it was objected for the first time in second appeal that a person seeking execution of a portion of decree was not entitled to execution the High Court refused to allow the objection GOODUR SAHOY v DHUNNESHUR KOER 7 C L. R., 117

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

264. ———— **Form of suit**—*Madras Local Boards Act (Madras Act V of 1884) s 27*—An objection that the suit was not properly framed was not allowed to be taken for the first time on second appeal in a suit brought under the Madras Local Boards Act PRESIDENT OF THE TALUK BOARD v NARAYANAN **I L R. 16 Mad. 317**

265 ———— **Fraud**—*Omission to allege fraud*—*Held* that defendant could not be allowed in special appeal to object that the lower Court had not determined the *bona fides* of plaintiff's purchase unless he (defendant) had not only alleged fraud but shown the way in which the fraud was intended to be carried out BOIKUNTO NATH SETT v RUSSICK LALL BURMONO **10 W R. 231**

266 ———— **Guardian**—*Objection as to due appointment of guardian*—Where plaintiff claimed as his inheritance what had been sold to defendants by his mother to liquidate debts due by his late father it was held first that it was too late in special appeal to raise doubts as to his mother having been plaintiff's guardian when the objection had not been taken below at any stage of the proceedings KOOL CHUNDER SURMAH v RAMJOY SURMONA **10 W R. 8**

267 ———— *Want of certificate*—*Maxim Omnia præsumuntur rite esse acta*—On a suggestion taken for the first time in special appeal that a guardian has not obtained a certificate it will not be assumed for the purpose of reversing the decree that such is the case It will be presumed rather that the proceedings in the Court below have been regularly conducted until irregularity be shown THUMMUN v GOLAB RAE **2 N W 89**

268 ———— **Issues**—*Omission to raise issues*—Where appellant satisfies the Court that he has been substantially injured by no issues being framed by the Judge previous to his decision effect will be given to such objection. SAH KOONDUN LALL v MAKHUN LALL **[1 N W 168 Ed. 1873 247**

269 ———— **Jurisdiction**—The defendant objected to the jurisdiction of the first Court but took no objection to the jurisdiction before the lower Appellate Court *Held* that objection to the jurisdiction was waived. MAHOMED HOSSEIN v AKAYA NARAYAN PAL **[2 B L R., Ap 42 18 W R. 37 note**

HURISH CHUNDER ROY v POORNA SOONDUREE DEBEE **18 W R. 35**

270 ———— *Suit brought in Court without jurisdiction*—*N W P Rent Act XVIII of 1873 s 206*—As the plaintiff's claim instituted in the Civil Court to eject the defendant a quondam tenant and to recover mesne profits could not be entertained in any suit in any Court the provisions of s 206 of Act XVIII of 1873 that the objection that a suit was instituted in the wrong Court shall not be entertained by the Appellate Court unless such objection was taken in the Court of first instance were not applicable RAM AUTAR RAI v TALIMUNDI KUAR **7 N W 49**

271. ———— *Summary suit for possession*—*A* and *B* obtained a decree for possession of land against *C* On their proceeding to execute their decree *D* who was in possession, presented a petition to the Munsif complaining that they were thereby attempting unlawfully to interfere with his possession The case was tried on remand from the Judge as a suit under the provisions of s 229 of Act VIII of 1859 *Held per* JACKSON *J* that as the decree holder had not complained that the officer of the Court had been obstructed or resisted by the claimant the case did not fall within s. 229 of Act VIII of 1859 and therefore the Court had not jurisdiction to take summary cognizance of the case *Per* MITTER *J*—This objection taken for the first time on special appeal did not affect the merits of the case or the jurisdiction of the Court BUHAL SINGH CHOWDRY v BEHARI LALL **[1 B L R. A. C, 206 10 W R. 318**

272. ———— *Objection to suit for mesne profits as being matter for execution*—*Civil Procedure Code (Act XIV of 1882) s 244*—A landlord sued his tenant for arrears of rent and obtained a decree for a certain amount and a declaration that if the amount were not paid within fifteen days the tenant should be ejected under s 52 Act VIII of 1869 The amount was not paid and the landlord executed the decree and obtained possession The tenant appealed and succeeded in getting the decree set aside and the amount found due from him for arrears by the first Court was reduced and a decree made directing that if the reduced amount were not paid within fifteen days, he should be ejected He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree It was contended on second appeal that the suit would not lie as the matter might and should have been determined in the execution department under s 244 of the Civil Procedure Code *Held* that as the suit was instituted in the Munsif's Court and the Munsif under the circumstances of the case was the officer who in the first instance would have had to determine the matter in the execution department there was at most only an error of procedure and no exercise of jurisdiction by the Munsif which he did not possess and that upon the authority of the decision in *Parmessuree Pershad Narain Singh v Jankee Kooer 19 W R 90* this could not be made a ground of objection on appeal *Held* also that the point being one that was not raised in the pleadings or before either of the lower Courts and being a point which went exclusively to the jurisdiction of the Court it could not be raised on second appeal AZIZUDDIN HOSSEIN v RAMANUGRA ROY **[I. L. R., 14 Calc. 605**

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

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APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

264. ———— Form of suit— *Madras Local Boards Act (Madras Act V of 1884) s 27*—An objection that the suit was not properly framed was not allowed to be taken for the first time on second appeal in a suit brought under the Madras Local Boards Act PRESIDENT OF THE TALUK BOARD *v* NARAYANAN I L R 16 Mad. 317

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266 ———— Guardian—*Objection as to due appointment of guardian.*—Where plaintiff claimed as his inheritance what had been sold to defendants by his mother to liquidate debts due by his late father it was held first that it was too late in special appeal to raise doubts as to his mother having been plaintiff s guardian when the objection had not been taken below at any stage of the proceedings KOOL CHUNDER SURMAH *v* RAMJOY SURMONA 10 W R., 8

267 ———— *Want of certificate—Maxim Omnia præsumuntur rite esse acta*—On a suggestion taken for the first time in special appeal that a guardian has not obtained a certificate it will not be assumed for the purpose of reversing the decree that such is the case It will be presumed rather that the proceedings in the Court below have been regularly conducted until irregularity be shown THUMMUN *v* GOLAB RAE 2 N W 89

268 ———— Issues—*Omission to raise issues*—Where appellant satisfies the Court that he has been substantially injured by no issues being framed by the Judge previous to his decision effect will be given to such objection. SAH KOONDUN LALL *v* MAKHUN LALL

[1 N W 168 Ed. 1873 247

269 ———— Jurisdiction —The defendant objected to the jurisdiction of the first Court but took no objection to the jurisdiction before the lower Appellate Court *Held* that objection to the jurisdiction was waived. MAHOMED HOSSEIN *v* AKAYA NARAYAN PAL

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270 ———— *Suit brought in Court without jurisdiction—N W P Rent Act XVIII of 1873 s 206*—As the plaintiff s claim instituted in the Civil Court to eject the defendant a quondam tenant and to recover mesne profits, could not be entertained in any suit in any Court the provisions of s. 206 of Act XVIII of 1873 that the objection that a suit was instituted in the wrong Court shall not be entertained by the Appellate Court unless such objection was taken in the Court of first instance were not applicable RAM AUTAR RAI *v* TALIMUNDI KUAR 7 N W 49

271. ———— *Summary suit for possession*—*A* and *B* obtained a decree for possession of land against *C* On their proceeding to execute their decree *D* who was in possession presented a petition to the Munsif complaining that they were thereby attempting unlawfully to interfere with his possession The case was tried on remand from the Judge as a suit under the provisions of s 229 of Act VIII of 1859 *Held per* JACKSON *J* that as the decree holder had not complained that the officer of the Court had been obstructed or resisted by the claimant the case did not fall within s 229 of Act VIII of 1859 and therefore the Court had not jurisdiction to take summary cognizance of the case *Per* MITTER *J*—This objection taken for the first time on special appeal did not affect the merits of the case or the jurisdiction of the Court BUHAL SINGH CHOWDRY *v* BEHARI LALL

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272. ———— *Objection to suit for mesne profits as being matter for execution—Civil Procedure Code (Act XIV of 1882) s 244*—A landlord sued his tenant for arrears of rent and obtained a decree for a certain amount and a declaration that if the amount were not paid within fifteen days the tenant should be ejected under s 52 Act VIII of 1869 The amount was not paid and the landlord executed the decree and obtained possession The tenant appealed and succeeded in getting the decree set aside and the amount found due from him for arrears by the first Court was reduced and a decree made directing that if the reduced amount were not paid within fifteen days he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding He then brought a suit in the Munsif s Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court s decree It was contended on second appeal that the suit would not lie as the matter might and should have been determined in the execution department under *s* 244 of the Civil Procedure Code *Held* that as the suit was instituted in the Munsif s Court and the Munsif under the circumstances of the case was the officer who in the first instance would have had to determine the matter in the execution department there was at most only an error of procedure and no exercise of jurisdiction by the Munsif which he did not possess and that upon the authority of the decision in *Furmessuree Pershad Narain Singh* v *Jankee Kooer 19 W R 90* this could not be made a ground of objection on appeal *Held* also that the point being one that was not raised in the pleadings or before either of the lower Courts and being a point which went exclusively to the jurisdiction of the Court, it could not be raised on second appeal AZIZUDDIN HOSSEIN *v* RAMANUGRA ROY

[I. L. R., 14 Calc. 605

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APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

has been already heard on its merits DHONDIBA KRISHNAJI PATEL *v* RAMCHANDRA BHAGVAT [I. L. R. 5 Bom 554

GUNESH PERSAD *v* WILSON [W R. 1864 Act X 86

295 ———— *Civil Procedure Code (1882) s 44—Misjoinder of causes of action—Objection not taken in Court of first instance* —An objection under s 44 of the Code of Civil Procedure as to misjoinder of causes of action should be taken in the Court of first instance and not for the first time on appeal Where such an objection had been raised for the first time in appeal the High Court in second appeal declined to entertain it *Dondiba Krishnaji Patel* v *Ramchandra Bhagvat I L R 5 Bom 554* followed MAULA *v* GULZARI SINGH I. L. R. 16 All. 130

296 ———— *Misjoinder of parties* —Misjoinder of parties is not an objection which can be allowed to be taken in special appeal TILUCK CHUNDER CHUCKERBUTTY *v* MUDDUN MOHUN JOOGEE 12 W R. 504

LALL MAHOMED *v* PEER BUZUR 18 W R. 112

LUCHMEE DHUR PATTUCK *v* RUGHOODUR SINGH [24 W R. 236

297 ———— *Held* that even if there had been a misjoinder the plea could not be allowed in second appeal as the defendants had not been prejudiced MALAGURI GARUDIAH *v* NARAYANA RUNGIAH I. L R 3 Mad. 359

NUJMOODDEEN AHMED *v* ZUHOORUN [10 W R. 45

RAM DOYAL DUTT *v* RAM DOOLAL DEB [11 W R 273

TULSHA *v* GOPAL RAI I. L R. 6 All 632

Contra SREEKANT ROY CHOWDHRY *v* KITABOODDEEN SIRDAR 10 W R. 49

298 ———— *Misjoinder of causes of action* —As a general rule if an objection on the ground of misjoinder of causes is pressed and carried to a decision in the first Court the High Court will even upon special appeal upon its being shown to be well founded give the objector the benefit of it but if it is not pressed and carried to a decision in the first Court and if the parties go to trial as if the objection had not been made then the objection will not be given effect to at a later stage unless it appears clearly that there was a defect in the original trial in consequence of the misjoinder TARINEE CHURN GHOSE *v* HUNSMAN JHA [20 W R. 420

299 ———— *Objection to defendant being made plaintiff* —Where a defendant was made one of the plaintiffs by the consent of the first Court and appealed as one of the plaintiffs and took no objection until the case came up on special appeal the objection was not allowed to be taken RAKHAL DOSS MUNDLE *v* PROTAP CHUNDER HAZRAH 12 W R. 455

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

300 ———— Notice of enquiry—*Want of notice of enquiry by Ameen* —A judgment debtor who while objecting before the Judge as to what had been done by the Ameen in the enquiry as to the mesne profits raised no objection as to the want of notice of the Ameen s enquiry was not allowed to raise the latter objection on appeal SHARODA MOYEE BURMONEE *v* WOOMA MOYEE BURMONEE [8 W R. 9

301 ———— Notice of sale—*Objection to form of notice of sale for arrears of rent under Bengal Regulation VIII of 1819 s 8* —An objection to the form of the notice of sale under s 8 of Bengal Regulation VIII of 1819 was taken for the first time in the Appellate Court *Held* that as a defect fatal to the whole proceeding appeared in the notice the objection was competently taken in that Court *Macnaghten* v *Mahabir Pershad Singh I L R 9 Calc 656 L R 10 I A 25* distinguished AHSANULLA KHAN BAHADUR *v* HARICHARN MOZUMDAR I. L R. 20 Calc 86 [L R 19 I. A 191

302 ———— Notice of suit—*Omission to give notice of action under s 42 Police Act V of 1861* —In a suit against a police officer the objection under s 42 Act V of 1861 that one month s notice has not been given must be taken in the lower Court if not taken then it cannot be made a ground of appeal NARAIN DEEN TEWAREE *v* RAM DASS [8 W R 425

303 ———— *Notice of suit against Municipal Commissioners—Non joinder of party—Special appeal—Act XV of 1873 ss 28 43* —The plea that no notice was given as required by s 43 cannot be taken for the first time in special appeal *Quære*—Whether a plea that the Local Government had not been made a party to a suit against a Municipal Committee in accordance with s 28 can be taken for the first time in special appeal MUNICIPAL COMMITTEE OF MORADABAD *v* CHATRI SINGH I. L. R. 1 All. 269

304 ———— Notice to quit —An objection as to the necessity of notice to quit is one which may be taken on special appeal DODHU *v* MADHAVRAO NARAYAN GADRE [I. L. R. 18 Bom 110

305 ———— *Suit for ejectment* —Where notice to quit is a necessary part of plaintiff s title to eject and when the issues raised the question of plaintiff's right to eject and no proof was given of notice by plaintiffs but no objection was taken to the want of notice by the defendant until second appeal —*Held* that it was competent to the Court to entertain the objection in second appeal but that the plaintiff should have liberty to meet the objection upon the trial of an issue referred to the lower Court upon that point ABDULLA RAWUTAN *v* SUBBARAYYAR I. L. R. 2 Mad. 346

306 ———— *Denial of landlord s title throughout case—Objection on*

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

284 ——— Landlord and tenant—*Suit to have pottah cancelled* —Where a plaintiff sued to have the defendants pottah cancelled on the ground of fraud to restrain them from felling trees and for a declaration that a certain shola was Government property —*Held* that having failed to establish the grounds upon which relief was claimed the plaintiff was n t entitled to object on appeal for the first time that the defendants were merely tenants from year to year SECRETARY OF STATE FOR INDIA v NUNJA I. L. R. 5 Mad. 163

285 ——— Limitation—*Possession* — Where a defendant in the l wer Court pleaded limit ation but placed that issue upon the simple fact that he himself had possession for twelve years and upwards which issue was found against him —*Held* that it was t o late for the defendant in special appeal to object that that finding did not dispose of the issue of limitation KISTO MOHUN KURMOKAR v NOYAN TARA DOSSEE 10 W R 389

286 ——— *Minority—Right of member of family to alienate* —A plaintiff obtained a decree to set aside an alienation of ancestral property effected by his father during his min r ity Defendant objected in special appeal first that the suit was barred by lapse of time since plaintiff attained his maj rity and secondly that under the Mitakshara law the father had a right to alienate a share of the property *Held* that as the first of these objections was entirely a matter of fact and as the second though essentially a matter of law went to the substance of the plaintiff s claim they should have been urged in the lower Courts and could not be admitted for the first time in special appeal BENODE PUTNAIK v DOYANIDHEE BULLIOR SINGH [9 W R 493

287 ——— *Settlement* — In the first Court an issue was raised whether or not the hearing of this suit was barred by the law of limitation One of the grounds of appeal to the Judge was that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector s settlement The Judge did not notice this ground in his ju lgment The same ground of appeal was repeated in the special appeal to the High Court but that Court refused to entertain it for the reason that it di l n t appear to have been rais d in argument bef re the Judge or in the first C urt RAI KUNWAR *alias* SHEOMURAT KUNWAR v INDERJIT KUNWAR [5 B. L. R. 585 13 W. R. 52

288 ——— *Guardian and Ward—Minority* — *A* sued *B* to recover possession of a hered tary j te of which he alleged he had been dispossessed by *B* dur ng l is min r y *B* raised the defence of limitati n and relinquishment by *A* s grandmother and guardian The Munsif hel l that the suit was n t barre l n the ground that it had been brought within thr e years fr m the date on which *A* had attained his majority but decided against *A* on the merits On appeal the question of limitation was not raised but on the merits the Judge also found against *A* On special appeal by *A* *B* took an objection under s 348 of Act VIII of 1859 that *A* s suit was barred *Held* that *B* could not take the objection at that stage KEDERNATH MOOKERJEE v MATHURANATH DUTT [1 B L. R. A C 17 10 W R., 58

289 ——— Where an objection that the suit was barred by limitation was not taken into consideration by the lower Appellate Court and in special appeal the facts necessary to support the plea of limitation were stated in the ground of appeal, but for another reason and in another form than those for which it was raised before the High Court allowed the objection to be taken and to prevail and dismissed the suit BISSONATH SURMA v SHOODAMOOKEE [11 B L. R. Ap 1 20 W R. 1

290 ——— *Setting aside ex parte case* —A Munsif entertained a petition by a defendant under s 119 of the Civil Procedure Code and set aside his former judgment given *ex parte* in favour of the plaintiff and dismissed the plaintiff s suit The plaintiff on appeal before the Judge did not raise the objection that the Munsif ought not to have entertained the petition of the defendant as it had not been presented in due time It was held to be too late to raise the objection on special appeal BORO KHASIA v JATA SIRDAR [8 B L R. 78 15 W R., 315

291 ——— *Limitation* — Where the question of limitation was raised for the first time on second appeal *held* that it could not be decided against the plaintiff SHIVAPA v DOD NAGAYA I L R. 11 Bom 114

292 ——— Merger—*Plea of merger* — A plea of merge cannot be raised for the first time in special appeal RUSTON v ATKINSON [11 W R. 485

293 ——— Misjoinder—*Misjoinder of causes of action—Suit for arrears of rent—Separate leases* —The Court refused to admit in special appeal the plea that the lessor should have instituted separate suits to recover the arrears of rent due on each lease as it allowed the objection that the leases could not be declared forfeited for the aggregate of the arrears of rent and cesses due on both leases but that the forfeiture of each lease was incurred in respect of the arrears due on it and that the lower Courts should have therefore determined and declared in their d crees what was the amount of arrear due in respect of rent and cesses on each lease separately GOLABI SINGH v RAI NOBMAL CHAND 6 N W 342

294 ——— *Misjoinder of causes of action* —An objection that the plaintiff has j ined together causes of action which by s 44 of the Civil Procedure Code may not be joined t gether without leave first obtained is taken too late f r the first time in the Court of Appeal after the case

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

could not be raised in appeal MACKINNON v DUNDAS Bourke A. O C 155

317 ——— Purchase—*Suit to enforce sale of religious office* —In a suit to enforce a right by purchase of a priest s office no objection was taken to the legality of the transaction until second appeal *Held* that the objection must be allowed KUPPA v DORASAMI I. L. R. 6 Mad. 78

318. ——— *Suit on bond as asset purchased* —A plaintiff who had purchased a factory from the Official Assignee sued for the recovery of money on a bond alleged to have been an asset of his purchase and obtained a decree In appeal it was objected for the first time that plaintiff had not filed any evidence to prove that the bond formed part of the assets of the factory and his suit was dismissed. *Held* that the objection ought not to have been allowed to prevail so far as to dismiss the suit but the plaintiff ought to have an opportunity given him of adducing the requisite proof CHUNDER COOMAR ROY v KUBEERODDEEN 10 W R. 332

319 ——— Rent suit for—*Rate of arrears of rent* —Where a landlord s claim for arrears of rent at enhanced rates was dismissed *in toto* by the first Court and in his appeal to the Judge he advanced no claim for arrears at the old rates he cannot in special appeal object to the Judge's decision on the ground that such arrears were not decreed to him BEEJOY GOBIND BURAL v JANNOBEE BURMONYA [8 W R. 252

320 ——— *Raising new plea on special appeal* —In a suit for enhancement of rent which was dismissed in the lower Court where the sole issue raised was the genuineness of a pottah pleaded by the defendant —*Held* that an entirely new plea of misconstruction of the terms of the lease could not be admitted in special appeal when the facts on which alone it could be supported had not been found in the lower Court SATOORAM MAJOOMDAR v PREONATH BANERJEE 10 W R 424

321 ——— Res judicata—*Act X of 1877 (Civil Procedure Code) s 542—Raising new plea in special appeal* —*Held* that not only may the plea of *res judicata* though not taken in the memorandum of appeal be entertained in second appeal under the provisions of s 542 of Act X of 1877 but that even when such plea has not been urged in either of the lower Courts or in the memorandum of appeal if raised in the second appeal it must be considered and determined either upon the record as it stands or after a remand for findings of fact MUHAMMAD ISMAIL v CHATTAR SINGH I. L. R. 4 All. 69

KOYLASHNATH CHUND v MONMOHINEY DOSSEE [Marsh. 276

MONMOHINEY DOSSEE v KOYLASHNATH CHUND [2 Hay 154

See MUGNO MOYE DEBIA v HUR CHUNDER RAOOT [3 W R. Act X, 146

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

322 ——— *Plea of res judicata taken for the first time in Appeal—Power of Court to entertain it* —Although the plea *res judicata* may be taken at any stage of a suit including first or second appeal an Appellate Court is not bound to entertain the plea if it cannot be decided upon the record before that Court and if its consideration involves the reference of fresh issues for determination by the lower Court *Muhammad Ismail* v *Chattar Singh I L R 4 All 69* and *Tek Narain Rai* v *Dhondh Bahadur Rai Weekly Notes All 1898 p 104* referred to KANAHAI LAL v SURAJ KUNWAR I. L. R. 21 All. 446

323 ——— Right of suit.—An appellant cannot defeat the suit by an objection to the plaintiff s right to sue brought forward for the first time on appeal. PAREYASAMI *alias* KOTTAI TEVAR v SALUCKAI TEVAR *alias* OYYA TEVAR 8 Mad. 157

324. ——— *Objection to competency to sue* —Incompetency to sue is a defect not admitting of cure or palliation but that plea being of a material preliminary nature and involving the plaintiff s *locus standi* in Court was held to be admissible though pleaded orally for the first time on appeal RADHA KISHEN v BUKHTAWUR LALL [1 Agra 1

325 ——— *Absence of tender before suit* —Where a party has a good objection such as an absence of tender before suit to urge to the prosecution of a suit his omission to do so in the first instance is fatal to his availing himself of it as an objection on appeal MAHOMED AMEEN OODDEEN KHAN v MOZUFFUR HOSSEIN KHAN [5 B L R. 570 14 W R. P C 5

326 ——— *Suit not brought on agreement* —In a suit for maintenance the amount of which had been fixed by agreement an objection taken on appeal that the suit should have been brought on that agreement held taken too late the defendant having been made aware of the agreement at the hearing and not having objected on this ground in the first Appellate Court AHMAD HOSSEIN KHAN v NIHAL UD DIN KHAN [I. L. R. 9 Calc., 945 13 C L. R. 330

327 ——— *Partnership—Contract Act s 342* —An objection taken for the first time in special appeal that the plaintiff had no right as a partner and no right to sue under s 342 of the Contract Act was not allowed. BUDDUN SAHU v RAMPERTAB SAHU 25 W R. 511

328 ——— *Jurisdiction of Civil Court* —A party who applied to a Magistrate for the removal of an obstruction having been referred to the Civil Court brought a suit there and obtained a decree declaratory of his right of way In special appeal it was objected that the suit was not cognizable in the Civil Court *Held* that after decree it ought to be presumed that plaintiff had a right to bring the suit in the Civil Court and the objection was

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

not allowed to prevail. TRILOCHUN DOSS v. GUGUN CHUNDER DEY 24 W R. 413

329 ———— *Competency of agent to sue* —The question of competency of an agent to sue if not raised in the initial stage of a suit cannot be permitted to be raised in special appeal. SOORENDRONATH ROY v. PUGHOOBUR DYAL AWUSTEE [15 W R. 392

330 ———— *Insolvency* —Where the defendants for the first time in second appeal objected to the plaintiff's right to sue on the ground of his having taken the benefit of the Insolvency Act the objection was entertained by the High Court upon admission by the plaintiff of the fact of his insolvency SADODIN v. SPIERS [I. L. R., 3 Bom., 437

331. ———— *Suit for declaratory decree* —An objection urged by the respondents for the first time in special appeal that inasmuch as it was the plaintiff's own fault that he did not appear before the Collector and make his objection in time his suit which was one merely for declaration of title and therefore was in the discretion vested in the Court by the 15th section of Act VIII of 1859 ought not to be entertained was not allowed SPENCER v. PURUL CHOWDRY SPENCER v. KADIR BUKSH [6 B L. R. 658 15 W R. 471

Contra SOODHUKHINA CHOWDHRANI v. ISUR CHUNDER MOJOOMDAR 12 W R. 24

332. ———— *Suit for declaratory decree —Wrongful distraint* —A suit was brought against the plaintiff by his tenants for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant in the course of that suit presented a petition to the Court in which he stated that he was the owner of the land on which the crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession alleging that the defendant's statement affected his (plaintiff's) title by throwing a cloud over it. On special appeal it was objected for the first time that the plaint disclosed no cause of action and the objection was admitted and prevailed. JAN ALI v. KHONKAR ABDUR RUHMA 6 B L. R. 154 14 W R. 420

333 ———— *Suit for declaratory decree—Possession* —In a suit merely for a declaration of right in respect of certain property the lower Appellate Court considering that the suit was really one for the possession of such property allowed the plaintiff to make up the full amount of Court fees required for a suit for possession. The plaint in the suit was not amended and the lower Appellate Court eventually gave the plaintiff a declaratory decree. *Held* on second appeal by the defendant who objected that a suit merely for a declaratory decree could not be maintained, that such objection ought not to be allowed under the circumstances. SARASUTI v. MANNU [I. L. R., 2 All., 134

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

334. ———— *Cause of action* —An objection as to the plaintiff having no cause of action may be taken at any stage of the suit PARBATI CHARAN MUKHOPADHYA v. KALI NATH MUKHOPADHYA 6 B L. R. Ap., 73

Contra KALICOOMAR SIRCAR v. BROMOMOYEE DOSSEE 1 W R., 23

SUDAKHINA CHOWDHRAIN v. RAJMOHAN BOSE [11 W R., 350

335 ———— *Plaint disclosing no cause of action—Discovery at the stage of an appeal under the Letters Patent of defect in the plaint* —Where in an appeal under s. 10 of the Letters Patent it was brought to the notice of the Court that the plaint in the suit disclosed no cause of action against the defendant named therein the Court entertained the plea and dismissed the suit SECRETARY OF STATE FOR INDIA v. SUKHDEO [I. L. R. 21 All. 341

336 ———— *Dismissal of suit on the ground that the plaint disclosed no cause of action although no such ground taken in the written statement* —It is competent to the defendant at the earliest possible stage of the hearing to obtain the declaration of the Court upon the question whether the plaint does or does not disclose a cause of action even if that question is not expressly raised in the written statement UMAMOYE DASSEE v. RAJKRISTO NUNDUN 3 C W N., 220

337 ———— *Cause of action* —In a suit by a purchaser of an estate to have his name registered in the Collectorate and his possession confirmed which failed in the Court of first instance but was decreed in the lower Appellate Court it was held to be too late for the defendant after contesting the suit in two Courts to urge in special appeal that the plaint disclosed no cause of action BUKSH ALY SOWDAGUR v. JOYANUT KHAN [11 W R., 248

SOODUKHINA CHOWDHRANI v. RAJ MOHAN BOSE [11 W R 350

338 ———— *Cause of action. —Per* PEARSON J and STRAIGHT J (SPANKIE J dissenting)—That in disposing of a second appeal the High Court is competent under s. 542 of Act X of 1877 to consider the question whether the plaintiff has any cause of action or not although such question has not been raised by the defendant appellant in the Courts below or in his memorandum of second appeal but is raised for the first time at the hearing of such appeal. LACHMAN PRASAD v. BAHADUR SINGH I. L. R 2 All., 884

339 ———— *Cause of action —Premature suit —K* sued *N* (his uncle) for partition of the estate of *F* (the father of *N*) in the lifetime of *F* who was alleged to be of unsound mind. *N* objected to the suit being entertained on the ground that *F* was alive. Before issues were settled, *F* died and the suit was tried and *K* obtained a decree. On appeal by *N* on the ground that when the plaint was

APPELLATE COURT—*continued*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*continued*

filed *K* had no cause of action —*Held* that the decree could not on this ground be set aside NARAYANA *v* KRISHNA I L R. 8 Mad 214

340 ——— *Suit for partition of portion of property* —A case is not to be decided in special appeal upon a question which was not raised or tried or considered by the lower Courts the objection that a suit for a partition of portion of joint property will not be taken for the first time on special appeal was therefore not allowed to prevail. SHIB SAHAYE SINGH *v* NURSINGH LALL [22 W R 352

341. ——— *Separate suit for question determinable in execution of decree* —Where a question such as is provided for by Act XXIII of 1861 s 11 instead of being determined by order of the Court executing the decree was made the subject of a separate suit in that Court it was held that though the form of procedure was wrong there was not a want of jurisdiction which could be made a ground of objection in appeal PURMESSUREE PERSHAD NARAIN SINGH *v* JANKEE KOOER [19 W R 90

342. ——— *Delay in bringing suit* —An objection that there had been such delay that the Court in its discretion under s 27 of the Specific Relief Act would not give relief in a suit for specific performance not allowed to prevail in second appeal MOKUND LALL *v* CHOTAY LALL [I L R 10 Calc 1061

343 ——— Sale setting aside *Setting up new case on appeal—Suit to set aside sale on ground of fraud misrepresentation etc by vendor —Raising issue as to breach of covenant for title* —When a vendee who sues to cancel a sale on the ground of fraud misrepresentation or concealment by his vendor fails to establish those grounds of relief he is not entitled to set up in second appeal a case founded on the implied covenant for title under the Transfer of Property Act s 55 MAHOMED *v* SITA RAMAYYAR I L R. 15 Mad. 50

344. ——— Service of summons—*Object on that suit ought to have been dismissed for non service of summons on non payment of costs* —Where the Court did not dismiss the suit under s 5 of Act XXIII of 1861 as it should have done but proceeded with the suit and passed a decree from which the original defendant appealed on the merits to the Assistant Judge without taking the objection that the suit ought to have been dismissed it was held that he could not raise the objection for the first time in special appeal ABAS *v* IBRAHIMJI [5 Bom A C 119

345 ——— Settlement—*Suit for possession* —In a suit to recover possession the plaintiff alleging that the land in dispute from which he had been ousted had been settled with him by Government in 1833 as part of his zamindari and the defendant alleging that the land was part of his lakhiraj garden land which had been released by Government from assessment the Courts below found that the lands in dispute were part of those which had been settled with the plaintiff On appeal to the Privy Council the defendant attempted to show that assuming the lands in question to have been part of those settled with the plaintiff that settlement had been improperly made *Held* that this contention was not open to the defendant upon the record never having been taken in the Courts below SRIMATI DASI *v* LALANMANI [2 B L R P C 64 11 W R P C 27

346 ——— Transfer of case—*Objection to transfer of case for execution of decree* —An objection on special appeal that the transfer of the suit for execution had been made without jurisdiction was allowed to be taken in special appeal HAMIDOODDEEN *v* BHADOO SAHAE 18 W R 345

347 ——— *Objection to transfer from Munsif to Judge* —Although the transfer by the Judge of a case from the file of the Munsif to that of his own Court and the decision of it upon issues framed by and evidence taken before the Munsif is improper yet if no objection be taken to it at the time it must be presumed that the parties consented to the action of the superior Court and they are not at liberty to await its decision and on finding it adverse to them to take exception for the first time to the Court s proceedings on appeal YAKOOB ALI *v* LUCHMUN DASS 6 N W 80

348 ——— Valuation of suit—*Objection as to valuation of suit* —An objection to the decree of a subordinate Court founded on the improper valuation of the suit is not such an objection as may be entertained when raised for the first time in special appeal KALADDIN GURU BAKUS *v* RAGHOOJI 1 Bom 62

KALEE COOMAR CHATTERJEE *v* KRISTO KISHORE PODDAR 14 W R. 196

349 ——— *Objection to valuation of suit* —Where no question of valuation for the purpose of determining the amount of institution fee payable on a suit has been raised either in the Court of first instance or in the grounds of appeal the Appellate Court is not competent to raise such question. KALA CHAND SEN *v* ANUND KRISTO BOSE 22 W R. 433

350 ——— Question of deficiency of Court fee not raised in the Court of first instance—*Court Fees Act s 12—Estoppel* —The plaintiffs suing in respect of certain plots of land by mistake undervalued their claim with regard to the said land and in consequence paid an insufficient Court fee on their plaint This mistake was not discovered until the case had come in appeal before the High Court and when discovered the deficiency was at once made good. *Held* that no plea as to the deficiency in the Court fee having been raised as it might have been by the defendant before the decision of the suit in the Court of first instance such plea could not be raised for the first time in appeal WILAYAT ALI KHAN *v* UMARDARAZ ALI KHAN I L R. 19 All. 165

APPELLATE COURT—*concluded*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*concluded*

351. ——— Will—*Transaction treated as gift—Objection to it as an invalid will*—In a suit to recover certain property left by one *R* both the lower Courts found that it had been left by *R* before his death to defendants by way of gift In special appeal the plaintiffs raised the objection that under the Hindu Wills Act a verbal will of this kind was not legal *Held* that after two Courts had decided unfavourably to plaintiff the only case raised by him there he could not now turn round and throw out the defendant s case on a technical ground that the alleged gift was really a will RADHA BULLUBH CHUCKERBUTTY v BANEE MADHUB CHUCKERBUTTY 23 W R. 230

352 ——— Withdrawal of suit—*Plea taken for the first time at the hearing of second appeal*—The plea that the plaintiff had improperly been permitted to withdraw from a former suit with liberty to bring the present one, which had not been taken in the lower Courts and was not taken in the memorandum of second appeal was not permitted to be urged at the hearing of the second appeal ZAHURUNNISSA v KHUDA YAR KHAN
[I. L. R., 3 All. 528

APPLICATION

See LIMITATION ACT 1877 s 4
[I. L. R. 2 Mad. 230
I. L. R. 5 Bom. 680

——— by person not a party to suit

See MANAGEMENT OF ESTATE BY COURT
[I. L. R. 15 Calc 253

See PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY TO SUIT
[I. L. R. 17 Calc 285

——— to another Judge after refusal by one.

See PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL.
[I. L. R. 16 Bom. 511

———for execution of decree

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT

See CASES UNDER LIMITATION ACT 1877 ART 179 (1871 ART 167 1859 s 20)

———to sue in forma pauperis

See MAHOMEDAN LAW—DOWER
[15 B L. R. 306
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See CASES UNDER PAUPER SUIT

APPOINTMENT

——— by will.

See COURT FEES ACT (SCH 1 ART 11)
[13 B. L. R. Ap 21 21 W R. 245

APPOINTMENT—*concluded*

——— of daughter

See HINDU LAW—CUSTOM—APPOINTMENT OF DAUGHTER 15 B L. R. 190

———Exercise of—

See TRANSFER OF PROPERTY ACT s 53
[I L. R. 22 Calc 185

——— Power of—

See HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER OF ENDOWMENT
[I. L. R. 17 Bom 600

See HINDU LAW—WILL—CONSTRUCTION
[I. L. R 15 Bom 326
I. L. R. 16 Bom 492
I. L. R 19 Bom 647
I. L. R. 21 Bom. 709

See WILL—CONSTRUCTION
[I L. R 4 Calc 514
I L. R. 18 Bom. 1

APPRAISEMENT PROCEEDINGS

——— Collector acting in—

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I. L. R. 17 Calc. 872

APPROPRIATION OF PAYMENTS.

See GUARANTEE
[I. L. R. 4 Calc 560 3 C L. R., 361

1. ——— Payment of rent—A general payment made in one year without proof that it was in satisfaction of the rents of that year may be applied in satisfaction of the arrears of the previous years AHMUTY v BRODIE
[W R. 1864 Act X 15

2. ———The payments in each year must be presumed to be for the current year and surplus payments to be for the past not subsequent years TARAMONEE DOSSEE v KALLY CHURN SURMAH W R. 1864 Act X 14

3 ——— Where a tenant pays money to his landl rd on account of rent without any specification whether the payment was for old or enhanced rent the landlord is at liberty to credit the payment as he thinks fit SHURNO MOYEE v KASHEE KANT BHUTTACHARJEE 7 W R. 511

4 ——— Payment of debts—*Debt barred by limitation*—An unappropriated payment is to be applied to the earliest debt although the debt is barred by the Act of Limitation where the facts do n t raise any question which might affect such priority MOONEAPPAH v VENCATARAYADOO
[6 Mad. 32

MULCHAND GULABCHAND v GIRDHAR MADHAV
[8 Bom. A C 6

APPROPRIATION OF PAYMENTS—*concluded*

5 ——————— Payments unapplied by either the debtor or the creditor should be appropriated to the earlier items making up the debt due. This rule is not impaired by the decisions in the cases of *Mills* v *Fowkes 5 Bing., N C., 455* and *Nash* v *Hodgson 6 De G M and G., 474* HIRADA KARIBASAPPAH v GADIGI MUDDAPPA

[6 Mad. 197

6 ——————— *Contract Act ss 60 74*—In consideration of an advance of R118 the defendant executed, in favour of the plaintiff, a mortgage-bond, dated 3rd November 1879, by which it was stipulated that the amount should be repaid in kind by delivery of half the amount of the rubbi crops of every description produced at the first-class rates, and in case the same is not paid in kind it will be paid principal with interest from the date of execution at one anna per cent. per mensem in cash in the month of Baisakh 1287 F S (April 1880). The defendants admitted execution of the bond and pleaded payments in grain to the amount of R130, which they failed to prove. It was found that the plaintiff had received payments in grain to the extent of R71, more than half of which however he claimed to be entitled to appropriate to the payment of other antecedent debts which were due to him by the defendants. It was not stated at the time of payment towards which debt the payments were to be applied but all the payments were admittedly made in kind. *Held* that the plaintiff was not entitled to appropriate the payments to the antecedent debts inasmuch as, within the meaning of s 60 of the Contract Act there were other circumstances indicating that the payments were made in liquidation of the amount of the bond. SUNGUT LAL v BAIJNATH ROY

I. L. R. 13 Calc 164

7 ——————— *Contract Act (IX of 1872) s 60—Creditor's appropriation of payments to one or other of debts*—One of two mortgages bore interest at 12 per cent on the mortgage debt payable with costs and the other carried simple interest. Payments made by the debtor had been appropriated by the creditor to payment of the interest on the bond bearing simple interest while the compound interest on the other hand had been left to accumulate. In a suit brought against the representative of the debtor after his decease to enforce the mortgage bearing compound interest the objection was taken to the appropriation by the creditor. *Held* that the rule in s 60 of the Indian Contract Act 1872 follows the ordinary law in prescribing a rule as to the case in which the creditor may at his discretion apply to one or other of the debts due to him payments made by the debtor. A reluctance shown by the debtor to agree to pay compound interest before he executed the mortgage bond at such interest was not an indication within that section that he intended that application of his payments should be made first to that bond. RAMESWAR KOER v MAHOMED MEHDI HOSSEIN KHAN

[I. L. R. 26 Calc 39
2 C W N 633

APPROVERS.

See CASES UNDER ACCOMPLICE.

——— Prosecution of—

See PRACTICE—CRIMINAL CASES—APPROVERS I. L. R., 24 Calc 429

1. ——— Mode of dealing with evidence of approvers.—The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in a Court of law. QUEEN v IMAM ALI and DULLOO KHAN

6 W. R., Cr., 77

2. ——— Uncorroborated evidence.—The evidence of an approver is not sufficient to convict a person charged with an offence. QUEEN v TULSI DOSAD

3 B. L. R., A Cr., 63

QUEEN v ISSUR MUNDLE 3 W. R. Cr., 6
QUEEN v NAWAB JAN 8 W. R., Cr., 19
QUEEN v RAM SAGOR 8 W. R., Cr., 67
QUEEN v CHIRAG ALI 12 W. R. Cr. 6

3 ——————— Where a prisoner had been found guilty by the jury on the uncorroborated evidence of an approver after the Judge in his summing up had pointed out to them the danger of convicting under the circumstances of such corroboration the High Court on appeal refused to set aside the conviction. QUEEN v MAHIMA CHANDRA DAS

[6 B L. R. Ap 108 15 W R. Cr 37

See QUEEN v ELAHI BUKSH

[B L. R. Sup Vol. 459 5 W R. Cr., 60

4 ——————— *Illegal conviction*—A conviction based on the testimony of approvers uncorroborated as to the identity of the accused person cannot be sustained and confessions of co prisoners implicating him cannot be accepted as sufficient corroboration of such testimony. [illegible] v BUDHU NANKU I. L. R. 1 Bom., 475

5 ——————— When evidence is given by an approver it is not important to consider whether a story told by the accused to him tallies with that made to another person. QUEEN v NYTARAM MYTEE

1 Ind. Jur N S 171

6 ——— Direction to Jury—A Sessions Judge should not permit the evidence of an approver who was examined as a witness before the committing Magistrate to be laid before the jury by whom the prisoners were tried. ANONYMOUS

[4 Mad. Ap 22

7 ——————— In a case in which the principal evidence against an accused is the evidence of an approver a Sessions Judge should carefully warn the jury of the infirmity which attaches to that evidence and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon.

[28 W R Cr 19

8 ——— Corroboration—*Dacoity*—Rule as to corroboration of the evidence of an approver laid down in case of dacoity under s 400, Penal Code. QUEEN v KALLA CHAND DOSS

[11 W R. Cr 21

APPELLATE COURT—*concluded*

7 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—*concluded*

351. ——— Will—*Transaction treated as gift—Objection to it as an invalid will*—In a suit to recover certain property left by one *R* both the lower Courts found that it had been left by *R* before his death to defendants by way of gift In special appeal the plaintiffs raised the objection that under the Hindu Wills Act a verbal will of this kind was not legal *Held* that after two Courts had decided unfavourably to plaintiff the only case raised by him there he could not now turn round and throw out the defendant s case on a technical ground that the alleged gift was really a will RADHA BULLUBH CHUCKERBUTTY v BANEE MADHUB CHUCKERBUTTY 23 W R., 230

352. ——— Withdrawal of suit—*Plea taken for the first time at the hearing of second appeal*—The plea that the plaintiff had improperly been permitted to withdraw from a former suit with liberty to bring the present one which had not been taken in the lower Courts and was not taken in the memorandum of second appeal was not permitted to be urged at the hearing of the second appeal ZAHURUNNISSA v KHUDA YAR KHAN [I. L. R. 3 All. 528

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See LIMITATION ACT 1877 s 4 [I. L. R. 2 Mad. 230 I. L. R. 5 Bom. 680

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See MANAGEMENT OF ESTATE BY COURT [I. L. R. 15 Calc 253

See PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY TO SUIT [I. L. R. 17 Calc 285

——— to another Judge after refusal by one.

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See CASES UNDER LIMITATION ACT 1877 ART 179 (1871 ART 167 1859 s 20)

———to sue in forma pauperis

See MAHOMEDAN LAW—DOWER [15 B L. R. 306 24 W R. 163 L. R. 3 I. A 235

See CASES UNDER PAUPER SUIT

APPOINTMENT

——— by will.

See COURT FEES ACT (SCH I ART 11) [13 B. L. R. Ap 21 21 W R. 245

APPOINTMENT—*concluded*

——— of daughter

See HINDU LAW—CUSTOM—APPOINTMENT OF DAUGHTER 15 B L. R. 190

———Exercise of—

See TRANSFER OF PROPERTY ACT s. 53 [I. L. R. 22 Calc. 185

——— Power of—

See HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER OF ENDOWMENT [I. L. R. 17 Bom 600

See HINDU LAW—WILL—CONSTRUCTION [I. L. R. 15 Bom 326 I. L. R. 16 Bom 492 I. L. R. 19 Bom. 647 I. L. R. 21 Bom 709

See WILL—CONSTRUCTION [I L. R. 4 Calc, 514 I L. R. 18 Bom. 1

APPRAISEMENT PROCEEDINGS

——— Collector acting in—

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE [I. L. R. 17 Calc. 872

APPROPRIATION OF PAYMENTS.

See GUARANTEE [I. L. R. 4 Calc 560 3 C L. R., 361

1. ——— Payment of rent—A general payment made in one year without proof that it was in satisfaction of the rents of that year may be applied in satisfaction of the arrears of the previous years AHMUTY v BRODIE [W R. 1864 Act X, 15

2. ———The payments in each year must be presumed to be for the current year and surplus payments to be for the past not subsequent years TARAMONEE DOSSEE v KALLY CHURN SURMAH W R. 1864 Act X, 14

3 ——— Where a tenant pays money to his landlord on account of rent without any specification whether the payment was for old or enhanced rent the landlord is at liberty to credit the payment as he thinks fit SHURNO MOYEE v KASHEE KANT BHUTTACHARJEE 7 W R. 511

4 ——— Payment of debts—*Debt barred by limitation*—An unappropriated payment is to be applied to the earliest debt although the debt is barred by the Act of Limitation where the facts do not raise any question which might affect such priority MOONEAPPAH v VENCATARAYADOO [6 Mad. 32

MULCHAND GULABCHAND v GIRDHAR MADHAV [8 Bom., A C 6

APPROVERS—*continued*

passed but that it must appear to the Judge before he passes judgment that the conditions of the pardon have not been complied with and that in the present case it was impossible to hold that because the actual order of commitment of the accused was written (although in the judgment) after the acquittal therefore it did not appear to the Judge before passing judgment that there were grounds for his order IN THE MATTER OF THE PETITION OF NOBIN CHUNDER BANIKYA. EMPRESS v NOBIN CHUNDER BANIKYA [I. L. R. 8 Calc 560 10 C L R. 369

17 ———— *Criminal Procedure Code 1882 s 338—Tender of pardon to accomplice who has pleaded guilty—Accomplice—Evidence—Corroboration*—A Court of Session under s. 338 of the Criminal Procedure Code tendered a pardon to an accused person charged jointly with two others for the same offence who had pleaded guilty The tender was accepted and such person was examined as a witness against the other accused *Held* that the tender of pardon was not improperly made and the evidence of the approver was admissible *Per* DUTHOIT *J*—The word supposed in s. 338 must be taken merely as intended to exclude the case of a man who has actually been convicted of the crime and not the case of a man who although admitted to be a party to the crime is unconvicted QUEEN EMPRESS v KALLU I. L. R 7 All. 160

18 ———— *Criminal Procedure Code 1872 s 349—Withdrawal of pardon granted under s 349*—A pardon granted under s 349 of Act X of 1872 was withdrawn by the Sessions Judge before the hearing of the whole of the evidence without proof that the statement made by the person pardoned was inconsistent except upon most immaterial points with previous statements by him or contradicted by the evidence and before any evidence affecting his veracity had been given *Held* that the pardon had been improperly withdrawn SHINOP v EMPRESS 12 C L R 228

19 ———— Tender of pardon Effect of—*Criminal Procedure Code ss 337 339—Accomplice—Subsequent trial of accomplice for connected offences*—A prisoner charged before a Magistrate at Benares with offences punishable under ss 471 472 and 474 of the Penal Code made a confession to the Magistrate in respect of those offences He was then sent in custody to Calcutta and was there together with other persons charged before a Magistrate with offences punishable under ss. 467 473 and 475 The conduct to which these charges related was closely connected and mixed up with that to which the charges first mentioned had reference Under s 337 of the Criminal Procedure Code the Magistrate at Calcutta tendered a pardon to the prisoner upon the conditions specified in that section and the prisoner accepted the pardon and gave evidence for the prosecution The Magistrate held that this evidence was not sufficiently corroborated, and accordingly discharged all the accused but the pardon was not withdrawn and there was nothing to show that the Magistrate was dissatisfied with the prisoner's statements or considered that he had not complied with the conditions on which the pardon was tendered Subsequently the prisoner was committed by the Magistrate of Benares for trial before the Court of Sessions upon the charges under ss 471 472 and 474 of the Penal Code He pleaded not guilty but did not in terms plead the pardon as a bar to the trial though he made some reference to the subject and the Sessions Judge having made a brief inquiry as to the proceedings at Calcutta came to the conclusion that there was no sufficient proof of any conditional pardon and convicted and sentenced the accused *Held* that by the terms of the conditional pardon granted to the accused by the Calcutta Magistrate the conditions of which were satisfied as was shown by its never having been withdrawn the accused was protected from trial at Benares in respect of the offences under ss 471 472 and 474 and was not liable to be proceeded against in respect of them and that the trial and conviction were therefore illegal Although s 337 of the Criminal Procedure Code does not in terms cover a case where a Magistrate holding a preliminary inquiry for committal against several persons tenders a conditional pardon to one of them examines him as a witness and subsequently discharges all the accused for want of a *primâ facie* case against them the words every person accepting a tender under this section shall be examined as a witness in the case mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by s 339) such a person ceases to be triable for the offence or offences under inquiry or (with reference to s 339) for any other offence of which he appears to have been guilty in connection with the same matter while making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences directly under inquiry The words last quoted refer to the importance when a pardon is tendered of encouraging the approver to give the fullest details so that points may be found in his evidence which may be capable of corroboration The question of how far the pardon protects him and what portion of it should not protect him ought not to be treated in a narrow spirit QUEEN EMPRESS v GANGA CHARAN I L R 11 All. 79

20 ———— Trial of persons whose pardon has been cancelled—*Conditional pardon granted and afterwards cancelled—Criminal Procedure Code s 339*—It is unfair to put an approver whose conditional pardon has been cancelled on trial along with other prisoners in the course of whose trial such approver has given evidence QUEEN EMPRESS v RAMA TEVAN [I. L. R. 15 Mad. 352

21. ———— *Pardon tendered and afterwards withdrawn—Criminal Procedure Code ss 338 339*—An accused person to whom a tender of pardon has been made and who has given evidence under that pardon against persons who were co accused with him should not if such pardon is withdrawn be put back into the dock and tried as if he had never received a tender of pardon but his trial should be separate from and subsequent to that

APPROVERS—*concluded*

of the persons co-accused with him QUEEN EMPRESS v MULUA I. L R. 14 All, 502
QUEEN EMPRESS v SUDRA I. L R., 14 All, 336

22 ———————— *Criminal Procedure Code (Act V of 1898) s 337—Pardon tendered to one of the accused Approver—Trial of approver for non fulfilment of the condition on which pardon was offered*—No action can be taken against a person who has accepted a pardon for breach of the condition on which the pardon was tendered until after the case in the Court of Session has been finished and then his trial should be commenced *de novo* QUEEN EMPRESS v BHAU [I L R. 23 Bom 493

ARBITRATION

See CASES UNDER APPEAL—ARBITRATION

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—ARBITRATION REFERENCE TO

See CASES UNDER RIGHT OF SUIT—AWARDS SUITS CONCERNING

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—ARBITRATION [1 B. L. R., A C 43

———— Agreement to refer to—

See SPECIFIC RELIEF ACT s 21 [I. L. R. 11 Bom. 199
I. L. R., 9 All. 168
I. L. R., 23 Calc., 956

ARBITRATION—*continued*

———— Reference to—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE [I. L R 20 Bom 304

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I. L. R. 21 Bom 335

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS I L R 19 Calc., 334

———— Revocation of Agreement to refer—

See CONTRACT ACT s 28 [I L R 1 Calc, 42 466

See SPECIFIC RELIEF ACT s 21 [I L R 9 All., 168

1 ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS

(a) ACT VI OF 1857

1. ———— Act VI of 1857—*Land acquisition—Appointment of third arbitrator—Non attendance of umpire—Waiver*—Where one of two arbitrators appointed under s 10 of Act VI of 1857 by letter and also verbally authorized his co-arbitrator to appoint a certain person as third arbitrator and the co arbitrator wrote to the proposed third arbitrator informing him that he had been so appointed—*Semble*—That there was a good appointment by writing of the third arbitrator within the meaning of s 12 of Act VI of 1857 Where a third arbitrator appointed under s 12 of Act VI of 1857 considering that his services were required merely as an umpire though he had due notice of the first meeting neglected to attend that or any subsequent meetings of the arbitrators and took no part in the making of the award—It was held that such non attendance of the third arbitrator did not render the award a nullity but was only a ground for setting it aside on the ground of irregularity Where an officer appointed under Act VI of 1857 to conduct arbitration proceedings on behalf of Government attended the first two meetings of the arbitrators and did not object to two of the arbitrators proceeding with the reference in the absence of the third arbitrator and did not attend the subsequent meetings of the arbitrators—It was held that the Government had thereby waived their right to insist on the non attendance of the third arbitrator as a ground for setting aside the award ARDESAR HORMASJI WADIA v THE SECRETARY OF STATE FOR INDIA IN COUNCIL [9 Bom., 177

2. ———————— *Land acquisition—Judgments of arbitrators separately given*—The separately recorded opinions on different dates of arbitrators (appointed under Act VI of 1857 to assess the value of land taken for a public purpose) who have never met or consulted together do not constitute an award under the Act An award to be good must contain the joint judgment of the arbitrators up to the latest period previous to the execution of the award. FATMA BIBEE v COLLECTOR OF SURAT 8 Bom. A C., 79

ARBITRATION—*continued*

1 ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—*continued*

3 ——————— s 32—*Waiver of irregularity—Well in mill compound—Manufactory*—By a Government notification of the 3rd of June 1863 published in the Gazette it was declared under the provisions of Act VI of 1857 that a certain strip of land passing by the mill of the defendants was required for a public purpose—the Bombay Baroda and Central India Railway—a plan of which land was to be seen in the Collector's office On the 4th of November following the secretary of the defendants company received a notice signed by the Collector requiring the owner of the mill to call at the Collector's office to signify his acceptance or otherwise of the compensation for the land required The secretary went to the Collector's office and there saw a plan from which it appeared that an adjoining well from which the engine of the mill was supplied with water was intended to be taken but no compensation for the well or land required was then agreed upon On the 28th November a notice signed by the Collector was served on the defendants stating that he had appointed an arbitrator on behalf of Government and requiring the defendants to appoint an arbitrator also; the defendants in reply stated that they had already appointed an arbitrator *Held* that the defendants had by appointing their arbitrator to determine the compensation for the land required waived any irregularity in the previous proceedings and precluded themselves from claiming to have the whole manufactory taken under s 32 Act VI of 1857 though no proceedings were taken in the arbitration for nearly twelve months subsequently and the defendants had shortly before such proceedings made such a claim KHARSHED I NASARVANJI *v* SECRETARY OF STATE FOR INDIA **5 Bom O C 97**

(*b*) ACT X OF 1859

4. ——— **Act X of 1859 Suit under**—*Quære*—Whether Act X of 1859 empowered a Judge to refer a case to arbitration GAZEF HAZED BUKSH **16 W R 160**

5 ——————— *Civil Procedure Code (Act X of 1877) Chap XXXVII—Kabuliat Suit for*—Notwithstanding that Chapter XXXVII of Act X of 1877 in reference to arbitration does not refer specially to suits brought under Act X of 1859 yet if both parties to a suit for a kabuliat brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them and file a joint petition in the Court of the Deputy Collector stating that they had so agreed and praying that the case may be referred to such arbitrators neither of them will be afterwards at liberty to object to a decree made upon the award of the arbitrators on the ground that the reference to arbitration was irregular and not warranted by any of the provisions of Act X of 1877 When a case has been so referred the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint the Court out of which the reference issued is not at liberty on that ground to dismiss the suit but is bound to order the defendant (with the alternative of eviction) to execute a kabuliat in favour of the plaintiff engaging himself to pay rent to the plaintiff at the rate determined by the arbitrators to be fair and equitable KHEMNA GOWALA *v* BUDOLOO KHAN

[I L R 6 Calc 251 7 C L R 92

(*c*) ACT XX OF 1863

6 ——— **Act XX of 1863 s 16**—*Power to refer suit to arbitration—Suit for dismissal of members of devastanam committee—Validity of award*—Where a suit for dismissal of the members of a devastanam committee and damages was referred under Act XX of 1863 s 16 to arbitrators who passed an award dismissing them as prayed and decreeing a portion of the damages claimed with interest *Held* that the Court had power to refer the matter to the arbitrators and the arbitrators had power to decide it and to award damages with interest provided the amount inclusive of interest did not exceed the amount claimed in the plaint PERUMAL NAIK *v* SAMINATHA PILLAI **I L R 19 Mad 498**

7 ——————— *Award—Decision by majority without such provision in the award*—Plaintiff brought this suit to obtain a decree dismissing defendants committee and manager of a certain pagoda from their offices on the ground of malversation The Court made an order expressed to be by consent of the parties concerned and in exercise of the Court's discretionary power under s 16 of Act XX of 1863 referring the matters in difference to three arbitrators for final determination the said arbitrators to make their award in writing and submit the same within a certain period Each arbitrator delivered a separate award in writing two arbitrators finding for the plaintiff The Civil Judge made a decree in accordance with the award of the majority of the arbitrators The first defendant appealed on the grounds (1) that he had not consented to the arbitration and (2) that there being no provision in the order of reference to the effect that the finding of a majority of the arbitrators should prevail there was no valid award *Held* that in this case the order of the Judge was valid without the assent of the persons to be bound that he might when he made the order have inserted as a provision that the decision of the majority should be that of the body and that there was no reason why his ratification of that mode of decision wholly within his discretion should not be equivalent to a previous command IMMEDY KANTOA PAMAYA GAUNDAN *v* RAMASWAMI AMBALAM **7 Mad 173**

8 ——————— Case referred to arbitration under s 16 of Act XX of 1863 in which it was held that that Act did not apply and that the award and decree made thereon were illegal and void PROTAP CHANDRA MISSER *v* BROJONATH MISSER

[I L R 10 Calc 275

(*d*) BOMBAY REGULATION VII OF 1827

9 ——— **Bom. Reg VII of 1827**—*Award Validity of*—Where an award was held to be

ARBITRATION—*continued*

1 ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—*continued*

bad on the ground that the deed of submission to arbitration did not contain all the conditions required by the law (Bombay Regulation VII of 1827) as it made no provision as to the time within which the award was to be given —*Held* that the parol consent of the parties to the deed of submission before the arbitrator to waive such omission will not cure the defect NUSSERWANJEE PESTONJEE v MYNOODEEN KHAN **6 Moore s I. A , 134**

(*e*) DEKKHAN AGRICULTURISTS RELIEF ACT 1879

10 ——— **Dekkhan Agriculturists' Relief Act (XVII of 1879), s 47**—*Code of Civil Procedure (XIV of 1882) s 525—Construction—Conciliator's certificate* —Where a matter has been referred to arbitration without the intervention of a Court of Justice by parties one of whom is an agriculturist and an award has been made thereon any person interested in the award may, without obtaining the conciliator s certificate apply for the filing of the award under s. 525 of the Code of Civil Procedure the provisions of which are not superseded by s 47 of the Dekkhan Agriculturists Relief Act 1879 GANGADHAR SAKHARAM v MAHADU SANTAJI **I L R 8 Bom. 20**

11 ——— **ss 47 and 74**—*Civil Procedure Code (1882) ss 518 521 and 522—Power to file private award to which agriculturist debtors are parties* —A Civil Court can file a private award to which agriculturist debtors are parties without adjusting the accounts under the Dekhan Agriculturists Relief Act *Gangadhar* v *Mahadu I L R 8 Bom 20* followed MOHAN v TUKARAM **I L R., 21 Bom., 63**

(*f*) N W P RENT ACT 1873

12 ——— **N W P Rent Act (XVIII of 1873)** —Under the general law parties to suits may if they are so minded before issue joined refer the matters in dispute between them to arbitration and, after issue joined with the leave of the Court. Act XVIII of 1873 does not prohibit the parties to the suits mentioned therein from referring the matters in dispute between them in such suits to arbitration. Where therefore the parties to a suit under that Act agreed to refer the matters in dispute between them to arbitration after issues had been framed and evidence recorded and applied to the Court to sanction such reference —*Held* (STUART C J dissenting) that the Court was competent to grant such sanction and on receiving the award to act on it GOSHAIN GIRDHARIJI v DURGA DEVI **I. L. R., 2 All. 119**

(*g*) N W P LAND REVENUE ACT 1873

13 ——— **N.-W P Land Revenue Act (XIX of 1873) s. 221**—*Civil Procedure Code s 521—Award delivered after expiration of time allowed by Court* —The principle of the ruling of the Privy Council in *Har Narain Singh* v *Chaudhrain Bhagwant Kuar I L R 13 All 300 L R 18 I A 51* is applicable also to arbitrations under s 221 of Act No XIX of 1873 GAURI SHANKAR v BABBAN LAL **I. L. R., 14 All., 347**

14 ——— **ss 222 to 231**—*Award by one arbitrator only—Effect of such award and of the decision of the Settlement Officer thereon* —The provisions of ss 222 to 231 of Act XIX of 1873 contemplate that the award therein dealt with should be an award made by more arbitrators than one Where therefore a Settlement Officer had delivered a decision under s 230 upon what purported to be an award by one arbitrator only it was *held* that such so called award and the decision thereon of the Settlement Officer would not prevent the matters dealt with therein being reopened in a civil suit *Jatan Singh* v *Mahadeo Singh Weekly Notes All 1886 p 180* distinguished PARSIDH RAI v RAJI NAIN RAI **I. L. R , 18 All., 172**

2 REFERENCE OR SUBMISSION TO ARBITRATION

15 ——— **Power of Court to refer**—*Remand under Civil Procedure Code s 566 for trial of issues—Reference by first Court of whole case to arbitration—Refusal of arbitrator to act—Award by remaining arbitrators—Illegality of award—Civil Procedure Code s 510* —A Court of first instance to which issues have been remitted under s. 566 of the Civil Procedure Code by the Appellate Court has only jurisdiction to try the issues remitted and is *functus officio* in other respects and cannot make a reference of the case to arbitration which is only within the jurisdiction of the Appellate Court *Gossain Dowlat Geer* v *Bissessur Geer 22 W R 207* referred to NAND RAM v FAKIR CHAND **I. L. R. 7 All. 523**

16 ——— **Power of parties to refer**—*Civil Procedure Code 1859 ss 312 325—Mode of reference to arbitration* —Ss 312 and 325 of the Code of Civil Procedure (VIII of 1859) were enabling and were not intended to be restrictive or exclusive Parties who are *sui juris* are competent before decree to make any agreement as to the settlement of the suit JOOGESSUR BANERJEE v KULYANEE CHURN DEO **24 W R., 41**

17 ——— **Matters for arbitration.**—Whatever matters parties to a suit may agree to refer to arbitration they can refer such matters or any of such matters as are in difference between them in the suit TRUNATH CHOWDHRY v MANICK CHUNDER DOSS **14 W R. 400**

18 ——— **Agreement to refer future differences to arbitration**—*Naming of arbitrators—Civil Procedure Code (1882) s 523*—A general agreement to refer future differences to

ARBITRATION—*continued*

2 REFERENCE OR SUBMISSION TO ARBITRATION—*continued*

arbitration comes within s 523 of the Civil Procedure Code (Act XIV of 1882) and may be filed under that section. The section is not confined to cases in which a dispute actually existing at date of agreement is agreed to be referred to arbitration But the agreement must name the arbitrator or arbitrators and an agreement which provides for the future appointment or election of arbitrators does not fall within the section The effect of the last clause of s 523 is to give the parties to such an agreement power to nominate the arbitrator even when they have agreed that he shall be appointed by the Court In such cases the Court must appoint their nominee FAZULBHOY MEHRALI CHINOY v BOMBAY AND PERSIA STEAM NAVIGATION COMPANY

[I. L. R. 20 Bom 232

19 ———— Reference by executor to arbitration—*Application for probate—Opposition by caveator—Effect of award—Jurisdiction of Testamentary Court to decide question of award—Power of executor to refer question of execution of will to arbitration* —Any dispute (for instance as to the due execution of a will) in a suit on the testamentary side of the High Court can be referred to arbitration and the Court will recognize such reference and the award made in it An executor having propounded a will applied for probate a caveat was filed denying the execution of the alleged will and the matter was duly registered as a suit The executor and the caveatrix subsequently referred the dispute to arbitration and an award was made that the alleged will had not been executed. The executor nevertheless subsequently continued the suit At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor) The plaintiff (executor) contended that the Court as a Court of Probate had no jurisdiction to try any question as to the award but was limited only to the question of the execution of the will *Held per* CANDY J that the Court had jurisdiction to determine the question as to the award *Held* also that the award was binding on the executor GHELLABHAI ATMARAM v NANDUBAI

[I L R, 20 Bom 238

In the same case on appeal —*Semble* (FARRAN C J and STRACHEY J)—An executor against whose application for probate a caveat has been entered cannot submit to arbitration the question whether the will propounded by him was duly executed by the deceased GHELLABHAI ATMARAM v NANDUBAI I. L. R 21 Bom., 335

20 ———— Application for reference —*Parties to application—Act VIII of 1859 s 313* —An application for arbitration as provided by s 313 of Act VIII of 1859 must be made by all the parties who are materially interested otherwise it is liable to be declared invalid by the Court and to be set aside BAIKANTHANATH CHATTERJEE v NAZIRUDDIN

[1 B L R S N, 11 10 W R, 171

21 ———— *Mode of application* —The application for a reference to arbitration must be made in Court by an instrument in writing by the parties in person or their pleaders specially authorized in that behalf BHRIGOO ROY v BHAGRUTH UPADHYA W R 1864 Act X, 41

GAZEE v HAMID BUKSH 16 W R., 160

22 ———— Power of partner to bind the firm by reference to arbitration in absence of special authority—*Specific Relief Act s 21* —One partner though entitled to bring a suit on behalf of the firm of which he is a member to recover a debt due to the firm has no power in the absence of special authority to bind the firm by submission to arbitration of the claim so brought *Stead v Salt 3 Bing 101* and *Stranqford v Green 2 Mod 228* referred to RAM BHAROSE v KALLU MAL

[I L R 22 All, 135

23 ———— Absent plaintiff—Special authority — An application for arbitration on behalf of an absent plaintiff is not allowable without special authority GOOR CHUNDER PUTEETUNDO v JOOGUL CHUNDER *alias* SHAMA CHURN GHOSE

[1 W R., 80

24. ———— Unauthorized reference—*Civil Procedure Code 1859 s 313—Mooktears without special authority* —Where reference to arbitration was made by mooktears of the parties without holding special authority for that purpose as provided by law (s 313 Act VIII of 1859) from their clients respectively —*Held* that such reference to arbitration was unauthorized and illegal and not sufficient to remove the bar of limitation SHUNKER v HUR NARAIN 1 Agra Rev 49

RAM PERSHAD v NAZEER HOSSEIN

[1 Agra Rev 63

25 ———— Application made during hearing—*Civil Procedure Code 1859 s 313* — When an application for reference to arbitration is made in open Court at or during the final hearing of a suit in the presence of all parties and they consent thereto a written authority such as that referred to in s 313 of Act VIII of 1859 seems not to be required. AKBER BEG v BUNDA ALI

[2 N W 419

JEYASANKIRA DEVI v NAGANNADA DEVI

[1 Mad. 106 1 Ind Jur., O S, 136

26 ———— Submission in writing—*Civil Procedure Code 1859 s 326* —S 326 of the Civil Procedure Code made all submission to arbitration by an instrument in writing practically a rule of Court PESTONJEE NUSERWANJEE v MANOCKJEE & Co 1 Ind. Jur, N S 69

27 ———— *Order of reference to arbitration—Civil Procedure Code (Act XIV of 1882) s 506—Jurisdiction—Absence of written authority to refer practice* —By a Judge's order consented to by the plaintiff and defendant, this suit was referred to arbitration on the 13th December 1898 In the following January and February two

ARBITRATION—*continued*

2 REFERENCE OR SUBMISSION TO ARBITRATION—*continued*

meetings were held before the arbitrator which were attended by the defendant and the managing clerk of his then attorney and he took an active part in the proceedings. Subsequently the defendant changed his attorney and declined to proceed with the arbitration contending that the order of reference was illegal inasmuch as no special authority in writing was given by the parties to their attorneys to obtain the order as required by s 503 of the Civil Procedure Code. He took out a summons to set aside the order. *Held* (dismissing the summons) that the absence of a written authority did not invalidate the order of reference. LUXAMIDAS v. WADINA CASSUM

[I L R, 33 Bom 630

29 ———— *Code of Civil Procedure (Act XIV of 1882), ss 506 and 578* —*Reference to arbitration not by a written petition but by consent of parties—Whether an award passed on such reference is ab initio void—Irregularity not affecting the merits of the case or the jurisdiction of the Court* The second paragraph of s 506 of the Civil Procedure Code which says that every application for an order of reference shall be made in writing is directory only; therefore in a case where both the parties consented to a reference to arbitration and where the order of reference was made by the Court in the presence of their counsel and vakils but not upon a written application, such a reference is not a nullity as it is merely an irregularity not affecting the merits of the case or the jurisdiction of the Court. SHAMA SUNDARAM IYER v. ABDUL LATIF

I L R 27 Calc 61
[4 C W N 94

30 ———— Ineffectual reference *Refusal of arbitrator to act—Act VIII of 1859 ss 313 and 316* —Where parties had executed a deed agreeing to refer all matters in dispute to the arbitration of three persons and one of the arbitrators refused to continue to act and the other two consequently refused to proceed with the reference the Court refused to order the agreement to be filed in Court. BROOKE v. DURDIAL

[12 B L R Ap 13

30 ———— *Want of express consent* —The Judge intimated that he should refer the suit to arbitration and allowed a certain time to the parties to object to that course. No objection was made within such time and thereupon the Judge referred the cause to arbitrators named by him. After the day fixed the defendants objected. *Held* that the reference was not warranted, there having been no express consent by the parties. DEOPUNTA CHATTERJEE v. RAM LALL DEBEA

[Marsh 517 2 Hay 583

31 ———— Refusal to consent to arbitration *Presumption* Nothing which passes between the parties in any attempt at arbitration ought to be allowed to affect the slightest degree the merits of their case as it stands if it comes to be tried before the Court. No presumption can be raised against a party to a suit

ARBITRATION—*continued*

2 REFERENCE OR SUBMISSION TO ARBITRATION—*concluded*

from his refusal to withdraw from the determination and submit to arbitration. MOHABEER SINGH v. DHOJJOO SINGH

20 W R 173

32 ———— *Jurisdiction of Court over arbitrators Civil Procedure Code (Act XIV of 1882) ss 508 516* —When a Court has referred a suit to arbitration it has jurisdiction over the arbitrators to compel them to give up documents filed before them as exhibits during the course of the arbitration and to return the original records of the suit which may have been handed to them. Such jurisdiction can be exercised by an application made in the suit on notice to the arbitrators. NURSING CHUNDER DAWN v. NUFFUR CHUNDER DUTT

[I L R, 17 Calc, 833

3 APPOINTMENT OF ARBITRATORS AND UMPIRES

33 ———— Power of Judge to appoint —*Consent of nominees—Fresh appointment after refusal to act* Before a Judge refers a case for arbitration he should ascertain whether the persons nominated are willing to accept the office and till he has done so any nomination of an arbitrator by him without the application or consent of the parties is illegal. But when a case has once been referred to arbitration after the preliminary steps have been properly taken the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act. PROVE OKHONATH ROY v. COLLECTOR OF BEERBHOOM LOCKENATH ROY v. COLLECTOR OF BEERBHOOM HURONATH ROY v. KASHEENATH ROY

W R 1864 338

34 ———— Nomination by Judge— *Civil Procedure Code 1859 s 314—Validity of appointment of arbitrator* —When both the parties could not agree in nominating an arbitrator and the Judge nominated one under s 314 Act VIII of 1859 and one of the parties six weeks after the nomination objected to the Judge's nominee but could not show on appeal that he did not request the Judge to nominate some one the appointment was held good and binding upon both parties. SEROOP RAM DEB v. GOBIND RAM DEB

7 W R, 13

35 ———— *Civil Procedure Code (1882) ss 510 and 521—Refusal of person appointed arbitrator to act—Appointment of arbitrator by Judge—Effect of s 521 on such appointment* —The words "so far as they are consistent with any agreement so filed" in s 524 of the Code of Civil Procedure do not mean that the agreement must contain in every case an express provision as to what ought to be done if any arbitrator is unwilling to act in order that a Judge may act in conformity to it and that s 510 has thereby no application. The reasonable construction is that the action of the Judge under s 510 should not be in conflict with the agreement if it contains any special provision on the subject. BALA PATTABHIRAMA CHETTI v. SEETHARAMA CHETTI

[I L R, 17 Mad, 498

ARBITRATION—*continued*

3 APPOINTMENT OF ARBITRATORS AND UMPIRES—*continued*

36 ——— **Arbitrators not consented to by parties**—*Invalid award* —The Code gives no power to a Court to enforce arbitrators on an unwilling suitor The award of arbitrators so appointed will not be enforced. SHEONATH *alias* BUBBAY KAKA *v* RAMNATH *alias* CHOTAY KAKA

[1 Ind. Jur N S., 161 5 W R P C., 21 10 Moore's I A, 413

37 ——— **Appointment of sole arbitrator in place of four**—*Civil Procedure Code 1859 ss 315 318 319—Recall of reference—Consent—Appointment of substitute for arbitrator* — In a suit for a partnership account the matters in dispute were by an order dated the 19th April 1877 referred by consent to four persons and an umpire the award to be made within five months Some steps were taken in the reference but the arbitrators failed to make their award within the time limited and meanwhile the umpire died After negotiations for appointment of a fresh arbitrator and enlargement of the time had failed the plaintiff moved that the order of the 9th April 1877 might be recalled and that the matters in dispute might be referred to the arbitration of such person or persons as the Court might be pleased to admit or be tried and determined by the Court The defendant opposed the application An order was however made on the 29th May 1878 that the order of the 19th April 1877 should be recalled and that all matters in difference between the parties should be referred to *C D* who should make his award in writing within three months or within such further time as the said *C D* might think necessary Certain provisions as to the payment of costs were also made *Held* that the order of the 19th May was not an order recalling the reference under s 318 and then referring it afresh under s 315 of Act VIII of 1859 but an order under s 319 appointing a new arbitrator in the place of the old ones for which the consent of all parties was not necessary Under s 319 of Act VIII of 1859 the Court has power to appoint an arbitrator or arbitrators either in the place of an arbitrator or in the place of arbitrators RAMPERSAD *v* JUGGERNAUTH 6 C L R, 1

38 ——— **Umpire, Appointment of**—*Act VIII of 1859 s 316—Difference of opinion* — Where a case has been referred to arbitration but no provision has been made in the reference for any difference of opinion among them as directed by s 316 Act VIII of 1859 —*Held* that the Court on the case coming before it and objection being taken to the award should have ordered that the arbitrators should appoint an umpire; or should have declared that the decision of the majority should prevail; or should have appointed an umpire; or should have made such arrangement as the parties would have consented to or if they could not agree such arrangement as it thought fit Where this was not done and the case came up in special appeal to the High Court the case was sent down that it might be submitted to arbitrators again with a distinct order under s 316 HARADHAN DATT *v* RADHANATH SHAHA

[2 B L R S N 14 10 W R. 398

39 ——— **Appointment of Arbitrator by Court.** —*Semble*—Where no arbitrator has been named in an agreement and the aid of the Court in the appointment of an arbitrator is invoked the parties ought to have an opportunity of being heard upon the selection to be made *Pestonjee Nusserwanjee v Manockjee 12 Moore's I A. 112* referred to COLEY *v* DACOSTA

[I. L R 17 Calc 200

40 ——— **Power of Court to appoint new arbitrators**—*Civil Procedure Code (Act XIV of 1882) s 510* —The Court has power under s 510 of the Code of Civil Procedure to appoint a new arbitrator in the place of another only when the latter had consented to act as arbitrator *Pugardin Ravutan v Moidinsa Ravutan I L R 6 Mad 414* approved of BEPIN BEHARI CHOWDHRY *v* ANNODA PROSAD MULLICK

[I L R., 18 Calc, 324

41 ——— **Appointment of umpire by arbitrators**—*Umpires—Mode of appointment prescribed by contract—Delegation by arbitrators of their right to appoint umpire* —A contract provided that disputes between the parties were to be referred to the arbitration of two merchants and that should the arbitrators be unable to agree they should appoint an umpire The plaintiffs and defendant referred their dispute to two arbitrators These arbitrators disagreed in their report and referred the case to the Bombay Chamber of Commerce for the appointment of an umpire The Chamber of Commerce appointed an umpire who made his award. *Held* that the appointment of the umpire was invalid. The arbitrators could not delegate the power of appointment conferred on them by the contract SMITH *v* LUDHA GHELLA DAMODAR I. L. R 17 Bom., 129

42 ——— **Incapacity to act**—*Act VIII of 1859 s 319—Absence from the country* —When a person goes away from the country and remains away and there is no evidence to show an intention to return that person becomes incapable of acting as umpire within the meaning of s 319 of Act VIII of 1859 GADADHAR MOITRY *v* GANGA PRASAD MOITRY 4 B. L. R. O C 89

4. DUTIES AND POWERS OF ARBITRATORS

43 ——— **Ascertainment of points at issue**—*Decision on issue* — All matters in difference in the suit including all dealings and transactions between the parties, having been referred to the arbitration and award of certain persons the arbitrators should ascertain upon what points the parties are at issue and upon each of these points come to a finding LUCHMEE NARAIN *v* LYLE

[2 N W, 150

ARBITRATION—*continued*

4 DUTIES AND POWERS OF ARBITRATORS —*continued*

44 ———— **Delegation of authority**—*Absent arbitrators* —Arbitrators have no power to delegate their authority to others Thus if some of the arbitrators are absent those present cannot appoint others in their stead SURUBJEET NARAIN SINGH *v* GOUREE PERSHAD NARAIN SINGH [7 W R 269

45 ———— **Procedure of arbitrators**—*Technical rules* —Arbitrators are not bound by the technical rules of Court KHEDOY KRISHTO MOZOOMDAR *v* JUDDO LUCHON MOZOOMDAR 1 W R 12

46 ———— *Evidence* —Arbitrators ought only to take such evidence as is required by the terms of the agreement referring the question in dispute to arbitration KRISHNAKANTA TARAMANIK *v* BIDYA SUNDAREE DASI [2 B L R Ap 25

47 ———— **Matters referred by Court also by parties**—*Separate awards* —Arbitrators should give separate awards in a case referred to them by the Judge and on other matters referred to them by the parties instead of mixing them all up and giving a general award JOGHOO NUNDUN LALL SAHOO *v* BUNWAREE LALL SAHOO [3 W R Mis 27

48 ———— **Decision on matters not referred** —The decision of arbitrators in a matter not in difference between the parties nor referred to them is null and void for want of jurisdiction MOSHAHEL SINGH *v* KOVOMUTTY BEWA 15 W R, 172

49 ———— **Power to order payment of fees to be condition precedent to hearing of reference** —There is nothing in the Civil Procedure Code which authorizes arbitrators to apply to the Court for confirmation of an order passed by them making payment of their fees a condition precedent to the hearing of a reference STEEL *v* ROBERTS [I L R 6 Calc 809 8 C L R 439

50 ———— **Interest after date of submission**—*Costs of reference—Act VIII of 1859 ss 312 322* —Where all matters in difference between the parties in the suit were referred to arbitration under an order of Court —*Held* that the arbitrators had power to award interest after the date of the submission and to deal with the costs of the reference and award MOHAN LALL *v* NATHU RAM [1 B L R O C 144

51. ———— **Costs**—*Omission to fix scale of costs* —An award directed that the defendant should pay the costs of the suit and of the reference and of the award without fixing the scale On application to the Court to do so the case was sent back to the arbitrator for that purpose *Held* that when the order of reference gives the arbitrator full discretion over costs he alone can fix the scale BARRUT CHUNDER DOSS *v* DAMJEE PITTUMBER [Bourke O C 7 Cor, 150

52. ———— *Civil Procedure Code 1859 s 317 et seq* —Where by an order of reference made pending a suit all matters in difference between the parties are referred to an arbitrator by the Court under Act VIII of 1859 s 317 *et seq* the arbitrator has power to deal with the costs of the suit MUDDOOSOODUN CHOWDHRY *v* KOYLAS CHUNDER SHAW KOYLAS CHUNDER SHAW *v* MUDDOOSOODUN CHOWDHRY 2 Ind Jur N S 12

53 ———— *Power of arbitrators to deal with question of costs—Excess in award* —The parties to a suit having referred the matters in dispute between them to arbitration the arbitrators without being specially authorized to decide the question of costs included in the award a direction that the defendant should pay the costs of the plaintiff On the application of the plaintiff the Subordinate Judge under s 526 of the Civil Procedure Code (Act XIV of 1882) ordered the award to be filed holding that the arbitrators had as such an implied power to deal with the costs The defendant applied to the High Court under its extraordinary jurisdiction praying that the record of the case might be sent for and the order of the Subordinate Judge set aside *Held* that the arbitrators had no implied power to deal with the question of costs and that on the defendant's objection the Subordinate Judge should have refused to file the award. Under the circumstances the High Court instead of setting aside the order to file the award directed the award to stand good except so far as it awarded costs and that the decree should be drawn in accordance with it as it would be if it contained no direction as to costs DAGDUSA TILAKCHAND *v* BHUKAN GOVIND SHET I L R 9 Bom 82

5 SUBMISSION OF AWARD

54. ———— **Extension of period for submission of award**—*Practice* —Applications for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. MOWJI PREMJI SETT *v* MALIYAKEL KOYASSAN KOYA HAJI [I L R. 3 Mad. 59

55 ———— *Umpire—Civil Procedure Code 1882 s 509* —As in the case of an arbitrator so in the case of an umpire a Court has power to extend the period within which the award is to be submitted. The Court can extend the time allowed to an umpire under s 509 of the Code KUPU RAU *v* VENKATARAMAYYAR [I. L R. 4 Mad. 311

56 ———— *Order extending time for presentation of award* —An order extending the time for the presentation of an award upon application presented within time is not bad in law by reason of its having been made after the expiry of the term which it purports to extend. SUPPU *v* GOVINDACHARYAR I L R 11 Mad. 85

57 ———— *Omission to fix time for delivery of award—Extension of time after expiration of period fixed—Civil Procedure Code*

ARBITRATION—*continued*

5 SUBMISSION OF AWARD—*continued*

ss 508 514 —The provision contained in s 508 of the Civil Procedure Code requiring the Court to fix a reasonable time for the delivery of the award is not imperative, but directory and non compliance with it does not make the order of reference abortive and any subsequent arbitration proceedings ineffectual and bad. Under s 514 of the Code the Court may extend the time for making the award after the time fixed therefor has expired. HAR NARAIN SINGH *v* BHAGWANT KUAR **I. L. R. 10 All. 137**

58 ———— *Making and filing award—Award made but not filed within time specified by order of Court—Civil Procedure Code (Act XIV of 1882) ss 508 514 521* —The present suit for dissolution of partnership and all matters in dispute between the parties thereto were by Judge's order dated 18th July 1887 referred to the arbitration of *A* and *B* The time for making and filing the award was by subsequent orders extended to the 18th May 1888 The award was made on that day but was not filed until the 18th June 1888 The second defendant obtained a rule calling on the other parties to show cause (*inter alia*) why the award should not be set aside by reason of its not having been filed in time *Held* that the omission to file the award on or before the 18th May 1888 did not render it invalid The word made in ss 514 and 521 of the Civil Procedure Code (Act XIV of 1882) does not include the filing of the award. UMERSEY PREMJI *v* SHAMJI KANJI **I. L. R. 13 Bom. 119**

59 ———— **Award leaving point at issue undecided**—*Omission from reference of a point in dispute—Decision by Court after submission* —Where matters in dispute are referred to arbitration and it is found that one question at issue is omitted from the reference and that the award returned by the arbitrators contains no decision thereon the party interested should bring the omission to the notice of the Court If he fails to do so the Court is not wrong in not passing any order or coming to any decision on that point RAJ NARAIN ROY *v* JUGGESSUR MOOKERJEE **14 W R. 247**

60 ———— **Delivery of award to party**—*Completion of arbitration—Act VIII of 1859 ss 315 318 and 320—Record of proceedings* —By an order of Court of January 17th 1867 a suit was referred to two arbitrators under s 312 Act VIII of 1859 who were to make their award in writing and submit the same to the Court within three months No order for enlarging that time was made The first meeting of the arbitrators was held on May 22nd 1867 and four subsequent meetings were held at which all the parties attended and evidence was taken at the last of which meetings namely on 27th July an objection for the first time was taken on behalf of the defendant that the time limited by the order of reference had expired but the arbitrators proceeded with the reference The award was made on 19th August 1867 and remained with one of the arbitrators until his death in August 1868 Subsequently it was produced by the other arbitrator on the application of the parties to the suit and delivered to the successful party by whom it was brought into Court on the 10th May 1870 and judgment was moved for in accordance therewith *Held* that the arbitrators had authority to make the award The award was properly submitted to the Court S 320 Act VIII of 1859 does not make it necessary for the arbitrators to submit the award to the Court personally Submission to the Court under s 320 is not necessary to the completion of an award under ss 315 and 318 Although an arbitrator may deliver his award to one of the parties he ought not to hand over with it the proceedings depositions and exhibits JAGAT SUNDERI DASI *v* SANATAN BYSAK **[5 B L R, 357**

6 REMISSION TO ARBITRATORS

61 ———— **Defective and illegal award** —An award defective and illegal on the face of it should be at once remitted to the arbitrators LUCHMEE NARAIN *v* LYLE **2 N W 150**

62. ———— **Award containing mistakes omissions or defects**—*Civil Procedure Code 1859 ss 322 323 324*—S 323 Act VIII of 1859 authorizes a Court which refers a case to arbitrators to remand it to them for reconsideration when their award contains mistakes omissions or defects which cannot be amended by the Court under s 322 Such award on the refusal of the arbitrators to reconsider it becomes null and void without proof of corruption or misconduct under s 324 MOHUN KISHEN *v* BHOOBUN SHYAM **7 W R. 406**

63 ———— **Application to remit award to arbitrators**—*Time for remission—Civil Procedure Code 1859 s 320* —An application that an award be remitted to the arbitrators in order that the proceedings depositions and exhibits in the suit which had not been submitted with it to the Court under Act VIII of 1859 s 320 should be so submitted ought to be made within ten days after the award has been originally submitted otherwise if the award be good on the face of it the Court will give judgment upon it BANEY MADHUB ROY *v* HURRY MOHUN ROY **2 Ind. Jur N S 16**

64 ———— **Judgment passed on award within time allowed for remission**—*Civil Procedure Code 1859 ss 324 325—Remission after judgment* —A judgment given according to an award under s 325 of Act VIII of 1859 without waiting the ten days prescribed by s 324 of that Act is illegal and will be set aside After passing judgment according to an award such award cannot be resubmitted to the arbitrator for reconsideration and correction POHKAR PERSHAD *v* PUNCHUM RAE **2 N W 235**

65 ———— **Remission to arbitrators after decision on special appeal.**—A case having been referred to arbitration without provision being made for a difference of opinion and the arbitrators having given in differing awards the Court of first instance tried the case anew and dismissed the suit This decision was confirmed on appeal In special appeal the plaintiff asked that

ARBITRATION—*continued*

6 REMISSION TO ARBITRATORS—*continued*

the case might be sent back to the arbitrators with a provision for difference of opinion and that they might submit their award a second time *Held* that it was too late at this stage to allow such a course THAKOOR DASS CHUCKERBUTTY *v* RAM JEEBUN CHUCKERBUTTY 14 W R. 150

66 ——— **Refusal of arbitrator to reconsider award.** The plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage which he alleged the defendants had received and appropriated to their own use The defendants denied that they had received such moneys but admitted that such moneys had been credited by the plaintiff s father to the firm in which they the plaintiff and the plaintiff s father were jointly interested against a larger amount of moneys belonging to the firm which had been expended on the plaintiff s marriage The parties agreed to refer the matter in dispute between them to arbitration and to abide by the decision of the arbitrator The arbitrator decided that the plaintiff could not recover the money he sued for and which had been credited to the firm of which he was a partner as a larger sum had been expended on his marriage out of the funds of the firm The plaintiff obtained the opinions of certain pandits to the effect that under Hindu law gifts on marriage are regarded as separate acquisitions and prayed that the Munsif would remit the award with these opinions to the arbitrator The Munsif remitted the award with the opinions requesting the arbitrator to consider them and to return his opinion in writing within a certain period The arbitrator having refused to act further the Munsif proceeded to determine the suit and gave the plaintiff a decree on the ground that in a joint Hindu family presents received on marriage do not fall into the common fund. *Held* (PEARSON J dissenting) that there being no illegality apparent on the face of the award the Munsif was not justified in remitting the award or in setting the award aside and proceeding to determine the suit himself but that he should have passed judgment in accordance with the award. NANAK CHAND *v* RAM NARAIN

I. L. R. 2 All 181

67 ——— **Refusal by arbitrator to act**—*Award on one point only—Remission to arbitrator—Limitation—Adverse possession* —A case was referred for decision to an arbitrator The arbitrator made his return deciding by the award only one of the issues raised in the case *viz* that the defendants had been in possession of the land in suit for more than twelve years The plaintiffs and the defendants claimed under the same landlord. The Munsif remitted the award to the arbitrator for determination of the other matters arising in the case the arbitrator however refused to act further in the matter and the Munsif himself took up the case and decided it in favour of the plaintiffs. On appeal the Subordinate Judge held that the award made by the arbitrator was sufficient for the determination of the case and reversed the decision of the Munsif and gave the defendants a decree in terms of the award. *Held* that as the plaintiffs and the defendants claimed under one and the same landlord and the question between them being which of the two had the better title to the land in dispute the case could not have been concluded by the finding of the arbitrator upon the question of possession and that the Munsif had acted rightly, on the arbitrator declining to complete the award in deciding the case himself JONARDON MUNDUL DARNA *v* SAMBHU NATH MUNDUL

I L R 10 Calc 808

68 ——— **Appeal impugning propriety of order of remission**—*Civil Procedure Code 1877 s 520* —An award was remitted under s 520 of Act X of 1877 The arbitrators refused to reconsider it and the Court thereupon proceeded with the suit and gave the plaintiffs a decree The defendants appealed from such decree on the ground amongst others that the award had been improperly remitted under s 520 *Held* that the question whether the award had been properly remitted under s 520 or not could be entertained in such appeal ABDUL RAHMAN *v* YAR MAHAMMAD

I L R 3 All. 636

But *see* GEORGE *v* VASTIAN SOLEY

I. L. R. 22 Mad., 204

and cases cited in the judgment in that case

69 ——— **Omission of arbitrator to carry out terms of reference**—*Suit for partition and to take accounts—Civil Procedure Code 1877 ss 2 520 522 523—Filing agreement to refer to arbitration in Court— Decree* —The sharers of a joint undivided estate agreed in writing that such estate should be partitioned and the accounts there of settled by arbitration and named one of such sharers as arbitrator and agreed that he should settle all the accounts show the surplus at each sharer's credit and prepare lots after partition of the lands and houses comprehended in such estate and have them drawn within one year from the completion of the partition Subsequently one of such sharers applied under s 523 of Act X of 1877 to have such agreement filed in Court The other sharers not objecting to this course such agreement was filed accordingly and the case was referred to such arbitrator The arbitrator made an award whereby he partitioned such estate into lots assigning some only of such lots by name and wherein he stated that he had not been able to settle the accounts owing to the default of the parties and that considering that the partition should take effect without any delay he did not ask for further time He further stated that "all the parties state that they will adjust the accounts after renewing the agreement" and he requested that the unassigned lots might be drawn in Court The Court made an order confirming the award and it being objected that the settlement of the accounts should not be postponed but that they should be settled as agreed directed that the arbitrator should settle the accounts and gave him a year's time for that purpose and some of the parties not being willing to draw the unassigned lots directed the distribution of such lots in reference to

ARBITRATION—*continued*

6. REMISSION TO ARBITRATORS—*concluded*

the age and number of the sharers *Held* that such order was a decree within the meaning of ss. – and 5– of Act X of 1877 that the arbitrator should himself have drawn such lots or he should have made the parties draw them but inasmuch as it would not have strained the agreement to have had such lots drawn in Court and no objection had been taken to the arbitrator not having himself drawn them it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them that the Court however should not have distributed such lots in the manner it had done but should have drawn a lot for each person and in acting as it had done it had acted contrary to the award and for that reason its decree could not be maintained and that in confirming the award before the accounts had been settled and an award made in respect thereof the Court had acted erroneously inasmuch as the award had left undetermined a very important matter in the settlement of the accounts and the Court should under s 520 of Act X of 1877 have remitted the award for the reconsideration of the arbitrator and as it had the power to remit it upon such terms as it thought fit the Court could have allowed one year if necessary for the settlement of the accounts and on this account and also because the Court had made an order postponing the settlement of the accounts and thereby made an order contrary to and in excess of the award its decree must be reversed. SADIK ALI *v* IMDAD ALI KHAN I L R 3 All 283

70 ———————— *Civil Procedure Code (1882) s 521—Legality of order remitting award for reconsideration—Appeal*—An award submitted by arbitrators to whom all matters in dispute had been referred stated that defendant has not produced any witness in support of his contention raised in issues Nos 1 – 5 and 6 hence we have only to deal with issues Nos 3 4 and 7 and, dealing with those issues the arbitrators gave their findings The award was remitted on the ground that the arbitrators had not determined the issues Nos 1 2 5 and 6 *Held* (1) the legality of an order remitting an award for the reconsideration of the arbitrators may be challenged on appeal against the decree ultimately passed and (2) that the award ought not to have been remitted there was no illegality on the face of it and there was a decision on the whole matter in issue between the parties *Mothooranath Tewaree* v *Brindabun Tewaree* 14 W R 327 *Ambica Dasi* v *Nadyar Chand Pal* I L R 11 *Calc* 172 *Nanak Chand* v *Ram Narayan* I L R 2 *All* 181 and *Bikramjit Singh* v *Husaini Begam* I L R 3 *All* 643 referred to GEORGE *v* VASTIAN SOURY [I L R 22 Mad 202

7 REVOCATION OF OR WITHDRAWAL FROM ARBITRATION

71 ———————— Revocation of agreement to refer—It is almost a universal rule that a submission to arbitration is revocable before award made SUROBJEET NARAIN SINGH *v* GOOREE PERSHAD NARAIN SINGH 7 W R 269

72 ———————— Mode of revocation—A revocation by deed can set aside a deed by which a person binds himself to abide by the decision of arbitrators A revocation by parol may set aside a parol agreement Notice is not necessary ALLA AYAPPA *v* NUNDULA PERAIYA *alias* PERAMBOTLU [3 Mad 82

But *see* NAGASAWMY NAIK *v* RUNGAVAMY NAIK 8 Mad 46

73 ———————— *Telegram staying proceedings*—In the course of arbitration proceedings in Calcutta one of the arbitrators received two telegrams purporting to be sent by the plaintiff and defendant in Darjeeling to the arbitrators the terms of which were Stay further proceedings arrange matters here *Held* that the telegrams sent to the arbitrators did not amount to a revocation of their authority KELLIE *v* FRASER [I L R 2 Calc 445

74 ———————— *Lapse of time Presumption of revocation from Suit to enforce agreement to refer*—Where some months had elapsed without either party taking action to carry out an agreement to refer a dispute to arbitration the plaintiff was held not to be debarred from considering the agreement revoked and prosecuting his suit JEORA KHUN LOLL *v* MUTTRA PERSHAD [1 N W Ed. 1873 252

75 ———————— Ground for revocation—*Sufficient cause*—An agreement to refer an existing dispute to arbitration is as binding and capable of enforcement as any other lawful contract and a submission of such a dispute to arbitration once made is not without just and sufficient cause revocable *Alla Ayappa* v *Nundala Peraiya* 3 *Mad* 82 overruled *Pestonjee Nusserwanjee* v *Maneckjee* 3 *Mad* 183 and *Santanja* v *Ramaraya* 7 *Mad* 207 followed. NAGASAWMY NAIK *v* RUNGAVAMY NAIK 8 Mad 46

76 ———————— *Long and unreasonable delay in the conduct of the proceedings—Civil Procedure Code (Act XIV of 1882) s 523*—A submission to arbitration can only be revoked on good grounds The claimant in a reference to arbitration is the person on whom *cæteris paribus* it is incumbent to press on the conduct of the proceedings and when therefore there is a long and unreasonable delay unexplained by any act of the other party either conducing to it or consenting to it or waiving it the latter is *primâ facie* entitled to decline to go on with the reference and to revoke the agreement for submission Where an agreement to refer has been duly revoked the Court is incompetent to order it to be filed under s 523 of the Code of Civil Procedure COLEY *v* DACOSTA I. L. R., 17 Calc., 200

77 ———————— *Omission to fix time within which award should be made—Notice*—According to the proper construction of the Code of

ARBITRATION—*continued*

7 REVOCATION OF OR WITHDRAWAL FROM, ARBITRATION—*continued*

Civil Procedure (that is to say construing it with reference to the constitution of the Civil Courts of India and the abiding direction to them to proceed in all cases according to equity and good conscience) when persons have agreed to submit the matter in difference between them to the arbitration of one or more specified persons no party to the agreement can revoke the submission to arbitration unless for good cause and a mere arbitrary revocation of the authority is not permitted Where no time was originally fixed within which the award was to be made it is open to either party to hasten the proceedings by giving notice to the arbitrators that the award must be made and an umpire appointed within a reasonable time but where the time elapsing after the notice has been actively employed by the arbitrators and the delay has been owing to necessity which they could not control the parties cannot recede from their submission by reason of the notice PESTONJEE NUSSERWANJEE *v* MANOCKJEE & CO

[10 W R, P C, 51 12 Moore's I A, 112

ABLAKHEE KOOER *v* OODUN SINGH

[15 W R, 331

78 ———— After the parties to a suit have agreed to refer it to arbitration and the order of reference has been made by the Court under s 508 of the Civil Procedure Code neither of them can arbitrarily and on no sufficient ground withdraw from the agreement *Pestonjee Nusserwanjee* v *Manockjee & Co 12 Moore's I A 112* followed NAINSUKH RAI *v* UMADAI I L R 7 All., 273

79 ———— Revocation of submission.—A submission to arbitration once made cannot be revoked except for good cause It cannot be revoked at the mere will of one of the parties to it *Pestonjee Nusserwanjee* v *Manockjee & Co 12 Moore's I A 112* referred to SULTAN MUHAMMAD KHAN *v* SHEO PRASAD

[I L R, 20 All, 145

80 ———— Appointment of new arbitrator Power of—*Civil Procedure Code (Act XIV of 1882) ss 506 508 510 521*—On 19th June 1884 an application for an order of reference was made under s. 506 of the Civil Procedure Code (XIV of 1882) by both parties to a suit It was signed by both defendants and by the plaintiffs pleader As the plaintiffs pleader had not been specially authorized in writing to join in the application the Court postponed making any order on the application till the 23rd idem. On that day the first defendant did not attend the Court but the plaintiffs pleader produced the requisite authority and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th On 27th June the first defendant made an application to the Court to revoke the authority of the arbitrator and appoint a new arbitrator in his place on the ground that after signing the application of the 19th he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence reposed in him No final order was made upon this application till after the submission of the award when it was rejected on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out *Held* first that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884 when the order of reference was made must be taken to have tacitly acquiesced in the course adopted by the Court and that such acquiescence amounted to a fresh submission *Ardesar Hormosji Wadia* v *Secretary of State for India 9 Bom 177* and *Sreenath Ghose* v *Raj Chunder Paul 8 W R 171* followed. The objections raised by the first defendant could only be considered after the submission of the award and then only to the extent permitted by s. 521 of the Code of Civil Procedure (XIV of 1882) When once a matter is referred to arbitration it is not competent to the Court under the second paragraph of s 508 of the Code of Civil Procedure (Act XIV of 1882) to deal with the matter in difference between the parties except as provided in Ch XXXVII of the Code There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator and to appoint a new one except in cases falling strictly within the purview of s 510 of the Code where the scope and object of the reference cannot be executed. It is only in those cases apparently that the authority conferred on arbitrators can be revoked ' for good cause the cause being such as is contemplated in that section as where an arbitrator refuses or neglects, or becomes incapable to act or leaves British India under circumstances showing that he will probably not return to India at an early date The enactment of the second paragraph of s 508 of the Code of 1882 which does not occur in the corresponding section (315) of Act VIII of 1859 has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary HALIMBHAI KARIMBHAI *v* SHANKAR SAI I. L. R., 10 Bom., 381

81. ———— Revocation by one party—*Sufficient cause —Civil Procedure Code 1859 s 326*—The fact of one of the parties to the agreement revoking his submission is not a sufficient cause within the meaning of s 326 of Act VIII of 1859 The English cases on the subject considered PESTONJEE NUSSERWANJEE *v* MANECKJEE

[3 Mad., 183

S C on appeal 12 Moore's I. A. 112 [10 W R, P C 51

SANTANJA *v* RAMARAYA 7 Mad. 257

82. ———— Examination of arbitrator as a witness —A reference to arbitration made under an order of Court cannot be revoked at the instance of a party If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision but only to prove any admission which may have been made

ARBITRATION—*continued*

7 REVOCATION OF OR WITHDRAWAL FROM ARBITRATION—*continued*

before him in the course of arbitration and which might be material evidence NILMONEE BOSE v MOHIMA CHUNDER DUTT 17 W R, 516

83 ——— Revocation of agreement to have case decided on the evidence of third person—*Act X of 1873 (Oaths Act) ss 8 12—Act X of 1877 (Civil Procedure Code) Ch XXXVII* —The plaintiffs and some of the defendants in a suit agreed that the matters in difference between them in the suit should be decided in accordance with the statement made on oath by one *J* after he had made a local enquiry into such matters The Court trying the suit accordingly directed that *J* should be examined on a certain day Before *J* was examined the defendants objected to the case being decided in accordance with *J's* evidence but the Court disallowed the objection and having taken *J's* statement on oath decided the case in accordance therewith *Held* by STUART C J that the provisions of ss 8 to 12 of Act X of 1873 were not applicable to the reference of the case to *J* that *such reference was in the nature of a* reference to arbitration under the Code of Civil Procedure that it would have been valid and binding on the parties had all the defendants joined in it but that as all the defendants did not do so the proceedings were illegal and they should be set aside and the suit be decided on the merits *Held* by OLDFIELD J that the reference of the case to *J* was not made under or governed by the provisions of the Civil Procedure Code relating to arbitration and therefore the defendants were competent to revoke the agreement and that assuming the reference was made under the provisions of the Oaths Act there was no rule of law prohibiting the revocation of such a reference and therefore the defendants were competent to revoke the same LEKHRAJ SINGH v DULHMA KUAR [I L R 4 All. 302

84. ——— Revocation by Court—*Illness of arbitrators—Civil Procedure Code 1859 s 318* —Where one of the arbitrators had been ill and the time for sending it in elapsed before they could make their award the Court superseded the arbitration and recalled the suit JOSEPH v SREERKER Bourke O C 359

85 ——— Withdrawal from arbitration—*Civil Procedure Code 1859 s 326* —Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award unless the submission to arbitration has been made a rule of Court under s 326 of the Civil Procedure Code ALLA AYAPPA v NUNDALA PERAIYA *alias* PERAMBHOTLU [3 Mad. 82

But *see* NAGASAWMY NAIK v RUNGASAMY NAIK [8 Mad 46

86 ——— Refusal of some arbitrators to act—*Civil Procedure Code 1859 s 319—Refusal to nominate other arbitrators—Withdrawal from arbitration* —Where some of the arbitrators named in an arbitration agreement refuse to act and the parties do not agree to appoint others instead of them it is not incumbent upon the Court to appoint other arbitrators unless both parties agree the provision of s 319 being not obligatory but simply permissive *Held* further that under such circumstances the refusal on the part of one party to nominate other arbitrators does not amount to a withdrawal from the agreement to proceed to arbitration SADA SOOKH v SHIVA DYAL 1 Agra, 109

ARBITRATION—*continued*

7 REVOCATION OF OR WITHDRAWAL FROM ARBITRATION—*concluded*

87 ——— Withdrawal from arbitration—*Ground for withdrawal* —A party is not entitled to withdraw without good cause shown from a submission to arbitration Where an award was about to be pronounced and a party withdrew on the grounds first that the arbitrator was entering into foreign matters and second that a minor was likely to be interested who would not be bound the grounds were held not to constitute a good ground for withdrawal RAM COOMAR SHAHA v KALA CHAND SHAHA [21 W R, 395

88 ——— *Agreement not fully carried out as to number of arbitrators* —The parties to the suit agreed to refer the disputes between them in another suit to the arbitration of five persons named by them and did not agree to accept the decision of any less number of persons so nominated Three only of the arbitrators nominated were proceeding with the arbitration and one had declined to act *Held* that the suit which was one to put an end to the arbitration was maintainable PARMESHAR DAT v HARI NAIK 7 N W 357

89 ——— *Agreement to withdraw suit—Failure to make award—Application for restoration to file of Court* —A suit was by order of Court referred to three specified arbitrators who were to make an award within six months and in case of difference of opinion all matters in dispute were to be referred to the decision of an umpire The arbitrators had only one meeting at which an agreement was come to by the parties to settle all matters in dispute among themselves and withdraw the matters from arbitration which was accordingly done but nothing appeared to have been afterwards done No award was made by the original arbitrators within six months from the reference On application by the plaintiff to have the suit restored to the file of the Court —*Held* that the suit was still pending the arbitrators not having determined it while they had jurisdiction to do so, and it was ordered that it should be brought again before the Court GAPI NATH NANDI v SHIB CHANDRA NANDI [6 B L R, Ap, 74

8 AWARDS

(*a*) CONSTRUCTION AND EFFECT OF

90 ——— Rule of construction.—An award should be construed not by oral evidence given by the arbitrators but by looking at the language of the award itself GUNESHEE v CHOTAY LALL 3 N W 117

ARBITRATION—*continued*

8 AWARDS—*continued*

91. ——— *Award of the nature of a family settlement d recting an annu ty to le paid ta ha yat t alidain* —An award drawn by an unprofessional arbitrator in India is not to be construed according to the same principl s as an award settled by couns l or a s licitor in Eng land but in accordance with what may reasonably be supposed under the circumstances of the cas to have been the intentions of the arbitrator Where an award which was of the nature of a family settlement between a father m ther and son of certain property which had been given by the father to the mother in lieu of dower and then by the mother to the son directed that a certain annuity should be paid out of the pr perty to the father and mother ta hayat walidain it was he d that the annuity was to be paid during th j int lives of the father and mother and also during the life of the survivor ABDUL MAJID KHAN v KADIR BEGAM [I. L. R 20 All 245

92. ——— Eff ct of award—*Signature of award by part es* *Held* that the parti s having signed the award f arbitrati n must be bound by that until it is legally s t aside and until it is s t aside a suit to nf rce ri hts irre pective of th award is not maintainabl GULAM ALI KHAN IMAN ?? KHAN 2 Agra 224

93 ——— *Party added dur ng arl trat n* In a suit pending before arbitra tors a pers n who is made a plaintiff n ???? tion and makes no obj ction t th arbitrat n is bound by th award SHITANATH BI W? ?? MOHUN MOOKERJEE 5 W R 130

94. ——— *Defen e of s l miss on to arl itrat on and a ard r n tl e matt r in suit lefore s t l rought* An award upon a qu s tion referred to arbitrators on wh se part no mis conduct or mistak appears concludes the parties who have submitted to the reference from aft rwards contesting in a suit the questi n so referred and disposed of by the award Two widows of a decess d Hindu referred generally t arbitrators the question of their ri hts respectively in the estate of their deceased husband including the m tter wh th r there was or was n t any ca s disentitling the widow who afterwards brought thi suit f r h r share in the estate agai st th other who had obt ined poss ssion of th wh le The arbitrat rs declared her to be disentitled to succeed to any p rti n of the estate and awarded h r maintenance only *He d* tl at in the abs nce of m stak or mi c nd ct on th part of th arbitrators the award was binding on the p rti s BHAGUTI v CHAND N [I. L. R. 11 Calc 386 L. R 12 I. A 67

95 ——— *Pe on n t party to a ard Pe pr e ty Estoppel of object f part es—Exclu n f m nher tan e Pe de Act s 115* An arbitrat r's ward d clared the ri ht of a member of a Hindu family jointly p ss ss d of village h uses and property su ch member being deaf and dumb and not a party to the arbitrati n and award He afterwards sued for separate possession against the others who in their defence denied his title to inherit by Hindu law on account of his phy sical infirmity which was from birth The award having been produced at the hearing —*held* that this m mber of he family being a stranger to the submission to arbitrati n was under no obligation to abide by th award and that he consequently could not avail himself of what the award contained in his favour HIRA SINGH v GANGA SAHAI [I. L. R 6 All. 322 L. R 11 I. A 20

Affirming decision of High Court in GANGA SAHAI v HIRA SINGH I L. R 2 All. 809

96 ——— *Award not made on ref rence ly all part es* —An arbitrati n award not being one which has been made upon a r ference by all the parties to the suit is not capabl of being conv rted into a final decree under the prov si ns of Ch VI Act VIII of 185 th u h it is evidence against any party who agreed to the reference BEEJOY CHUNDER BANERJEE v BHUPUT CHUNDER BANERJEE 15 W R 427

97 ——— *Con ent to arbi trat on—Aml g ty n award* —A dispute having a is n as to th boundary of two estates the parties j in d in a petiti n to the Settlement Officer of the distri t to appoi t arbitrators for the purpose of s ttling the boundary Th o fficer appointed arbi trator wh subs quently ma le the f ll wing award

Having in th pres nce of the karpardaz s of both parti s t ken d wn the depositi ns of th witness s of b th parti s on the d sputed l cality and made investi gati n and enquiry on the spot and having obs rved th aspect of th pl ce we have a rtained as f ll s They then pr ce ded to state the b undary C ming al ng west fr m the high peak of Sathoo P har which is n th south of Inplara a one c mes to a nu h call d Rajgurh on the so th of it is D olhi didi in M h medabad on the north of that gurh is Kolarkoonda n Belpotta on the est of it is P rina hill n the east s uth and west is Mahom d abad on the n rth is Belp tta At the foot of the award were the words Decision of the arbitrators c nfirmed dated and signed by the Deputy C llector The p rties to the award afterwards petitioned tl Settlem nt Offi er to lay pillars along the line s ttl d by th arbitrators but he refused th applica ti n but m d an order that if th petition rs construct th pillars themselves th re will be no like li ood of obj cti n hereafter It is not nec ssary for th Co rt t pass any order in this matter *He d* (1) th t b th parties had accepted the award (2) that the award was not ambiguous (3) that the eff ct of the aw rd w s not merely to determine possession at th e ti e but t determine th ri ht to the lan itself RAMRUNJUN CHUCKERBUTTY v RAM PROSAD DASS 13 C L. R 26

98 ——— *Refusal to award intere t to Mal medan—Suit on mortgage* —Plain tiff who was a Mahomedan sued upon a m rtgage executed by the defendants who were also Mahomed ans to secure certain sums adv nced by him with interest at 24 per cent The defendants pleaded an

ARBITRATION—*continued*

8 AWARDS—*continued*

award by which the arbitrator to whom the question of the defendants liability under the mortgage and certain cross claims which the defendants urged against the plaintiff had been referred had found that the plaintiff was entitled to a particular sum under the mortgage for principal but that as a Mahomedan he was not entitled to any sum for interest The plaintiff contended that the award was bad *Held* on appeal that the plaintiff was not entitled by reason of interest having been disallowed to treat the award as a nullity that the omission by the arbitrator to allow interest was a mistake which might be rectified by the Court and that the award must be taken to be binding on the plaintiff *Held* further that the plaintiff was entitled to proceed on the mortgage and that the sum found due by the award having been a portion of the mortgage debt the plaintiff was entitled to the usual mortgage decree for the sum found due with interest at 24 per cent from the date of the award MOONZOORAD DOWLAH *v* MEHIDI BEGUM **7 C L R 206**

99 ———————— *Maintenance* *Grant of villages for—Nature of grant whether absolute or resumable* A grant of villages was made by a talukhdar to his younger son for maintenance The elder son inherited the family talukh In the next generation in 1861 an award was made by a body of Oudh talukhdars as arbitrators on the submission of the disputants who directed that the village given as maintenance be decreed in favour of the grantee to continue as heretofore The questions raised in that award were whether the villages had been granted only for life or were inheritable by the descendants of the grantee and whether the talukhdar or the holder of the grant for the time being was liable for the revenue on the villages The same questions were now raised by the third generation who were the great grandsons of the grantor on the construction of the award There was no limitation in the original grant of the villages to the grantee personally nor was the grant expressly declared to be to him and his lineal descendants through males But possession had followed in that order and the talukhdar had always paid the revenue The award not having been filed within six months after the passing of the Oudh Estates Act 1869 did not come within s 33 of that Act *Held* (1) that the award was not on that account invalid It was obligatory upon both parties to the submission and upon those whose interests they represented (2) That evidence of the antecedent possession of the villages as well as of the quasi judicial acts of the arbitrators was admissible (3) That the terms of the award conferred upon the grantee and his descendants the right to possess the villages free of rent to the talukhdar who remained responsible for the revenue (4) That the villages could not revert to the talukhdar's line until the line of the grantee's descendants should have become extinct BHAIYA ARDAWAN SINGH *v* UDEY PRATAB SINGH

[I. L. R. 23 Calc. 838

L. R. 23 I. A 64

ARBITRATION—*continued*

8 AWARDS—*continued*

(*b*) ENFORCING AWARDS

100 ———— Requisites for enforcing award—*Judgment and decree on award*—By MELVILL and PINHEY JJ—Before effect can be given to an award by execution proceedings there must be a judgment according to the award and a decree following thereon ISHWARDAS JAGJIVANDAS *v* DOSIBAI **I. L. R. 7 Bom 316**

101. ———— Award allowing maintenance in perpetuity—*Enforcing an award beyond lifetime of parties*—The plaintiff and the defendant were members of a deshpande family in Khandesh An arbitration award dated 1838 which was assented to by the ancestors of the parties provided that the defendant's father should continue to hold the deshpande vatan and pay a certain allowance to the plaintiff's father and two uncles unless they should see fit to make a partition The plaintiff alleged that the allowance as fixed was payable in perpetuity and was paid till 1864 65 when it was stopped and prayed for a decree declaring him entitled to it and arrears for eleven years *Held* that effect could not be given to the award as a decree as no Court would pass a decree fixing a grant of maintenance in perpetuity that an allowance fixed by a decree as maintenance was ordinarily liable to be varied on the party ordered to pay it showing circumstances rendering it equitable to make the variation and that there being no reason to suppose that the arbitrators had any idea of fixing the allowance for a longer period than the lifetime of the parties and all those parties being dead no effect could any longer be given to the award MADHAVRAV DESHPANDE *v* RAMRAV DESHPANDE

[I. L. R 7 Bom 151

102 ———— Agreement to be bound by majority—*Refusal of arbitrator to act*—Where a case was referred by a Court to the arbitration of three persons and the parties to the reference agreed to be bound as to the matters in dispute by the decision of a majority of the arbitrators and one of the arbitrators subsequently refused to act and withdrew from the arbitration—*Held* that the Court could not pass a decree on the award of the remaining arbitrators and could only under s 510 of the Civil Procedure Code appoint a new arbitrator or supersede the arbitration and proceed with the suit *Nasir Ali v Tinoo Doss* 6 *W R* 95 and *Rohilkhand and Kumaun Bank v Row I L R* 6 *All* 468 referred to NAND RAM *v* FAKIR CHAND

[I. L. R. 7 All. 523

(*c*) POWER OF COURT AS TO AWARDS

103 ———— Confirmation of award—*Duty of Court*—The Court, in passing judgment on the arbitration award must confine itself to the plaintiff's claim and give a decision thereon TRILNATH CHOWDRY *v* MANICK CHUNDER DASS

[14 W R. 466

104. ———————— *Duty of Court*—If a Court regards an award as not open to objection such Court must deliver judgment in accordance

ARBITRATION—*continued*

8 AWARDS—*continued*

with the terms of such award and not modify the same LUCHMEE NARAIN v PYLE 2 N W 150

105 ———————— *Adding to award on confirmation*—The Court can only give judgment in accordance with the award and cannot add an order for interest to it if interest has not been given MOHUN LALL SHAHA v JOYNARAIN SHAHA CHOWDHRY 23 W R. 105

106 ———————— *Plea of jurisdiction on limitation*—When an award has been made no plea of jurisdiction or limitation can be raised before the Court which is to pass its decree according to the award. AMEEN CHUND v MENDHOO KHAN 1 Agra Rev, 53

107 ———————— *Reduction of number of instalments where payment by instalment is ordered—Civil Procedure Code ss 518 522*—The arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments and the Court holding that the arbitrators had no power to make such a direction modified the award to that extent under s 518 of the Civil Procedure Code On appeal the District Judge while allowing the power of the arbitrators to direct payment by instalments reduced the number of instalments which had been fixed. *Held* that as it was clear that the reference to arbitration gave the arbitrators full powers not only as to the amount to be paid but also as to the manner of payment the lower Appellate Court was wrong in reducing the number of instalments which had been fixed. *Per* MAHMOOD J—The word award used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators and not as amended by the Court under s. 518 The words in excess of or not in accordance with the award used in s 522 were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518 JAWAHAR SINGH v MUL RAJ [I. L. R. 8 All., 449

108 ———————— *Power of Court to order sale—Award without power to sell—Power of Court to go beyond award when made a decree of Court*—Where the partners of a firm in their partnership deed agreed to refer their disputes to arbitration and the reference made in pursuance of this agreement gave the arbitrators a power to make partition but omitted a power to sell—*Held* on the award being made a rule of Court that the Court had no power under s 326, Act VIII of 1859 to order the sale of certain property of which the arbitrators were unable to make partition and the sale of which they recommended on that ground. CHINTAMONY DASSEE v NISTARINEE DASSEE 3 C L. R. 357

109 ———————— *Grant of right of way not given by award—Award for partition—Subsequent suit for right of way not of necessity*—Where the house and lands of a joint Hindu family were partitioned by the Court according to an award made by an arbitrator to whom the parties had agreed to refer the matter—*Held* in a subsequent suit that the Court could not go behind the award and allow one of the members of the family to claim a right of way from the family house to a public road through the lands allotted by the award to another member such right of way not having been granted by the award and there being no such right of way of necessity GOPAL CHUNDER ROY v BROJENDRO COOMAR ROY [5 C L. R., 338

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE

110 ———— Reversal of award—*Civil Procedure Code 1859 s 324*—An award is not reversible unless the provisions of s 324 Act VIII of 1859 apply REEDOY KISTO MUZOOMDAR v PUDDO LOCHUN MUZOOMDAR 1 W R., 12

111 ———— Application to set aside award—*Extension of time for applying to set aside award—Civil Procedure Code 1859 s 324*—In an application to set aside an order made by a Judge in chambers extending the time (of ten days) for making an application under s. 324 of Act VIII of 1859 to set aside an award on the ground of misconduct of one of the arbitrators and of the umpire—*Held* that the words of the section being in their ordinary import obligatory and there being nothing in the other parts of the Code to show that such construction was at variance with the intention of the Legislature and a similar provision having been held by the Courts in England to be imperative that the application to set aside the award must be made within the ten days provided the Court be then sitting and if not on the first day of its sitting after that time and that there is no power to enlarge the time to make such application. EDALJI SHAPORJI v TALSIDAS SUNDARDAS 2 Bom. 285 2nd Ed., 270

EDULJI SHAPURJI v TULSIDAS SUNDERDAS [1 Ind. Jur N S., 234

112 ———— Ground for setting aside award—*Delay in returning*—An award made by the consent of the parties cannot be set aside merely by reason of its having been sent in a week later than the date appointed, when *such delay is not owing* to misconduct or corruption AMEEN CHUND v MENDHOO KHAN 1 Agra Rev 53

113 ———————— *Fraud*—To set aside an award there must have been some fraudulent suppression of evidence or other malpractice of the successful party which should be definitely stated in the plaint HUR CHURN DASS v HAZAREE MULL [1 Ind. Jur O S 12

114 ———————— *Inconsistency in award*—An award of arbitrators cannot be set aside on the ground of its being inconsistent because the plea of the defendant was proved as to part of the case and not as to the other DHERAJ ROY v KARTICK CHUNDER SIRCAR W R 1864, 153

ARBITRATION—*continued*

8 AWARDS—*continued*

115 ———— *Civil Procedure Code 1859 ss 322 323 324* —Where by the terms of a reference to arbitration all matters in difference are referred to the arbitrator the Court will not modify (s. 322) remit (s 323) or set aside (s 324) the award on the ground that the arbitrator in his discretion has awarded damages to the plaintiff and at the same time make him pay all the costs when it is not shown that he exercised the discretion given him improperly MOHENDRONATH BOSE v NUSSEE MANGEE 1 Ind. Jur N S 224

116 ———— *Document wrongly admitted in evidence Privileged communication —Refusal to confirm award* In a case referred to arbitration the defendant contended that as he had tendered the amount awarded to plaintiff before suit he ought not to pay costs and in support of his contention produced a letter written by the plaintiff's attorneys to his attorneys which was stated to be without prejudice and on that the arbitrator refused plaintiff costs An application to confirm the award was refused on the ground that the letter had been improperly used as evidence *Held* on appeal that though the arbitrator was wrong in receiving and using a document which ought not to have been received yet that this was not a sufficient ground to justify the Judge in refusing to confirm the award HOWARD v WILSON [I. L. R. 4 Calc 231 2 C L R 488

117 ———— *Arbitrator having interest in the matter at issue—Civil Procedure Code 1859 s 324* A Court should make full enquiry into the objections made to an award before setting it aside and should not hastily assume that the mere circumstance of the arbitrator having some interest in the matter at issue would necessarily bring the award within the provisions of s 324 of Act VIII of 1859 and render it liable to be set aside SENUK KACHEE v OBEE DOOBEY [2 N W 241

118 ———— *Interested arbitrator—Pleader of one of the parties* A Court is justified in holding that an award is not valid and binding upon the defendant when the arbitrator was the retained pleader of the plaintiff and no disclosure of this fact was made before the arbitrator was appointed to the defendant who was consequently unaware of it KALI PROSANNO GHOSE v RAJANI KANT CHATTERJI I L. R. 25 Calc 141

119 ———— *Award purporting to be considered award of arbitrators but really adoption by arbitrators of an agreement between parties* Where an award which purported to be a considered award of the arbitrators framed after consideration of the statements of the parties and the evidence of witnesses was found in reality to be merely the adoption by the arbitrators of an agreement arrived at and signed by the parties to the reference it was *held* that this would not prevent the award being a valid and binding award between the parties GOBARDHAN DAS v JAI KISHEN DAS [I. L. R. 22 All. 224

120 ———— *Arbitrary decision—Civil Procedure Code 1859 s 324* It is no ground to set aside an award of arbitrators under s 324 Act VIII of 1859 that the arbitrators decided the case against the written statement of the defendant GOOROO CHURN DEY v RAMDHONE PAUL 7 W R. 28

121. ———— Misconduct of arbitrators —*Refusal to amend award* The refusal of arbitrators to amend a clearly bad award is misconduct under s 324 Act VIII of 1859 DEB NARAIN SINGH v RAJMONEE KOONWAR 3 W R. 168

122 ———— *Neglect of some arbitrators to attend—Civil Procedure Code 1859 s 324*—The neglect of some of the arbitrators to attend meetings of the arbitrators is misconduct within the meaning of s 324 justifying the setting aside of the award by the Court which appointed the arbitrators but not by a Court of Appeal SREENATH GHOSE v RAJCHUNDER PAUL 8 W R., 171

123 ———— *Power of Court on appeal* —But where the decree is appealed from the Appeal Court has power to take cognizance of the question of misconduct of arbitrators *See* s 363 Act VIII of 1859 RAMJYAD SINGH v NIRUNJUN KOER [22 W R. 420

RAM GUTTEE MUNDUL v THAKOOR DASS MUNDUL 22 W R 418

124 ———— *Refusal to call witness*—Refusal by an arbitrator to call witnesses produced by either party amounts to judicial misconduct within the meaning of s 321 of the Civil Procedure Code RUGHOOBUR DYAL v MAINA KOER [12 C L. R. 564

125 ———— *Suspicion of partiality* An award cannot be set aside by the Court on the mere surmise that the arbitrator has been partial NAINSUKH RAI v UMADAI [I L. R. 7 All. 273

126 ———— *Power to set aside award after judgment given on it—Award—Act VIII of 1859 ss 324 325 Jurisdiction*— Two out of three arbitrators appointed in the case submitted their award before the Munsif The defendant against whom the award had been made applied to the Munsif to set aside the award on the grounds of corruption and misconduct and that the award was a nullity inasmuch as only two out of three arbitrators had made the award The Munsif overruled the objections and passed a decree in terms of the award On appeal to the Judge the order of the Munsif was set aside on the ground that the award was illegal as two only of the three arbitrators originally appointed had made the award and the evidence did not prove the plaintiff's case On an application to the High Court to set aside the order of the Judge —*Held* that under s 32 Act VIII of 1859 the Judge had no jurisdiction to set aside the award when the Court of first instance had passed

ARBITRATION—*continued*

8 AWARDS—*continued*

with the terms of such award and not modify the same LUCHMEE NARAIN v PYLE 2 N W, 150

105 ———— *Adding to award on confirmation* —The Court can only give judgment in accordance with the award and cannot add an order for interest to it if interest has not been given MOHUN LALL SHAHA v JOYNARAIN SHAHA CHOWDHRY 23 W R 105

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107 ———— *Reduction of number of instalments where payment by instalment is ordered—Civil Procedure Code ss 518 522* — The arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments and the Court holding that the arbitrators had no power to make such a direction modified the award to that extent under s 518 of the Civil Procedure Code On appeal the District Judge while allowing the power of the arbitrators to direct payment by instalments reduced the number of instalments which had been fixed *Held* that as it was clear that the reference to arbitration gave the arbitrators full powers not only as to the amount to be paid but also as to the manner of payment the lower Appellate Court was wrong in reducing the number of instalments which had been fixed *Per* MAHMOOD *J*— The word award used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators and not as amended by the Court under s 518 The words in excess of or not in accordance with the award used in s 522 were intended to enable the Court of appeal to check the improper use of the power conferred by s 518 JAWAHAR SINGH v MUL RAJ

I L R 8 All 449

108 ———— *Power of Court to order sale—Award without power to sell—Power of Court to go beyond award when made a decree of Court* —Where the partners of a firm in their partnership deed agreed to refer their disputes to arbitration and the reference made in pursuance of this agreement gave the arbitrators a power to make partition but omitted a power to sell —*Held* on the award being made a rule of Court that the Court had no power under s 326 Act VIII of 1859 to order the sale of certain property of which the arbitrators were unable to make partition and the sale of which they recommended on that ground CHUNIMONY DASSEE v NISTARINEE DASSEE 3 C L R 357

109 ———— *Grant of right of way not given by award—Award for partition—Subsequent suit for right of way not of necessity* — Where the house and lands of a joint Hindu family were partitioned by the Court according to an award made by an arbitrator to whom the parties had agreed to refer the matter —*Held* in a subsequent suit that the Court could not go behind the award and allow one of the members of the family to claim a right of way from the family house to a public road through the lands allotted by the award to another member such right of way not having been granted by the award and there being no such right of way of necessity GOPAL CHUNDER ROY v BROJENDRO COOMAR ROY

5 C L R, 338

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111 ———— Application to set aside award—*Extension of time for applying to set aside award—Civil Procedure Code 1859 s 324* —In an application to set aside an order made by a Judge in chambers extending the time (of ten days) for making an application under s 324 of Act VIII of 1859 to set aside an award on the ground of misconduct of one of the arbitrators and of the umpire —*Held* that the words of the section being in their ordinary import obligatory and there being nothing in the other parts of the Code to show that such construction was at variance with the intention of the Legislature and a similar provision having been held by the Courts in England to be imperative that the application to set aside the award must be made within the ten days provided the Court be then sitting and if not on the first day of its sitting after that time and that there is no power to enlarge the time to make such application EDALJI SHAPORJI v TALSIDAS SUNDARDAS 2 Bom 285 2nd Ed 270

EDULJI SHAPURJI v TULSIDAS SUNDERDAS

1 Ind. Jur N S 234

112. ———— Ground for setting aside award—*Delay in returning* —An award made by the consent of the parties cannot be set aside merely by reason of its having been sent in a week later than the date appointed when such delay is not owing to misconduct or corruption AMEEN CHUND v MENDHOO KHAN 1 Agra Rev 53

113 ———— *Fraud* —To set aside an award there must have been some fraudulent suppression of evidence or other malpractice of the successful party which should be definitely stated in the plaint HUR CHURN DASS v HAZAREE MULL

I Ind. Jur O S 12

114. ———— *Inconsistency in award* —An award of arbitrators cannot be set aside on the ground of its being inconsistent because the plea of the defendant was proved as to part of the case and not as to the other DEBRAJ ROY v KARTICK CHUNDER SIRCAR W R, 1864, 153

ARBITRATION—*continued*

8 AWARDS—*continued*

115 ———————— *Civil Procedure Code 1859 ss 322 323 324* —Where by the terms of a reference to arbitration all matters in difference are referred to the arbitrator the Court will not modify (s. 322) remit (s 323) or set aside (s 324) the award on the ground that the arbitrator in his discretion has awarded damages to the plaintiff and at the same time make him pay all the costs when it is not shown that he exercised the discretion given him improperly MOHENDRONATH BOSE v NUSSEE MANGEE 1 Ind. Jur N S 224

116 ———————— *Document wrongly admitted in evidence Privileged communication —Refusal to confirm award* In a case referred to arbitration the defendant contended that as he had tendered the amount awarded to plaintiff before suit he ought not to pay costs and in support of his contention produced a letter written by the plaintiff's attorneys to his attorneys which was stated to be without prejudice and on that the arbitrator refused plaintiff costs An application to confirm the award was refused on the ground that the letter had been improperly used as evidence *Held* on appeal that though the arbitrator was wrong in receiving and using a document which ought not to have been received yet that this was not a sufficient ground to justify the Judge in refusing to confirm the award HOWARD v WILSON

I. L. R. 4 Calc 231 2 C L R 488

117 ———————— *Arbitrator having interest in the matter at issue—Civil Procedure Code 1859 s 324* A Court should make full enquiry into the objections made to an award before setting it aside and should not hastily assume that the mere circumstance of the arbitrator having some interest in the matter at issue would necessarily bring the award within the provisions of s 324 of Act VIII of 1859 and render it liable to be set aside SENUK KACHEE v OREE DOOBEY

2 N W 241

118 ———————— *Interested arbitrator—Pleader of one of the parties* A Court is justified in holding that an award is not valid and binding upon the defendant when the arbitrator was the retained pleader of the plaintiff and no disclosure of this fact was made before the arbitrator was appointed to the defendant who was consequently unaware of it KALI PROSANNO GHOSE v RAJANI KANT CHATTERJI I L R. 25 Calc 141

119 ———————— *Award purporting to be considered award of arbitrators but really adoption by arbitrators of an agreement between parties* Where an award which purported to be a considered award of the arbitrators framed after consideration of the statements of the parties and the evidence of witnesses was found in reality to be merely the adoption by the arbitrators of an agreement arrived at and signed by the parties to the reference it was *held* that this would not prevent the award being a valid and binding award between the parties GOBARDHAN DAS v JAI KISHEN DAS

I. L. R. 22 All. 224

ARBITRATION—*continued*

8 AWARDS—*continued*

120 ———————— *Arbitrary decision—Civil Procedure Code 1859 s 324* It is no ground to set aside an award of arbitrators under s 324 Act VIII of 1859 that the arbitrators decided the case against the written statement of the defendant GOOROO CHURN DEY v RAMDHONE PAUL 7 W R 28

121 ———————— Misconduct of arbitrators —*Refusal to amend award* The refusal of arbitrators to amend a clearly bad award is misconduct under s 324 Act VIII of 1859 DEB NARAIN SINGH v RAJMONEE KOONWAR 3 W R. 168

122 ———————— *Neglect of some arbitrators to attend—Civil Procedure Code 1859 s 324*—The neglect of some of the arbitrators to attend meetings of the arbitrators is misconduct within the meaning of s 324 justifying the setting aside of the award by the Court which appointed the arbitrators but not by a Court of Appeal SREENATH GHOSE v RAJCHUNDER PAUL 8 W R. 171

123 ———————— *Power of Court on appeal*—But where the decree is appealed from the Appeal Court has power to take cognizance of the question of misconduct of arbitrators *See* s 363 Act VIII of 1859 RAMYYAD SINGH v NIRUNJUN KOER 22 W R. 420

RAM GUTTEE MUNDUL v THAKOOR DASS MUNDUL 22 W R 418

124 ———————— *Refusal to call witness*—Refusal by an arbitrator to call witnesses produced by either party amounts to judicial misconduct within the meaning of s 21 of the Civil Procedure Code PUGHOOBUR DYAL v MAINA KOER

12 C L R 564

125 ———————— *Suspicion of partiality* An award cannot be set aside by the Court on the mere surmise that the arbitrator has been partial NAINSUKH RAI v UMADAI

I L R. 7 All. 273

126 ———————— *Power to set aside award after judgment given on it—Award—Act VIII of 1859 ss 324 327 Jurisdiction*— Two out of three arbitrators appointed in the case submitted their award before the Munsif The defendant against whom the award had been made applied to the Munsif to set aside the award on the grounds of corruption and misconduct and that the award was a nullity inasmuch as only two out of three arbitrators had made the award. The Munsif overruled the objections and passed a decree in terms of the award On appeal to the Judge the order of the Munsif was set aside on the ground that the award was illegal as two only of the three arbitrators originally appointed had made the award and the evidence did not prove the plaintiff's case On an application to the High Court to set aside the order of the Judge—*Held* that under s 325 Act VIII of 1859 the Judge had no jurisdiction to set aside the award when the Court of first instance had passed

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ARBITRATION—*continued*

8 AWARDS—*continued*

judgment according to the award IN THE MATTER OF THE PETITION OF ILAHI BAX [5 B L R. Ap 75

ELAHEE BUKSH v HAJOO 14 W R. 33

127 ——— *Civil Procedure Code s 521 cl (a)—"Misconduct" of arbitrator*—The word misconduct as used in s 521 cl (a) of the Civil Procedure Code should be interpreted in the sense in which it is used in English law with reference to arbitration proceedings It does not necessarily imply moral turpitude but it includes neglect of the duties and responsibilities of the arbitrators and of what Courts of Justice expect from them before allowing finality to their awards An arbitrator to whom the matters in difference in a suit were referred under s 508 of the Civil Procedure Code and who was directed by the order of reference to deliver his award by the 22nd September applied on the 17th September for an extension of time on the ground that a very full investigation was necessary which it was not possible to make within the prescribed period On the 20th September without waiting for the order of the Court he notified to the parties that he proposed to hold an inquiry in the case on the 24th and it appeared that he did not expect this intimation to reach them before the 21st or 22nd. On the 23rd he informed the plaintiff s pleader that a new date would be fixed for the inquiry of which notice would be given to the parties Notwithstanding this on the 23rd the arbitrator took evidence for the defendant in the absence of the plaintiff and his pleader All these proceedings were held before the arbitrator received an order of the Court extending the time for delivery of the award up to the 26th October On the 27th September he directed the parties to be informed that the investigation would be held on the 5th October On the 4th October the plaintiff presented a petition praying the arbitrator to summon witnesses and to take documentary evidence and upon this nothing definite was settled at the time but after the pleaders had left the arbitrator passed an order rejecting the petition on the ground that the evidence sought to be produced was unnecessary On the same date and on the 5th and 6th October he took evidence for the defence in the absence of the plaintiff and his pleader On the 10th he rejected a petition by the plaintiff praying for further time to produce evidence and complaining of his having taken evidence in the plaintiff s absence and having received in evidence a fabricated document On the 25th October the arbitrator delivered his award in favour of the defendant Subsequently upon objections made by the plaintiff the Court set aside the award and directed that the trial of the suit should proceed *Held* that although no case of corruption within the meaning of s 521 cl (a) of the Civil Procedure Code had been made out against the arbitrator the circumstances above stated amounted to misconduct and the award was therefore bad in law and had rightly been set aside *Soobal Thakur Opadeeah v Punchanund Tikka S D A Bengal 1849 p 115 Reedoy Kristo Mozoomdar v Puddo Luchun Mujumdar 1 W R 12 Sada Ram v Beharee S D A N W 1864 Vol 2 p 399 Paru Dass v Khoobee S D A N W 1861 Vol 2 p 199 Howard v Wilson I L R 4 Calc 231 Bhagirath v Ram Ghulam I L R 4 All 283 Wazir Mahton v Lalit Singh I L R 7 Calc 166 Nainsukh Rai v Umadai I L R 7 All 273* and *Pestonjee Nusserwanjee v Manockjee 12 Moore s I A 112* distinguished GUNGA SAHAI v LEKHRAJ SINGH I. L R. 9 All. 253

128 ——— *Omission of arbitrators to act in conformity with the rules of evidence*—It is not a valid objection to an award that the arbitrators have not acted in strict conformity with the rules of evidence GUPPU v GOVINDA CHARYAR I. L. R., 11 Mad, 85

129 ——— *Civil Procedure Code s 521—Misconduct of arbitrators—Ground for setting aside award*—Where a suit was referred to arbitration and objection was taken to the award on the ground that one of the arbitrators had not attended a meeting when witnesses were examined by the other arbitrators—*Held* that the award was invalid by reason of misconduct on the part of the arbitrators within the meaning of s 521 (a) of the Code of Civil Procedure THAMMIRAJU v BAPIRAJU [I. L. R. 12 Mad. 113

130 ——— *Misconduct of arbitrators—Application to have award set aside—Ground for setting aside award*—On an application to have an award set aside by reason of misconduct on the part of the arbitrators their action alleged was *held* not to amount to misconduct and therefore the defendants were not entitled to have the award set aside TOOLSEE MONEY DASSEE v SUDEVI DASSEE [I. L. R. 26 Calc 361
3 C W N 347

131. ——— In another case heard at the same time and between the same parties the facts were these—The first meeting of the arbitrators was held on the 9th January without any notice to the defendants It was alleged that nothing was done at this meeting On that day the arbitrators sent a notice to the appellants appointing the next day (10th) at 6 30 P M for the next meeting The defendants attorney thereupon wrote protesting and asked the arbitrators not to proceed, as they intended to apply to the Court No notice of this protest was taken by the arbitrators and they proceeded with the arbitration on the 10th in the absence of the defendants On the 11th the defendants attorney received a notice that the arbitrators would hold a meeting on the 12th at 8 A M A meeting was held on that day in the absence of the defendants and an award was made decreeing the suit *Held* that the arbitrators did not give the defendants a fair and reasonable opportunity of being heard and were guilty of such misconduct as was sufficient to vitiate the award *Semble*—The *ex parte* meeting on the 10th was alone sufficient to warrant the Court in setting aside the award TOOLSEYMONY DASSEE v SUDEVI DASSEE 3 C W N, 361

ARBITRATION—*continued*

8 AWARDS—*continued*

132 ———————— *Ground for setting aside award—Arbitrator receiving evidence from one side in absence of other side—Misconduct—Civil Procedure Code (1882) s 521* — An arbitrator ought not to hear or receive evidence from one side in the absence of the other side without (if he does) giving the other side affected by such evidence the opportunity of meeting and answering it This proposition is however subject to the qualification that the parties may agree that a reference may be conducted in any particular way and such an agreement may be either express or implied from their conduct during the arbitration and they may also expressly or by their conduct waive their objection to an irregular course of conduct on the part of the arbitrator Where an arbitrator received certain papers and documents from the defendants in a suit referred to his arbitration together with a letter from the defendants containing certain documents sent to him and made his award without giving the plaintiffs an opportunity of seeing the said papers and documents and of meeting the inferences deducible from them —*Held* that there was such a breach of duty on the part of the arbitrator as entitled the plaintiffs to have the award set aside CURSETJI JEHANGIR KHAMBATTA *v* CHOWDER I L R 18 Bom 299

133 ———————— *Civil Procedure Code ss 508 514 521—Omission to fix time for delivery of award—Extension of time after expiration of period fixed—Invalidity of award when not made within time fixed by Court—Costs* — The provision contained in s 508 of the Civil Procedure Code requiring the Court to fix a reasonable time for the delivery of the award is not imperative but directory and non compliance with it does not make the order of reference abortive and any subsequent arbitration proceedings ineffectual and bad Under s 514 of the Code the Court may extend the time for making the award after the time fixed therefor has expired The last paragraph of s 521 does not imply that an omission by the Court to fix a positive date within which the award is to be filed is fatal to the validity of the award Where an order extending the time for delivery of an award was made after the time fixed therefor had expired and did not fix any positive date for the filing of the award —*Held* that the adoption of the award by the Court amounted to an enlargement of the time for delivery of the award to the date on which it was in fact delivered and to a ratification of what had been done by the arbitrators and that the parties having made no objection to the action of the Court must be taken to have waived any objection to the award The mere circumstance of an arbitrator having first tendered and then withdrawn his resignation does not formally divest him of his character as arbitrator *Joymungul Singh* v *Mohun Ram Marwaree 23 W R 429* referred to HAR NARAIN SINGH *v* BHAGWANT KUAR I L R 10 All 1 7

Held on appeal to the Privy Council (reversing the above decision) — When once an award has been delivered it is no longer competent to the Court to grant further time or to enlarge the period for the delivery of the award under s 514 of the Code of Civil Procedure Where an award was not made within the period fixed by the Court s order but was made after the date given in the last order extending the time for its delivery —*Held* that the award was invalid The decree of the Court dealing with the award as if duly made within the time could not be treated as enlarging it The judgment in *Chuha Mal* v *Hari Ram I L R 8 All 548* approved Order to be that the suit should proceed Neither party to be entitled to costs in either Court below after the first judgment with regard to the stage at which the objection was taken and the costs prior to that to abide the issue HAR NARAIN SINGH *v* CHAUDHRAIN BHAGWANT KUAR

[I L R 1 All 300
L R 18 I A 355

The principle of this case is applicable also to arbitration under s 2-1 of the N W P Land Revenue Act (XIX of 1873) GOURI SHANKAR *v* BABBAN LALL I L R 14 All 147

134 ———————— *Omission to fix time for delivery of award—Award not signed by the arbitrators in the presence of each other—Civil Procedure Code (1882) ss 508 and 516* — An award is not invalid merely because no time has been fixed for the making of the award s 508 of the Code of Civil Procedure being directory and not mandatory *Har Narain Singh* v *Bhagwant Kuar I L R 10 All 137* followed MUTHUKUTTI NAYAKAN *v* ACHA NAYAKAN I L R, 18 Mad 22

135 ———————— *Civil Procedure Code ss 514 521—Enlargement of time for award after period fixed for making it had expired* —A suit was referred to an arbitrator who did not make his award within the period limited for that purpose After that period had expired an application was made for its extension both parties consenting the application was granted and the award was made within the time so extended and a decree was passed in its terms *Held* that the order extending the time was not illegal and the party dissatisfied with the decree was not entitled to have the award and the decree made upon it set aside LAKSHMINARASIMHAM *v* SOMASUNDARAM I L R 15 Mad 284

136 ———————— *Civil Procedure Code ss 514 and 521—Power of Court to extend time for making award* — A Court has power to act under s 514 of the Code of Civil Procedure at any time before the award is actually made whether the time previously limited for making the award has expired or not *Har Narain Singh* v *Chaudhrain Bhagwant Kuar I L R 13 All 300* referred to RAM MANOHAR MISR *v* LAL BEHARI MISR

[I L R 14 All 343

137 ———————— *Civil Procedure Code (1882) ss 508 521—Delivery of an award* — A suit was at the instance of the plaintiff and defendants referred to an arbitrator The arbitrator made his award within the period fixed by the order of reference but did not submit it to the Court until two days later *Held* that the award was valid

ARBITRATION—*continued*

8 AWARDS—*continued*

under Civil Procedure Code s 508 ARUMUGAM CHETTI v ARUNACHALAM CHETTI

[I. L. R. 22 Mad 22

138 ——— Validity of award—*Omission to fix time for sending in—Act VIII of 1859 s 319* Where no time had been fixed in the order directing the award for sending in the award the award is under s 318 Act VIII of 1859 invalid GANGAGOBINTA v KALIPPASANNA NAIK

[1 B L R S N 13 10 W R. 206

139 ——— *Omission to fix time for delivery of award—Civil Procedure Code 1859 s 315*—Where the lower Appellate Court omitted in its order referring the case to arbitration to fix a time for the delivery of the award as directed by s 315 of Act VIII of 1859 but both the parties permitted the reference to proceed and took part in the proceedings without making any objection until after the award was delivered and when the omission in the order of reference could work no injury to either party the High Court saw no reason why the omission should be held to avoid the award MUBARIK ALI v KADIR BUKSH 7 N W 351

140 ——— *Award made out of time—Civil Procedure Code (Act XIV of 1882) ss 506 514* An appeal was preferred against a decree of an original Court dismissing a suit and the Appellate Court sent the case back for the purpose of certain evidence being taken and certified to it Pending that being done the parties applied to the Appellate Court to refer the case to arbitration and that Court referred that application to the original Court for disposal although the case was still pending on its own file for disposal Subsequently another application was made to the original Court to refer the case to arbitration and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days On the 12th September as the award had not been sent in the original Court passed an order recalling the record and subsequently the award of the arbitrator dated the 12th September was filed The original Court thereupon forwarded the record to the Appellate Court for its decision Objections were taken to the award but overruled and the Appellate Court passed an order directing the case to be sent back to the original Court with orders to pass a final decree in accordance with the award of the arbitrator *Held* that the award was bad in law because the time within which it was directed to be made had never been enlarged and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. BHUGWAN DASS MARWARI v NUND LALL SEIN

[I. L. R. 12 Calc 173

141 ——— *Award made out of time—Civil Procedure Code s 521—Arbitration*—Under s 521 of the Civil Procedure Code the rule that no award shall be valid unless made within the period fixed by the Court, is equivalent to a rule that the award must be delivered within that period. Upon a reference to the arbitration of three persons the Court ordered that the award made by them should be filed on the 19th September 188 The award was not filed on that date but was signed by two of the arbitrators on that date and by the third arbitrator on the 20th September on which day it was filed It had been agreed that the opinion of the majority should carry the decision *Held* that the award was not made within the period fixed by the Court within the meaning of s 21 of the Civil Procedure Code BEHARI DASS v KALIAN DAS

[I. L. R. 8 All. 543

142 ——— *Award made out of time—Civil Procedure Code s 521—Arbitration—Order fixing time or enlarging time fixed for the delivery of award requisite—Civil Procedure Code ss 508 514 522 Decree in accordance with award*—The law contained in ss 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award or for extending or enlarging such time and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given An award which is invalid under s 521 of the Civil Procedure Code because not made within the period allowed by the Court is not an award upon which the Court can make a decree and a decree passed in accordance, with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in *Luchman Das v Brijpal I L R 6 All 174* CHUBA MAL v HARI RAM I. L. R. 8 All 548

143 ——— *Award made out of time—Civil Procedure Code ss 508 521 522 622—Act VIII of 1859 s 318*—An order of reference to arbitration was made on 21st January Six weeks time was allowed for the return of the award No application was made for extension of time The award having been returned on 8th May the Court refused to give judgment in accordance with it under s 522 of the Code of Civil Procedure on *the ground that it was not valid Held on an application under s 622 of the Civil Procedure* Code that the award was invalid SIMSON v VENKATAGOPALAM I. L. R. 9 Mad 475

144. ——— *Making and filing award—Award made but not filed within the time specified by order of Court—Civil Procedure Code (Act XIV of 1882) ss 508 514 521*—A suit for dissolution of partnership and all matters in dispute between the parties thereto were by Judge's order dated 18th July 1887 referred to the arbitration of *A* and *B* The time for making and filing the award was by subsequent order extended to the 18th May 1888 The award was made on that day but was not filed until the 18th June 1888 The second defendant obtained a rule calling on the other parties to show cause (*inter alia*) why the award should not be set aside by reason of its not having been filed in time *Held* that the omission to file the award on or before the 18th May

ARBITRATION—*continued*

8 AWARDS—*continued*

1888 did not render it invalid The word made in ss 514 and 521 of the Civil Procedure Code (Act XIV of 1882) does not include the filing of the award UMERSEY PREMJI v SHAMJI KANJI [I. L. R. 13 Bom. 119

145 ———————— *Denial of genuineness—Want of consent*—The objections which can be raised against an award are such as at the outset are fatal to it e g objections which deny its genuineness or deny that the objector was a consenting party to the arbitration PROTAP CHUNDER ROODRO v HURO MONEE DOSIA 24 W R. 183

146 ———————— *Parties not all joining in reference*—A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application) an award was passed and a decree made in accordance with such award. The plaintiffs objected to the validity of the award on the ground that all the parties to the suit had not joined in referring the suit to arbitration the objection was dismissed and judgment given in accordance with the award *Held* that under the special circumstances of the case justice was so clearly in favour of the view that the award was good that the Court although not entirely approving of certain decisions of the High Court (*Shitanath Biswas* v *Kishen Mohun Mookerjee 6 W R 130 Ram Soonder Mookerjee* v *Ram Shurun Mookerjee 6 W R 25 Doorga Churn Thakoor* v *Kally Doss Hazrah 10 W R 463 Bishoka Dasia* v *Anunto Lall Pain 4 C L R 65* which laid down that such an award is good notwithstanding that some of the parties to the suit may not have joined in the reference to arbitration) did not think fit to differ from those decisions on that occasion JOY PROKASH LALL v SHEO GOLAM SINGH

[I L R., 11 Calc 37

147 ———————— *Parties not all joining in reference Submission to arbitration by one of several defendants*—*A* having brought a suit against *B* and two of his tenants for possession of certain lands of which he alleged he had been dispossessed by the defendants in 1879 it was arranged between *A* and the defendant B that the matter should be referred to arbitration Arbitrators were accordingly appointed and their award having been given in favour of *A* judgment for the plaintiff was recorded in terms of that award. *B* then appealed on the ground that the other defendants had not joined in the agreement to submit the matter to arbitration and the judgment was set aside and the case remanded for re trial On remand the plaintiff s suit was dismissed and the order of dismissal was upheld by the lower Appellate Court *Held* on further appeal by the High Court that the fact of the tenants not having joined in the submission to arbitration did not vitiate the award and that as between *A* and *B* the original decision of the Court of first instance in terms of that award must be restored BISHOKA DASIA v ANUNTO LALL PAIN

[4 C L R, 65

ARBITRATION—*continued*

8 AWARDS—*continued*

148 ———————— *Parties not all joining in reference—Award made without all parties consenting to arbitration*—*Quære per* JACKSON J—What is the effect of an award arrived at in a pending suit which was referred to arbitration by an order of Court otherwise than by consent of all the parties? DOORGA CHURN THAKOOR v KALLY DOSS HAZRAH 10 W R 463

149 ———————— *Parties not all joining in reference—Award without consent—Some arbitrators only acting*—Where parties do not give their consent to the appointment of arbitrators and the judgment proceeds on the arbitration award the decree is not binding on those parties Where four arbitrators had been appointed and only two acted the award was held to be invalid. PASH BEHAREE ROY v DOORGABUR ROY 14 W R. 211

150 ———————— *Award by three arbitrators where reference is to five—Illegal order*—The parties to the suit agreed to refer the disputes between them to the arbitration of five persons named by them and did not agree to accept the decision of any less number of persons so nominated. Three only of the arbitrators nominated were proceeding with the arbitration and one had declined to act The Court which made the reference relused in favour of the plaintiffs in the suit in which the reference was made the attachments existing on debts due to the defendant in that suit at the instance of the three arbitrators who purported to authorize the plaintiffs to collect these debts and directed the debtors to pay their debts to the plaintiffs It was held that assuming that the reference permitted the arbitrators nominated to authorize either of the parties to collect the debts attached inasmuch as the agreement was unaccompanied by any stipulation that a less number than the whole of the arbitrators could determine such per mission should be given the act of the three arbitrators which led to the issue of the order could not be supported and that the last portion of that order was *ultra vires* and must be declared void IARMESHAR DAT v HARI NAIK 7 N W 357

151 ———————— *Award made by more arbitrators than were appointed*—An award was held invalid among other reasons because it purported to be the award of four persons whereas the order of reference was addressed only to three PHIRAN v BAHARAN 7 N W 367

152 ———————— *Presence of arbitrators at meeting of award*—When a case has been referred to arbitration the presence of all the arbitrators at all meetings and above all at the last meeting when the final act of arbitration is done is essential to the validity of the award NAND RAM v FAKEER CHAND I L R 7 All 523

153 ———————— *Omission of provision for difference of opinion and award by majority—Ground for setting aside award*—Where an order of reference to arbitration does not provide for difference of opinion among the arbitrators and for authorizing a majority to decide the case the award

ARBITRATION—*continued*

8 AWARDS—*continued*

und r Civil P ocedure C de s 508 ARUMUGAM CHETTI v ARUNACHALAM CHETTI

[I. L. R. 22 Mad, 22

138 ———— Validity of award—*Omission to fix time for sending in—Act VIII of 1859 s 318* Where no time had been fixed in the order directing the award for sending in the award the award is under s 318 Act VIII of 18 9 invalid GANGAGOBINDA v K LIPRASANNA NAIK

[1 B L R S N 13 10 W R. 206

139 —— *Omission to fix time for del ver f award—Civil Procedure Code 1859 s 315*—Where the lower Appellate Court omitted in it o der referring the case to arbitration to fix a time for the d l very of the award as directed by 31 of Act VIII of 18 9 but both the parti p rmitted the reference to proceed and took part in the proceeding without making any objection until if r the a ard was deliver d and when the omi ion in the ord r of refer nce could work no injury to either party th High Court saw no reason why the omi ion sh uld be held to avoid the award MUBARIK ALI v KADIR BUKSH 7 N W 351

140 ———— *Award made out of time—Civil Procedure Code (Act XIV of 1882) ss 506 514* An appeal was preferred against a decree of an original Court dismissing a suit and the Appellate Court sent the case back for the purpose of certain evidence being taken and certified to it Pending that being done the parties applied to the Appellate Court to refer the case to arbitration and that Court referred that application to the original Court for dispo al although the case was still pending on its own file for di posal Subsequently another application was made to the original Court to refer the case to arbitration and on the 10th May the record was sent to the arbitrator with directions to submit his awa d within seven days On the 12th Septe ber as the award had not been sent in the original Court passed an order recalling the record and subsequently the award of the arbitrator dated the 12th September was filed The original Court thereup n f n a d d the record to the Appellate Court for it l n Obj ctions were taken to the award but overr il d and the App llate Court passed an order dir ctin the ca e to be sent back to the original C urt with rd rs t pa s a formal decree in accordance with the a ard of the arbitrator *Held* that the a ard was l ad in law been is the time within whi h it wa dir cted to be ma le had never be n en la g d a l the Court s order of the 12th September re all n the record could not be taken as an indication th t the time was enlarged. BHUGWAN DASS MARWARI v NUND LALL SEIN

[I. L. R. 12 Calc 173

141 ———— *Award made out of time—C v l P c d Cod s 521—Arbitration*—Under s f the Civil Procedure Code the rule that no award shall be valid unless made within the period fixed by the Court is equivalent to a rule that the award must be delivered within that period. Upon a reference to the arbitration of three persons the Court ordered that the award made by them should be filed on the 19th September 188 The award was not filed on that date but was signed by two of the arbitrators on that date and by the third arbitrator on the 20th September on which day it was filed It had been agreed that the opinion of the majority should carry the decision *Held* that the award was not made within the period fixed by the Court within the meaning of s 21 of the Civil Procedure Code BEHARI DASS v KALIAN DAS

[I. L. R. 8 All. 543

142 ———— *Award made out of time—Civil Procedure Code s 521—Arbitration—Order fixing time or enlarging time fixed for the delivery of award requ site—Civil Procedure Code ss 509 514 522 Decree in accordance with award*—The law contained in ss 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award or for extending or enlarging such time and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given An award which is invalid under s 521 of the Civil Procedure Code because not made within the period allowed by the Court is not an award upon which the Court can make a decree and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in *Luchman Das v Brijpal I L R 6 All 174* CHUBA MAL v HARI RAM I. L. R. 8 All. 548

143 ———— *Award made out of time—Civil Procedure Code ss 508 521 522 622—Act VIII of 1859 s 318*—An order of reference to arbitration was made on 21st January Six weeks time was allowed for the return of the award No application was made for extension of time The award having been returned on 8th May the Court refused to give judgment in accordance with it under s 522 of the Code of Civil Procedure on the ground that it was not valid *Held* on an application under s 622 of the Civil Procedure Code that the award was invalid SIMSON v VENKATAGOPALAM I L R. 9 Mad 475

144 ———— *Making and filing award—Award made b t not filed within the time spec fied by order of Court—Civil Procedure Code (Act XIV of 1882) ss 509 514 521*—A suit for dissolution of p rtnership and all matters in dispute between the parties thereto were by Judge s order dated 18th July 1887 referred to the arbitration of *A* and *B* The time for making and filing the award was by subsequent order extended to the 18th May 1888 The award was made on that day but was not filed until the 18th June 1888 The second defendant obtained a rule calling on the other parties to show cause (*inter alia*) why the award should not be set aside by reason of its not having been filed in time *Held* that the omission to file the award on or before the 18th May

ARBITRATION—*continued*

8 AWARDS—*continued*

provisions were consistent with the agreement filed under that section MUHAMMAD ABID v MUHAMMAD ASHGAR I L R 8 All 64

163 ——— *Umpire appointed contrary to agreement—Decision by majority of arbitrators* —B submitted to arbitration the matters in dispute between himself and the other parties to a suit on the terms that an umpire should be selected from seven persons whom he named. These terms were not objected to by the other side Arbitrators were agreed upon and *R* one of the seven persons named in the submission was appointed an umpire But *R* and some of the arbitrators declined to act Fresh arbitrators were then chosen but no umpire and the arbitrators being equally divided in their opinion on the case the Court of its own motion appointed as umpire *L* who was not one of the seven persons named in the submission *B* objected to *L*'s appointment but the Judge overruled the objection and passed judgment in accordance with the umpire's award. *Held* on appeal that as it was stipulated as an essential part of the submission that an umpire should be chosen from seven persons named the power of the Court to appoint an umpire under s 319 of the Civil Procedure Code was controlled and limited by that stipulation and that the umpire not being one of the seven persons named in the submission there was no valid award. BARRACHO v DESOUZA 7 Mad 72

164 ——— *Award by umpire and one arbitrator—Refusal of arbitrator to attend* —*Held* that an award made by one of the arbitrators and the umpire in the absence of second arbitrator who declined to attend was not a valid award. BUSUNT RAI v GRIDHAREE SINGH [3 Agra 93

165 ——— *Award by umpire where arbitrators cannot decide* —Where the parties prayed the Court to appoint two arbitrators and an umpire and to refer the case to them for decision and undertook to abide by such decision as might be passed by them unanimously or by the majority of them —*Held* that an award by the umpire alone the arbitrators being unable to decide was valid. KUPU RAU v VENKATARAMAYYAR [I. L. R. 4 Mad 311

166 ——— *Partial disagreement of arbitrators* —A partial disagreement of two arbitrators does not nullify their award as a whole PANAOOLAH v TUMEEZOODDEEN [2 W R. 32

167 ——— *Omission to sign award at same time—Procedure—Act VIII of 1859 s 325* —An award of arbitrators to be legal must be completed and signed by each in the presence of the whole of them. IN THE PETITION OF JAY MANGAL SINGH [3 B L R. A C 83 11 W R. 433

168 ——— *Omission to sign award at same time —Act VIII of 1859 s 327* — Where on a reference to arbitration the case had been regularly heard by all the arbitrators sitting together and an award been drawn up and signed by them the mere omission of the arbitrators to sign the award at the same time and in each other's presence does not invalidate the award BHOBOSUNDARI DASI v MAKHUN LAL DEY 8 B L R 128

But *see per* NORMAN J in JAY MANGAL SINGH v MOHAN RAM MARWARI [8 B L. R. 130 note and 319 note 12 W R. 397

169 ——— It is necessary as provided by s 516 of the Code that all the arbitrators agree to the terms of the award but there is no provision of law requiring them to sign it in the presence of each other *Bharasundari Dasi v Makhanlal Dey 8 B L R 125* followed MUTHUKUTTI NAYAKAN v ACHA NAYAKAN [I. L R. 18 Mad. 22

170 ——— *Omission of all the arbitrators to sign award—Draft of award signed by all the arbitrators—Fair copy signed by only four* —Where in a suit to recover a sum of money on an award the five arbitrators came to a decision and made dated and signed a rough draft of their award and the defendant then withdrew from the submission and a fair copy was then made bearing the same date as that of the rough draft but signed by only four of the arbitrators —*Held* that the award was complete at the date of the rough draft and that its validity was not affected by the subsequent occurrences The validity of an award cannot be impeached because the arbitrators afterwards do an act required neither by the law nor by the terms of the submission. KULA NAGABUSHANAM v KULASESHACHALAM 1 Mad. 178

171. ——— *Award not signed by all the arbitrators—Civil Procedure Code 1859 s 312—Division of award* —The parties to certain suits having agreed to submit to arbitration the suits were so referred under Act VIII of 1859 s 312 After this reference the parties agreed by an ikrarnama to submit the same suits together with other matters to the arbitration of five persons the effect being to withdraw the first submission and substitute the new agreement Before these arbitrators arrived at a final conclusion the parties by a solenamah compromised the whole of the subjects of dispute and afterwards an award was drawn up in the terms of the solenamah and signed by two of the arbitrators and the head arbitrator When the award was brought before the Subordinate Judge he considered it had been made *ultra vires* in respect of those matters which were not involved in the suits originally referred and accordingly made a decree only in those suits *corresponding* with the terms of the award. Some of the defendants applied to the Subordinate Judge to have the effect of a decree given to that portion of the award which was left outstanding by the first decision This application was decreed and the remainder of the award enforced An appeal to the Judge was dismissed with costs *Held* that the award was illegal because it was not

ARBITRATION—*continued*

8 AWARDS—*continued*

signed by all the arbitrators and there had been no agreement to abide by the decision of the majority or that the voice of the umpire should prevail *Held* however that as the parties concerned did not take steps to set the Subordinate Judge right the High Court could not interfere but that the effect of the decision was to dispose of the award altogether and not to divide it into two parts one of which might form the foundation of a future judgment *Held* that the application to give effect to the unenforced portion of the award ought to have been dismissed NEM ROY v BHARUT ROY

[22 W R. 129

172. ———— *Signing award after tender of resignation by one arbitrator*—Where one of the arbitrators before duly signing the award tendered his resignation in a letter to the Judge but was induced to withdraw it and afterwards signed the award —*Held* that the arbitrator who first tendered and then withdrew his resignation did not formally divest himself of his character of arbitrator and was therefore not *functus officio* when he signed the award which was consequently valid JOYMUNGAL SINGH BAHADOOR v MOHUN RAM MARWAREE 23 W R. 429

Affirming decision of High Court in

[15 W R 38

173 ———— *Resignation of arbitrator and subsequent withdrawal of resignation —Power to withdraw resignation* —An arbitrator has full power to retract his resignation of office before it is accepted An award signed after the withdrawal of such resignation is a valid award. JOYMUNGUL SINGH v MOHUN RAM MARWAREE

[15 W R 38

174. ———— *Award irregularly made* —Where an arbitrator imported into his proceedings a previous enquiry alleged to have been made by him and relied upon admissions made in the former proceedings his award was held to be bad and the decision based upon it was set aside KANHYE CHAND GOSSAMEE v RAM CHUNDER GOSSAMEE 24 W R 81

175 ———— *Award made on special form of oath—Power of arbitrators to administer other than prescribed form of oath—Oaths Act (X of 1873) s 13* —The matters in dispute in a suit were by the desire of the parties to the suit referred to arbitration. During the investigation of these matters by the arbitrators the plaintiff offered to be bound by the oath of the defendant administered on the Koran. The defendant agreed to take such oath and such was accordingly administered to him by the arbitrators and his evidence taken and an award made based on the evidence so taken On special appeal to the High Court by the plaintiff he objected for the first time the objection not having been taken in his memorandum of special appeal that the arbitrators were not legally competent to administer such oath and the evidence so taken could not form a valid basis of an award and the award was therefore void. *Held per* PEARSON J SPANKIE J dissenting with reference to the legal competency of the arbitrators to administer the oath that the objection was good and that the arbitrators had no power to administer the oath *Per* PEARSON J that the statement of the defendant made on an oath illegally administered could not form a valid basis of an award and the award was void and should be set aside *Per* SPANKIE J that the plaintiff having offered to be bound by the oath and the defendant having agreed to take it the plaintiff was bound by the evidence given on such oath and that as the arbitrators had by law and consent of parties authority to receive the evidence of the defendant the substitution by them of an oath on the Koran for an affirmation did not under the provisions of s 13 Act X of 1873 invalidate such evidence and consequently render the award based on such evidence void. WALI ULLAH v GHULAM ALI

[I L R, 1 All 535

176 ———— *Vague and indefinite award—Civil Procedure Code (Act XIV of 1882) ss 520 521 525 526*—Certain disputes between parties were referred under a written agreement to an arbitrator who in due course made his award. The plaintiff then applied to the Subordinate Judge to have the award filed in Court under the provisions of s 525 of the Code of Civil Procedure The defendants came in and objected to the award on the following amongst other grounds that the agreement of submission was vague and indefinite and did not clearly set out the matters in dispute The Subordinate Judge overruled the objection without taking any evidence and directed the award to be filed and a decree to be passed thereon The plaintiff appealed *Held* on appeal that as the objection was well founded inasmuch as the agreement to refer was vague and indefinite and did not clearly lay down the power of the arbitrator in dealing with the subject matter in dispute and as it was not possible to make out what powers were intended to be conferred upon the arbitrator the award should not be allowed to be enforced under the provisions of ss 525 and 526 BINDESSURI PERSHAD SINGH v JANKEE PERSHAD SINGH I L R, 16 Calc 482

177 ———— *Award referring parties to separate suit—Civil Procedure Code 1882 s 522*—After issues had been framed in a suit to wind up a partnership the matter was referred to an arbitrator who made his award and with regard to certain property not part of the partnership property he referred the parties to a separate suit *Held* that the award was not illegal by reason of its comprising the reference of the parties to a separate suit VENKAYYA v VENKATAPPAYYA

[I L R 15 Mad., 348

178 ———— *Submission to arbitration—Award not disposing of all the matters referred—Finality of award Validity of award—Waiver—Consent of parties Partition* The ground for holding an award to be invalid on account of its not disposing of all the matters referred appears to be that there is an implied condition in the

ARBITRATION—*continued*

8 AWARDS—*concluded*

submission of the parties to the arbitration that the award shall dispose of all. This condition may be waived by the consent of the parties before the arbitrators The partition of joint estate consisting of different properties having been submitted to arbitration and the parties agreeing to a division being made by steps and that each division should be final without any condition that the award should not be final while part remained undivided —*Held* in a suit brought by one of the parties for partition of the whole estate after such a division of part that although cases cited as to the invalidity of an incomplete award might have been applicable had the arbitrators awarded as to only part of the property of their own authority and without that of the parties it was competent to the latter to agree before the arbitrators to the division being made as it had been and that here the partition as to the property divided was final Only a decree for the partition of the undivided residue could be made MAKUND RAM SUKAL v SALIQ RAM SUKAL

[I. L. R. 21 Calc. 590
L R. 21 I A 47

179 ——— *Reference applied for by agent without authority Knowledge and tacit ratification by principal—Estoppel* In a suit which was defended by an agent (ammukhtar) on behalf of the defendant the agent applied for a reference to arbitration although he had no power to do so under the ammukhtarnamah After the submission of the award objection was made on behalf of the defendant that the agent had no authority to apply for or consent to the reference The objection was overruled by the Court and a decree made in accordance with the award with one slight modification in the defendant's favour *Held* that although the agent was not authorized to apply for or consent to a reference the defendant having been aware of the proceedings and tacitly ratified the action of his agent could not be allowed to question the legality of the award and the award was not void *ab initio* *Unnaman* v *Chathan* I L R 9 Mad 401 referred to SATURJIT PERTAB BAHADOOR SAHI v DULHIN GULAB KOER I. L R. 24 Calc 459

180 ——— *Award made in reference to arbitration by one partner without authority —Specific Relief Act s 21* — A partner has no power in the absence of special authority to bind the firm by a submission to arbitration of a suit which has been brought and an award was in such arbitration invalid *Stead* v *Salt*, 3 *Bing* 101 and *Sharpfood* v *Green* 2 *Mad* 228 referred to RAM BAROSE v KALLU MAL I. L R. 22 All. 135

9 PRIVATE ARBITRATION

181. ——— Mode of submission to arbitration—*Civil Procedure Code 1882 s 525 (1859 s 327)* —In arbitrations not started with the sanction of the Court it is not necessary that the agreement should be reduced to writing before it can be binding MUDHOO MANJEE v NILMONEE SINGH DEO 18 W R. 533

ARBITRATION—*continued*

9 PRIVATE ARBITRATION—*continued*

182 ——— *Oral submission* —A submission of private arbitration may be perfectly valid though not put in writing and a private award made in pursuance of such submission will be respected and treated as valid by the Courts if duly performed and the possession of the entered property be held under them The arbitrators may be competent to prove as well the submission as the making of the award though no ikrarnamah was ever executed. BAHAL SINGH v SHIBO RAM SINGH

[W R. 1864 76

183 ——— Matters for submission—*Subject matters of suit and other matters in dispute* —There is nothing in Act VIII of 1859 to prevent parties who have a suit pending in Court from submitting the subject matter of that suit and other matters in dispute to arbitration under s 327 THAKOOR DOSS ROY v HURRY DOSS ROY

[W R. 1864 Mis 21

184 ——— Agreement to refer to private arbitration by parties engaged in litigation—*Civil Procedure Code (Act X of 1877) ss 523 and 525* —Under ss 523 and 525 of the Civil Procedure Code (Act X of 1877) parties to a suit as well as persons not engaged in litigation may agree to refer matters in dispute between them to private arbitration without the intervention of the Court and may apply to have the agreement filed and the mere fact that a suit is pending with respect to the matters in dispute is not of itself a sufficient reason to induce the Court to refuse to file the agreement HARIVALABDAS KALLIANDAS v UTTAMCHAND MANEKCHAND I. L. R 4 Bom., 1

185 ——— Power of arbitrators after making and delivery of award—*Review* —After an award has been made and handed to the parties the functions of the arbitrators cease They have no power afterwards to deal with an application for review of their decision IN THE MATTER OF THE PETITION OF DUTTO SINGH DUTTO SINGH v DOSAD BAHADUR SINGH I. L. R 9 Calc. 575

186 ——— *Award signed by arbitrators at different times—Civil Procedure Code 1859 s 327 Award irregularly made* In the case of a private award where the arbitrators granted a new trial and eventually disposed of the case in the absence of the defendant and after a year from the time of allowing a new trial one day verbally pronounced their judgment to one party and on another day to the other party and on a subsequent date wrote out the award which was signed on a particular date by one arbitrator who sent it to others elsewhere for signature on a different date —*Held* that the award ought not to be enforced under Act VIII of 1859 s 327 NADER ALI v MAJOO 21 W R., 377

187 ——— *Award signed only by some of the arbitrators* Matters in dispute between the parties were referred to seven arbitrators without the intervention of a Court The arbitrators or so many of them as could be got together held sittings extending over some months and at

ARBITRATION—*continued*

9 PRIVATE ARBITRATION—*continued*

each sitting they came to a decision either unanimously or by a majority on different questions submitted to them These decisions were entered on the minutes of their proceedings and at their last sitting the arbitrators all agreed and informed the parties that the decisions so arrived at constituted the final award and gave directions for embodying those decisions in the shape of a formal document which was drawn up on a subsequent day but was signed by four only out of the seven arbitrators The remaining arbitrators not being asked to sign it they never did sign it *Held* that the actual award was an oral award made by all the arbitrators on the last day of their joint sitting and the drawing up of the formal award was a purely ministerial act to give effect to the previously completed judicial act. The omission to take the signatures of the minority of the arbitrators to the document which formed the record of the award was not fatal to the award. DANDEKAR v DANDEKARS I L. R. 6 Bom. 663

188 ——— *Document recommending solution of disputed points—Act XIV of 1882 s 525* —A document although headed as an award and signed by the arbitrator which merely recommends a solution of the questions referred to arbitration will not be treated by the Court as an award on an application made under s 525 of the Code of Civil Procedure NUNDOLOLL MOOKERJEE v CHUNDER KANT MOOKERJEE [I. L. R. 11 Calc 356

189 ——— Application to enforce award—*Time for filing award—Civil Procedure Code 1859 s. 327* —An award of arbitration whether private or not cannot be enforced unless the application for enforcement is made within six months from the date of award. BHYRUB JHA v HUNOOMUN DUTT JHA 5 W R. 123

190 ——— *Time for filing award—Limitation Act (XV of 1877) sch II art 176—Civil Procedure Code 1877 ss 525 526* —Where an award was made and signed by the arbitrators on the 5th of August 1881 but was not delivered to the parties till the 13th of September following —*Semble* that an application to file the award made on the 25th of February 1882 under the provisions of s. 525 of the Code of Civil Procedure was not barred by limitation It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award under s 525 of the Code of Civil Procedure from the time when he is in a position to enforce it IN THE MATTER OF THE PETITION OF DUTTO SINGH DUTTO SINGH v DOSAD BAHADUR SINGH I. L R. 9 Calc. 575

191. ——— Filing award in Court—*Effect of not filing—Civil Procedure Code 1859 s 327* —An arbitration award should be filed in Court Effect of not filing as defined in s 327 Act VIII of 1859 SOOPHUL SINGH v METHOO SINGH [1 W R. 163

192. ——— *Effect of not filing—Validity of award* —An award of arbitration may be valid without being enforced by the Courts as for instance where possession under the award is shown MOHESH CHUNDER MOITER v BULORAM MOITER 6 W R. 94

193 ——— *Effect of not filing—Validity of award* —An award made by private submission may be valid and binding though no proceedings under s 327 Act VIII of 1859 have been taken to enforce it SURUBJEET NARAIN SINGH v GOUREE PERSHAD NARAIN SINGH [7 W R. 260

194. ——— *Effect of not filing—Civil Procedure Code 1859 s 327—Validity of award* —Arbitration awards not brought into Court under s 327 Act VIII of 1859 are not on that account necessarily invalid. RAMYAD SAHOO v DOOLAR SAHOO 9 W R. 441

NURSINGH GARIWAN v PUTTOO OSTAGUR [20 W R. 420

195 ——— *Objection by creditor to filing award* —The plaintiff applied to file an award and for a decree in terms thereof to which the defendant consented *K* a creditor of the defendant thereupon applied to be made a party to the suit and objected to the filing of the award and to the decree alleging that the award was fraudulent and fictitious and had been made in order to save the defendant s property from his creditors The Subordinate Judge made *K* a party to the suit and refused the plaintiff s application On application to the High Court —*Held* that the Judge was bound to file the award the defendant having raised no objection to it and no illegality appearing on the face of it DUNGAR I DIPCHAND v UJAMSI VELI [I. L. R. 22 Bom. 727

196 ——— *Obligation to file—Suit to enforce award not filed—Civil Procedure Code 1859 s 327* —A suit lies to enforce an award made without the intervention of a Court of Justice The procedure provided in s 327 of the Civil Procedure Code is not imperative upon a plaintiff who seeks to enforce an award so made PALANIAPPA CHETTI v RAYAPPA CHETTI [4 Mad., 119

KOTA SEETAMMA v KOLLIPURLA SOOBBIAH [8 Mad. 81

197 ——— *Objections to filing award—Civil Procedure Code (Act XIV of 1882) ss 520 521 525 and 526—Procedure where identity of award impeached—Power of Court to enquire into objection to file award—Jurisdiction* —Where an application was made to a Subordinate Judge to file an award and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed thus impeaching the identity of the award and the Subordinate Judge after an enquiry with regard to the several objections ordered the award to be filed —*Held* that the order of the Subordinate Judge should be set aside or the award be deemed not to have been filed. The only objections which the Court can enquire into under ss. 525

ARBITRATION—*continued*

9 PRIVATE ARBITRATION—*continued*

and 5 6 of the Civil Procedure Code (Act XIV of 1882) are those which are specified in ss 520 and 521 and these relate to cases in which the reference and the award are accepted facts but where the objection denies the *factum* of the particular award sought to be filed and the objection does not seem to be frivolous but one giving rise to enquiry into difficult questions of law and fact it is not competent for the Court to deal with that objection under ss 525 and 5 6 In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action wherein the party urging the objection will have the advantage of being a defendant rather than a plaintiff and of having an appeal open to him in the event of an unfavourable decision SAMAL NATHU *v* JAISHANKAR DALSUKRAM

[I. L. R. 9 Bom. 254

198 ——— *Objections to filing award*—*Civil Procedure Code 1877 ss 520 524 525*—*Rejection of application to file award*—*Consent of parties to jurisdiction.*—A dispute between the plaintiffs and defendant having been referred to arbitration and an award made the plaintiffs applied under s 525 of the Civil Procedure Code that the award should be filed in the Munsif's Court It having been objected that the arbitrators had been guilty of impartiality and other misconduct an issue was framed with the consent of both parties whether the award could be filed and enforced and the Munsif after hearing evidence dismissed the application On appeal the Subordinate Judge decided that the award was valid On second appeal—*Held* that although where an application to file an award under s 525 and objection is made upon any of the grounds mentioned in s 520 or 521 the proper course for the Court is to dismiss the application and leave the applicant to bring a regular suit to enforce the award yet both parties having consented to the matter being tried upon the application as if in a regular suit it could not on second appeal be objected that the lower Courts had acted without jurisdiction HURO NATH ROY *v* NISTARINI CHOWDHRAIN

[13 C. L. R. 14

199 ——— *Showing cause*—*Sufficient cause*—The term to show cause in ss 525 and 526 of the Code of Civil Procedure (Act X of 1877) does not mean merely to allege cause nor even to make out that there is room for argument but both to allege cause and to prove it to the satisfaction of the Court DANDEKAR *v* DANDEKARS

[I. L. R. 6 Bom 663

200 ——— *Civil Procedure Code ss 525 526*—*Partnership*—*Agreement to refer disputes to arbitration*—The three parties to a deed of partnership agreed that in case of any dispute or difference the matter should be referred to the arbitration of persons chosen by each party to such dispute and that in case any such party should refuse or fail to nominate an arbitrator then the arbitrator named by the other party should nominate another arbitrator and the two should nominate a third person as umpire Certain differences having arisen among the three partners two of them called upon the executors of the third to nominate an arbitrator under the terms of the deed but they refused to do so The first mentioned partners then nominated an arbitrator who in his turn nominated another and these having appointed an umpire made an award One of the partners at whose instance the matter in dispute had been referred to arbitration presented an application under s 525 of the Civil Procedure Code praying that the award might be filed in Court This application was opposed by the executors of the third partner who appeared and lodged verified petitions disclosing grounds of objection within the meaning of s 520 or s. 521 of the Code *Held* that the word parties as used in s 525 should not be confined to persons who are actually before the arbitrators that if persons by an agreement have undertaken between themselves that in the event of a certain state of things happening a particular procedure shall be followed which under one state of circumstances may be adopted *in invitum* they should for the purposes of s 525 be regarded as parties to that arbitration and that there was sufficient reason to show that the defendants in the present case were *prima facie* bound by the arbitration so as to bring them within the terms of s 5 5 as parties thereto who should be called on to show cause why the award should not be filed *Willcox v Storkey L R 1 C P 671* and *Re Newton and Hetherington 19 C B N S 342* referred to *Held* also that ss 525 and 526 of the Code read together mean that the party coming forward to oppose the filing of the award must show cause that is must establish by argument or proof or both reasonable grounds to warrant the Court in arriving at the conclusion that the award is open to any of the objections mentioned in s 520 or s 521 and it is not sufficient when it is sought to make the award a rule of Court for the defeated party to come and merely say upon a verified petition that this or that ground referred to in ss. 520 and 521 existed against the filing *Sree Ram Chowdhry v Denobundhoo Chowdhry I L R 7 Calc 490* and *Ichamoyee Chowdhranee v Prosunno Nath Choudhry I L R 9 Calc 557* dissented from *Dutto Singh v Dosad Bahadur Singh I L R 9 Calc 575 Dandekar v Dandekars I L R 6 Bom 663* and *Chowdhry Murta a Hossein v Bechunnissa L R 3 I A 209 26 W R 10* referred to JONES *v* LEDGARD

[I. L. R. 8 All. 340

201 ——— *Sufficient cause*—*Civil Procedure Code 1859 s 327* *Per* SPANKIE J—S 327 intended to provide for those cases only in which the reference to arbitration is admitted and an award has been made Where the defendant denies referring any dispute to arbitration or that an award has been made between himself and the plaintiff sufficient cause is shown why the award should not be filed. The plaintiff should be left to bring a regular suit for the enforcement of the award. HUSSAINI BIBI *v* MOHSIN KHAN I. L. R., 1 All. 156

202 ——— *Sufficient cause*—*Civil Procedure Code 1882 ss 525 526*—Under

ARBITRATION—*continued*

9 PRIVATE ARBITRATION—*continued*

each sitting they came to a decision either unanimously or by a majority on different questions submitted to them These decisions were entered on the minutes of their proceedings and at their last sitting the arbitrators all agreed and informed the parties that the decisions so arrived at constituted the final award and gave directions for embodying those decisions in the shape of a formal document which was drawn up on a subsequent day but was signed by four only out of the seven arbitrators The remaining arbitrators not being asked to sign it they never did sign it *Held* that the actual award was an oral award made by all the arbitrators on the last day of their joint sitting and the drawing up of the formal award was a purely ministerial act to give effect to the previously completed judicial act The omission to take the signatures of the minority of the arbitrators to the document which formed the record of the award was not fatal to the award DANDEKAR *v* DANDEKARS I L R. 6 Bom. 663

188 ——— *Document recommending solution of disputed points—Act XIV of 1882 s 525* —A document although headed as an award and signed by the arbitrator which merely recommends a solution of the questions referred to arbitration will not be treated by the Court as an award on an application made under s 525 of the Code of Civil Procedure NUNDOLOLL MOOKERJEE *v* CHUNDER KANT MOOKERJEE [I L R. 11 Calc 356

189 ——— Application to enforce award—*Time for filing award—Civil Procedure Code 1859 s. 327* —An award of arbitration whether private or not cannot be enforced unless the application for enforcement is made within six months from the date of award BHYRUB JHA *v* HUNOOMUN DUTT JHA 5 W R. 123

190 ——— *Time for filing award—Limitation Act (XV of 1877) sch II art 176—Civil Procedure Code 1877 ss 525 526* —Where an award was made and signed by the arbitrators on the 5th of August 1881 but was not delivered to the parties till the 13th of September following —*Semble* that an application to file the award made on the 25th of February 1882 under the provisions of s 525 of the Code of Civil Procedure was not barred by limitation It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award under s 525 of the Code of Civil Procedure from the time when he is in a position to enforce it IN THE MATTER OF THE PETITION OF DUTTO SINGH DUTTO SINGH *v* DOSAD BAHADUR SINGH I L R. 9 Calc 575

191. ——— Filing award in Court—*Effect of not filing—Civil Procedure Code 1859 s 327* —An arbitration award should be filed in Court Effect of not filing as defined in s 327 Act VIII of 1859 SOOPHUL SINGH *v* METHOO SINGH [1 W R., 163

192. ——— *Effect of not filing—Validity of award* —An award of arbitration may be valid without being enforced by the Courts as for instance where possession under the award is shown MOHESH CHUNDER MOITER *v* BULORAM MOITER 6 W R 94

193 ——— *Effect of not filing—Validity of award* —An award made by private submission may be valid and binding though no proceedings under s 327 Act VIII of 1859 have been taken to enforce it SURUBJEET NARAIN SINGH *v* GOUREE PERSHAD NARAIN SINGH [7 W R 260

194. ——— *Effect of not filing—Civil Procedure Code 1859 s 327—Validity of award* —Arbitration awards not brought into Court under s 327 Act VIII of 1859 are not on that account necessarily invalid RAMYAD SAHOO *v* DOOLAR SAHOO 9 W R. 441

NURSINGH GARIWAN *v* PUTTOO OSTAGUR [20 W R. 420

195 ——— *Objection by creditor to filing award* —The plaintiff applied to file an award and for a decree in terms thereof to which the defendant consented *K* a creditor of the defendant thereupon applied to be made a party to the suit and objected to the filing of the award and to the decree alleging that the award was fraudulent and fictitious and had been made in order to save the defendant s property from his creditors The Subordinate Judge made *K* a party to the suit and refused the plaintiff s application On application to the High Court —*Held* that the Judge was bound to file the award the defendant having raised no objection to it and no illegality appearing on the face of it DUNGARSI DIPCHAND *v* UJAMSI VELSI [I. L. R. 22 Bom. 727

196 ——— *Obligation to file—Suit to enforce award not filed—Civil Procedure Code 1859 s 327* —A suit lies to enforce an award made without the intervention of a Court of Justice The procedure provided in s 327 of the Civil Procedure Code is not imperative upon a plaintiff who seeks to enforce an award so made PALANIAPPA CHETTI *v* RAYAPPA CHETTI [4 Mad. 119

KOTA SEETAMMA *v* KOLLIPURLA SOOBBIAH [8 Mad. 81

197 ——— *Objections to filing award—Civil Procedure Code (Act XIV of 1882) ss 520 521 525 and 526—Procedure where identity of award impeached—Power of Court to enquire into objection to file award—Jurisdiction* —Where an application was made to a Subordinate Judge to file an award and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed thus impeaching the identity of the award and the Subordinate Judge after an enquiry with regard to the several objections ordered the award to be filed —*Held* that the order of the Subordinate Judge should be set aside or the award be deemed not to have been filed. The only objections which the Court can enquire into under ss. 525

ARBITRATION—*continued*

9 PRIVATE ARBITRATION—*continued*

18 Calc 414 L R 18 I A 73 referred to AMRIT RAM *v* DASRAT RAM I. L. R. 17 All. 21

208 ———— *Application to file award—Civil Procedure Code (1882) ss 521 522 525 and 526—Objections as to factum or validity of submission and award* Where on an application to file an award under ss. 525 and 526 Civil Procedure Code (Act XIV of 1882) objections which in the opinion of the Court are not merely frivolous or colourable are raised to the factum or validity of the submission and award the Court has no jurisdiction to deal with them and must refer the parties to a regular suit *Samal Nathu v Jaishanker Dalsukram I L R 9 Bom 254* and *Surjan Raot v Bhikari Raot I L R 21 Calc 213* followed *Amrit Ram v Dasrat Ram I L R 17 All 21* not followed TEJPUR DEWCHAND *v* MAHOMED JAMAL

[I L R 20 Bom. 596

209 ———— *Application to file award—Objection that submission was revoked before award made—Jurisdiction of Court to determine objection—Subsequent suit to annul award—Civil Procedure Code (1882) ss 521 522 and 526—Right of suit* —The plaintiff s case was that arbitrators to whom differences between him and the defendant had been referred had out of enmity to him and at the defendant s instance made a fraudulent award on 17th February after he had revoked his submission and had antedated it as on 1st February that the defendant had instituted proceedings under Civil Procedure Code Chap XXXVII and his objections to the above effect having been overruled a decree was passed in terms of the award. He now sued to have it declared that neither the decree nor the award was binding *Held* that the Court had jurisdiction to determine the genuineness or validity of the award in the proceedings under Chap XXXVII and that the present suit was not maintainable CHINTAMALLAYYA *v* THADI GANGI REDDI I. L. R 20 Mad. 89

210 ———— *Civil Procedure Code (Act XIV of 1882) ss 525 and 526—Arbitration award—Denial of reference to arbitration—Jurisdiction of Court to determine the factum of reference—Appeal* —*Held* by a majority of the Full Bench (MACPHERSON J dissenting) that when an application has been made under s 525 of the Code of Civil Procedure and notice has been given to the parties to the alleged arbitration the jurisdiction of the Court to order the award to be filed and to allow proceedings to be taken under it is not taken away by a mere denial of the validity of the reference to arbitration on an objection to the validity of that reference *Amrit Ram v Dasrat Ram I L R 17 All 21* followed MAHOMED WAHIDUDDIN *v* HAKIMAN

[I. L. R. 25 Calc. 757
2 C W N 529

211 ———— *Application to amend an award—Civil Procedure Code 1859 s 327* —Upon a motion to amend an award filed under s 327 of the Civil Procedure Code on the ground of obvious errors contained in it it was held that the Court had no power under s. 327 to amend an award or remit it for the reconsideration of the arbitrators but had only the power to file and enforce the award or reject it ALLARAKHIA SHIVJI *v* JEHANGIR HORMASJI 10 Bom 391

212 ———— *Award in criminal matter—Civil Procedure Code 1859 s 327* —When complaint has been preferred to a Criminal Court and the Magistrate has directed that the subject matter of the complaint be referred to arbitration if the parties consent and proceed to such reference the award may be enforced under the provisions of s 327 Act VIII of 1859 SHEO NUND RAI *v* MAHANUND RAM 1 Agra 45

213 ———— *Award deciding matter not referred—Civil Procedure Code 1877 s 525* —*Held* where a private award determined a matter not referred to arbitration that a claim under s 525 of Act X of 1877 that such award should be filed in Court was properly dismissed JUALA SINGH *v* NARAIN DAS

[I. L. R. 3 All. 541

214 ———— *Award in excess of terms of submission—Civil Procedure Code 1877 ss 525 526—Agreement as to management of devasam* —An award made under s 525 which is partly within and partly exceeds the terms of the submission to arbitration cannot be enforced by summary procedure under s 526 as to such portion as does not exceed those terms To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a devasam as regards conduct of suits granting of demises custody of property collection of rents appointment and removal of servants and defrayment of current expenditure MANA VIKRAMA MAHARAJA OF CALICUT *v* MALLICHERY KRISTNAN NAMBUDRI

[I. L. R. 3 Mad. 68

215 ———— *Award dealing with—Matters referred piece by piece—Civil Procedure Code 1859 s 327* —Where an arbitration bond provides that the matters in dispute referred to the arbitrators may be taken up and dealt with *seriatim* and the award delivered bit by bit (khund khund) it is not necessary under s 327 of Act VIII of 1859 that all the matters referred should have been decided before the first portion of the award dealing with some only of the subjects in dispute can be filed. SHOSHIMUKHI DABIA *v* NOBIN CHUNDER ROY 4 C L. R., 93

216 ———— *Private award Enforcement of—Procedure—Civil Procedure Code 1859 s 327* —When a private award between parties is filed in a Court the prescribed course is for the Court to give judgment upon it and pass a decree; not to order execution before such decree has been passed. SAHEB RAM JHA *v* KASHEENATH JHA

[21 W R. 295

217 ———— *Civil Procedure Code s 525—Loss of award procedure on.*—When an award has been lost a Court acting under

ARBITRATION—*continued*

9 PRIVATE ARBITRATION—*continued*

s 525 of the Code of Civil Procedure cannot take secondary evidence of its provisions and pass a decree accordingly A suit to have a copy of such award filed cannot therefore be maintained GOPI REDDI v MAHANANDI REDDI I. L. R., 12 Mad 331

218 ———— *Award not deciding chief subject of dispute—Order setting aside filing of award*—Amongst other matters the arbitrators were asked to make a division of certain fields to which the parties were equally entitled The arbitrators decided the other matters but as regards the fields said that it was inconvenient to do so in consequence of the rains and ordered the parties to receive the profits half and half and to pay the assessment half and half *Held* that the award left undetermined one of the principal subjects of dispute and as the Court had no power to remit the award to the arbitrators the applicant was entitled to a judgment setting aside the order for filing the award DANDEKAR v DANDEKARS [I. L. R 6 Bom, 663

219 ———— *Civil Procedure Code s 525—Suit on a private award—Alternative claim on original consideration—Withdrawal of claim on award*—The plaintiff lent money to two of the defendants who were partners with the third defendant for the purposes of the partnership and obtained promissory notes from them Disputes which arose between them were referred to arbitrators who made an award An application by the plaintiff to have the award made a rule of Court was opposed by defendant No 1 and the plaintiff was referred to a regular suit He now brought his suit in the alternative on the award and on the promissory notes The award was found to be unenforceable The plaintiff then declared himself satisfied to withdraw his suit as far as the award was concerned and the Court passed a decree for plaintiff on the merits Defendant No 3 alone having appealed the Court of first appeal held that the plaintiff must succeed or fail on the award and that the withdrawal of the prayer for a decree on the award altered the nature of the suit and finding that there was no evidence of misconduct on the part of the arbitrators he passed a decree in the terms of the award On a second appeal preferred by defendant No 1—*Held* that this procedure was right NARASAYYA v RAMABADRA I. L. R 15 Mad., 474

220 ———— *Civil Procedure Code (XIV of 1882) s 525—Application for filing an award registered as a suit—Grounds for not filing award*—An application for filing an award being registered as a suit the defendant raised objections and the following issues were framed—(1) Whether a certain arbitrator was nominated or accepted as one of the arbitrators by the defendant? (2) Whether there was any and what illegality apparent on the face of the award? (3) Whether the proceedings conducted by the arbitrators were illegal?—*Held* that the objections taken by the defendant which were the subject of the above issues precluded the Court from filing the award VENKATESH KHANDO v CHARAPGAVDA [I. L. R 17 Bom 674

ARBITRATION—*concluded*

9 PRIVATE ARBITRATION—*concluded*

ARBITRATOR

See CASES UNDER ARBITRATION

ARCHITECT

———— Certificate of in Building Contract

See CONTRACT—BREACH OF CONTRACT [I. L. R 19 Mad. 178

ARGUMENTS ON APPEAL

See LETTERS PATENT HIGH COURT cl 15 [4 B L. R A C 86 181 9 B L. R 274

See CASES UNDER REVIEW—QUESTIONS WHICH MAY BE RAISED ON REVIEW

ARMENIANS

See ENGLISH LAW [I. L. R 24 Calc 216

ARMS ACT (XXXI OF 1860)

See ARMS ACT (XI OF 1878) [I. L. R 9 Bom 478

1 ———— s 32—Carrying or being in possession of arms without a licence—The mere possession of arms under *Act XXXI of 1860* is not an offence in districts where s 32 of the Act is not in force IN THE MATTER OF THE PETITION OF RAMESAR PERSHAD NARAYAN SING [9 B L. R Ap 34 18 W R Cr 1

IN THE MATTER OF THE PETITION OF MODNARAIN PURI 18 W R Cr 26

2 ———— Possession of arms—*Illegalities in conduct of search*—The mere possession of arms in a certain district being an offence if there be satisfactory evidence that the prisoners were in the possession of arms they would be punishable for such illegal possession notwithstanding the police may have also committed an illegality in their procedure in conducting the search for the same QUEEN v SHEOPERSHUN ROY 2 N W 57

3 ———— cl (6)—*Fine—Imprisonment—Sentence*—Under Act XXXI of 1860 s. 32 cl 6 a sentence of fine only or of imprisonment only is a legal sentence QUEEN v BHISTA BIN MADANNA I. L. R. 1 Bom 308

4 ———— s 44—*Fine—Manufacturing gunpowder without a licence*—Certain persons were convicted under s 5 of Act XXXI of 1860 of manufacturing and selling gunpowder without a licence and sentenced to fine or in default imprisonment S 44 of the Act provides a special procedure for levying the fine by distress *Held* that the sentence was legal the Act giving power to imprison or fine upon conviction ANONYMOUS 5 Mad., Ap 24

ARMS ACT (XI OF 1878)

———— s. 1, cl. (b) and s 5—*Attachment and sale of arms in execution of a decree by Nazir of the Court—Public servant Sale of arms by* —The sale of arms by the Nazir of the Court in execution of a decree is a sale by a public servant in discharge of his duty and is therefore excluded by s 1 cl (*b*) from the operation of the Indian Arms Act XI of 1878 It is expedient for the Court ordering such sale to give notice of the sale and of the purchaser s name and address as contemplated by s 5 of that Act to the Magistrate of the district or to the police officer in charge of the nearest police station WALA HIRAJI v HIRA PATEL

[I. L. R. 9 Bom 518

1. ———— s 4—*Possession of unserviceable firearms without licence* —A gun rendered unserviceable by the loss of the trigger does not fall within the definition of arms in s 4 of the Indian Arms Act 1878 Possession of such a weapon without a licence is no offence QUEEN v SIDDAPPA

[I. L. R., 6 Mad 60

2. ———— A revolver with a broken trigger is within the definition of arms in Indian Arms Act 1878 s. 4 Whether in any particular case an instrument is a firearm or not is a question of fact to be determined according to circumstances and the circumstance that it is in an unserviceable condition is not conclusive *Queen v Siddappa I L R 6 Mad 60* dissented from. QUEEN EMPRESS v JAYARAMI REDDI

[I. L. R. 21 Mad 360

3 ———— *Arms—Parts of arms—Serviceable gun barrel* —As a gun barrel and nipple in serviceable condition fall within the definition of arms in s 4 of the Indian Arms Act 1878 the possession of such articles without a licence is punishable under s. 19 (*f*) of the said Act QUEEN v VYAPURI KANGANI I. L. R. 7 Mad. 70

———— ss 4 and 5—*Manufacture or possession of fireworks—Rockets* —The manufacture or possession of fireworks including rockets which are mere fireworks without a licence is not prohibited by s 5 of the Indian Arms Act 1878 The rockets referred to in s 4 are war rockets QUEEN v SUPPY

[I. L. R. 5 Mad. 159

———— ss 5 and 19 —*A* having obtained a licence under the Arms Act 1878 for a match lock had the same converted into a percussion gun He was convicted under s 19 of the said Act on the ground that the licence did not permit him to keep a percussion gun. *Held* that the conviction was bad QUEEN EMPRESS v BODAPPA

[I. L. R. 10 Mad. 131

———— ss 15 and 19—*Arms—Possession of arms—Badami Talukha—Act XXXI of 1860 s 32 cls 1 and 2*—Cl 2 s 32 of Act XXXI of 1860 relating to the manufacture importation and sale of arms did not apply to the Badami Talukha of the Kaladgi Collectorate at the time when the Indian Arms Act No XI of 1878 came into force and the notification of the Government of Bombay No. 1112 of the 19th February 1878 which declares that the provisions of Act XXXI of 1860 as modified by Act

ARMS ACT (XI OF 1878)—*continued*

XI of 1866 are in force in Badami amongst other places is not an order of disarmament under cl (1) s 32 of Act XXXI of 1860 In the absence therefore of a notification under s 15 of Act XI of 1878 extending with the previous sanction of the Governor General in Council the provisions of the section to Badami the possession of arms without a licence in that talukha is not punishable under s 19 GOVERNMENT OF BOMBAY v DADYAMA BASAPA

[I. L. R 9 Bom 478

1. ———— s 19—*Unlicensed possession of gunpowder used for making crackers* —The possession of gunpowder without a licence whether intended for the manufacture of fireworks or not is an offence under s 19 of the Indian Arms Act 1878 *Queen v Suppy I L R 5 Mad 159* distinguished. QUEEN EMPRESS v KHASIM

[I. L. R. 8 Mad. 202

2 ———— s 19 (a)—*Sale of sulphur and ammunition by agent of a licence holder* —Sale of sulphur and ammunition by the agent of one holding a licence (in Form VI) under Act XI of 1878 is not illegal QUEEN EMPRESS v SITHARAMAYYA

[I. L. R., 12 Mad. 473

3 ———— s 19—*Going armed without licence—Licence to carry arms Production of—Retainer carrying arms* —A servant of a person who possessed a licence for two swords and a gun which licence also covered one retainer was stopped by the police on the road while carrying a sword On being asked to produce his licence he was unable to do so it not then being with him No opportunity was afforded him of producing the licence but he was charged with an offence under s 19 of Act XI of 1878 and on these materials convicted and fined. *Held* that the conviction was wrong The law does not require a licensee always to have his licence with him If under such circumstances on being required to produce it he is prepared to do so on a reasonable opportunity being given him to get it and it exists he should not be prosecuted if prosecuted the production of the licence at the trial is a sufficient answer to the charge of infringing the Arms Act *Held* further that a licence granted to a person to carry arms and including a retainer authorizes any retainer to carry the arms specified with the permission of his master and does not restrict him merely to carry them while in the actual presence of his master QUEEN EMPRESS v KISHUNWA

[I. L. R. 20 Calc 444

IN THE MATTER OF THE PETITION OF KALI NATH SINGH 3 C W N 394

4. ———— s 19 cl. (c)—*Going armed —Presumption as to persons found carrying arms* —Where a person is found carrying arms apparently in contravention of the provisions of the Arms Act it must be presumed in the absence of proof to the contrary that he is carrying such arms with the intention of using them should an opportunity of using them arise *Queen Empress v Williams Weekly Notes 1891 p 208* explained and approved. QUEEN EMPRESS v BHURE I. L. R. 15 All, 27

ARMS ACT (XI OF 1878)—continued

5 ——— s 19—*Unlawful possession of arms—Temporary custody of arms not for use as such* —The mere temporary possession without a licence of arms for purposes other than their use as such as for instance where a servant is carrying his master's gun to a blacksmith for repairs or where a blacksmith has a gun left with him for repairs is not an offence within the meaning of s 19 of the Indian Arms Act 1878 *Queen Empress v William Weekly Notes All (1891) 208* and *Queen Empress v Bhure I L R 15 All 27* referred to QUEEN EMPRESS *v* TOTA RAM

[I. L. R. 16 All. 276

6 ——— ss 19 27—*Exemptions from provision of Arms Act—Government Notification 518 of the 6th March 1879—Government Notification 458 of the 18th March 1898— Personal use of arms—Arms carried and used by servant of exempted person* —By a notification under s. 27 of the Arms Act (XI of 1878) issued by the Government of India certain persons amongst them Rajas and members of the Legislative Council of the Lieutenant Governor of the North Western Provinces were exempted from the operation of ss 13 and 16 of the said Act but with this proviso that except where otherwise expressly stated the arms or ammunition carried or possessed by such persons shall be for their own personal use etc etc *Held* that the terms of this proviso would allow of a person exempted under the notification above alluded to sending a servant armed with a gun into a neighbouring district to shoot birds for him and that a gun so carried and used by the servant of the exempted person was in the personal use of the exempted person within the meaning of the notification. QUEEN EMPRESS *v* GANGA DIN

[I. L. R. 22 All. 118

7 ——— s 19—*Order extending time for renewal of licences—Conviction for offence during extended time* —An order extending the time for renewal of licences has the effect of keeping a licence previously granted practically in force and a person cannot be convicted of an offence under s. 19 (*f*) of the Arms Act for a breach of its provisions within the extended time IN THE MATTER OF THE PETITION OF KALI NATH SINGH 3 C W N 394

8 ——— s. 19 cl. (f) and s 25—*Unlawful possession of arms—Search warrant Contents of— Possession What evidence of necessary where arms are found in common room of joint family house* —When a Magistrate issues a search warrant under s. 25 of the Indian Arms Act 1878 it is necessary that he should record the grounds of his belief that the person against whom the warrant is issued has in his possession arms ammunition or military stores for an unlawful purpose Where proceedings under the Indian Arms Act 1878 in respect of the unlawful possession of arms are taken against a member of a joint Hindu family not being the head of such joint family and arms are found in a common room of the joint family house it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession. QUEEN EMPRESS *v* SANGHAM LAL

[I. L. R. 15 All. 129

9 ——— ss 19, 20 29—*Possession of or control over—Search Legality of—Sanction to prosecute—Code of Criminal Procedure (Act V of 1898) ss 55 103 and 165* —The licence of the accused for the possession of firearms and ammunition was cancelled in August 1897 He was suspected of being in possession of arms after the cancellation of his licence On the 23rd of April 1899 the Assistant Magistrate of Purneah with a number of police went to the house of the accused to search for arms. They surrounded it arrested the accused, and then searched his house The police had no search warrants, nor was there anything to show upon what charge the accused was arrested. Two gun stocks some ammunition, and implements for reloading were discovered in the house There was nothing to show that the sanction required by s 29 of the Arms Act was given before proceedings were instituted against the accused. Accused was convicted and sentenced under ss 19 and 20 of the Arms Act *Held* that the conviction under s 20 was not sustainable but that the accused must be taken to have had arms and ammunition as defined by the Arms Act within the meaning of sub s (*f*) of s 19 of that Act, and the conviction under that section must be confirmed. *Held* further that with respect to the question of whether or not any previous sanction had been given under s 29 of the Arms Act the Court was not unmindful of the suggestion that the charge in this case was in the first instance in respect of an alleged offence under s 20 and not of one under s. 19 but that ss 19 and 20 were so interwoven that it was difficult to see how an offence could be committed under the first paragraph of s 20 unless an offence under one of the enumerated sub-sections in s. 19 had also been committed It was not suggested that the charge here was an offence under the second paragraph of s 20 AHMED HOSSEIN *v* QUEEN EMPRESS I. L. R. 27 Calc 692

[4 C W N 750

10 ——— s 19 cl. (f)—*Notification 458 of the 18th March 1898—Exemptions from the operation of the Arms Act—Volunteers* —A volunteer being a person exempted in virtue of Notification 458 dated 18th March 1898 of the Government of India, is not exempted merely with reference to his duties as a volunteer but generally (subject to the exceptions mentioned in the said notification) It is therefore not unlawful for a volunteer to possess fire arms and to use the same QUEEN EMPRESS *v* LUKE

[I. L. R. 22 All. 323

11 ——— s 19 cl. (f) and ss 25 30—*Arms in a temple—Confiscation of arms used for purposes of worship—Police Inspector specially empowered—Licence to possess arms—Criminal Procedure Code (Act X of 1882) s 579 and sch II— Offences against other laws"*—A collection of fire-arms consisting of four small cannons, four pistols and thirty-one muskets had been kept as objects of worship in a Sikh temple in Patna for upwards of two centuries. The Mohunt of the

ARMS ACT (XI OF 1878)—*concluded*

temple neglected to take out a licence in respect of these arms under Act XI of 1878 A Police Inspector who was appointed to see that the provisions of the latter Act were obeyed searched the temple on information received and having found the arms prosecuted the persons who had charge of the temple The latter was convicted by the Deputy Magistrate of Patna under s. 19 cl (*f*) of Act XI of 1878 and sentenced to pay a fine of R50 or to be rigorously imprisoned for two months The Deputy Magistrate also ordered the arms to be confiscated, and directed that their value and the fine should be divided between the informer and the Police Inspector On a reference from the Sessions Judge of Patna,—*Held* with reference to Act X of 1872 s 579 and the last heading to sch IV of the same Act and to s 19 cl (*f*) of Act XI of 1878 that the proceedings of the Police Inspector and the conviction of the accused were not illegal There is nothing in the Arms Act to exempt the custodians of a temple from complying with the requirements of the Arms Act either by taking out a licence or obtaining exemption under s 27 S 25 of the Arms Act appears to refer to cases in which the Magistrate considers that arms whether under a licence or not are possessed for an illegal purpose or under circumstances such as to endanger the public peace S 30 of the Arms Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search EMPRESS *v* TEGHA SINGH

[I. L. R. 8 Calc 473

——— s 22—*Master and servant—Master's liability for the criminal acts of his servant* —Where the manager of a licensed vendor of arms ammunition and military stores sold certain military stores without previously ascertaining that the buyer was legally authorized to possess the same —*Held* that the licensee was liable to punishment under s 22 of the Indian Arms Act (XI of 1878) though the goods were not sold with his knowledge and consent The principle— whatever a servant does in the course of his employment with which he is entrusted and as a part of it is his master's act —is applicable to the present case *Attorney General* v *Siddon 1 Cr and J 220* followed QUEEN EMPRESS *v* TYAB ALLI

[I. L. R. 24 Bom. 423

——— s 29—*Sporting Licence—Rules under Arms Act* —In a district where bison are notoriously in the habit of injuring crops a licence under form XI rule 16 of the Indian Arms Act (1878) Rules (to kill wild beasts which injure crops) justifies the holder thereof in shooting bison for the sake of sport without taking out a sporting licence under form VIII rule 13 of the same rules. QUEEN *v* BOMMAYA I. L. R. 5 Mad. 26

ARMY DISCIPLINE ACT 1879 (42 & 43 Vic. c. 33).

See SOLDIER I. L. R. 11 Mad. 475

——— s 144—Decree against person subject to military law—*Stoppage of pay Order for* —Where a decree was made against the defendant who was an officer in the Indian Army the Court under s 144 of the Army Discipline Act 42 & 43 Vic c 33 directed that the amount of the decree should be stopped and paid out of the pay of the defendant not exceeding one half thereof RAMSAY *v* ANDERSON 7 C L R 336

——— ss 144 151.

See SERVICE OF SUMMONS

[I L R 10 Mad 319
I. L. R 11 Mad. 475

See SMALL CAUSE COURT MOFUSSIL-JURISDICTION—ARMY ACT

[I. L. R. 10 Mad. 319

ARMY DISCIPLINE ACT 1881 (44 & 45 Vic c 58)

——— s 145—Soldiers in Indian Forces —S 145 of the Army Act 1881 is not applicable to soldiers of Her Majesty's Indian forces NATHUD BI *v* JAFAR HUSAIN I. L. R. 8 Mad. 365

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—ARMY ACT

[I. L. R 10 Bom 218
I L R. 13 Calc 143

——— ss 148 151

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—ARMY ACT

[I L R. 13 Calc 37

——— s 151

See ATTACHMENT—SUBJECT OF ATTACHMENT—PENSION SALARY OR ANNUITY

[I. L. R. 9 Mad. 170
I. L R. 24 Calc 102

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—ARMY ACT

[I. L R 18 Calc 144 372

——— s 156—*Taking in pawn medal or military decoration from a soldier*—Under the Army Act 1881 (44 & 45 Vic c 58) s. 156 any person who takes in pawn a military decoration from a soldier is liable to punishment. *Held* that this section of the Army Act 1881 is applicable to a person who takes a medal in pawn from a sepoy in India QUEEN EMPRESS *v* NARAYANSAMI

[I. L. R 10 Mad. 108

ARMY DISCIPLINE ACT 1888 (51 Vic c 4) s 7

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—ARMY ACT

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ARREST

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1 CIVIL ARREST	547
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See CASES UNDER ATTACHMENT—ATTACHMENT OF PERSON

See CASES UNDER WARRANT OF ARREST

ARREST—*continued*

——— pending Appeal.

See APPEAL IN CRIMINAL CASES—APPEALS FROM ACQUITTAL I L R., 1 Calc 281
[I. L. R. 2 All., 340, 386

——— of Native Subject

See CASES UNDER BENGAL REGULATION III OF 1818

——— Validity or otherwise of—

See CASES UNDER ESCAPE FROM CUSTODY

See JURISDICTION OF CRIMINAL COURT —GENERAL JURISDICTION
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L R. 24 I A. 137

1 CIVIL ARREST

1 ——— **Arrest pending enquiry into insolvency**—*Application of judgment-debtor to be declared insolvent—Subsequent proceedings in execution against him—Civil Procedure Code (Act XIV of 1882) ss 245B 336 337A 344 and 349* —G obtained a money decree against M and in execution applied for his arrest and imprisonment Before the warrant of arrest was issued but after M had appeared in Court in obedience to a notice under s 245B of the Civil Procedure Code another judgment creditor applied for execution of another decree against him Thereupon M applied under s 344 of the Civil Procedure Code (Act XIV of 1882) to be declared an insolvent and in his application mentioned G as one of his creditors (s 345) The Subordinate Judge referred to the High Court the question whether pending the inquiry into M s insolvency he could be arrested in execution of G s decree against him *Held* that there was no provision in the Code to prevent the Court from issuing a warrant of arrest against him Where however such a judgment debtor is brought before the Court under a warrant of arrest or comes before it upon notice under s 245B the Court has a discretionary power not to put the warrant in force under s 349 or not to issue it under s. 336 (where the requisite notification has been published by the Local Government) if the applicant furnishes security for his appearance when called upon. In such cases the Court can also act under s 337A of the Civil Procedure Code GANPAT BHAGVAT *v* MAHADEV HARI
[I. L. R. 22 Bom 731

2. ——— **Arrest of a lunatic in execution of a decree**—*Discretion of Court to order the arrest—Ground for disallowing application for arrest of judgment debtor—Civil Procedure Code (Act XIV of 1882) s 337A* —Under the Code of Civil Procedure (Act XIV of 1882) a Court is not bound to order the arrest of a lunatic in execution of a decree passed against him The power to order his arrest is discretionary The lunacy of a judgment debtor is good cause within the meaning of s 337 A of the Code for disallowing an application for his arrest BHAVABHAI *v* CHOTABHAI
[I. L. R. 23 Bom. 961

ARREST—*continued*

1 CIVIL ARREST—*continued*

3 ——— **Arrest of debtor in execution of money decree**—*Civil Procedure Code 1882 ss 245B 337A 339—Subsistence allowance* —A decree by consent was made on 6th May 189[illegible] ordering the defendant within one year to pay to the plaintiff R4 842 with interest and costs On 14th May 1898 a notice was issued to the judgment debtor to show cause why this decree should not be executed by his arrest and imprisonment he pleaded poverty and other sufficient cause and the matter was set down for inquiry under s 337A When it came on the Court after hearing the evidence of the judgment debtor held that no cause had been shown why he should not be arrested and that it was bound to order his arrest at once under that section and subsistence allowance was ordered under s 339 GURDOY *v* RAMDOYAL CHOWBAY 2 C W N 58

4. ——— **Suit for damages for arrest in execution of decree**—*Malice—Reasonable and probable cause Want of* —A suit to recover damages on account of injuries caused by an arrest in accordance with a decree of a competent Court can only be maintained under special circumstances—*viz* the plaintiff must show (i) that the original action out of which the alleged injury arose was decided in his favour (ii) that the arrest was procured without reasonable and probable cause (iii) that the injury sustained was something other than an injury which has been or might have been compensated for by an award of the costs of the suit —*e g* that he has suffered some collateral wrong Where a plaintiff must show an absence of reasonable and probable cause malice is not alone sufficient to entitle him to a verdict PA[illegible] CHUNDER ROY *v* SHAMA SOONDARI DEBI
[I L R., 4 Calc 58

5 ——— *Malice Proof of* —To maintain such a suit legal not actual malice is sufficient GOUTIFRE *v* CHARRIOL
[I N W Part 2 32 Ed. 1873 9

6 ——— **Privilege from arrest**—*Privilege of party morando* —Where a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending in which he was plaintiff and the case having been adjourned on 27th October for seven weeks remained in Madras on account of the suit and was arrested on 10th November —*Held* that he was privileged under s 642 of the Code of Civil Procedure IN RE SIVA BUX SATYNTHARAM
[I. L. R., 4 Mad. 317

7 ——— *Party in contempt of Court* —A party against whom a writ of attachment for contempt has been issued is not entitled to his right of privilege from arrest while proceeding to Court or leaving Court on the hearing of his suit JOHN *v* CARTER 4 B L R O C, 90

8 ——— *Party to suit—Summary Procedure—Arrest under writ of Small Cause Court—Act X of 1877 s 642* —The general rule that a party to a suit is protected from arrest upon any civil process while going to the place of trial while attending there for the purpose of the

ARREST—*continued*

1 CIVIL ARREST—*continued*

cause and while returning home applies to a defendant to a suit under the summary procedure sections of the Civil Procedure Code who has not obtained leave to appear and defend and who therefore cannot be heard at the trial Questions as to the privilege of exemption from arrest in the case of persons arrested under writs issued from the Small Cause Courts in Calcutta must be governed by the English law and not by s. 642 of the Civil Procedure Code It is not a deviation sufficient to forfeit the privilege if the shortest road home is deviated from and a less crowded and more convenient road adopted IN THE MATTER OF SURENDRO NATH ROY CHOWDHRY

[I. L. R. 5 Calc 106

9 ——— *Civil Procedure Code 1877 s 642—Arrest in execution of process of Revenue Court*—S 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest under that Code *Held* therefore where a person who had been convicted by a Magistrate and had been fined was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought that such person was not protected from such arrest by the provisions of that section and that having escaped from custody under such arrest such person had properly been convicted under s 6?1 for escaping from lawful custody EMPRESS OF INDIA v HARAKH NATH SINGH

[I. L. R., 4 All 27

10 ——— *Civil Procedure Code s 642—Insolvent Act (11 & 12 Vict c 21) s 51—Exemption from arrest on civil process redeundo*—The Commissioner in Insolvency committed an insolvent to jail by an order under s 51 of the Insolvent Act and he was released by order of the Full Bench who held that a Commissioner in Insolvency has no power under that section to commit an insolvent to jail but must leave the excepted judgment creditors (if any) to their ordinary remedies for the time mentioned in the order The insolvent having been discharged from jail under the rule laid down by the Full Bench as above was immediately arrested on a warrant obtained by a judgment creditor *Held per* SHEPHARD J that the insolvent was not privileged from arrest as being on his way back from Court SAMARAPURI v PARRY & Co

[I. L. R. 13 Mad. 150

11 ——— *Protection of arresting officers—Penal Code s 78*—The arrest under civil process of a judgment debtor going to a Court in obedience to a citation to give evidence and made within the precincts of that Court and with some show of violence and contempt of Court does not entitle the officers making the arrest to protection under s 78 Penal Code THACOORDASS NUNDEE v SHUNKUR ROY 3 W R. Cr 53

12 ——— *Defendant as witness for plaintiff*—A defendant in a suit summoned by and examined as a witness for the plaintiff is entitled to protection from arrest on civil process during the time reasonably occupied in going to attending at and returning from the place of trial APPASAMY PATTAR v GOVINDEN NAMBIAR

[4 Mad. 145

13 ——— *Summary execution—Small Cause Court Mofussil—Act XI of 1865 s 19*—In authorizing (s 19 Act XI of 1865) immediate execution of a Small Cause Court decree by the issue of a warrant either against the person or against the moveable property of a judgment debtor the Legislature never intended that the debtor should be protected from arrest until he had had a reasonable time for returning home Where a judgment debtor has paid the amount of a Small Cause Court decree he is not entitled to a refund merely because he was arrested before he reached home under an execution issued against his person by the Court and paid the amount to obtain his discharge DEPENNING v DEBENDRONATH MOITRO 9 W R 549

14 ——— **Power of High Court to release party arrested in execution of decree of Presidency Small Cause Court**—*Civil Procedure Code 1877 s 642*—Where a defendant in a suit in the High Court was arrested in execution of a decree of the Calcutta Court of Small Causes while attending before an arbitrator appointed by the High Court to take a reference in the suit it was held that he was privileged from such arrest while so attending and that the High Court had power to direct his release from custody Small Cause Courts in the Presidency towns are subject to the order and control of the High Courts *In the matter of Omrito Lall Dey I L R 1 Calc 78* followed. IN THE MATTER OF JUGGESSUR DOY

[5 C L R 170

15 ——— *Witness—Bona fides*—Where a witness was arrested in execution of a decree and the circumstances under which the arrest had taken place showed the absence of a *bona fide* belief on his part that his attendance at Court was required for the purpose of giving evidence in the case in which he had been subpœnaed the Court refused to allow his claim to privilege from arrest WOOMA CHURN DHOLE v TEIL 14 B L R. Ap 13

See IN THE MATTER OF OMRITO LALL DEY

[I. L R, 1 Calc., 78

16 ——— *Witness—Held* that on the facts shown in the affidavit the prisoner was privileged as a witness at the time of his arrest IN THE MATTER OF OMRITO LALL DEY

[I. L. R. 1 Calc, 78

17 ——— *Civil Procedure Code s 349—Court Power of to release judgment debtor after he is imprisoned — Arrest and imprisonment* — Arrest as used in s. 349 of the Civil Procedure Code (Act XIV of 1882) does not include imprisonment Therefore the power conferred on the Court under that section to release a judgment-debtor arrested in execution of a decree on a security being given by him ceases after he has been imprisoned or put into jail *In the matter of Hostie I L R 11 Calc 451* dissented from, *In*

ARREST—*continued*

1 CIVIL ARREST—*concluded*

re Quarme I L R 8 Mad 503 followed MAHOMED HUSEIN *v* RADHI **I. L. R. 12 Bom. 46**

18 ———— **Arrest on a Sunday**—*Lord's Day Act*—Arrest under civil process of a mofussil Court on Sunday is legal in this country ANONYMOUS **4 Mad. Ap 62**

See ABRAHAM *v* QUEEN **1 B L R. A Cr, 17**

See GRASEMAN *v* GARDNER **[3 W R. Rec. Ref 2**

See PARAM SHOOK DOSS *v* RASHEED OOD DOWLAH **7 Mad. 285**

19 ———— **Arrest of pilot brig**—*Privilege from arrest Statute 21 & 22 Vic c 126*—A Government brig employed in supplying pilots to vessels at the Sandheads was arrested under proceeding *in rem* *Held* that the brig by 21 & 22 Vic c 126 had become the property of the Crown and as such was entitled to the same exemption from arrest as all other Queen's ships and that the proceeding *in rem* was therefore illegal BROWN *v* THE PILOT BRIG KEDGEREE **1 Hyde 253**

20 ———— **Discharge from arrest**—*Undertaking by prisoner not to sue*—The prisoner was required before his discharge to give an undertaking that he would bring no action for damages for illegal arrest or false imprisonment against the Judges of the Small Cause Court the bailiff the Jailor or the judgment creditor IN THE MATTER OF OMRITO LALL DEY **I. L. R 1 Calc 78**

2 CRIMINAL ARREST

21 ———— **Arrest without warrant**—*Criminal Procedure Code s 54—Powers of the police to arrest without a warrant—Penal Code (Act XLV of 1860) ss 220 and 342*—S 54 of the Criminal Procedure Code (Act X of 1882) authorizes the arrest by the police not only of persons against whom a reasonable complaint has been made or a reasonable suspicion exists of their having been concerned in a cognizable offence but also of persons against whom credible information to that effect has been received *Semble*—Where the arrest is legal there can be no guilty knowledge super added to an illegal act such as it is necessary to establish against the accused to justify a conviction under s 220 of the Penal Code It is only where there has been an excess by a police officer of his legal powers of arrest that it becomes necessary to consider whether he has acted corruptly or maliciously and with the knowledge that he was acting contrary to law QUEEN EMPRESS *v* AMARSANG JETHA **I. L. R. 10 Bom 506**

22 ———— *Offence against opium law s*—The arrest of a person accused of an offence against the opium laws without a warrant is generally illegal except under the circumstances specified in s. 108 of the Code of Criminal Procedure REG *v* NARAYAN GANGARAM **9 Bom. 343**

23 ———— *Finding person with stolen property*—The police may without any formal complaint apprehend any person found with stolen property QUEEN *v* GOWREE SINGH **[8 W R., Cr, 28**

ARREST—*continued*

2 CRIMINAL ARREST—*continued*

24 ———— *Criminal Procedure Code 1861 s 140*—S 140 of the Code of Criminal Procedure did not apply to a case of arrest for dacoity made without warrant by a subordinate police officer in the presence of a head constable who authorized him to make the arrest QUEEN *v* EHOO QUEEN *v* SAGUE BEWAR **11 W R., Cr 20**

25 ———— **Re arrest on same charge of prisoner who has been discharged.**—A prisoner who had been sent up for trial and who was discharged by the Deputy Magistrate was subsequently re arrested by a sub inspector on the same charge and sent up for trial The Deputy Magistrate considered the second arrest to be illegal and prosecuted the sub inspector for wrongful confinement and fined him *Held* that the Deputy Magistrate was right the discharge from custody having been a useless procedure if the accused immediately became liable to be re arrested without fresh material for prosecution of the charge RAMDAS SADHOO *v* ANAND CHUNDER ROY **[19 W R. Cr 27**

26 ———— **Right to option of release on bail**—*Criminal Procedure Code s 55*—Where a person is arrested by the police under the provisions of s 55 of the Code of Criminal Procedure he should *always be given the option of release on reasonable* bail being supplied IN THE MATTER OF THE PETITION OF DOULAT SINGH **I. L. R. 14 All. 45**

27 ———— **Omission to notify substance of warrant**—*Criminal Procedure Code (Act V of 1898) s 80—Penal Code (Act XLV of 1860) s 225B*—An arrest by a police officer without notifying the substance of the warrant to the person against whom the warrant is issued as required by s 80 of the Criminal Procedure Code is not a lawful arrest and resistance to such an arrest is not an offence under s 225B of the Penal Code SATISH CHANDRA RAI *v* JODU NANDAN SING **I. L. R. 26 Calc 748** **[3 C W N 741**

28 ———— *Arrest by police on an order in writing—Whether police obliged to show authority under which they act to person arrested—Resistance to such arrest—Escape from custody—Code of Criminal Procedure (Act V of 1898) ss 56 and 80—Penal Code (Act XLV of 1860) s 224*—There is nothing extending s 80 of the Code of Criminal Procedure to an arrest made by the police on an order in writing under s. 56 of that Code so as to require that any information as to the authority under which the police are acting must be given to the person arrested in order to make it an arrest warranted by law It may be desirable or even obligatory that if called upon the police officer making such an arrest should show the person arrested the authority under which he is acting but to hold that he is bound to do so before

ARREST—*continued*

2 CRIMINAL ARREST—*continued*

he can properly arrest and detain in custody such a person so as to make the arrest and the detention lawful would be to extend the law beyond what the Legislature has thought proper to declare it QUEEN EMPRE v BASANT LALL

[I L R 27 Calc 320
4 C W N 311

29 ———— **Warrant of arrest directed to police officer—Endorsement of warrant by another police officer to process serving peons**—*Legality of such endorsement—Peons not police officers—Arrest by peons—Rescue of persons arrested—Whether lawful arrest—Code of Criminal Procedure (Act V of 1898) ss 68 and 79*—A warrant of arrest was endorsed over to a Court sub inspector for execution The Court sub inspector being away the Court head constable by an order in writing signed by himself endorsed this warrant over to two process serving peons for execution. The peons arrested a number of men under the warrant some of whom were forcibly rescued by the accused and other persons The accused were convicted under various sections of the Penal Code of rescuing the persons arrested and obstructing the execution of the warrant of arrest *Held* that the endorsement of the warrant by the Court head constable to the peons did not make them competent to execute the warrant that even if the peons had been legally appointed they could not have made the arrest inasmuch as they were not police officers within the terms of s 79 of the Code of Criminal Procedure The terms of s 79 are express in this respect and no other person except a police officer is competent to execute a warrant of arrest under an endorsement from another police officer DURGA CHARAN JEMADAR v QUEEN EMPRESS

[I L R 27 Calc 457

DURGA JEMADAR v GUNA NATH 4 C W N 822

30 ———— *Criminal Procedure Code (Act V of 1898) s 79—Warrant Endorsement upon without any name—Penal Code (Act XLV of 1860) s 224*—An endorsement upon a warrant under s 79 Criminal Procedure Code should be regularly made by name to a certain person in order to authorize him to make the arrest Where the endorsement was made to the officer of a certain police station without the name of such officer being given—*Held* that the arrest by virtue of such a warrant was not legal so as to make any attempt or obstruction or escape an offence punishable within the terms of s 224 of the Penal Code DURGA TEWARI v PAHMAN BUKSH 4 C W N 85

31 ———— **Arrest made by excise officer**—*Bengal Excise Act (Bengal Act VII of 1878) ss 39 40—Breach of excise rules—Penal Code (Act XLV of 1860) ss 147 225 353—Rioting—Assaulting a public servant in execution of his duties—Forcibly rescuing persons from lawful custody*—Where an excise sub inspector on receiving information that some persons were illicitly distilling liquor in some jungles proceeded thither unaccompanied by a police officer and finding his information correct arrested some persons and took them to the neighbouring village and asked for the assistance of the punchayet who instead of giving assistance collected men and rescued them from custody and assaulted the excise sub Inspector:—*Held* that the arrest was a lawful one under s 39 of the Bengal Excise Act (Bengal Act VII of 1878) HRIDOY MONDAL v JAGANANDA DASS

[4 C W N 245

ARREST—*concluded*

2 CRIMINAL ARREST—*concluded*

ARREST OF JUDGMENT

1. ———— **Act XVIII of 1862 s 41**—*Act XIII of 1865—Charge*—It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate but its not so appearing is a formal defect only to which objection could only be taken under s 41 of Act XVIII of 1862 before the jury has been sworn and it was not ground for arrest of judgment QUEEN v THOMPSON

[1 B L R O Cr, 1

2 ———— *Caption of charge—Act XIII of 1865*—Where the High Court could have directed the preliminary investigation of a charge against N by the Deputy Magistrate of Serampore but it did not appear in the caption of the charge or in evidence that the Court had so directed it—*Held* that it was no ground for arrest of judgment but the objection might have been raised before the jury was sworn under s 41 of Act XVIII of 1862 QUEEN v NABADWIP GOSWAMI

[1 B L R O Cr 15 15 W R Cr 71 note

ARTICLES OF ASSOCIATION

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS

See COMPANY—MEETINGS AND VOTING

[I L R 15 Bom 164

See STAMP ACT 1879 SCH I ART 8

[I L R 22 All 131

ARTIFICERS

See ACT XIII OF 1859

[2 B L R A Cr 32 12 W R, Cr 26

ARTIZAN

See MADRAS TOWNS IMPROVEMENT ACT (III OF 1871) I L R 1 Mad 174

ASCETICS

———— **Succession to property of**—

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS I L R 4 Calc, 543
[5 N W 50
I L R 22 Mad 302

ASSAM

———— **Law as to pykes in**—

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—PERSONS BY WHOM RIGHT MAY BE ACQUIRED

[I L R 15 Calc 100

ASSAM FRONTIER TRACTS REGULATION (II of 1880)

——— s 2.

See HIGH COURT JURISDICTION OF—CALCUTTA—CRIMINAL.

[I. L. R. 26 Calc 874

ASSAM LAND AND REVENUE REGULATION (I of 1886)

——— ss 2 prov (b) 12 and ss 39 151 and 154—*Settlement holder his rights under a settlement—Nisf kherajdar his rights to a settlement* —The effect of ss 39 and 151 of the Assam Land and Revenue Regulation 1886 is that a settlement made by a Settlement Officer unless interfered with by the Chief Commissioner is final but the settlement holder does not thereby acquire any right to the land so settled as against any person claiming rights to it The effect of an order by the Government of India before the passing of the Assam Regulation in regard to the right of a nisf kherajdar to hold lands found upon survey to be in excess of his nisf kheraj estate and to obtain a settlement thereof considered. In 1881 *S* a nisf kherajdar obtained a settlement for a year of certain lands which were found upon survey to be in excess of his nisf kheraj estate Subsequently a pottah was granted to *S* for a portion of the excess lands while the other portion was settled by the revenue authorities under a kobala pottah with *M* who entered into possession under his settlement In a suit by *S* the nisf kherajdar for a declaration of his right to a settlement of the portion settled with *M* and for possession —*Held* that having regard to the provisions of s 2 prov (*b*) s 12 of the Regulation and the order of the Government of India the nisf kherajdar was entitled to a declaration of his right to a settlement but in view of s 154 he was not entitled to a decree for possession MADHUB NATH SURMA *v* MYARANI MEDHI I. L. R. 17 Calc., 819

——— s 59—*Rent suit—Suit for arrears due before Regulation came into force* —In a suit for the recovery of arrears of rent accrued due before the Assam Land and Revenue Regulation of 1886 came into force which was instituted on the 7th of July 1886 where it appeared that the plaintiff s name had been previously registered but that the Chief Commissioner had issued no notification under s 48 of the Regulation directing that the registers then in existence should be deemed to be registers prepared under s. 59 of the Regulation and that the plaintiff s name had not been registered under the last mentioned section:—*Held* that s 59 applies to rent accruing due after the Regulation came into force and not to rent already due on the date on which it came into force and that therefore the suit was maintainable BROJO NATH CHOWDHRY *v* BIRMONI SINGH MONIPURI I. L. R. 15 Calc., 227

——— ss 65 68 70 (sub ss 2 and 3) and 71—*Act XI of 1859 s 37—Estate — Property"—Shikmi hasram rights*—A purchaser of a part of a permanently settled estate is entitled to the benefit of s. 71 of the Assam Land and Revenue Regulation inasmuch as in s. 71 the words used are "property sold under s. 70 and the property to which reference is made in s 70 includes both an estate as well as a share in respect of which revenue has been separately apportioned The object of s 37, Act XI of 1859 is the same as that of s. 71 Regulation I of 1886 Those sections cannot be said to have different meanings for if it were to be held that the incumbrance which could be set aside under s 71 of the Regulation I of 1886 must be an incumbrance actively created by the previous holder it would amount to this that any acquiescence or laches either wilful or arising from pure negligence on the part of the holder by which the talukh or estate becomes incapable in the hands of the purchaser of yielding the Government revenue would be outside the scope of this section. MAHOMED NASIM *v* KASI NATH GHOSE

[I. L. R. 26 Calc., 194
3 C W N 106

——— ss 96 and 154—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION

[I. L. R. 23 Calc., 514
I. L. R. 24 Calc 751

——— s 154—*Right to obtain a settlement—Jurisdiction of Civil Court* —The question as to the right of a party to obtain a settlement from the Revenue authorities is not excluded from the jurisdiction of the Civil Court by the provisions of s. 154 of the Assam Land and Revenue Regulation PATAN MARIA *v* BHABIRAM DUTT BARUA

[I. L. R. 24 Calc 239
1 C W N 94

ASSAULT

See COMPOUNDING OFFENCE

[6 N W 302

See HURT—CAUSING HURT

[7 B L R. Ap 25 16 W R. Cr, 3

——— Suit for damages for—

See EVIDENCE—CIVIL CASES—CRIMINAL COURT PROCEEDINGS IN

[2 B L R. A. C 31 12 W R. 477

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—DAMAGES

[4 B L R. A. C 31 4 W R. 7
I. L. R. 10 All, 49

1. ——— Criminal force—*Threatening gestures—Words* —Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence or in the language of the Penal Code is about to use criminal force to the person threatened constitute if coupled with a present ability to carry such intent into execution an assault in law Mere words do not amount to an assault but the words which the party threatening uses at the time may either give his gestures such a meaning as to make them amount to an assault or on the other hand may prevent them from being held to amount to an assault In order to have the latter effect the words must be such as clearly to show the party

ASSAULT—*concluded*

threatened that the party threatening has no present intention to use immediate criminal force CAMA v MORGAN 1 Bom 205

2. ———— Joint assault—*Cause of action* —An assault made by parties proceeding together and acting in conjunction as to time place and assault is a single act and the cause of action is common to all parties RAMESSUR BHATTACHARJEE v SHIBNARAIN CHUCKERBUTTY 14 W R 419

ASSAULT ON PUBLIC SERVANT

1 ———— Collectorate peadah—*Penal Code s 353*—A collectorate peadah who had been deputed to keep the peace during a distraint was assaulted by the prisoners while on his road to execute the order with which he had been entrusted the prisoners attempting to deprive him of his purwanah *Held* that they were rightly convicted under s 353 of assaulting a public servant while in the execution of his duty QUEEN v MEHHI MULLAH [13 W R Cr 49

2 ———— Sepoy in Revenue Department—*Penal Code ss 353 and 352—Rules or executive orders of Government published in Nairn s Revenue Handbook—Impressment of carts for the use of Government officers how far legal*—The rules or executive orders of Government printed at pages 26 and 27 of Nairne's Revenue Handbook have not the force of law and a public servant acting in obedience thereto cannot be considered as acting in execution of his duty as a public servant if his act is otherwise illegal Accordingly where on a complaint by a sepoy in the Revenue Department deputed by a Forest Settlement Officer to impress some carts for the use of the latter that the accused assaulted and prevented him from seizing his cart a Magistrate of the first class convicted the accused under s 353 of the Penal Code (Act XLV of 1860) for assaulting and obstructing a public servant in the execution of his duty and sentenced the accused to undergo twenty one days rigorous imprisonment —*Held* that the conviction under s 353 of the Penal Code should be set aside The only offence of which upon the evidence the accused was guilty was that of simple assault under s 352 of the Penal Code IN RE THE PETITION OF RAKHMAJI I L R 9 Bom. 558

3 ———— Public servant acting under warrant of attachment—*Deterring a public servant from discharge of his duty—Penal Code (Act XLV of 1860) s 353—Non production of the warrant at the trial*—One of the accused was convicted under s. 353 of the Penal Code (assaulting or using criminal force to a public servant in the execution of his duty) and two others of the abetment of an offence under that section But the warrant of attachment under which the public servant was acting was not produced at the trial nor was any secondary evidence given to show its contents *Held* in the absence of any evidence as to the terms of the warrant either by the production of the original or in the form of secondary evidence it

ASSAULT ON PUBLIC SERVANT —*concluded*

was impossible to hold that the conviction was good TAFAZZUL AHMED CHOWDHRY v QUEEN EMPRESS [I L R 26 Calc 630

CHUNDER COOMAR SEN v QUEEN EMPRESS [3 C W N 605

4 ———— Licensed vaccinator attempting to take lymph from child—*Assaulting public servant in execution of duty or with intent to prevent him from discharging his duty—Penal Code (Act XLV of 1860) s 353 —Right of private defence*—Where a licensed vaccinator attempted to take lymph from a child of one petitioner to vaccinate the child of the other and was assaulted in consequence and received slight injuries —*Held* that the vaccinator was not entitled to take lymph from the arm of any person who objected and his attempting to do so was unlawful and that the petitioners were justified in assaulting him *Held* also that the slight injuries received by the vaccinator did not prevent him from discharging his duty MANGOBINDA MUCHI v EMPRESS [3 C W N, 627

ASSESSORS

See CONVICTION 2 B L R. F B 23 [10 W R Cr, 43

———— in Land Acquisition cases

See LAND ACQUISITION ACT 1870 s 19 [I L R 8 Bom., 553 I L R 17 Bom 299

See LAND ACQUISITION ACT 1870 s 22 [I L R 17 Calc 380 383

See LAND ACQUISITION ACT 1870 s 35 [11 B L R., 230 13 B L R 300

———— Acquittal without consulting—

See CRIMINAL PROCEEDINGS [I. L. R. 1 All. 610 I L R 10 All. 414

———— Disqualification of—

See LAND ACQUISITION ACT 1870 s 19 [I L R 17 Bom. 299

———— Evidence not taken in presence of—

See CRIMINAL PROCEEDINGS [I. L. R. 15 All. 136

1. ———— Necessity of—*Opinion on whole evidence*—No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence in a case QUEEN v BHUGWAN LALL [15 W R Cr 3

2 ———— Opinions of assessors—*Trial on two charges—Criminal Procedure Code 1872 ss 255 265*—The intention of the Legislature in ss 255 and 265 of the Criminal Procedure Code in a case in which the accused was tried on two charges was that the assessors should give a definite opinion whether the prisoner is guilty of either of the offences charged, and if so of which of the charges

ASSESSORS—*continued*

preferred against him and that the Judge on delivering judgment should give it with advertence to the opinion of the assessors QUEEN v MATAM MAL [22 W R. Cr 34

3 ———— Grounds of opinion—*Assessors differing from Judge* —Assessors ought to give the grounds of their opinions particularly when they differ in opinion from the Judge QUEEN v BUSHMO ANENT 3 W R Cr 21

4. ———— Grounds for opinion—*One assessor concurring with other* —Where one of the two assessors says that he thinks it proved that a war was waged against the Queen that there was a conspiracy to carry on that war and that the prisoner is guilty of all the acts charged and the other assessor concurs with him it cannot be said that the assessors have given no reason for their opinion QUEEN v AMIRUDDIN [7 B L R. 63 15 W R Cr 25

5 ———— Grounds of opinion—*Recording opinions* —The grounds of each assessor's opinion should be distinctly recorded by the Judge QUEEN v MINA NUGGERSHATTY 3 W R., Cr., 6

6 ———— Recording opinions of assessors —When a judgment of acquittal is recorded it is not necessary to record the opinions of the assessors REG v PARBAT 7 Bom., Cr 82

7 ———— Omission of Judge to state grounds of decision—*Material error* —In a trial conducted with the aid of assessors the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction REG v KALA KARSAN 6 Bom., Cr., 55

8 ———— Summing up by Judge—*Criminal Procedure Code (Act XXV of 1861) s 379* —Although the old Criminal Procedure Code did not expressly provide for summing up of the evidence in a trial with the aid of assessors it was held that there was nothing in the Code to prevent a Judge from summing up the evidence to the assessors. QUEEN v AMIRUDDIN [7 B L R. 63 15 W R., Cr 25

Contra QUEEN v JOGE POLY [7 B L R. 67 note 11 W R. Cr., 39

9 ———— Summing up evidence—*Criminal Procedure Code 188 s 309—Delivery of opinions of assessors—Sessions Judge Duties of* —The power of summing up the evidence given by s. 309 of the new Code of Criminal Procedure Act X of 1882 is intended to be exercised in long or intricate cases and the Sessions Judge should confine himself to summing up the evidence and should not obtrude on the assessors his opinion of the worthlessness or otherwise of certain portions of the evidence The Sessions Judge should also conform strictly to the words of s. 309 and require each assessor to state his opinion orally The Sessions Judge should not utilize the services of the pleader for the prosecution for the purpose of recording his summing up to the assessors If he is not capable of recording the substance of it himself he should employ an independent person for that purpose SHADULLA HOWLADAR v EMPRESS [I. L. R 9 Calc 875 12 C L. R., 506

10 ———— Trial with assessors where no evidence offered by prosecution —In a trial before a Sessions Judge with assessors when the prisoner pleads not guilty and the public prosecutor does not offer evidence in support of the charge the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty ANONYMOUS 4 Mad., Ap., 39

11. ———— Inspection of place of offence—*Personal inspection by Judge Time for—Notice of intention to view* —If a Sessions Judge should think it necessary to visit the place of the alleged occurrence of an offence under trial he should give notice to the parties and the assessors. He should not go without such notice and after the trial has been completed by delivery of the opinion of the assessors IN RE OUDH BEHARI NARAIN SINGH 1 C L R., 143

12. ———— *Assessors viewing scene of offence—Power of Judge to delegate examination of witnesses* —In case of a view of the scene of an alleged offence it is the duty of the officer conducting the jury or assessors to the spot not to suffer any other persons to speak to or hold any communication with any of the jury or assessors The Judge therefore cannot delegate to the assessors his own function of examining witnesses on the spot QUEEN v CHUTTERDHAREE SINGH [5 W R., Cr., 59

13 ———— Trial without assessors—*Prisoner admitting offence but pleading insanity at time of committing it—Criminal Procedure Code 1861 s 394* —The prisoner having admitted before the Court of Session that he had killed his wife no assessors were empannelled. At the end however of his confession he pleaded that he was not in his right mind at the time The Judge therefore proceeded to record medical and other evidence on the point and having come to the conclusion that there was no reason to doubt from the prisoner's conduct either prior or subsequent to the murder that in committing the murder he knew that he was doing a wrongful act convicted the prisoner *Held* that the plea was in effect one of not guilty and that the trial should not have proceeded without assessors and that it should be quashed. QUEEN v CHEIT RAM [5 N W 110

14. ———— Trial by jury of a case properly triable by assessors—*Appeal on facts —Per* MACLEAN J (MITTER J *dubitante*)—The trial by a jury of an offence triable with assessors is not invalid on that ground but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors is not debarred from that right merely by the fact that the trial by jury is not invalid. EMPRESS v MOHIM CHUNDER ROY I. L. R., 3 Calc., 765

15 ———— Trial with the aid of assessors—Commencement of the trial—*Criminal*

ASSESSORS—*concluded*

Procedure Code (Act X of 1882) ss 268 272 284 285—The accused was committed for trial to the Sessions Court on a charge of murder He pleaded not guilty to the charge and claimed to be tried. Thereupon the Sessions Judge chose two assessors but as one of them was ill his attendance was at once dispensed with and the Sessions Judge proceeded with the trial with the aid of the other assessor only *Held* that this procedure was illegal and contrary to ss 284 and 285 of the Code of Criminal Procedure (Act X of 1882) The attendance of one of the assessors having been dispensed with before the commencement of the trial the Sessions Judge ought to have chosen another assessor in his place A trial in the Sessions Court with the aid of assessors does not begin with the reading of the charge as the assessors are chosen under s 272 of the Code of Criminal Procedure (Act X of 1882) *only if the accused does not plead to the charge* or claims to be tried QUEEN EMPRESS v BASTIANO [I L R 15 Bom 514

16 ——— Assessors prevented by death or illness from attending a trial—*Criminal Procedure Code ss 268 285*—During the course of a trial before a Sessions Court with three assessors one assessor died at an early stage of the proceedings Later on another assessor became too ill to take any further part in the trial and the third assessor was obliged to retire at the beginning of *the accused's pleader's address to the Court* and did not return until it was finished *Held* that the law contemplated the continuous attendance of at least one assessor throughout the trial This condition not having been fulfilled the proceedings before the Sessions Court must be set aside as having (with regard to the provisions of s 268 of the Code of Criminal Procedure) been held before a Court not having jurisdiction QUEEN EMPRESS v MUHAMMAD MAHMUD KHAN [I L R 13 All 337

17 ——— *Effect of incapacity of* assessors to understand the proceedings—*Criminal Procedure Code (1882) s 285*—Three assessors were chosen to assist the Court at a trial Before the case commenced it was discovered that one of the assessors was deaf and his presence was accordingly dispensed with. The trial proceeded with two assessors present but after the Public Prosecutor had closed his case it was discovered that one of the remaining assessors was so deaf as to be incapable of understanding the proceedings. Under these circumstances, it was *held* that the trial having been held with practically only one assessor the proceedings ought to be set aside and a new trial ordered. QUEEN EMPRESS v BABU LAL I. L. R., 21 All. 106

ASSETS

See ADMINISTRATOR GENERAL [2 Mad., 255 Cor 67 I. L. R., 23 Bom. 428

See ADMINISTRATOR GENERAL'S ACT 1866 s 33 6 Mad., 346

ASSETS—*concluded*

See ADMINISTRATOR GENERAL'S ACT 1874 s 35 I L R 25 Calc 54 65 [1 C W N 500

See CASES UNDER COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS

See CASES UNDER COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS [I. L R 18 Calc 31

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS

ASSIGNMENT

See CASES UNDER DEBTOR AND CREDITOR

See CASES UNDER EQUITABLE ASSIGNMENT

See CASES UNDER INSOLVENCY—ASSIGNMENTS BY DEBTOR

ASSIGNMENT OF CHOSE IN ACTION

See CHAMPERTY I L R 3 Bom 402

See CONTRACT ACT s 23 [I L R 5 Calc 4 I. L. R. 13 Bom. 42

See PROMISSORY NOTE [3 B L R O C 130 I. L. R. 11 Mad. 290

1 ——— Practice of Courts in India—*Right of assignee to sue*—In the practice of the Courts of India it is lawful to assign choses in action when there is neither fraud against individuals nor special violation of the rule of public policy The assignee of a claim for rents can sue under Act X of 1859 HURRINATH MUZOOMDAR v MORAN & Co [W R. 1864 Act X, 127

2. ——— Rule in equity—*Semble*—There is nothing in equity which prevents a suitor pending a suit or any other legal proceedings from assigning the whole or any part of the subject of litigation. *Per* PHEAR J in GROSE v AMIRTAMAYI DASI 4 B L. R O C 1 12 W R. O C, 13

See RAMLAL MOOKERJEE v HARAN CHANDRA DHUR [3 B L R O C 130 12 W R., O C 9

3 ——— Right of assignee to sue—*Suit in his own name*—Choses in action are assignable in this country and they are also assignable in England although at law the assignee cannot sue in his own name JUG MOHUN LALL v BUDDUN KOER [9 W R., 243

4. ——— Right of purchaser of decree to sue for possession.—Choses in action are assignable by Civil Courts in this country which are not merely Courts of Law but also Courts of Equity The purchaser of a decree-holder's rights and interests in decreed land may sue to recover possession even

ASSIGNMENT OF CHOSE IN ACTION —*continued*

if the thing purchased have no actual existence but rests on mere possibility if legally saleable it was equitably an assignable cause of action MUNBUNJUN SINGH v LEELA NUND SINGH 11 W R 5

5 ———— *Hindu Law—Promissory note—Small Cause Court Madras*—According to Hindu law not only is the beneficial interest in the subject matter of the contract but the contract itself assignable the assignee therefore may sue in his own name This doctrine is applicable to suits brought in the Madras Small Cause Court VEMBAKUM SOMAYAJEE JANAKEE AMMAL v MOONESAWMY CHETTY 4 Mad 176
RADABBACHA SAHIB v RANGASVAMI NAYAK [1 Mad., 150

6 ———— Assignment of bond—*Obligor's consent*—The obligor's consent is not necessary to the assignment of a common money bond. KRISTA CHETTI v BALARAMA CHETTI 1 Mad, 139

7 ———— Right of assignee to sue—*Promissory notes not made negotiable—Assignee's right of suit*—*Held* where a promissory note made payable simply to the payee without the addition of the words order or bearer and therefore not negotiable was assigned to a third person that the assignee could sue upon such note a chose in action being by the law of India assignable and that the assignee could sue in the Courts of India in his own name KANHAIYA LAL v LOMINGO [I L R. 1 All. 732

8 ———— *Purchaser of moiety of right to damages*—Where the plaintiff purchased from a certain person a moiety of whatever the latter might obtain as damages from the defendants for the breach of a contract—*Held* that such a transfer did not confer on the plaintiff a right to sue the defendants for a moiety of the damages BHEKAREE SINGH v MUHO SEIN ALLY [1 Hay 482

9 ———— *Amalgamation of joint debt and personal debt*—A joint debt cannot be amalgamated by a colourable assignment with a personal debt so as to give the assignee the right to sue in respect of both debts SREEHURRY PAUL v NILMONEY SEN 1 Hyde 169

10 ———— *Order directing servant to pay money on account of advance*—An order directing a servant to pay at an uncertain time a certain sum of money to the payee on account of advance is not a cheque and the payee cannot transfer the same to a third party so as to give such third party a right of action against the drawer of such order Nor is such a document evidence of a debt enabling the person to whom the same is transferred to contend that by the sale to him he acquired the interest in a debt due by the writer of the order to the payee BULLOO v DEBRETON 2 N W 335

11 ———— *Suit to recover possession of land and for damages*—In a solenamah between *B* the assignee of the plaintiff and the defendant and a third party it was agreed that *B* held less seer land than the other two there should be an equal division between the shareholders within a certain time and in case no division took place that *B* should be entitled to damages In a suit by the plaintiff to recover possession of certain seer land and a certain sum as damages for breach of the contract—*Held* if it was a suit to enforce a contract made with *B* which contract did not convey any right in specific lands the cause of action was one not legally assignable JUBBUNDHUN SINGH v SHEORAJ SINGH [5 N W 184

12 ———— *Sale of patnidari rights*—When a patnidar's rights and interests in a patni are sold during the pendency of a suit brought by him against his tenants the purchaser acquires the patnidar's privilege to carry on the suit WILSON v THE GOVERNMENT [12 W R, 122

13 ———— *Wrongful attachment of property—Assignment of right to sue for compensation*—The mere right to sue for compensation for the wrongful attachment of moveable property in execution of a decree is not transferable by sale PRAGI LALL v FATEH CHAND [I L R 5 All 207

14 ———— *Sale of decree*—Where *A* has sold his decree to *B* the purchaser *B* can sue on it SUNNOOBURNESSA KHANUM v MEHER CHUND W R 1864 313

But the decree holder should apply to the Court to certify any transfer of his interest in the decree otherwise the Court may take no notice of the transfer KHETTER MOHUN CHUTTAPADHYA v ISSAR CHUNDER SURMA 11 W R 271

15 ———— Right of assignee to execute decree—*Assignment of decree*—When a decree is assigned to *A* for his benefit in the name of *B* *B* the ostensible decree holder may take out execution. PURNA CHANDRA ROY v ABHAYA CHANDRA ROY [4 B L R Ap 40

16 ———— *Assignment of decree*—A Court is not bound to admit the assignee of a decree to execution thereof If there is no dispute it may admit him or if the dispute is one which it can decide it may try the point in dispute and upon the result of that trial admit the assignee to carry on the decree BISHTOO CHURN BHOOSUN v KISHEN GOPAL MISSER 13 W R., 207

17 ———— *Assignment of ex parte decree for rent*—When an *ex parte* decree for rent has been sold by the decree holder there is no rule of law in Bengal which forbids the assignee from carrying on the suit instead of the landlord. BINODE BEHAREE MOOKERJEE v BEER NARAIN ROY [5 W R Act X, 52

18 ———— *Assignee of decree under Act X of 1859*—The purchaser of a decree under Act X of 1859 is entitled to ask the holder for a power-of attorney to proceed with the execution. BROJO COOMAR MULLICK v MON MOHINEE DEBIA [16 W R. 55

ASSIGNMENT OF CHOSE IN ACTION —*continued*

19 ———— *Assignment of Act X of 1859 decree*—There is no prohibition or rule of law forbidding the assignment of a decree under Act X of 1859 any more than any other decree IN THE MATTER OF JUNMEJOY MOOKERJEE [14 W R 215

20 ———— Right of assignee to appeal—*Assignment of interest in suit*—Where the whole interest of a sole plaintiff had been transferred with his unqualified assent and the transferee was substituted for the original plaintiff in the very inception of the case the defendant s written defence being afterwards put in without demur it was held not to be necessary for the original plaintiff to be associated with the transferee in an appeal by the latter MUNEEROODEEN MOJOOMDAR *v* PARBUTTY CHURN GHOSE 15 W R 121

21. ———— *Purchaser of rights and interests of plaintiff*—A party who purchases the rights and interests of the plaintiffs after a suit has been dismissed is not entitled to appeal against the order of dismissal without joining the original plaintiffs in the suit as appellants DHUNNOO SOWDAGUR *v* SUNNOO BIBEE 15 W R 106

See JUDOOPATTEE CHATTERJEE *v* CHUNDER KANT BHATTACHARJEE 9 W R 311

22 ———— *Purchaser of right title and interest in suit*—The purchaser of the right title and interest of a defendant in a suit in and to the land the subject matter of that suit has no right as such to appeal from a decree passed against the defendant GAJADHAR PRASAD *v* GANESH TEWARI 7 B L R 149 15 W R 485

23 ———— *Right of purchaser on death of assignee*—*A* sued *B* in the Court of first instance and obtained a decree declaring *A* s right to a house The District Court on appeal reversed this decree and rejected *A* s claim The High Court reversed the decree of the District Court and remanded the appeal The District Court on remand made a decree confirming the original decree of the Court of first instance in *A* s favour Subsequently to the last mentioned decree of the District Court *B* sold the house to *C* *B* then preferred a special appeal to the High Court but died before it was heard. *Held* under Act VIII of 1859 that *C* could not carry on the special appeal after *B* s death MORESHWAR BAPUJI PHATAK *v* KUSHABA SHANKROJI I L R 2 Bom 248

24. ———— *Purchase of right of appeal—Effect of as to liability for costs in lower Court—Speculative purchase Policy of*—Where the rights and interests of the plaintiff in a suit which was dismissed were purchased by third parties who filed an appeal in which they described themselves as plaintiffs appellants together with the original plaintiffs and the original decree was confirmed with costs —*Held* that the purchasers took the position of plaintiffs with all the risks and liabilities of plaintiffs from the commencement including liability for all costs awarded against the plaintiffs generally without limitation *Quære*—Ought the

ASSIGNMENT OF CHOSE IN ACTION —*concluded*

speculative purchase of a right of appeal to be recognized by a Court of Justice? TROYLOCKHONATH BANERJEE *v* BRINDABUN CHUNDER SIRKAR CHOWDHURY 13 W R, 438

ASSOCIATION

———— Illegal—

See COMPANY—FORMATION AND REGISTRATION I L R 19 Mad 31 200 [I L R, 20 Mad 68

———— Registration of—

See CASES UNDER COMPANY—FORMATION AND REGISTRATION

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT [I L R 1 Bom, 550

———— Withdrawal from—

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS [I L R 19 Mad 85

ATTACHMENT

ATTACHMENT—*continued*

See Cases under Claim to Attached Property

See Cases under Equity of Redemption

See Execution of Decree—Liability for Wrongful Execution
[3 B L R A C 413 12 W R 329
12 B L R 208 note 11 W R 516
I L R 3 Bom, 74

See Case under Forfeiture of Property

See Case under Insolvency—Claims of Attaching Creditors and Official Assignee

See Onus of Proof—Attachment in Execution
[8 B L R 255 17 W R 165
4 C W N, 151

——— Absence of—

See Sale in Execution of Decree—Setting aside Sale—Irregularity
[8 W R 415
11 W R 226
I L R 5 All 86
I L R 10 All. 506
I L R 18 Cal. 188
I L R 15 Bom 222
I L R 21 Calc 639
I L R 18 Mad 437
I L R 21 All 311

——— by two Courts

See Cases under Sale in Execution of Decree—Invalid Sales—Want of Jurisdiction

1 SUBJECTS OF ATTACHMENT

(a) Annuity or Pension

1. ——— Annuity charged on estate—*Civil Procedure Code 1859 s 205*—An annuity the payment of which is a charge upon an estate is property which can be attached under the provisions of s. 205 Act VIII of 1859 at the instance of the person who has inherited the estate from the grantor of the annuity and by whom the annuity is payable Dheraj Mahtab Chand v Dhun Coomaree Bibee
[17 W R 254

2. ——— Stipends allowed to Mysore Princes.—The stipends allowed by Government to the members of the Mysore family cannot be attached. Mahomed Kuzulbash v Mahomed Buseeroodeen
[7 W R., 169

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

3 ——— Pay of Carnatic Stipendiary—*Mad Reg IV of 1831—Act XXIII of 1838*—The stipend of a Carnatic stipendiary is not liable to attachment in execution of a decree obtained against the stipendiary it being one of the descriptions of personal grants expressly protected from attachment in satisfaction of any decree or order of a Court by s 3 Regulation IV of 1831 extended by Act XXIII of 1838 These enactments were not impliedly repealed by ss 205 and 237 of the Code of Civil Procedure Mahomed Abdul Vakab Sahib v Comandur Rama Samy Aiyengar
[4 Mad. 277

4 ——— Allowance charged on estate—*Annuity—Civil Procedure Code 1859 s 205*—Where a deed is executed stipulating the grant of a regular maintenance payable from the grantor's estate and recoverable in the event of non payment from that estate the allowance so granted is property which can be attached under the provisions of s 205 Act VIII of 1859 Enaet Hossein v Nujeeboonissa Begum
11 W R 138

5 ——— Political pension—*Civil Procedure Code 1882 s 266 sub s (g)—Payments due under the Oudh loans of 1838 and 1842—Exemption from liability to attachment for debt*—Although it is probable that the enactments of s 266 Civil Procedure Code 1882 were not meant to cover pensions payable by a foreign State when remitted for payment to their pensioners in India they certainly include all pensions of a political nature payable directly by the Government of India. A pension guaranteed payable by the latter by a treaty *obligation contracted with another sovereign power* is in the strictest sense a political pension An allowance payable by the Government of India under an arrangement made between the King of Oudh and the Governor General in 1842 for the benefit of members of the King's family and household and their respective heirs in perpetuity and payable to one of such heirs who has inherited it as his share in the interest in the Oudh loan of 1842 is a political pension within the meaning of s 266 sub s (g) Civil Procedure Code 1882 *The arrangement of 1842 cannot be treated as merely a provision out of the King's private estate for the maintenance of members of his family there having been in a State like that of Oudh no distinction between State property and private property vested in the sovereign.* Bishambar Nath v Imdad Ali Khan
[I L R 18 Calc, 216
L R., 17 I A, 181

6 ——— Arrears of yeomiah pension—*Suit against representatives of yeomiahdar*—Arrears of yeomiah pension due to the estate of a deceased yeomiahdar which have accidentally accumulated are not *subject to attachment* in satisfaction of a decree of a Civil Court obtained against the representatives of the yeomiahdar Anonymous Case
[5 Mad. 371

7 ——— Tora garas hak—*Pensions Act s 11*—A tora garas hak is not exempted from attach-

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

ment under a decree of a Civil Court by s 11 of the Pensions Act of 1871 SECRETARY OF STATE v KHEMCHAND JEYCHAND

[I L R 4 Bom 432

8 ———— Arrears of pension due—*Civil Procedure Code 1877 s 266—Saleable property* — In case of pensions not exempted from attachment under s 266 of the Civil Procedure Code (Act X of 1877) it is only arrears in respect thereof actually accrued due that are attachable in execution of a decree *Tuffo ool Hossein Khan v Rughoo nath Pershad 14 Moore's I A 40 7 B L R 186* cited and followed BHOYRUB CHUNDER ROY v MADHUB CHUNDER SEN 6 C L R 19

9 ———— Gratuity—*Civil Procedure Code 1882 s 266 (g)—Liability to attachment in execution of decree*—The bar in s 266 of the Civil Procedure Code to the attachment of gratuities allowed by Government to its ex servants military and civil is not limited to such gratuities as are allowed to pensioners but applies to a gratuity granted in consideration of past services BAWAN DAS v MUL CHAND I L R 6 All 173

10 ———————— *Civil Procedure Code 1882 s 266—Liability to attachment—Gift—Delivery—Act IV of 1882 (Transfer of Property Act) s 123—Act IX of 1872 (Contract Act) s 90*—*K* a servant in the employment of the East Indian Railway Company was recommended by the Traffic Manager a bonus in consideration of long and good services This recommendation was sanctioned and the amount of the bonus was received by the District Paymaster Before payment to *K* the money was attached in execution of a decree obtained against him by *J* *Held* that inasmuch as the bestowal of the money was a gift of moveable property of date subsequent to the 1st July 1882 and was not evidenced by a registered instrument it could only be effected by actual delivery that as there had been no such delivery as completed the transfer (s 123 of the Transfer of Property Act and s 90 of the Contract Act) the money was not at *K's* disposal and he could not have enforced payment and that the money was therefore not liable to attachment in execution of a decree against him JANKI DAS v EAST INDIAN RAILWAY COMPANY

[I L R 6 All 634

(b) BOOKS OF ACCOUNT

11 ———— Account Books—Books of account cannot be attached in execution of a decree IN RE PESTANJI CURSETJI 3 Bom O C 42

ADJOODHYA PERSHAD v MIDDLETON COHEN & Co 3 N W 334

12 ———— *Order for production in Court by Court executing decree* — Although a Court will not allow account books to be attached and brought to sale as mere waste paper yet to prevent a judgment-debtor from making away with his books and defeating a decree held that it will be competent to a Court executing a decree if execution is applied for by attachment of debts to require the judgment debtor to produce his books in Court and leave them in the custody of the Court ADJOODHYA PERSHAD v MIDDLETON COHEN & Co

[3 N W 334

(c) BUILDING AND HOUSE MATERIALS

13 ———— Materials of house—*Property specifically mortgaged—Civil Procedure Code 1882 s 266*—S 266 of the Civil Procedure Code (Act X of 1877) prov (c) does not prohibit the sale of property specifically mortgaged albeit that the property be materials of a house belonging to or occupied by an agriculturist BHAGVANDAS v HATHIBHAI I L R 4 Bom 25

14 ———— Building materials—*Civil Procedure Code s 266 cl (c) and Explanation (a) and s 295—Attachment and sale of building materials—Rateable distribution of proceeds of sale*—By cl (c) of s 266 of the Civil Procedure Code (Act X of 1877) an ordinary judgment creditor is precluded from attaching or selling the materials of a house or other building belonging to his judgment debtor but by Explan (a) of the same section this prohibition does not extend to a creditor whose decree is for rent *Held* that ss 266 and 295 must be read together and that an ordinary judgment creditor is not entitled under s 295 to a rateable proportion of the assets realized by the sale of such house or building under a decree obtained by another creditor for rent due to him in respect of the said house or building MANIKLAL VENILAL v LAKHA I L R 4 Bom 429

15 ———— Houses and buildings occupied by agriculturists—*Representative of an agriculturist—Exemption from attachment and sale—Civil Procedure Code s 266 cl (c)*—The expression materials of houses and other buildings belonging to and occupied by agriculturists used in s 266 cl (c) of the Code of Civil Procedure is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such and the farm buildings appended to such dwelling The exemption does not extend to other houses not in the physical occupation of an agriculturist owner as a dwelling appropriate or convenient for his calling The exemption extends after the death of an agriculturist debtor to his representative who occupies the house in good faith as an agriculturist and who does not take it up merely with the view of defrauding his creditor RADHAKISAN HAKUMJI BALVANT RAMJI

[I L R 7 Bom. 530

16 ———— Execution against bhag—*Civil Procedure Code 1882 s 266 (c)—Building site—Agriculturist bhagdar—Bhagdari Act (Bom Act V of 1862)—Decree*—*A* having obtained a decree against *B* who was a bhagdar attached his bhag in execution including the gabhan or site upon which *B's* house was built *B* applied to have the attachment removed from the gabhan on the ground that he was an agriculturist and that

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

therefore the gabhan of his house was protected from attachment by cl (c) of s 266 of the Civil Procedure Code (Act XIV of 1882) *Held* that the gabhan was subject to attachment and was not protected by the above clause B did not hold as an agriculturist He could not have occupied the house except as a bhagdar and it was as part of a bhag that the site was attached The protection of s 266 cl (c) was intended for agriculturists in the strictest sense and for agriculturists in that sole character JIVAN BHAGA v HIRA BHAIJI

[I L R 12 Bom, 363

17 ———— *Bhagdari Act (Bombay Act V of 1862) ss 1 3 and 5—Civil Procedure Code (1882) s 662 (c)—Bhagdari village —Bhag— Homestead Meaning of—Per* FARRAN C.J and JARDINE PARSONS and RANADE JJ— The superstructure of a house belonging to a bhag in a bhagdari village is exempt from attachment under the provisions of the Bhagdari Act (Bombay Act V of 1862) *Per* CANDY J—Having regard to the decision in *Pranjivan v Jaishankar 4 Bom A C 46* and the object of the Bhagdari Act it is dubtful whether the Legislature intended to exempt from attachment the materials of a house belonging to a bhag COLLECTOR OF BROACH v VENILAL KESHAVBHAI

[I L R 21 Bom 588

(*d*) DEBTS

18 ———— Proclamation as to nature and value of property—*Civil Procedure Code 1877 ss 268 278 287*—A decree-holder by a prohibitory order issued under s 268 of the Civil Procedure Code attached a debt due to his judgment debtor The person served with the order applied under s 278 to have the attachment removed *Held* that the application could not be entertained under s 278 that section having no application to the case but that before issuing a proclamation of sale in execution of a decree of the debt so attached it is the duty of the Court under s 287 of the Code to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale If the property of which sale is sought is a debt and the Court receives notice from the alleged debtor that no debt exists the Court should satisfy itself as to the existence or otherwise of the debt and if it comes to the conclusion that no debt exists should abstain from proceeding to sale HARILAL AMTHABHAI v ABHESANG MERU

[I. L. R. 4 Bom. 323

19 ———— Right and interest of vendor in purchase money—*Civil Procedure Code 1877 s 266—Vendor and purchaser*—The right or interest which the vendor of immoveable property has in the purchase money where it has been agreed that the same shall be paid on the execution of the conveyance is not so long as the conveyance has not been executed a debt but a merely possible right or interest and as such, under s 266 of Act X of 1877 is not liable to attachment and sale in the execution of a decree The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase AHMAD UD DIN KHAN v MAJLIS RAI I L R. 3 All, 12

20 ———— Claims over which British Courts have no jurisdiction—*Civil Procedure Code s 266—Subject of the Gaikwar—Subject of a Kattiawar State—Rajkot*—Debts due to a British subject by the Gaikwar Government or by a subject of that Government or of a State in the province of Kathiawar are not debts which under s 266 of the Code of Civil Procedure (Act X of 1877) are liable to attachment in execution of a decree Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s 266 of the Civil Procedure Code (Act X of 1877) The mere circumstance that the garnishee is at the time of the application for attachment beyond the limits of British India would not of itself render the debts not liable to be attached GHAMSHAMLAL v BHANSALI I L R 6 Bom 249

21 ———— Debt secured by mortgage of immoveable property—*Civil Procedure Code (X of 1877) s 266*—A debt secured by mortgage of immoveable property cannot be sold in execution of a decree under the provisions of the Civil Procedure Code applicable to moveable property SRINATH DUTT v GOPAL CHUNDER MITRA

[I. L. R. 9 Calc. 511 12 C L R, 445

22 ———— Debt creating charge on immoveable property—*Interest in immoveable property—Civil Procedure Code 1882 s 266*—Where a judgment debtor is entitled to a debt secured by a collateral hypothecation of land and the decree holder attaches and sells the judgment debtor's interest in the bond such interest is immoveable property for the purpose of attachment and sale under the Code of Civil Procedure 1882 *Per* TURNER C J—*Quære*—Whether the decree holder could not sell the debt apart from the security as moveable property APPASAMI v SCOTT

[I. L. R. 9 Mad 5

23 ———— Attachment of debt—*Civil Procedure Code (1882) s 268—Payment of debt attached out of Court*—Where a debt which had been attached under s 268 of the Code of Civil Procedure was paid out of Court to the only person who had the money due been paid into Court as required by the terms of the said section would have been entitled to withdraw the said money from Court and such payment was certified to the Court it was held that this amounted to a sufficient compliance with the requirements of s 268 FIDA HUSAIN v MAULA BAKHSH I. L. R. 21 All., 145

24. ———— Attachment of maintenance allowance—*Civil Procedure Code (XIV of 1882) s 266—Meaning of the word 'debt'—Attachment in execution of decree—Prohibitory order*—The word debt in s 266 of the Civil Procedure Code means an actually existing debt that is a perfected and absolute debt not merely a sum of

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

money which may or may not become payable at some future time or the payment of which depends upon contingencies which may or may not happen When therefore *A* is bound under a deed to pay to *B* a monthly maintenance allowance during the lifetime of the latter there cannot be a valid attachment of any portion of the allowance by a prohibitory order issued to *A* of a date anterior to the time when the same falls due to *B* HARIDAS ACHARJIA CHOWDHRY *v* BARODA KISHORE ACHARJIA CHOWDHRY

[I. L. R. 27 Calc 38
4 C W N 87

25 ———— Attachment of partnership debt—*Execution of decree*—An uncertain sum which may or may not be payable by one member to another of a partnership not shown to have been wound up cannot be attached or sold in execution of a decree DWARIKA MOHUN DAS *v* LUKHIMONI DASI I L R 14 Calc 384

26 ———— Attachment of a debt due to a judgment-debtor—*Civil Procedure Code ss 268 284 301—Sale of debt—Payment into Court—Prohibitory order*—A decree holder by a prohibitory order made under s 268 (*a*) of the Civil Procedure Code attached a debt due to his judgment debtor The debt was not paid into Court *Held* that the Court cannot under s 268 of the Code of Civil Procedure call on a person subject to a prohibitory order to pay or show cause why he should not pay his debt into Court The Court is bound to satisfy itself that a debt is due the debt must then be sold and delivery made under ss 284 and 301 of the Code of Civil Procedure SIRIAH *v* MUCKANA CHARY I. L. R. 10 Mad. 194

27 ———— Attachment by a judgment creditor of a debt due to judgment debtor by a third party—*Civil Procedure Code 1882 ss 267 268 and 503—Execution—Practice—Garnishee—Order upon third party to pay where debt admitted—Procedure where existence of debt not admitted*—When a debt alleged to be due by a third party to a judgment debtor has been attached by the judgment creditor the Court may under s 268 of the Civil Procedure Code (Act XIV of 1882) make an order upon the garnishee for the payment of such debt to the judgment creditor in case the former admits it to be due to the judgment debtor Where however the garnishee denies the debt there is no other course open to the judgment creditor than to have it sold or to have a receiver appointed under s 503 of the Code TOOLSA GOOLAL *v* ANTONE I. L. R. 11 Bom. 448

28 ———— Order prohibiting creditor from recovering debt—*Civil Procedure Code s 268 (a)—Limitation Act (XV of 1877) s 15—Injunction or order staying a suit*—S 268 cl (*a*) of the Civil Procedure Code does not mean that while a debt is under attachment the person to whom the debt was originally owing should be barred from bringing a suit in respect of it What it prohibits is the recovery of the debt and the payment of it by the debtor to the creditor *Semble*—An order of attachment under s 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s 15 of the Limitation Act (XV of 1877) SHIB SINGH *v* SITA RAM

[I. L. R. 13 All 76

29 ———— Debt of which the amount is unascertained—*Principal and agent—Vendor and purchaser—Civil Procedure Code (1882) s 266*—Where money is due by an agent or vendee to his principal or vendor the principal's or vendor's claim against his agent or vendee may be attached and sold in execution of a decree against the principal or vendor as a debt under s 266 of the Code of Civil Procedure and it is not necessary that the exact amount due to the principal or vendor should be ascertained prior to attachment and sale *Tuffuzool Hossein Khan v Rughoonath Pershad 7 B L R 186 14 Moore's I A 40 Tokai Sherob v Daood Mullick Fureedoon Beglar 6 Moore's I A 510 Abbott v Abbott and Crump 5 B L R 382* and *Hill v Boyle L R 4 Ex 260* considered. MADHO DAS *v* RAMJI PATAK

[I. L. R. 16 All 286

(*e*) DECREES

30 ———— Other property —*Act VIII of 1859 s 205—Decree*—A decree of Court fell within the description of other property in s 205 of the Civil Procedure Code and was therefore liable to attachment which should be made under s 237 GHOLAM MAHOMED *v* INDRA CHAND JAHURI 7 B L R. 318 15 W R. 34

31 ———— Immoveable property—*Execution of decree Sale in*—A decree is held to be part of a judgment debtor's effects and not to fall under the head of immoveable property BUNSHEE MOHUN DOSS *v* HUROCHUNDER DOSS CHOWDHRY

[W R. 1864 Mis 28

32 ———— Decree for mesne profits—*Civil Procedure Code 1859 s 232—Decree for money—Attachment pending ascertainment of mesne profits*—A decree for mesne profits to be ascertained in execution is a decree for money within the meaning of s 232 Act VIII of 1859 and there is no irregularity in the decree-holder applying for attachment of the judgment debtor's property pending the ascertainment of the mesne profits SHARODA MOYEE BURMONEE *v* WOOMA MOYEE BURMONEE 8 W R., 9

33 ———— Decree for money obtained by judgment-debtor—*Debt—Civil Procedure Code (1877) (1882) ss 266 273*—A decree for money obtained by a judgment-debtor is not a debt which by virtue of s. 266 of the Code of Civil Procedure can be attached and sold. Where a decree holder desires to render a decree obtained by his judgment-debtor available for the satisfaction of his own decree the procedure laid down by s. 273 of the Code of Civil Procedure must be followed. TIRUVENGADA CHARI *v* VYTHILINGA PILLAI

[I. L. R., 6 Mad., 418

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

34 ———— Money decree—*Civil Procedure Code 1877 s 273*—*Held* that Act X of 1877 does not contemplate the sale of a decree for money at the result of its attachment in the execution of a decree and the attachment of a decree for money in the mode ordained in s 273 cannot lead to its sale *Held* also that the last clause but one of s 273 applies to other than money decrees Where two decrees for money although they were not passed by the same Court were being executed by the same Court —*Held* that the provisions of the first clause of s 273 of Act X of 1877 were applicable on principle SULTAN KUAR v GULZARI LAL

[I. L. R. 2 All. 290

35 ———— *Saleable property*—*Civil Procedure Code (Act XIV of 1882) ss 266 and 273*—*Adjustment of decree after attachment*—The particular procedure prescribed by s 273 of the Civil Procedure Code (Act XIV of 1882) is clearly confined to money decrees and therefore such decrees cannot be sold after being attached all other decrees are both attachable and saleable as saleable property under s 266 of the Code A decree being attached as directed by s 273 of the Civil Procedure Code its adjustment subsequent to such attachment cannot be recognized by the Court GOPAL NARASHET v JOHARIMAL DADA BALSHET v JOHARIMAL I. L. R. 16 Bom. 522

36 ———— *Sale of decree for money*—*Suit in forma pauperis*—*Court fees recoverable by Government*—*Civil Procedure Code (Act XIV of 1882) ss 273 284 411*—*Execution of decree Mode of*—Where a plaintiff suing *in forma pauperis* obtained a decree for money and the Collector in pursuance of an order made in his favour at the time when such decree was passed attached it under s 273 of the Code of Civil Procedure and subsequently sold the same under s 284 *held* upon the application of the decree holder for execution of his decree that the provisions of s 273 did not contemplate the sale of a decree for money but they showed in what manner the attachment of decrees should be made available on behalf of the attaching person *Sultan Koer v Gulzari Lal I L R 2 All 290* and *Tiruvengada Chari v Vythilinga Pillai I L R 6 Mad 418* followed *Semble*—The provisions of s 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector inasmuch as that section provides that persons who have been successful as paupers shall so far as the subject matter of their success is concerned be liable to satisfy out of what they recover the amount of the fees which have been for a time pending the decision of their suit remitted to them JOTINDRO NATH CHOWDHURY v DWARKA NATH DEY I. L. R. 20 Calc. 111

37 —— Decree for possession of land —*Immoveable property*—A decree for possession of land is of the nature of immoveable property and a Judge has no jurisdiction to interfere with the order of a lower Court setting aside the sale of such a decree MOBKOONISSA v DEWAN ALI

[4 W R, Mis 22

38 ———— Decree for redemption—*Mode of attachment*—*Civil Procedure Code ss 273 274 316*—*Sale of a decree for redemption*—S 273 of the Civil Procedure Code (Act X of 1877) having expressly provided a mode for the attachment of decrees the procedure laid down in s 274 relating to immoveable property has no application to the attachment of a decree for redemption NAIGAR TIMAPA v BHASKAR PARMAYA I. L. R 10 Bom 444

39 ———— Attachment of decree of Revenue Court in execution of a Civil Court decree—*Civil Procedure Code (1882) ss 266 268 273*—*Held* that though a decree of a Court of Revenue is not liable to attachment and sale in execution of a decree of a Civil Court under s 273 of the Civil Procedure Code such decree stands in the position of an ordinary debt and may be dealt with under s 268 of the Code *Onkar Singh v Bhup Singh I L R 16 All 496* and *Gholam Mahomed v Indra Chand Jahuri 7 B L R 318* referred to *Takiya Begam v Siraj ud daula Weekly Notes All 1885 p 123* and *Sultan Kuar v Gulzari Lal I L R 2 All 290* distinguished AULIA BIBI v ABU JAFAR I. L. R 21 All. 405

(*f*) EQUITY OF REDEMPTION

40 ———— *Civil Procedure Code (1882) ss 266 and 274*—*Transfer of Property Act (IV of 1882) s 60*—*Immoveable property*—The equity of redemption of the mortgagor is in moveable property and is as such liable to be attached and sold in execution of a decree under s 266 of the Civil Procedure Code (Act XIV of 1882) Its attachment can be effected under s 274 of the Code by an order prohibiting the judgment debtor from dealing with it in any way and all persons from receiving it such order being proclaimed and notified as therein directed PARASHRAM HARLAL v GOVIND GANESH PORGAONKAR

[I. L. R., 21 Bom. 226

(*g*) EXPECTANCY

41. ———— *Quære*—Whether a mere expectancy is liable to attachment and sale in execution of decree DOOLI CHAND v BRIJ BHUKAN LAL AWASTI 6 C. L. R. 528

[10 C. L. R. 61

42 ———— Sum to be paid in future—*Civil Procedure Code 1859 s 205*—A sum receivable by way of assignment is not liable to be attached and sold in execution of decree SHAM CHUNDER BABOO v TEELUCK CHUNDER BABOO 2 Hay 142

43 —— —— Claim under pending award —*Property Definition of*—Under s. 205 of the Civil Procedure Code sums to be attached must not be inchoate but existing and definite; and although liquidated demands in their nature definite and certain though *sub lite* and unproved may be seized, a mere expectancy or a mere right of suit cannot be attached; the attachment must operate at the time of attachment and not be anticipatory so as to fasten on some future state of property in which the

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

suit may result A claim which may accrue under a pending award cannot be sold in execution TUFFAZAL HOSSEIN KHAN v RAGHONATH PRASAD
[7 B L R 186 14 Moore's I A 40

See BHAICHAND BIN KHEMCHAND v FULCHAND HARICHAND 8 Bom A C 150

44. ———— Attachment of future estate —*Execution of decree—Civil Procedure Code s 266—Construction according to Mahomedan law of grant of such estate*—Previously to a mortgage a fractional interest in certain property (which interest was purchased by the plaintiff the mortgagee at a judicial sale) had been the subject of settlement by a Mahomedan on his wife, under the condition that if he should have no child by her his two sons by another wife should each have an estate therein He died without other children *Held* that the two sons had taken definite interests capable of being attached within s 226 of the Civil Procedure Code not being mere expectancies UMES CHUNDER SIRCAR v ZAHUR FATIMA I L R, 18 Calc 164
[L R 17 I A 201

45 ———— Expectancy of succession by survivorship—*Civil Procedure Code (Act XIV of 1882) s 266 (k)—Spes successionis*—One S devised a house which was his self acquired property to his widow (the defendant) and died leaving a son V The will did not give expressly the widow power to dispose of it The plaintiff in execution of a decree against V sought to attach V's interest in the house The lower Court held that as the interest taken by the defendant in the house under her husband's will was only a widow's estate V as her husband's son had an interest in the house which might be attached by the plaintiffs *Held* (reversing the decree) that V had no interest in the house He had only a *spes successionis*—an expectancy of succession by survivorship and such a hope or expectancy is not attachable under s 266 (*k*) of the Civil Procedure Code (Act XIV of 1882) The entire estate was vested by the testator in the defendant No doubt her estate was a widow's estate Her estate in it closely resembled that of a married woman in England to whom property is given with a restraint against alienation That being so she was unable to dispose of it but still she was its full owner The whole property passed to her from the testator Nothing was left in him But until she died it could not be known who would inherit the house *Annaji Dattatraya* v *Chandrabai I L R 17 Bom. 503* distinguished. ANANDIBAI v RAJARAM CHINTAMAN PETHE
[I L R 22 Bom 984

(*k*) IMMOVEABLE PROPERTY CHARGED WITH MAINTENANCE

46 ———— Immoveable property assigned for maintenance with proviso against alienation—*Civil Procedure Code (Act XIV of 1882) s 266, cl (1)—Land assigned for maintenance of widow with proviso against alienation—Such land exempt from attachment*—By a deed of assignment the usufruct of certain land was given to a Hindu widow for her maintenance the deed expressly stipulating that the same was not to be in any way alienated A judgment creditor of the widow caused the land to be attached in execution of a money decree The widow contended that the land was protected from attachment under s 266 of the Civil Procedure Code (Act XIV of 1882) Both the lower Courts disallowed the widow's contention On appeal to the High Court —*Held* reversing the orders of the lower Courts that having regard to the proviso against alienation contained in the deed of assignment the usufructuary interest in the land assigned to the widow was one over which she had no power of disposal, and consequently could not be attached and sold in execution of a money decree against her DIWALI v APAJI GANESH
[I L R 10 Bom 342

47 ———— Property assigned to Hindu widow in lieu of maintenance—*Civil Procedure Code s 266 cl 1*—*Held* that an interest in the income of immoveable property assigned by way of maintenance to a Hindu widow by the members of her family is not capable of being attached and sold in execution of a decree against the widow *Diwali* v *Apaji Ganesh I L R 10 Bom 342* referred to GULAB KUAR v BANSIDHAR
[I L R 15 All 371

(*l*) JOINT FAMILY AND REVERSIONARY INTERESTS

48 ———— Interest of member of joint family—*Civil Procedure Code 1859 s 205—Quære*—May not the creditor of a member of a joint Hindu family have under Act VIII of 1859 s 205 some remedy against the property to which his debtor may be entitled? KALI PUDO BANERJEE v CHOITUN PANDAH 22 W R 214

49 ———— Reversionary interest—*Execution of decree*—R C D a Hindu died possessed of property leaving as his heiress his widow P D He also left four daughters two of whom died in the lifetime of their mother each leaving a son R D died leaving her surviving two daughters, P D and J D who succeeded to the estate of R C D *Held* that J B one of the sons of J D had no such interest in the property as could be attached and sold in execution of a decree against him BHOOBUNMOHUN BANERJEA v THAKOORDOSS BISWAS 2 Ind Jur N S 277
[15 W R F B 18 note

50 ———— *Act VIII of 1859 s 205—Property Right of—Interest of Hindu heir expectant on death of widow.*—The interest of an heir according to the Hindu law expectant on the death of a widow in possession is not property and therefore not liable to attachment and sale in execution of a decree under s 205 of Act VIII of 1859

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

RAM CHANDRA TANTRA DAS *v* DHARMO NARAYAN CHUCKERBUTTY
[7 B L R 341 15 W R, F B 17

KORAJ KOONWAR *v* KOMAL KOONWAR
[6 W R 34

But *see* GAUR HARI DUTT *v* RADHA GOBIND SHAHA
[7 B L R 343 note 12 W R, 54

51 ———— **Interest of grandson in Mitakshara family**—*Sale in execution of decree—Civil Procedure Code 1882 s 266—Interest of grandson in ancestral property* —The interest of a grandson in the ancestral property of a joint Hindu family governed by the Mitakshara law can be attached and sold in execution of a decree JOGUL KISHORE *v* SHIB SAHAI I. L. R 5 All, 430

52 ———— **Interest of undivided member of joint family**—*Death of judgment debtor—Avoidance of right of survivorship by the attachment* —In the Madras Presidency where the interest of an undivided member in the joint property of a Hindu family has been attached in execution of a decree for the personal debt of such member and the judgment debtor dies pending attachment a *valid charge is constituted in favour of the judgment* creditor which will prevent the accrual to the other co parceners of the right of survivorship BAILUR KRISHNA RAU *v* LAKSHMANA SHANBHOGUE
[I L R. 4 Mad 302

53 ———— **Right of son to succeed by survivorship**—*Civil Procedure Code 1859 s 205* —The right of a son to succeed by survivorship to his father's specific share of property cannot be sold in execution of decree such right being too remote. S 205 of the Code of Civil Procedure which specifies the kinds of property which are liable to attachment and sale in execution of decree makes no mention of contingent interests The property must belong at the time to the defendants GOUR SURUN DOSS *v* RAM SURUN BHUKUT 8 W R. 253

54. ———— **Son s interest in ancestral estate**—*Reversionary rights—Death of son between attachment and sale* —The rights of a Hindu son during his fath r's lifetime in ancestral property *viz.*, a right of joint enjoyment thereof under the father s management and a right of partition under certain circumstances together with the right of succeeding the father in the management after his death may be vested rights and are undoubtedly rights of an incipient proprietary character but they do n t constitute a transferable or inheritable property and they cannot survive the person in whom they are vested GOOR PERSHAD *v* SHEODEEN
[4 N W 137

55 ———— **Property liable to attachment and sale**—*Grant to Hindu widow for maint nance for life—Reversionary right of grantor*—[illegible] *s 205—Civil Procedure Code s 266 (k)*—[illegible] the sole owner of a certain village had a son J and J had two wives. By his first wife he had a son *U* *J s* second wife was *G* by whom he had a son whose widow was *K* the defendant in the suit *J* died leaving *U* his son *G* his widow and *K* his son s widow and on his death *U* inherited the village. Prior to the year 1874 *U* had made a gift to *G* of 105 bighas situate in the village. In 1874 the rights and interests of *U* in the village were sold by auction and purchased by *T* the ancestor of the plaintiffs *G* by a deed of gift conveyed the 105 bighas to *K* and ultimately died on 26th January 1883 Plaintiffs then sued to set aside the gift and for possession of the land The learned Judge found that the land was given to *G* in lieu of her maintenance which she was to hold rent free for her life and that she had been in possession thereof for twenty years Further that *U* had the right to resume the land and assess it to rent on the death of *G* and that all the rights and interests of *U* in the land were attached and sold in 1874 On second appeal it was contended that the interest of *U* in the land at the time of the sale of the village by auction was in the nature of a mere expectancy and therefore could not be sold and was not sold *Held* that *U* gave to *G* the usufruct of the land for her life in lieu of her maintenance that after the gift the interest of *U* in the land was of the same character and carried with it the same consequences as the reversion which the lessor would have for land leased for life or years and analogous to the right which a mortgagor who had granted a usufructuary mortgage would have that *U* had a vested right in the land which was capable of being sold and that right passed to the auction purchaser at the sale of 1874 *Koraj Koonwar* v *Komul Koonwar 6 W R 34 Ram Chunder Tanta Doss* v *Dhurma Narain Chukarbutty 7 B L R 341 15 W R, F B 17* and *Tuffuzool Hussain Khan* v *Raghunath Pershad 7 B L R 186 14 Moore's I A 40* distinguished. KACHWAIN *v* SARUP CHAND
[I. L. R. 10 All. 462

56 ———— *Vested remainder—Civil Procedure Code 1882 s 266—Attachable interest* —The plaintiff sued to have it declared that a certain house was liable to be attached and sold in execution of a decree obtained by him against the defendant s son The defendant who was 80 years of age claimed the house as her absolute property alleging that her son by a deed had given it to her as a provision for her maintenance The deed stated that she had been made the owner of the house that the *donor had no right* to it and that it wholly belonged to her *Held* that the plaintiff was entitled to the declaration prayed for The surrounding circumstances showed that the house was revertible to the donor on the defendant s death He had what in English law would be termed a vested remainder on her death and he had therefore a saleable interest during her life He had an interest which could be attached and sold under s 266 of the Civil Procedure Code (Act XIV of 1882) ANVAJI DATTATRAYA *v* CHANDRABAI I. L. R 17 Bom, 503

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

(*j*) LETTERS IN POST OFFICE

57 ———————— *Civil Procedure Code 1882 s 272—Post Office Act (XIV of 1866) s 5—Letters held in trust for judgment debtor*—An attachment was placed under Civil Procedure Code s 272 on letters in the post office addressed to certain judgment debtors The day before the attachment the senders of the letters had applied to have the letters returned to them *Held* that the postmaster held the letters in trust for or on behalf of the judgment debtors and they were accordingly liable to attachment on the application of the decree holder NARASIMHULU *v* ADIAPPA [I. L. R. 13 Mad. 242

(*k*) MAINTENANCE

58 ———— Right of future maintenance—*Civil Procedure Code 1859 s 205*—A prospective right of maintenance cannot be attached and a contingency of this kind is not included in Act VIII of 1859 s 205 as something capable of attachment MONESSUR DOSS *v* KISHEN PROTAB SHAHEE 23 W R. 427

59 ———————— *Act VIII of 1859 ss 205 243—Attachment of future maintenance or Babooana—Procedure*—Where a judgment debtor was possessed of a decree entitling him to maintenance from a third party—*Held* that his judgment creditor could attach the amount before it accrued due by prohibitory order forbidding such third party to pay the judgment debtor and directing him to pay to such person only as the Court might direct or an arrangement might be made for the collection or administration if necessary of the amount of maintenance MANISWAR DAS *v* BIR PERTAB SAHU 6 B L. R. 646 15 W R. 188

60 ———————— *Right to appeal*—A decree holder cannot attach his judgment debtor's right to appeal or his right to future maintenance nor can the Court prescribe to the decree holder what course he is to take for the realization of his claim or what property he is to attach BIPRO PROTAP SAHU *v* DEO NARAIN ROY [3 W R. Mis 16

KASHESHUREE DEBIA *v* GREESH CHUNDER LAHOOREE 6 W R. Mis 64

DULOON KOONWAR *v* SUNGUM SINGH [7 W R 311

CHUKOWREE MISSER *v* NUMOODAH KOOER [24 W R. 5

61. ———— Money allowance for maintenance—*A* was liable to pay *B* a widow a monthly allowance for maintenance *B* obtained a decree against *A* as heir of her husband for a debt of her husband *Held* without deciding as to whether a money allowance for maintenance can be attached in execution of a decree that under the circumstances of this case he was not entitled to attach the maintenance under the decree KOMAREE DABEE *v* GREESH CHUNDER LAHOORY [Marsh 200 1 Hay 583

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

But arrears of maintenance are capable of being attached as a debt due to a widow in execution of the decree against her HOYMOBUTTY DEBIA CHOWDHRAIN *v* KOROONA MOYEE DEBIA CHOWDHRAIN [8 W R. 41

62. ———— Money allowance charged on land.—A Hindu widow's right to maintenance out of lands which belonged to her husband and have devolved on her son is a purely personal right which cannot be sold in execution of a decree or otherwise transferred. BHOYRUB CHUNDER GHOSE *v* NUBO CHUNDER GOOHO 5 W R. 111

63 ———— Right to monthly allowance in lieu of share of land—*Civil Procedure Code (Act XIV of 1882) s 266 proviso cl (l)—Attachment of monthly allowance*—A heritable right to receive a certain monthly allowance originally assigned in lieu of a share of landed property is not a mere right to maintenance or anything else exempted by the proviso to s 266 of the Civil Procedure Code and is saleable in execution of a decree SALAMAT HOSSEIN *v* LUCKHI RAM [I. L. R. 10 Calc. 521

64 ———————— *Attachment of maintenance allowance—Civil Procedure Code (Act XIV of 1882) s 266—Meaning of word debt*—The word debt in s 266 of the Civil Procedure Code means an actually existing debt that is a perfected and absolute debt not merely a sum of money which may or may not become payable at some future time or the payment of which depends upon contingencies which may or may not happen When therefore *A* is bound to pay to *B* a monthly maintenance allowance during the lifetime of the latter there cannot be a valid attachment of any portion of the allowance by a prohibitory order issued to *A* of a date anterior to the time when the same falls due to *B* HARIDAS ACHARJIA CHOWDHRY *v* BARODA KISHORE ACHARJIA CHOWDHRY I L. R 27 Calc. 38

(*l*) PARTNERSHIP PROPERTY

65 ———— Share in partnership assets—*Act VIII of 1859 s 205 and ss 233 234*—A decree holder who was also a partner of the judgment debtor sought to attach in execution of his decree the share of the judgment-debtor in the assets of the partnership business the business then being in the hands of the Receiver of the Court under a decree for dissolution and winding up *Held* that such share of the judgment-debtor was not property within the meaning of s 205 of Act VIII of 1859 and, therefore not liable to attachment in execution. ABBOTT *v* ABBOTT AND CRUMP 5 B L. R. 382

66 ———— Property of partnership—*Attachment limited to share of partner—Act VIII of 1859 ss 233 234*—A decree-holder in execution attached and seized certain property which belonged to the judgment debtor in partnership with another person who alone at the time of attachment was in actual possession *Held* that such property was the

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

subject of attachment in execution of the decree against the one partner but such attachment must be limited to his share and the attachment should be by prohibitory order not by actual manual seizure THAMA SING v KALIDAS ROY 5 B L R 388

67 ———— *Attachment limited to share of partner* —Property belonging to a partnership cannot be seized in execution of a decree against one partner only Accordingly where a suit was brought against one partner only and the decree made him alone liable —*Held* that only his property could be attached in execution of that decree KA RIMBHAI v CONSERVATOR OF FORESTS [I L R 4 Bom 222

SITARAM v ATMARAM BAJI [I L R 4 Bom 227 note

HARIBHAI v ARDESIR UKADJI [I L R 4 Bom 229 note

68 ———— Unascertained interest in a partnership—*Right of suit—Civil Procedure Code s 266* —In a suit by the purchaser at an execution sale of the interest of the judgment debtor in a partnership of which the undivided father (deceased) of the judgment debtor had been a member against the other partners praying that an account be taken and that the share of the judgment-debtor be paid to him it was contended that the share in the partnership was not liable to be attached and sold in execution —*Held* that a share in a partnership could be the subject of attachment under s 266 of the Civil Procedure Code that the execution sale was not bad in law and that the present suit was accordingly maintainable *Dwarika Mohun Das* v *Luckhimoni Dasi I L R 14 Calc* 384 dissented from PARVATHEESAM v BAPANNA [I L R 13 Mad., 447

69 ———— Share of partner in partnership business—*Civil Procedure Code (Act XIV of 1882) s 266—Saleable property* —The share of a partner in a partnership business is saleable property within the meaning of those words in s. 266 of the Code of Civil Procedure and can therefore be attached and sold by an execution creditor in execution of a decree against that partner *Dwarika Mohun Das* v *Luckhimon Dasi I L R 14 Calc 384 Tuffuz ul Hossein Khan* v *Raghu Nath Pershad 7 B L R 186 14 Moo I A 40 Deendyal Lal* v *Jugdeep Narain Singh I L R 3 Calc 198 L R 4 I A 247* and *Parvatheesam* v *Bapanna I L R 13 Mad 447* referred to JAGAT CHUNDER ROY v ISWAR CHUNDER ROY [I L R, 20 Calc 693

(m) PERISHABLE ARTICLES

70 ———— Articles of perishable nature —Articles of such a perishable nature that they *for* [illegible] be kept for fifteen days and sold according [illegible] Civil Procedure Code ought not to be taken in [illegible] SADASHIV MORESHVAR v HAN[illegible] certain 5 Bom A C 156

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

(n) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS

71 ———— Service tenure—*Interest in property—Civil Procedure Code 1859 s 205* —Where a tenant had an hereditary interest in property paying a small quit rent for it and holding it subject only to the duty to the zamindar of furnishing a few men in aid of the regular police —*Held* that the interest was a beneficial one which could be attached and sold by the tenant's creditor RAMESSUR NATH SINGH v GOLAMEE SAHOO [24 W R. 309

72 ———— Ship-owner Interest of in mortgaged ship—*Sale under prior mortgage* —A ship owner having mortgaged his ship has still an interest in her seizable in attachment under the Civil Procedure Code An attachment on a vessel in respect of the mortgagor's right and interest does not affect the validity of a sale under a prior mortgage AUHIN v AHMED MAHOMED [1 Ind. Jur, N S 241

73 ———— Profits of property —When a party attaches property he also attaches the profits thereof RAM COOMAR GHOSE v GOBIND CHUNDER SANDYAL 12 W R. 391

RAM COOMAR GHOSE v GOBIND NATH SANDYAL 9 W R. 450

74 ———— Profits already realized.—But if when attaching the property he allows the original owner to remain in possession and enjoy the profits, those profits cease from the moment they find their way into the pockets of the owner to be specifically liable for the judgment-debt under the attachment RAM COOMAR GHOSE v GOBIND CHUNDER SANDYAL 12 W R. 391

75 ———— Attachment of property of tenant for rent —A landlord may have a right to receive a share of the produce as rent and if the share is not made over to compel it to be done or to recover damages but the property in the crops is in the raiyat until transferred by some act of his own It is illegal for the landlord to attach everything in the possession of the raiyat which he considers may be liable to satisfy the rent all that he can do by way of attachment is to treat the rent as a debt due from the raiyat to the landlord and to attach it as such PRITUN KOORMEE v EDIL SINGH 18 W R. 464

76 ———— Doors and window shutters—*Execution of decree—Attachable property—Doors and windows—Immoveable property* —The doors and window shutters of a pucca building cannot be separately attached in execution of decree forming as they do part of an immoveable property and having no separate existence PERU BEPARI v RONUO MAIFARASH I. L. R., 11 Calc., 164

77 ———— Property which is the subject of a suit—*Interest in property contingent on suit* —The fact of a judgment-debtor's property being the subject of an existing suit is no hindrance to its being attached in execution but it is in the discretion

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

of the Court to order its sale at the fittest and most proper time RAM CHUNDER *v* NUND LALL BOSE 19 W R. 132

78 ——— Actionable claim—*Transfer of Property Act (IV of 1882) s 6 cl (d)—Transferable claim—Civil Procedure Code s 266—Execution of decree*—Under the Transfer of Property Act property includes an actionable claim There was sold in execution of a decree the judgment debtor s right to get by division a quantity of land which had been reserved by him for his own use in a deed of gift but which at the time of the execution sale was in the possession of the donee of the estate the land never having been appropriated by measurement as provided in the deed In a suit brought by the auction purchaser (decree holder) for the area of the land reserved by measurement and division —*Held* that the claim of the judgment debtor to the land was a transferable claim and therefore capable of being attached and sold in execution under s 266 of the Civil Procedure Code RUDRA PERKASH MISSER *v* KRISHNA MOHUN GHATUCK

I. L. R. 14 Calc. 241

79 ——— Property in zenana —There is nothing in Act VIII of 1859 which exempts from attachment property to be found in the zenana of a judgment debtor DOORGA CHURN MITTER *v* HUREE MOHUN GOOHO 17 W R. 86

80 ——— Property necessary for livelihood—*Civil Procedure Code (Act XIV of 1882) s 266—Property exempted from attachment—Execution of decree—Rules of High Court*—Before property of a judgment debtor can be exempted from execution as falling under the head of the property described in s 266 of the Code of Civil Procedure it is necessary that the Court should first express its opinion that such property is necessary to enable the execution debtor to earn his livelihood and the Court which must decide this point is the Court which issues the execution S 14 (*a*) Part II Chapter V of the General Rules and Circular Orders of the High Court commented on BAKHIR MOHAMMED *v* DOORGA CHURN SHAHA

I. L. R 10 Calc. 39 13 C L. R. 200

81 ——— Property in hands of the Receiver—*Order on Receiver to sell—Attachment in mofussil—Execution of decree*—By a decree of the High Court obtained by *D M* in November 1871 in a suit on a mortgage brought by him against *B C* and *P C* it was ordered that the suit should be dismissed against *P C* that the amount found due on the mortgage should be paid to *D M* by *B C* that the mortgaged property some of which was in Calcutta and some in the mofussil should be sold in default of payment and any deficiency should be made good by *B C* The property in Calcutta was sold under the decree and did not realize sufficient to satisfy the decree *D M* thereupon in August 1873 obtained an order for the transfer of the decree to the mofussil Court for execution After the transfer *B C* died in December 1874 leaving a widow and an adopted son his representatives against whom the suit was revived The decree however was returned to the High Court unexecuted In a suit for partition of the estate of *R C* deceased brought by *P C* against *B C* in the High Court a decree was made in February 1871 for an injunction to restrain *B C* from intermeddling with the estate or the accumulations and for the appointment of the Receiver of the Court as Receiver to whom all parties were to give up quiet possession *B C* was in that suit declared entitled to a moiety of the property in suit. *Held* on application by *D M* to the High Court for an order that the Receiver should sell the right title and interest of the widow and son of *B C* in the estate in his hands to satisfy the balance of his debt that *D M* was entitled to an order that their interest should be attached in the hands of the Receiver and that the Receiver should proceed to sell the same Property in the hands of the Receiver of the High Court cannot be proceeded against by attachment in the mofussil HEM CHUNDER CHUNDER *v* PRANKRISTO CHUNDER

I. L. R. 1 Calc 403

82 ——— Government promissory notes in the Bank of Bengal—*Civil Procedure Code ss 209 268 272 construction of*—By a decree of a mofussil Court the plaintiff had been declared to be entitled to certain Government promissory notes which were then in the custody of the Bank of Bengal on account of one *K D* regarding the title to whose estate the suit was brought On an application to the High Court by the plaintiff decree holder for execution of the decree by attachment *held* that s 209 provides for the delivery of specific moveable property in the possession of the judgment debtor and was therefore inapplicable to a case where the property sought to be attached was not in the possession of the judgment debtor but of the Bank *Held* also that ss 272 and 268 apply to the cases of moveable property belonging to the judgment debtor in the possession of a third party and in that of a Court or public officer respectively and were not therefore applicable where the property sought to be attached had been declared to belong to the plaintiff The only remedy open to a plaintiff to recover possession of moveable property decreed to belong to him and not in the possession or power of the defendants is to proceed by suit against the person in whose possession or power it is. PUDMANUND SINGH *v* CHUNDI DAT JHA

1 C W N., 170

83 ——— Malikana rights payable for ever—*Civil Procedure Code Act VIII of 1859 s 237*—*A* and *B* were entitled to receive annually and for ever a specified amount by way of malikana rights from the Collector as compensation for their extinguished rights in lakhiraj lands In execution of a decree *C* on 13th September purported to attach under s. 237 of Act VIII of 1859 *A* s share in such specified amount Subsequent to this attachment—namely on 23rd September 1873—*A* and *B* mortgaged their rights to the plaintiff In a suit brought by him against *A* and *B* and *C*—*Held* that attachment under

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

s 237 was not applicable to a right to receive money for ever that such an attachment is only good so far as it relates to any specific amount which may be set forth in the request to the officer in whose hands the moneys are as being then payable or likely to become payable and that the attachment in question was therefore invalid *Semble*—The attaching creditor should have proceeded under s 235 or s 236 In either of such cases the defendant the person to whom the money was payable would be entitled to notice that he was not at liberty to alienate his rights NILKUNTO DEY v HURRO SOONDEREE DOSSEE

[I. L. R. 3 Calc 414 1 C L. R., 412

84. ——— Allowance payable through post office—*Attachment of money in hands of public officer—Anticipatory attachment—Civil Procedure Code (Act XIV of 1882) s 272 sch 4 form 142*—S 272 of the Civil Procedure Code (Act XIV of 1882) does not allow of an anticipatory attachment of money expected to reach the hands of a public officer but applies only to moneys actually in his hand TULAJ FATESING v BALABHAI LAKHMICHAND I. L. R. 22 Bom., 39

85 ——— Deposit by servant of railway company—*Civil Procedure Code s 268—Rights of attaching creditor*—Where money deposited with a railway company by one of its servants as a guarantee for the due performance of his duties was attached by a judgment creditor of such servant under s. 268 of the Code of Civil Procedure—*Held* that the creditor was not entitled to have his decree satisfied out of the deposit but was entitled to a stop order under cl (c) of s 268 and also to payment of the interest if any due by the company on such deposit to the servant KARUTHAN v SUBRAMANYA I. L. R. 9 Mad., 203

86 ——— Cheque for money due on contracts—*Right of nominal surety—Assignment of money due to assignor—Principal and surety*—The plaintiff was nominal surety though really the principal in the case of two contracts entered into by one *R* with the Executive Engineer Ahmednagar On completion of the works the Executive Engineer handed over to the plaintiff a cheque on the Government treasury for the amount due on the first contract Before the cheque was presented by the plaintiff for payment the defendant who was the judgment creditor of *R* served the Executive Engineer with a notice attaching any money in his hands due by him to *P* The Executive Engineer thereupon stopped payment of the cheque the amount of which was eventually paid to the defendant. *Held* that at the date of the attachment the cheque had become the property of the plaintiff and that the defendant should refund the amount received by him. The second contract was sold to the plaintiff by *R* and the account in the Executive Engineer's office relating to it was closed, showing a sum of money to *P's* credit at the date of the defendant's attachment. *Held* that the plaintiff being the only person really interested, was entitled to this sum also for although the Executive Engineer would have been legally justified in paying it to *R* he was not bound it being really the plaintiff's property to pay it to a third person such as the defendant the judgment creditor who if the sum was paid to him must refund it to the plaintiff BHAGVANDAS KISHORDAS v ABDUL HUSEIN

[I. L. R. 3 Bom., 49

87 ——— Deposit of material for carrying out contract—*Interest liable to attachment*—Where a person deposited upon the works of another certain materials to be used in carrying out a contract with such second person and the latter had recognized and accepted such deposit by the advance of the value thereof—*Held* that such materials had vested in the person with whom they were deposited as a purchaser and were not liable to attachment under a decree against the depositor ANONYMOUS CASE

[2 N W 337

88 ——— Money deposited in Court—*Discretion of Court—Civil Procedure Code 1877 s 272*—The Court has no discretion to refuse an application for attachment of property in Court made under s 272 of the Civil Procedure Code NOOR JEHAN BEGUM v MASHITTY KHANUM

[8 C L. R. 7

89 ——— Standing crops—*Civil Procedure Code s 266—Immoveable property*—Standing crops are for the purposes of the Code of Civil Procedure immoveable property and cannot therefore be attached under s. 266 of the Procedure Code MADAYYA v YENKATA

[I. L. R. 11 Mad. 193

90 ——— *Civil Procedure Code s 266—Immoveable property—General Clauses Consolidation Act (I of 1868)—Provincial Small Cause Courts Act (IX of 1887) sch ii cl (6)*—Standing crops are immoveable property in the sense of the General Clauses Act (I of 1868) and of cl (6) of the second schedule of the Small Cause Courts Act (IX of 1887) and of the Civil Procedure Code. They cannot therefore be attached under s 266 of the Code *Madayya v Yenkata I L R 11 Mad 193* approved. CHEDA LAL v MULCHAND MINDAI v KUNDAN SINGH

[I. L. R. 14 All. 30

91. ——— Lease—*Saleable interest—Alienation by operation of law—Condition restraining alienation—Civil Procedure Code (Act XIV of 1882) s 266*—*A* sued to recover possession of certain land which was leased in osathowla by his father to *B* The lease expressly prohibited the lessee and his heir from making any assignment of the property either by sale or gift but it did not contain any provision for forfeiture or for re-entry by reason of an assignment in violation of its terms nor was there any provision restricting a sale in execution of a decree The osathowla passed to *B's* executor and was sold in execution of a decree against *B* *Held* the sale passed a good title *B* and also his executor at the time of the sale had

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

an interest in the lease which was saleable within the meaning of s 266 of the Civil Procedure Code. *Diwali v Apaji Ganesh I L R 10 Bom 242* distinguished. GOLAK NATH ROY CHOWDHRY v. MATHURA NATH ROY CHOWDHRY

[I. L. R. 20 Calc. 273

92 ———— Interest taken under will—*Bequest to wife with obligation of maintaining and educating children—Interest taken under such bequest—Decree against wife—Attachment of interest under will—Civil Procedure Code (Act XIV of 1882) ss 266 274 276—Assignment of interest while under attachment* —B died in 1891 leaving a widow (defendant No 1) and two sons P and D (defendants Nos 4 and 5) By his will he bequeathed the residue of his property to trustees (of whom his widow was one) in trust to pay the rents and income thereof to his widow for life she thereout maintaining educating and bringing up his children in a manner suitable to their degree in life After his death the property moveable and immoveable was to be divided among his sons equally when D should attain the age of twenty five. He attained majority in October 1895 At the date of suit D was eighteen years old and P was twenty five. It was contended that the widow was only a trustee of the rents for the benefit of her sons P and D On the 13th June 1895 the plaintiffs obtained a decree for R3 976 10-10 against the widow and her son P In execution of that decree they attached under an order dated 2nd July 1895 the immoveable properties which had belonged to the testator's estate on the ground that both the widow and P had an interest in them The attachment was issued under s. 274 of the Civil Procedure Code (Act XIV of 1882) The defendants contended that the widow had no attachable interest at all in the said properties she being under the will merely a trustee as above mentioned for her sons and that if she had it was an interest in moveable property which should have been attached under s. 268 of the Code and that the attachment under s. 274 was ineffectual and inoperative They further alleged that by an assignment dated the 20th February 1896 she had assigned and surrendered her life interest to her son D and that such interest was therefore not available to satisfy the plaintiff s decree against her As to P s interest the defendants alleged that by a deed of settlement dated the 9th February 1895 it was validly settled for the benefit of himself and his family and that therefore he had no interest in him which could be attached under the order of the 2nd July 1895. *Held* (1) that the widow had an attachable interest in the property ( ) That her interest was an interest in immoveable property and was validly attached under s. 274 of the Civil Procedure Code (3) That her assignment of the 20th February 1896 was invalid as against the plaintiffs under s. 276 of the Civil Procedure Code NATHA KERRA v DHUNBAIJI

[I. L. R., 23 Bom., 1

93 ———— Right of personal service—*Civil Procedure Code s 266—Vritti—Liability of a vritti to attachment and sale in execution of decree—Voluntary conveyances* —The nature of an upadhikpana vritti on the River Godavari at Nasik was stated to be as follows The vritti is an hereditary priestly office by virtue of which certain religious ceremonies are performed on the River Godavari on behalf of pilgrims who pay fees to the holders of such priestly offices for performance of such religious ceremonies at or about the time of their performance. By law and usage a certain relationship grows up between certain pilgrims or worshippers and a particular priest and when such relationship exists such pilgrims or worshippers are called yajmans or clients of the priest whose right to offer and perform the religious ceremonies in question for such yajmans becomes exclusive against rival priests so far that under the Hindu law as applied and followed in this Presidency if any such yajmans accept the religious services of another priest they must compensate the priest whose yajmans they are by giving to him a reasonable fee *Held* that such a vritti is a right of personal service within the meaning of cl (f) of s 266 of the Code of Civil Procedure (XIV of 1882) and therefore protected from attachment. GANESH RAMCHANDRA DATE v SHANKAR RAMCHANDRA

I. L. R. 10 Bom. 395

94. ———— *Civil Procedure Code 1882 s 266 (f)—Jotishipana vritti—Liability to attachment in execution of a decree—Nature of vrittis under Hindu law* —The jotishi vritti being a right to receive certain emoluments as a reward for personal services is not liable to attachment under s 266 (f) of the Code of Civil Procedure (Act XIV of 1882) *Semble*—Under the Hindu law vrittis are to be regarded as generally *extra commercium* GOVIND LAKSHMAN JOSHI v RAMKRISHNA HARI JOSHI

I. L. R. 12 Bom 366

95 ———— Vritti or religious office—*Alienation of religious office—Civil Procedure Code 1882 s 266* —A vritti cannot be sold in execution of a decree Such a compulsory alienation is not only opposed to the Hindu law and public policy but is also against the provisions of s. 266 of the Code of Civil Procedure (Act XIV of 188) But private alienations are not absolutely prohibited. No general rule can be pl ad d in such matters The rules of succession depend upon each particular foundation or office and in respect of it custom and practice must govern and prevail over the text law which prohibits both partition and alienation RAJARAM v GANESH

I. L. R., 23 Bom., 131

(o) RIGHT OF SUIT

96 ———— Right to bring a suit A right to bring a suit cannot be attached under the Civil Procedure Code 1859 CARAPIET v PANNA LAL SEAL

14 W R., 152

DRURY v HARADHUN BHUTTACHARJEE

[3 W R. Mi. 8

MAHOMED HADEE v SHEO SEVUK DOOBEY

[6 N W., 95

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*continued*

97 ———— Right to sue for damages—*Mesne profits—Civil Procedure Code (1877) s 266 cl (e)* The right to sue for mesne profits is a right *to sue* for damages within the meaning of s 266 cl ( ) of the Code of Civil Procedure and therefore cannot be sold in execution of decree Where therefore the plaintiff purchased the right to sue for *mesne profits* at a sale in execution of a decree —*Held* that a suit by him to enforce the right was not maintainable SHYAM CHAND KOONDOO v LAND MORTGAGE BANK OF INDIA

I L R. 9 Calc. 695 12 C L R. 440

98 ———— Right to appeal.—A judgment debtor's right to appeal cannot be attached in execution of a decree BIPRO PROTAP SAHU v DEO NARAIN ROY 3 W R., Mis., 16

(*p*) SALARY

99 ———— Salary of officer of Small Cause Court Calcutta—*Execution of decree of High Court*—The pay of an officer of the Small Cause Court will be set aside by an order of the High Court in satisfaction of judgment obtained in that Court KOOMELBEUN v MICHAEL

Bourke O C., 259

100 ———— Salaries of Railway Company's servants—*Jurisdiction of Mofussil Small Cause Courts—Act VIII of 1859 ss 236 239*—Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII of 1859 s. 236 The attaching Court must make a written order to be fixed up in some conspicuous part of the Court house and a copy is to be delivered or sent registered by post to the debtor The registered letter should be addressed to the Agent of the Railway Company at the head office of the Company It need not be sent through the High Court although the head office is within the jurisdiction of the High Court IN THE MATTER OF HOLLICK 2 B. L. R., A. C. 108 10 W R., 447

101. ———— Salary of telegraph officer—The salary of a telegraph officer which is due for past services is a debt which may be attached under s. 236 Act VIII of 1859 HUSSEN BHAMJEE v HICKS 18 W R., 194

102. ———— Salary of peon of mamlatdar—The whole salary of a peon in the service of a mamlatdar under Government is liable to attachment as it becomes due TEJRAM JAGRUPJI v KUSAJI BIN GANOJI 7 Bom., A. C., 110

103. ———— Percentage received by khot—*Civil Procedure Code 1882 s 266 cl (f)—Percentage received by a khot*.—A percentage received by a khot for collecting the assessment on dumala lands is not salary nor is such a khot a "public officer" within the contemplation of s 266 cl (h) of the Civil Procedure Code (Act XIV of 1882) The Collector therefore cannot object to the attachment of such percentage in execution RAVJI MORESHVAR v SAYAJIRAO GANPATRAO

I. L. R., 13 Bom 673

104 ———— Salary of hereditary officer—*Act XI of 1843*—The official remuneration of the officiating hereditary officer is not liable to civil process so long as it is in the hands of the Collector or other disbursing officer but as soon as it is in the hands of the hereditary officer himself it is deprived of any special protection GANPATLAL ANUPRAM v SAMPATRAM GHELABHAI

10 Bom 400

105 ———— Salary already due—*Civil Procedure Code 1859 ss 236 237*—A judgment debtor's salary which has become due is a debt within the meaning of Act VIII of 1859 s 236 which indicates the remedy open to the judgment creditor S 237 has no bearing on such a case KALU SHAIKH KHANSAMA v BEATSON 24 W R. 446

106 ———— Wages of private servant—*Civil Procedure Code (Act XIV of 1882) s 266*—The wages of a private servant cannot be attached in whole or in part before they become due and a debt exists AYYAVAYAR v VIRASAMI MUDALI

I. L. R., 21 Mad. 393

107 ———— Moiety of salary of officer on half pay—*Civil Procedure Code 1877 s 266 (h)—Attachment of moiety of salary of officer on half pay*—Under cl (h) of s 266 of the Code of Civil Procedure 1882 a moiety of the salary of a public officer drawing half pay (exceeding R20 per mensem) on sick leave is liable to attachment. BEARD v EGERTON I. L. R. 8 Mad. 179

108 ————Moiety of salary of military officer—*Civil Procedure Code s 266 expl (h)—Debtor subject to military law—Attachment of moiety of salary under R20 per mensem—Army Act s 151*—S. 151 of the Army Act 1881 not being affected by the provisions of s. 266 of the Code of Civil Procedure the attachment by a Civil Court of a moiety of the monthly salary of a debtor subject to military law not exceeding R20 is legal VIJIARAGAVA v RAMUDU I. L. R., 9 Mad., 170

109 ———— Pay of Military Officer in Indian Staff Corps—*Officer not officer of regular forces—Civil Procedure Code (1882) s 266 cl (h)—Army Act 1881 s 151—Public officer*—An officer of the Indian Staff Corps is a "public officer" within the meaning of cl (h) of s 266 of the Civil Procedure Code read with the interpretation clause (s 2) of the Code His pay is therefore subject to attachment in execution of a decree against him but the operation of the attachment must be restricted to pay received from the Indian Government The pay of an officer of the regular forces is not so subject to attachment. The attachment in this case was allowed subject to a decree previously passed against the defendant by which under s 151 of the Army Act, half his pay was ordered to be deducted and applied in payment of the amount due under that decree—the repeal of that section not affecting a decree previously passed under it and the right to enforce such

ATTACHMENT—*continued*

1. SUBJECTS OF ATTACHMENT—*continued*

a decree continuing until satisfaction has been obtained. CALCUTTA TRADES ASSOCIATION *v.* RYLAND [I. L. R. 24 Calc. 102 1 C W N 138

110 ———— Pay of military officer—*Mutiny Act s 99—Military officer—Attachment of moveable property*—Where with reference to s. 99 of the Mutiny Act a decree for money made against a military officer serving in India directed that the judgment debt should be stopped out of a moiety of such officer's pay—*Held* that the decree holder could not obtain satisfaction of the decree by attachment of such officer's moveable property MERCER *v.* NARPAT RAI [I. L. R. 1 All 730

111. ———————— *Civil Procedure Code 1859 s 203—Omission to provide for stoppage of pay in decree*—The pay of a military officer cannot be attached in the hands of the Paymaster in the execution of a decree where no provision for its stoppage has been made in the decree BANSI LAL *v.* MERCER 7 N W., 331

112 ———— Pay of non-commissioned officer in civil employ—Execution of a decree against the pay of a non commissioned officer in civil employ is entirely in conformity with law COHEN *v.* McCARTHY 14 W R. 231

113 ———— Military pay attached, Refund of.—Where a part of the military pay of a sergeant employed under the Executive Engineer was erroneously remitted by his superior to a Small Cause Court which had directed execution against the sergeant's pay it was *held* that the sum remitted should be refunded to the Executive Engineer COHEN *v.* McCARTHY 14 W R. 441

(*q*) TRUST PROPERTY

114. ———— Debtor's interest in property assigned to trustees for benefit of creditors.—A *bona fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor until the trusts of the deed of assignment have been carried out. DAMANJI MANICKJI *v.* NAOROJI PALANJI [1 Bom., 233

115 ———— Property placed in trust with managers.—Property placed in trust with parties as managers but not beneficial owners is not liable to be taken in execution of a decree against them MOHEEPUT SINGH *v.* EYBAREE CHOWDHRY [19 W R. 323

116 ————Property held by judgment-debtor in trust for a specific purpose—*Attempt to attach surplus after fulfilment of trust—Civil Procedure Code s 266*—Neither the whole corpus nor any specific portion of the corpus of an estate in the hands of a trustee who is a judgment-debtor is rendered liable to attachment in execution of the decree against him because a surplus of income is in his hands for his own benefit after due performance of the trusts nor does such corpus or any part of it come for that reason within the meaning of s 266 of the Code of Civil Procedure which only authorizes the attachment of property over which the judgment debtor has a disposing power exerciseable for his own benefit Where a trust had been created for specific purposes *viz* the performance of religious and other duties and the trustee had duly appointed another trustee in his place the latter being entitled to hold the trust estate —*Held* that a decree having been made against the trustee personally the corpus of the trust estate could not be sold to satisfy the claim of the judgment creditor nor could any specific portion of the corpus of the estate be taken out of the hands of the trustee on the ground that there was or might be a margin of profit coming to him personally after the performance of the trusts BISHEN CHAND BASAWAT *v.* NADIR HOSSEIN [I. L. R. 15 Calc., 329 L. R., 15 I. A , 1

(*r*) WAGES

117 ———— Money paid to sirdar as wages of coolies—*Act VIII of 1859 ss 236 237*—The defendants were sirdars of coolies A decree was obtained against them by the plaintiff in respect of goods supplied for the coolies It was proved that by virtue of custom a sirdar of coolies was entitled to have the wages of coolies paid to him so that he might deduct the amounts due to him by the respective coolies for food supplied by him to them; but it was not found that the coolies were hired on the basis of such custom In execution of the decree an order was made upon the officer of the Public Works Department in whose employ the coolies were attaching all moneys which are or may become payable to the debtors whether on their own personal account or on account of the coolies over whom they were sirdars. *Held* the attachment could not be maintained. The wages of the coolies were not liable to attachment under s 236 or 237 of Act VIII of 1859 SAJIWAN *v.* GOPAL 1 B. L. R. S. N., 15 [10 W R., 149

118 ———— Money paid for spinning cotton—*Civil Procedure Code Act X of 1877 s 266 cl (j)—Labourer—Wages*—Persons who agree to spin cotton belonging to a spinning and weaving company and to receive a certain amount of money for a certain quantity of cotton spun by them are labourers within the meaning of s 266 of the Code of Civil Procedure (Act X of 1877) and therefore their remuneration is wages which under cl. (*j*) of the section, cannot be attached in execution of a decree JECHAND KHUSAL *v.* ABA [I. L. R., 5 Bom., 132

(*s*) WEARING APPAREL AND ORNAMENTS

119 ————Wearing apparel—*Civil Procedure Code 1859 s 205*—Necessary wearing apparel is not liable to attachment under s 205 of the Code of Civil Procedure GANGARAM VELOJI *v.* PARBHU DAYARAM I. L. R., 8 Bom., 272

ATTACHMENT—*continued*

1 SUBJECTS OF ATTACHMENT—*concluded*

120 ———— Ornaments—*Civil Procedure Code 1882 s 266—Attachment—Wearing apparel —Mangalsutra (a neck ornament)*—The mangalsutra a neck ornament which is worn by a Hindu married woman during the lifetime of her husband and never removed is a part of her necessary wearing apparel and is exempt from execution under s. 266 of the Code of Civil Procedure (Act XIV of 1882) APPANA *v* TANGAMMA I. L. R., 9 Bom., 106

121. ———— Ornaments on person of Hindu wife—*Execution against husband*—Ornaments on the person of a Hindu wife if forming part of her stridhan cannot be taken under an execution against her husband On certain occasions however the husband may take them but the right is personal to him TUKARAM BIN RAMKRISHNA *v* GUNAJI BIN MHALOJI 8 Bom. A. C 129

2. ATTACHMENT BEFORE JUDGMENT

122. ———— Attachment before judgment Effect of.—An attachment before judgment places the property in the custody of the law but does not alter the right to it IN THE MATTER OF GOCOOL DASS SOONDERJEE PETUMBER MUNDLE *v* GOCOOL DAS SOONDERJEE [1 Ind. Jur., N S. 32 Bourke O C 24

123 ———————— *Civil Procedure Code 1859 ss 83 and 84*—In attachment before judgment under ss. 83 and 84 of Act VIII of 1859 the Court does not interfere with the legal disposal of the property attached beyond declaring that possession shall not be taken without its previous sanction undertaking only that if no subsequent order to the contrary be made the property shall be forthcoming at the time of pronouncing the decree to abide whatever order it shall make about it JAVA RAMJI *v* JADHAVJI NATHU 1 Bom 224

SAVA RAMJI *v* JADHAVJI NAHU EX PARTE GAMBLE 2 Bom. Rep 150 2nd Ed. 142

124 ———————— *Civil Procedure Code 1859 s 89*—S 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit whether obtained before or after the attachment ANONYMOUS CASE 6 Mad., 135

125 ———— Attachment before judgment operation of where there are no conflicting attachments—If there are no conflicting attachments a sale of property under a decree may legally follow upon an attachment made before decree MUSTAN SAIB *v* BROOKS 7 Mad. 347

126 ———— Subsequent attachment—*Civil Procedure Code 1859 s 89*—*Semble*—S 89 of the Code of Civil Procedure was introduced, not for the purpose of restraining the ordinary effect of attachment but for the purpose of preventing the same view being taken of attachments before judgment as had been taken by the Indian Courts of the

ATTACHMENT—*continued*

2 ATTACHMENT BEFORE JUDGMENT —*continued*

writ of sequestration When attachment of property has preceded decree no fresh attachment is necessary subsequent to decree SARKIES *v* BUNDHOO BAEE [1 N W Part 6 p 81; Ed. 1873 172

Contra *See* SATBHAWAN *v* SAHOO BANARASEE DOSS 2 N W., 365

127 ———— Writs of execution, priority of—*Lodging writ in office of Sheriff*—In considering which of two writs of attachment in execution of a decree is to have priority over the other the time when the writs are lodged in the office of the Sheriff is the criterion by which priority is to be determined and not the time when such writs reach the hands of that officer NARSINGDAS MULTANCHAND *v* NAHU NURAI SUMARMAL JOHARIMAL *v* NAHANURAI [7 Bom., O C 183

128 ———————————— Where one of several writs first reaches the Sheriff it has priority and he has no power to deprive it of such priority and transfer it to another by first executing a writ delivered to him later DWARKANATH SHAW *v* PRAN KRISTO PAUL CHOWDHRY Bourke O C, 260

129 ———————— Priority—*Civil Procedure Code 1859 s 81*—*N S* and subsequently *J S* filed plaints and obtained attachment orders against *J P's* property *J S* who got a decree on the 13th and an order for sale on the 16th of February claimed priority Claim disallowed *Held* that of several creditors who have attached a debtor's property under s 81 of Act VIII of 1859 the one who first obtains judgment is entitled to priority JUGGUR NAUTH SHAW *v* ISSURCHUNDER ROY [Bourke O C 146

LUTCHMEEPUT DOGAREE *v* KENARAM SEN [1 Ind. Jur N S. 393

SHUMBHOONATH GHOSE *v* NOBINMONEY DOSSEE ROBERT AND CHARRIOL *v* NOBINMONEY DOSSEE [Bourke O C 92

130 ———— Suit against one member of undivided Hindu family—*Death of defendant before decree—Right of survivorship*—Where in a suit against one member of an undivided Hindu family *not as representing the family there is an attachment* before judgment of family property and the defendant dies before decree is passed the right of survivorship takes effect before that attachment becomes effectual for the purpose of execution Principle of decision in *Sadayappa* v *Ponnama I L R 8 Mad 554* followed, RAMANAYYA *v* RANGAPPAYYA [I. L R 17 Mad. 144

131. ———— Suit on hypothecation bond —*Civil Procedure Code (1882) s 483—Attachment of non hypothecated immoveable property—Sale not necessary to satisfy Court that hypothecated property may prove insufficient*—S 483 of the Code of Civil Procedure does not refer exclusively to moveable property Where in a suit on an hypothecation bond the plaintiff sought to attach before judgment immoveable property of the defendant other than

ATTACHMENT—*continued*

2 ATTACHMENT BEFORE JUDGMENT—*continued*

that hypothecated —*Held* that it was not necessary in order that the Court might be satisfied that the proceeds of the sale of the hypothecated property were likely to prove insufficient to meet the decree which the plaintiff might obtain in his suit that such property should be actually brought to sale BISHAMBAR NATH v SUKHDEVI I. L. R., 10 All., 189

132. ———— Attachment of money deposited in Court—*Civil Procedure Code (1882) ss 483 and 484* —The term "property" as used in ss. 483 and 484 of the Code of Civil Procedure is wide enough to *include property of every description* moveable and immoveable whether in the actual possession of the defendant or of some other person on his behalf; and the words the Court may require him to produce and place at the disposal of the Court only refer to such property as is capable of being produced in Court. Where property *ordered* to be attached is deposited in the Court which made the order for attachment that *order is sufficient notice to itself that the property ordered to be attached is to be held subject to the further orders of the Court, and it is not necessary* that a separate formal notice should be drawn up CHEDI LAL v KUARJI DICHIT I. L. R. 17 All., 83

133 ———— Attachment before judgment of Company's property—*Winding up Company—Suit against Manager of Company—Company not a party to the suit—Remedy of liquidator—Appeal—Civil Procedure Code (1882) ss 283 483 487 588 and 622*—The Dhulia Manufacturing Company Limited, carried on business at Dhulia and had its registered office at Bombay One *M* was the manager at Dhulia and he had authority to borrow *money and draw hundis on behalf of the company* In August 1894 the directors opened negotiations for the sale of the company's factory to one *H* and in September 1894 while the negotiations were pending a special resolution was passed to wind up the company voluntarily The resolution was confirmed in October 1894 and *A* was appointed liquidator under s 177 of the Indian Companies Act (VI of 1882) In December 1894 the liquidator agreed to sell the *factory to H for the* said sum of R38 000 Under the agreement *H* was to enter into possession of the *factory* but the company was to have a lien upon it until the completion of the purchase which was *to take place in May 1895 A month before the* date fixed for the completion of the sale the plaintiff filed a suit in the Court of the first class Subordinate Judge of Dhulia against *M* the manager of the company in his individual capacity and as manager of the company His claim was professedly against the company but he did not make the company which was then in liquidation a party to the suit Subsequently the plaintiff applied for and obtained an *order for* attachment before judgment of the company's factory at Dhulia No notice of the application *or of the order made on it* was given to the liquidator He at once applied to the Court to raise *the attachment contending that the Court had no* power to attach the property of the company which was not a party to the suit The Court made the company a party and dismissed the liquidator's application confirming its previous order for attachment The liquidator appealed to the High Court *Held* that the order of attachment should be reversed The intended sale by the liquidator which was the *sole reason for making the order was not with intent* to obstruct any decree that the plaintiff might obtain against the company but was being effected by the liquidator in the course of his duty and in pursuance of a contract entered into long before the suit was instituted. The plaintiff's claim if established would be satisfied *pari passu* with the other debts of the company The plaintiff was not entitled to security for his claim in preference to the other creditors It was contended that *no appeal lay against the order of* the Subordinate Judge and that the liquidator's sole remedy was by suit under ss 283 and 487 of the Civil Procedure Code (Act XIV of 1882) *Held* that the company having been made a party to the suit the order of attachment was made under s 483 of the Civil Procedure Code and consequently under s. 588 an appeal lay from that order If the company had not been made a party the High Court would have set aside the order of attachment under s 622 of the Code as in that case the Subordinate Judge *would have had no jurisdiction to make it* MIR ALI MAHOMED PATEL v BIHARILAL SUKLAL [I. L. R. 21 Bom., 273

134. ———— Attachment Effect of—*Necessity of subsequent attachment—Civil Procedure Code 1859 s 89*—*R R* filed a plaint against *I P* on the 15th and obtained a decree on the 27th of February and a prohibitory order was made against *I P's property on the 18th of March subject to* three prior attachments one by *J S* whose plaint was filed on the 30th of January and who obtained a prohibitory order on the 13th and a decree on the 16th of February a second by *N S* who filed his plaint and obtained a prohibitory order on the 30th of January and obtained a decree on February 22nd; and a third by *K S* who also filed his plaint and got a prohibitory order on January 30th and a decree on February 28th for an order for the sale of the goods on notice to the other three plaintiffs and the Court ruled that *N S* and *K S* were entitled to priority over *R R Held* that the process in *attachment before judgment is in all respects the* same as in cases of attachment after judgment and the effect in binding the property attached so as to prevent alienation is the same That an attachment whether before or after judgment places the property in the custody of the law That if property have been attached before judgment there is no need of a second attachment in the same suit after judgment That the words attachment before judgment in s 89 of Act VIII of 1859 must be read as equivalent to attachments in pending suits or in other words the phrase *before judgment* must be read as meaning until after judgment RAJCHUNDER ROY v ISSERCHUNDER ROY [Bourke O C 139

ATTACHMENT—*continued*

2. ATTACHMENT BEFORE JUDGMENT—*continued*

135. ———— Jurisdiction of High Court—*Property outside local limits of jurisdiction*.—The High Court has no power to attach before judgment a defendant's property situate outside the limits of its ordinary original civil jurisdiction. NUR MAHOMED *v.* ABDULLAH IBRAHIM MEMAN [5 Bom., O. C. 29

136. ———— Attachment before judgment, Effect of—*Civil Procedure Code (Act XIV of 1882), ss. 483, 484, 485, 486, 487, 488, 490*.—The effect of an attachment of a property under the Civil Procedure Code, whether made before or after decree, is the same, provided that in the former case a decree is made for the plaintiff, in which instance the attachment takes place. *Ex Chunder Roy v. Issur Chunder Roy Bonerjee O. C. 139 referred to*. GANPUT RAI *v.* JAN I LAL [I. L. R., 23 Calc., 531

137. ———— *Act XXIII of 1840—Warrant, by Mofussil Court*.—I was competent to the High Court, under Act XXIII of 1840, to order a warrant of attachment before judgment issued by a Mofussil Court to be executed within the limits of the High Court's ordinary original civil jurisdiction. IN RE ABRAHAM 6 Bom., A. C., 170

138. ———— *Civil Procedure Code, 1859, s. 81—Execution of decree—Enforcement of decree under Act XXIII of 1840, s. 1*.—The words in s. 81 of Act VIII of 1859 "where the defendant is about to dispose of his property or any part thereof" refer only to property within the jurisdiction of the Court where the suit is pending; therefore where an order under that section by the First Subordinate Judge of the 24-Pergunnahs in respect of property in Calcutta was sent up to the High Court in order that it might be enforced in accordance with the provisions of s. 1 of Act XXIII of 1840, the High Court refused to endorse it. BALARAM MULLICK *v.* SUJANO 8 B. L. R., 335

139 ———— Grounds of application—*Suit not commenced*—*Civil Procedure Code 1859 s. 81*.—In an application made under s. 81, Act VIII of 1859, the Court must be satisfied that a removal of goods being made, or about to be made, with a view to evade the execution of a decree in a specified suit, though it is not necessary that the suit should be actually commenced at the time of their removal. RAMNARAIN PODDAR *v.* LEVY 2 Hyde 183

140. ———— Property within jurisdiction—*Civil Procedure Code 1877 s. 483*.—The words "any portion of his property" in the latter part of s. 483 of the Code of Civil Procedure 1877 mean any portion of the property of the defendant which is within the jurisdiction of the Court in which the suit is pending. KRISHNA NATH DEY *v.* SURYA KANTA RAMA LUCHMAN CHETTY [I. C. L. R., 339

141. ———— Property not in jurisdiction—*Civil Procedure Code 1877 ss. 483, 484*.—Under the provisions of ss. 483 and 484 of the Code of Civil Procedure 1882, property of the defendant which is not within the jurisdiction of the Court cannot be attached before judgment. KRISHNASAMI *v.* EWART [I. L. R., 8 Mad., 20

142. ———— Security for satisfaction of decree—*Civil Procedure Code 1877 s. 484—Security*.—The defendants were on the 11th of March 1881 called upon, under s. 484 of the Civil Procedure Code (Act X of 1877) to furnish security for the satisfaction of a decree that the plaintiff might obtain against them, or to show cause on the 25th March 1881 why security should not be furnished. To this direction the order was appended, which is provided by the form at the end of the Code of Civil Procedure for a provisional attachment under s. 484. The defendants, to avoid the attachment, gave security on the 12th March 1881 for satisfaction of the decree, and the attachment was not carried out. On the 25th March 1881 they showed cause why security should not be furnished, but the Subordinate Judge as security had been furnished, thought the matter was at an end, and that he could not cancel the security bond. *Held* that the Subordinate Judge was wrong; the security so given was really not the security expressly provided under s. 484, and did not preclude the defendants from showing cause why no security should be furnished. LOKHMAN *v.* LOKHMAN [I. L. R., 5 Bom., 643

143. ———— Grounds for granting application—*Defendant leaving jurisdiction to avoid or delay process*—*Civil Procedure Code 1859 ss. 74, 75*.—Applications under ss. 74 and 75, Act VIII of 1859, on the ground first mentioned in s. 74 must show at least that defendant is about to leave the jurisdiction with a view to avoid process, or to delay the plaintiff in the prosecution of his suit. Evidence sufficient to support this must be adduced in all cases. THEVARAM *v.* RAMINGTON 2 Hyde 181

144. ———— *Defendant leaving jurisdiction or dealing with property so as to make decree unavailable—Grounds for arrest or attachment*.—A creditor is not entitled, merely because he has a just demand against his debtor, to move the Court to put in force the extraordinary processes of arrest or attachment on mesne process. He must also have good reason to believe that his debtor is about to depart from the jurisdiction of the Court, or to deal with his property in such a manner that it will be unavailable for satisfaction of the claim against him. GOVINDAN *v.* CHINAPPEN [I N. W., Part 2, 32 Ed. 1873 91

145. ———— *Defendant leaving India—Good cause—Civil Procedure Code 1859, ss. 74-80*.—When it appears *prima facie* that the defendant is going to leave India with intent to remain absent so long that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant, he will be ordered, unless he show good cause, to find security for the amount of the claim and the costs of the suit. And "good cause" must be either (1)

ATTACHMENT—*continued*

2 ATTACHMENT BEFORE JUDGMENT —*continued*

that he is not going to leave India or not for so long a time as will obstruct, or be likely to obstruct the plaintiff should he succeed; or (2) that the suit is not a *bond fide* one; or (3) that even if it is the institution of it has been vexatiously delayed till the defendant is about to depart from India, in order to embarrass or coerce him. SPENCE'S HOTEL COMPANY v ANDERSON 1 Ind. Jur., N S, 294 note

146. ———————— *Defendant leaving jurisdiction—Civil Procedure Code 1859 s 80* — It is not necessary for the plaintiff to show that the defendant intends to obstruct or delay the plaintiff in execution of his decree in order to justify an application to the Court for his arrest before judgment under Act VIII of 1859 s 80 it is enough if his going away will have that effect AGRA AND MASTERMAN'S BANK v MINTO [1 Ind. Jur., N S 265

147 ———————— *Defendant leaving the jurisdiction—Repairs of ship Suit for price of*—The defendant having employed the plaintiffs to do repairs to his ship on the promise that they would be paid for out of the proceeds of a letter of credit from the owners for that purpose afterwards drew bills on the credit for other purposes The defendant being about to leave Calcutta on the application of the plaintiffs an attachment order was issued against him and the proceeds of the bills in the hands of P's agent. CALCUTTA DOCKING COMPANY v LASMORE [Bourke O C 125 Cor., 151

148 ———————— *Arrest of master and part owner of ship where ship was lost—Repairs of ship Suit for price of*—In an action for repairs, where the ship had been lost the Court granted an order for personal arrest of the defendant the master and part owner under s 80 of Act VIII of 1859 CHARRIOL v COURTOIS Cor., 123

149 ———————— *Security for personal appearance of defendant—Civil Procedure Code (Act XIV of 1882) ss 477 479—Bond fide suit*—A suit was instituted against the master of a vessel for repairs done to his vessel and for hire of a dock in which the vessel had been. The master being about to leave the jurisdiction of the Court with his vessel the plaintiffs under s 477 of the Code of Civil Procedure applied for an order that the defendant should give security for his appearance to answer any decree that might be passed against him and a rule was issued calling on him to show cause why such security should not be furnished. The defendant showed cause and alleged that the amount claimed for the repairs was excessive that the repairs were badly done that the plaintiffs were not entitled to dock hire and that some of the repairs charged for had not been executed. He further counterclaimed for a large sum for demurrage owing to the detention of his vessel and damages caused to it by the wrongful act of the plaintiffs It was contended that as the claim was on a contested account which on the face of it was stated but unsettled on the principle of the English authorities the plaintiffs were not entitled to the order asked for It was further contended that the suit was not a *bond fide* one but brought merely to harass the defendant and that for this reason security should not be ordered to be given It was not disputed that the defendant had no domicile in this country and that he was shortly leaving in his vessel in the ordinary course of his business The Court found the plaintiffs were undoubtedly entitled to recover some amount on account of repairs and that the mere fact that the plaintiffs added on to such a claim one of a disputable character did not go to show that the suit was not a *bond fide* one *Held* that there is no authority for saying that the principles applied in England to the granting of writs *ne exeat regno* should be applied in this country that the Court can only look to the provisions of the Code of Civil Procedure that when a person comes on business to this country in which he has no property or domicile and enters into a contract with a person to do work in connection with that business and which must be done before he leaves the country and it is known he intends to leave as soon as the work is completed there is an implied understanding if the work was done on his credit that it should be paid for before he leaves. *Held* also that the case fell within the provisions of s 477 of the Code and that the defendant should furnish security for his appearance while the suit was pending within a week in terms of s 479 such security to be for the amount of the claim. PROBODE CHUNDER MULLICK v DOWEY [I L R, 14 Calc, 695

150 ———————— *Disposing of property to delay or obstruct execution—Civil Procedure Code 1882 s 483*—Before proceeding under s 483 of the Civil Procedure Code to attach property the Court should be thoroughly satisfied that the defendant is really disposing of his property with intent to obstruct or delay the execution of any decree that may be passed against him SHOSHEE SHEKHORESWAR ROY v HARO GOBIND BOSE [13 C L R 356

151. ———— Residence—*Civil Procedure Code 1882 s 648—Arrest before judgment* — Where an officer proceeding from Burma to England on leave resided a few days in Madras on the way—*Held* that such residence was sufficient for the purpose of s 648 of the Code of Civil Procedure to render him liable to arrest before judgment. EVERET v FRERE I. L. R. 8 Mad, 205

3 ATTACHMENT OF PERSON

152. ———— Attachment against person and property simultaneously—*Civil Procedure Code 1859 ss 201 207—Act XXIII of 1861 s 15—Discretion of Court*—Under s 201 and other sections cited of Act VIII of 1859 a judgment creditor has uncontrolled option whether he will proceed in the first instance against the person or the property of his judgment debtor; and by

ATTACHMENT—*continued*

2 ATTACHMENT BEFORE JUDGMENT —*continued*

135 ———— Jurisdiction of High Court —*Property situate out of jurisdiction*—The High Court has no power to attach before judgment a defendant's property situate outside the limits of its ordinary original civil jurisdiction NUR MUHAMMAD v ABUBAKAR IBRAHIM MEMAN [8 Bom O C 29

136 ———— Attachment before judgment Effect of—*Civil Procedure Code (Act XIV of 1882) ss 483 484 485 486 487 488 489 490* —The effect of an attachment of a property under the Civil Procedure Code whether made before or after decree is the same provided that in the former case a decree is made for the plaintiff at whose instance the attachment takes place. *Raj Chunder Roy v Isser Chunder Roy Bourke O C 139* referred to GANU SINGH v JANGI LAL [I. L. R. 26 Calc., 531

137 ———— *Act XXIII of 1840—Warrant by Mofussil Court*—It was competent to the High Court under Act XXIII of 1840 to order a warrant of attachment before judgment issued by a Mofussil Court to be executed within the limits of the High Court's ordinary original civil jurisdiction IN RE ABRAHAM 6 Bom., A C 170

138 ———— *Civil Procedure Code 1859 s 81—Execution of decree—Endorsement of decree under Act XXIII of 1840 s 1*—The words in s. 81 of Act VIII of 1859 where the defendant is about to dispose of this property or any part thereof refer only to property within the jurisdiction of the Court where the suit is pending therefore where an order under that section by the First Subordinate Judge of the 24 Pergunnahs in respect of property in Calcutta was sent up to the High Court in order that it might be endorsed in accordance with the provisions of s 1 of Act XXIII of 1840 the High Court refused to endorse it BALARAM MULLICK v SOLANO 8 B L R. 335

139 ———— Grounds of application—*Suit not commenced—Civil Procedure Code 1859 s 81*—In an application made under s 81 Act VIII of 1859 the Court must be satisfied that a removal of goods is being made or about to be made with a view to evade the execution of a decree in a specific suit though it is not necessary that the suit should be actually commenced at the time of their removal RAMNARAIN PODDAR v LEVY 2 Hyde 183

140 ———— Property within jurisdiction—*Civil Procedure Code 1877 s 483*—The words any portion of his property in the latter part of s 483 of the Code of Civil Procedure 1877 mean any portion of the property of the defendant which is within the *jurisdiction of the Court in* which the suit is pending KEDAR NATH DUTT v SREVA VEYANA RANA LUCHMAN CHETTY [1 C L R. 336

141. ———— Property not in jurisdiction —*Civil Procedure Code 1882 ss 483 484*—Under the provisions of ss 483 and 484 of the Code of Civil Procedure 1882 property of the defendant which is not within the jurisdiction of the Court cannot be attached before judgment KRISHNASAMI v ENGEL [I. L. R., 8 Mad. 20

142. ———— Security for satisfaction of decree—*Civil Procedure Code 1877 s 484—Security*—The defendants were on the 10th of March 1881 called upon under s 484 of the Civil Procedure Code (Act X of 1877) to furnish security for the satisfaction of a decree that the plaintiff might obtain against them or to show cause on the 28th March 1881 why security should not be furnished To this direction the order was appended which is provided by the *form at the end of the Code of* Civil Procedure for a provisional attachment under s 481 The defendants to avoid the attachment gave security on the 12th March 1881 for satisfaction of the decree and the attachment was not carried out On the 28th March 1881 they showed cause why security should not be furnished but the Subordinate Judge as security had been furnished thought the matter was at an end and that he could not cancel the security bond *Held* that the Subordinate Judge was wrong the security so given was really not the security expressly provided under s 484 and did not preclude the defendants from showing cause why no security should be furnished. LOTLIKAR v LOTLIKAR [I. L. R., 5 Bom., 643

143 ———— Grounds for granting application—*Defendant leaving jurisdiction to avoid or delay process—Civil Procedure Code 1859 ss 74 75*—Applications under ss 74 and 75 Act VIII of 1859 on the ground first mentioned in s 74, must show at least that defendant is about to leave the jurisdiction with a view to avoid process or to delay the plaintiff in the prosecution of his suit Evidence sufficient to support this must be adduced in all cases TEENARAM v RAMRUTTON 2 Hyde 181

144 ———— *Defendant leaving jurisdiction or dealing with property so as to make it unavailable—Ground for arrest of debtor*—A creditor is not entitled merely because he has a just demand against his debtor to move the Courts to put in force the extraordinary processes of arrest or attachment on mesne process he must also have good reason to believe that his debtor is about to depart from the jurisdiction of the Court or to deal with his property in such a manner that it will be unavailable for satisfaction of the claim against him GOUTIERE v CHARRIOL [1 N W., Part 2, 32 Ed. 1873 91

145 ———— *Defendant leaving India—Good cause—Civil Procedure Code 1859 ss 74 80*—When it appears *primâ facie* that the defendant is going to leave India with intent to remain absent so long that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant he will be ordered unless he show good cause to find security for the amount of the claim and the costs of the suit And good cause must be either (1)

ATTACHMENT—*continued*

2 ATTACHMENT BEFORE JUDGMENT—*continued*

that he is not going to leave India or not for so long a time as will obstruct, or be likely to obstruct the plaintiff should he succeed or (2) that the suit is not a *bona fide* one; or (3) that even if it is the institution of it has been vexatiously delayed till the defendant is about to depart from India, in order to embarrass or coerce him. SPENCE'S HOTEL COMPANY v. ANDERSON 1 Ind. Jur., N S, 294 note

146. ——— *Defendant leaving jurisdiction—Civil Procedure Code 1859 s 80* — It is not necessary for the plaintiff to show that the defendant intends to obstruct or delay the plaintiff in execution of his decree in order to justify an application to the Court for his arrest before judgment under Act VIII of 1859 s 80 it is enough if his going away will have that effect AGRA AND MASTERMAN'S BANK v. MINTO

[1 Ind. Jur., N S 265

147 ——— *Defendant leaving the jurisdiction—Repairs of ship Suit for price of*—The defendant having employed the plaintiffs to do repairs to his ship on the promise that they would be paid for out of the proceeds of a letter of credit from the owners for that purpose afterwards drew bills on the credit for other purposes. The defendant being about to leave Calcutta on the application of the plaintiffs an attachment order was issued against him and the proceeds of the bills in the hands of P's agent. CALCUTTA DOCKING COMPANY v. LASSMORE

[Bourke, O C 125 Cor., 151

148 ——— *Arrest of master and part owner of ship where ship was lost—Repairs of ship Suit for price of*—In an action for repairs where the ship had been lost the Court granted an order for personal arrest of the defendant the master and part owner under s 80 of Act VIII of 1859 CHARRIOL v. COURTOIS Cor 123

149 ——— *Security for personal appearance of defendant—Civil Procedure Code (Act XIV of 1882) ss 477 479—Bona fide suit*—A suit was instituted against the master of a vessel for repairs done to his vessel and for hire of a dock in which the vessel had been. The master being about to leave the jurisdiction of the Court with his vessel the plaintiffs under s 477 of the Code of Civil Procedure applied for an order that the defendant should give security for his appearance to answer any decree that might be passed against him and a rule was issued calling on him to show cause why such security should not be furnished The defendant showed cause and alleged that the amount claimed for the repairs was excessive that the repairs were badly done that the plaintiffs were not entitled to dock hire and that some of the repairs charged for had not been executed. He further counter claimed for a large sum for demurrage owing to the detention of his vessel and damages caused to it by the wrongful act of the plaintiffs It was contended that, as the claim was on a contested account which on the face of it was stated but unsettled on the principle of the English authorities the plaintiffs were not entitled to the order asked for It was further contended that the suit was not a *bona fide* one but brought merely to harass the defendant and that for this reason security should not be ordered to be given It was not disputed that the defendant had no domicile in this country and that he was shortly leaving in his vessel in the ordinary course of his business. The Court found the plaintiffs were undoubtedly entitled to recover some amount on account of repairs and that the mere fact that the plaintiffs added on to such a claim one of a disputable character did not go to show that the suit was not a *bona fide* one *Held* that there is no authority for saying that the principles applied in England to the granting of writs *ne exeat regno* should be applied in this country; that the Court can only look to the provisions of the Code of Civil Procedure; that when a person comes on business to this country in which he has no property or domicile and enters into a contract with a person to do work in connection with that business and which must be done before he leaves the country and it is known he intends to leave as soon as the work is completed there is an implied understanding if the work was done on his credit that it should be paid for before he leaves. *Held* also that the case fell within the provisions of s 477 of the Code and that the defendant should furnish security for his appearance while the suit was pending within a week in terms of s 479 such security to be for the amount of the claim PROBODE CHUNDER MULLICK v. DOWEY

[I L R., 14 Calc, 695

150 ——— *Disposing of property to delay or obstruct execution—Civil Procedure Code 1882 s 483*—Before proceeding under s 483 of the Civil Procedure Code to attach property the Court should be thoroughly satisfied that the defendant is really disposing of his property with intent to obstruct or delay the execution of any decree that may be passed against him SHOSHEE SHEKHORESWAR ROY v. HARO GOBIND BOSE

[13 C L R 356

151. ——— Residence—*Civil Procedure Code 1882 s 643—Arrest before judgment*—Where an officer proceeding from Burma to England on leave resided a few days in Madras on the way—*Held* that such residence was sufficient for the purpose of s 643 of the Code of Civil Procedure to render him liable to arrest before judgment EVERETT v. FRERE I. L. R. 8 Mad 205

3 ATTACHMENT OF PERSON

152 ——— Attachment against person and property simultaneously—*Civil Procedure Code 1859 ss 201 207—Act XXIII of 1861 s 15—Discretion of Court*—Under s. 201 and other sections cited of Act VIII of 1859 a judgment creditor has uncontrolled option whether he will proceed in the first instance against the person or the property of his judgment debtor; and by

ATTACHMENT—*continued*

3 ATTACHMENT OF PERSON—*continued*

s. 15 Act XXIII of 1861, the Small Cause Court is bound to issue execution according to the nature of the application if made in writing after the passing of the decree under s 207 Act VIII of 1859 The Court may at its discretion refuse execution against the person and property at the same time or against the same person when under s 13 Act XXIII of 1861 or under s 19 Act XI of 1865 application for immediate execution is made verbally at the time of passing the decree DAVIS v MIDDLETON 8 W R., 282

153 ———————— *Execution of decree—Decree for sale of hypothecated property and against judgment debtor personally—Execution against judgment debtor's person—Decree holder entitled to proceed against property or person as he might think fit*—Where a decree upon a hypothecation bond allows satisfaction of the debt from the hypothecated property and also from the judgment debtor personally and contains no condition that execution shall first be enforced against the property and where there is no question of fraud being perpetrated on the judgment debtor there is no principle of equity which prevents the decree holder from enforcing his decree against the judgment debtor's person or property whichever he may think best *Wali Muhammad* v *Tarab Ali* I L R., 4 All 497 explained. JOHARI MAL v SANT LALL [I. L. R. 9 All., 484

154 ———————————— *Absconding debtor*—Where a defendant against whose person an attachment in execution has been issued absconded a second attachment against his moveable property was granted and the writ of [a]chment against the person was not recalled [GR]EGORY v HADJEE ESSUFF COONJEE [. . .]. Jur, N S., 244

155 ———— [. . . a]pplication for at-
tachment—P[. . .]rt —*Held* by PHEAR
J that u[. . .]il Procedure 1859 a
Court wi[. . .] as a matter of course
a sec[. . .] a judgment-creditor for
attach[. . .]he [. . .]s to require him to show
[. . .] person [. . .]ken did not lead to a full
and by [. . .]d ought not to grant its
[. . .]ss satisfied that the failure
[. . .]he applicant's own fault.
[. . .]HYA LALL PUNDIT
[9 W R. 527

[. . .] ———— *Discretion of*
[. . .]859 s 221—In execution of
[. . .]ed against the defendant who
[. . .] within the jurisdiction of the
[. . .] writ was made returnable in
[. . .]it returnable in the same time
[. . .] not being successful but the
[. . .] found An application for a
[. . .]e year was refused. *Held* on
[. . .] C J that although the Judge
14 [. . .] VIII of 1859 [. . .] refuse the writ under s 221
—C[. . .]ed the utmost possible diligence was not suffi
the prov[. . .]round on which the writ should be refused.

ATTACHMENT—*continued*

3 ATTACHMENT OF PERSON—*continued*

Per MACPHERSON J—The Court had a discretion under s. 221 and ought not to grant the writ where it is not satisfied that the parties have used every reasonable endeavour to execute former ones that have expired as the former writs were returnable in so short a time however in this case the writ ought to be granted NITTAI CHANDRA PAL v THAKUR DAS BISWAS 8 B L R., 258 note

KALEE CHUNDER PAUL v THAKUR DAS BISWAS [12 W R O C 7

157 ———— **Attachment and discharge**—*Further execution against debtor's property*—After a debtor has been arrested in execution of a decree and discharged at the request of the creditor his personal property may be taken in execution under the same decree JANOKI SINGH ROY v LALOO MUNDUL [B L R, Sup Vol. 889 9 W R. 178

158 ———— **Non satisfaction of decree against property of judgment-debtor**—*Right to attach person*—Where a judgment creditor had obtained a writ of attachment against the property of his judgment debtor but the debtor had no property to the knowledge of the creditor against which the attachment could be enforced—*Held* (reversing the decision of the Court below) that he was entitled to an order for execution of the decree by attachment of the person of the debtor SETON v BIJOHN [8 B L R., 255 17 W R. 165

159 ———— **Option of proceeding against person or property**—*Civil Procedure Code 1877 1882 s 254 (1859 s 201)—Execution of decree—Ex parte decree*—Under s 201 of Act VIII of 1859 a judgment creditor has the option of enforcing his decree against the person or property of the judgment debtor and the fact that such decree is an *ex parte* one makes no difference RAJ CHUNDER ROY v SHAMA SOONDARI DEBI [I. L. R., 4 Calc. 583

160 ———— **Arrest and discharge of debtor**—*Re-arrest*—*D M* a prisoner for debt having been discharged for non payment of subsistence-money the execution-creditor applied for a rule nisi for his re-arrest or for a new writ *Held* that a prisoner once discharged on non payment of his subsistence money cannot be re-arrested nor can a new writ be issued against him for the former debt and that the principle that no man shall be twice vexed on the same charge applies here *Per* MORGAN J.—That there may be a distinction between the words release and discharge in Act VIII of 1859 and that the arrest of the person is not the full satisfaction here that it is under English law IN THE MATTER OF DWARKALALL MITTER Bourke O C 109

161. ———————— *Re arrest—Distinction between arrest and imprisonment*—The Code of Civil Procedure expressly preserves a distinction between arrest and imprisonment and the immunity from further process is only generated by actual confinement A second arrest therefore held to be legal CHINGALRAYA CHETTY v SUBBIAH 6 Mad. 84

ATTACHMENT—*continued*

3. ATTACHMENT OF PERSON—*continued*

162. ———— **Warrant of arrest, Power of detention under**—*Illegal detention*—The warrant of arrest in execution of decree empowers the Sheriff only to arrest the defendant in execution and detain him for such reasonable time as is sufficient to allow of his being brought before the Court and having an opportunity of applying for his discharge; the detention of such prisoner by the Sheriff after such reasonable time without further authority of law is illegal IN RE SUMBOO CHUNDER HALDAR IN RE DURGAPERSAUD MITTER. IN RE LAKHAL DOSS [Bourke O C. 59

163 ———— **Imprisonment, Period of**—*Subsequent arrest in execution*—*Civil Procedure Code Act XIV of 1882 ss 481 and 342*—The defendant was arrested before judgment and on the 5th February 1883 committed to jail under s. 481 of the Civil Procedure Code On the 6th March following a decree in the suit was passed against him On the 28th July the defendant being then still in jail under the order of the 5th February the plaintiff took out a fresh warrant of arrest in execution of the decree and sought to have the defendant further imprisoned for the full period of six months limited by s 342 of the Code. *Held* that the defendant could be re-committed to jail in execution of the decree only for such a period as together with the period of imprisonment that had elapsed since the passing of the decree would complete a period of six months and that consequently he would be entitled to be liberated on the 5th September 1883 Imprisonment under s 481 becomes after decree imprisonment in execution of the decree and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months which by s 342 of the Code is the limit allowed for an imprisonment in execution of a decree GHANASHAMDAS GOORSAMULL v JOHARIMULL KEDARINATH [I. L. R. 7 Bom., 431

164. ———— **Imprisonment several periods of**—*Right to discharge*—A judgment debtor who has been imprisoned in execution of a decree if the several periods of his imprisonment be added together for more than the maximum period for which he can be legally kept in prison is entitled to his release KHODA BUKSH v SHUKROOLLAH [5 N W 220

165 ———— **Order for arrest before judgment Form of**—*Civil Procedure Code 1877 1882 s 481 (1859 ss 78 and 276)*—*Commitment in execution of decree*—An order for the arrest before judgment of a debtor made in the form directed by s 78 is after judgment has passed, a commitment in execution of a decree within the meaning of s. 276 RAMPERSAUD ROY v CALLACHAND DOSS [Bourke O C 423

166 ———— **Discharge of judgment debtor on offer to place estate at disposal of Court**—*Act of bad faith subsequent to discharge*—*Civil Procedure Code 1859 ss 273 275*—A judgment debtor having been arrested in 1871 offered to place his estate at the disposal of the Court and was examined on oath as to the particulars of the estate and discharged from custody His estate was never taken possession of and part of it was subsequently disposed of by him to a stranger *Held* that he was not liable to be arrested again in execution of the decree VENKATAKRISHNA CHARYA v COELHO [I. L. R., 6 Mad., 170

167 ———— **Decree payable by instalments**—*Execution by arrest and imprisonment*—*Civil Procedure Code (Act X of 1877) s 341*—In the execution of a decree payable by instalments the judgment debtor cannot be arrested and imprisoned separately for default in the payment of each instalment DAMODAR SHALIGRAM v MALHARI [I. L. R. 7 Bom 106

168 ———— **Simultaneous execution by arrest and attachment of property**—*Attempt to evade payment*—A warrant of arrest directed to be issued against the judgment debtor notwithstanding the previous proceedings by attachment the Court being satisfied that the judgment debtor was determined to evade if possible the payment of his debt CHENA PEMAJI v GHELABHAI NARANDAS I. L. R. 7 Bom., 301

169 ———— **Re arrest of judgment debtor**—*Power of Court to arrest without petition*—It is not within the competence of a Judge to direct the re-arrest of a judgment debtor without any petition or motion of the decree holder to that effect SHIB RAM MUNDLE v BOHEEMTOOLLAH [15 W R. 69

170 ———— *Civil Procedure Code 1882 s 341*—*Non payment of subsistence money*—*Discharge*—The discharge of a judgment debtor before imprisonment on account of the non payment of the subsistence money for the debtor is no bar to the debtor being re arrested SUBBA v VENKATTA I. L. R. 8 Mad. 21

171. ———— **Discharge of debtor**—*Civil Procedure Code 1882 s 336*—*Discharge of judgment debtor arrested under decree of High Court*—*Right of discharge*—*Intention to be adjudicated insolvent*—A judgment-debtor having been arrested in execution of a decree of the High Court in its Original Civil Jurisdiction and brought before the Court under the provisions of s 336 of the Code of Civil Procedure claimed to be discharged on the ground that he intended to apply to the Court to be declared an insolvent either under the provisions of Chap XX of the Code or of 11 & 12 Vict c 21 *Held* that the judgment debtor on expressing his intention to file a petition and schedule under 11 & 12 Vict c 21 and complying with the conditions of s 336 of the Code of Civil Procedure was entitled to be discharged. EX PARTE PINSENT [I. L. R. 8 Mad. 276

172 ———— *Civil Procedure Code 1882 ss 336 341 344 349*—*Judgment debtor*—*Imprisonment*—Ss 336 and 349 of the Code of Civil Procedure 1882 are applicable to judgment debtors under arrest but not committed to jail

ATTACHMENT—*continued*

4 MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*continued*

sought to be attached is moveable if in the hands of the Judge or the Judge's Court it must be attached in the mode prescribed by the first part of Act VIII of 1859 s 239 and a notice so sent to the Judge is an effectual attachment of such moveable property although it is refused by the Judge whose refusal to receive the notice cannot make that no attachment which would otherwise be a good attachment IN THE MATTER OF THE PETITION OF TEIL & Co TEIL & Co v ABDOOL HYE 19 W R 37

194 ——— **Attachment and sale of mortgage bond**—*Civil Procedure Code 1882 ss 268 274—Lien of purchaser on mortgaged property after attachment under s 268*—In execution of a decree obtained by them against *J* and *U* the plaintiffs attached a decree obtained by *J* and *M* against *D* and on the allegation that *J* and *M* in order to avoid the consequence of this attachment executed a benami conveyance of their interest under the attached decree to *B* and *P* and afterwards with the same object took in adjustment and satisfaction of that decree two bonds in favour of *E* and *I* respectively by which immoveable property was pledged as collateral security the plaintiffs attached these two bonds by prohibitory order under s 268 of the Civil Procedure Code and purchased them at the sale in execution of their decree In a suit on the bonds against *D* as the principal defendant with *J M B P R* and *I* joined as parties —*Held* that the plaintiffs were entitled to enforce the lien created by the bonds against the immoveable property specified in them notwithstanding that no attachment had been made in accordance with the provisions of s 274 of the Code a debt secured by a mortgage lien on immoveable property not being immoveable property within the meaning of that section DEBENDRA KUMAR MANDEL v RUP LALL DASS

[I. L. R., 12 Calc, 546

195 ——— *Civil Procedure Code s 274 cl (c)—Rights of purchaser of mortgage bond at sale in execution of decree*—Where a person at an execution sale purchases a mortgage bond under which certain immoveable property is given as collateral security for an advance the fact that he has not attached under s 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged KASINATH DAS v SADASIV PATNAIK

[I. L. R. 20 Calc, 805

196 ——— *Civil Procedure Code (1882) ss 268 and 274—Attachment of mortgage debt—Sale under irregular attachment—Suit by purchaser on mortgage*—The plaintiff sued to recover principal and interest due on a mortgage He claimed title as purchaser at a Court sale held in execution of a decree against the mortgagee It appeared that there had been no attachment under Civil Procedure Code s 274 but under s 268 only *Held* that the purchase by the plaintiff was not invalid by reason of the last mentioned circumstance and that the plaintiff was entitled to recover as against the property *Debendra Kumar Mandel* v *Rup Lall Dass I L R 12 Calc, 546* and *Kasinath Das* v *Sadasiv Patnaik I L R 20 Calc 805* referred to MUNIAPPA NAIK v SUBBAMANIA AYYAN

[I. L. R. 18 Mad. 437

197 ——— *Sale of mortgage debt in execution of a decree against mortgage—Sale carrying with it security without attaching mortgaged property—Civil Procedure Code (1882) s 274*—The sale of a mortgage debt described as such in execution of a decree carries with it the security without attaching the mortgaged property under s 274 of the Civil Procedure Code *Debendra Kumar Mandel* v *Rup Lall Dass I L R 12 Calc 546* and *Appasami* v *Scott I L R 9 Mad 5* (p 7 *per* TURNER *J*) followed. BALDEV DHANRUP MARVADI v RAMCHANDRA BALVANT KULKARNI

[I. L. R. 19 Bom 121

198 ——— *Civil Procedure Code—Rights and interests of mortgagee out of possession*—Where the rights and interests under his mortgage of a mortgagee out of possession are attached in execution of a decree the procedure by which such attachment must be effected is that prescribed by s 268 of the Code of Civil Procedure S 274 of the Code cannot be applied in such a case KARIM UN NISSA v PHUL CHAND

[I. L. R. 15 All 134

199 ——— *Sale in execution held in pursuance of an attachment irregularly made—Civil Procedure Code ss 268 and 274—Rights of auction purchaser*—*Held* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction purchaser even though the attachment subsequent to which such sale was held might have been made under a wrong section of the Code of Civil Procedure *Bal Krishna* v *Masuma Bibi I L R 5 All 142 L R 9 I A 182 Mahadeo Dubey* v *Bhola Nath Dichit I L R 5 All 86 Ram Chand* v *Pitam Mal I L R 10 All 506* and *Karim un nissa* v *Phul Chand I L R 15 All 134* referred to SHEO CHARAN LAL v SHEO SEWAK SINGH I L R 18 All. 469

200 ——— **Irregularity in attachment**—*Beng Reg VII of 1825 s 7—Omission to require security*—An attachment made under Bengal Regulation VII of 1825 without first requiring security as directed by s. 7 of that Regulation was held to have been irregularly made but the irregularity was not one which affected the jurisdiction of the Court or made the attachment void KHODAJANINISSA v STEVENS 20 W R 433

201 ——— *Civil Procedure Code 1859 s 239—Immaterial injury*—An attachment of immoveable property is not voidable merely because all the forms prescribed in s 239 Code of Civil Procedure have not been followed when the irregularities complained of are immateria and not productive of any substantial injury to th

ATTACHMENT—*continued*

4 MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*continued*

person who objects to the proceedings. KOOBANEE DASSI *v.* BHUBUN MOHINEE DASSI [6 W R., Mis., 52

202. ——— *Attachment of more property than is necessary.*—Where the decree-holder wantonly attached more property than was necessary for the discharge of his claim the Court may order sequestration of only a portion of the property attached. PURSOTUM DOSS *v.* OODEY NARAIN MULL 1 Agra Mis., 3

203. ——— *Incorrect description of property sought to be attached—Sale in execution of decree—Subsequent purchase of same property under a decree for pre-emption—Civil Procedure Code, s. 274.*—In execution of a simple money-decree against the holders of a muafi interest in a certain village who did not possess any zamindari interest in that village an attachment was obtained by the decree holder in 1884 of "an eight biswas zamindari share of mouza *D*" and under that attachment a sale took place in January 1886. Meanwhile in December 1885 a decree for pre-emption in respect of a sale by the judgment-debtors in 1881 of their muafi interests in the village was decreed in favour of persons who were not parties to the litigation in which the attachment of 1884 was effected. The plaintiffs (who were in possession) sued for a declaration of their right to the muafi interests as against the auction purchaser under the sale of January 1886. *Held* that the attachment in 1884 was not a good attachment of the muafi interests of the judgment debtors, and the auction purchaser could not be held to have purchased those muafi interests and the title of the plaintiffs under their pre-emptive decree of December 1885 must prevail. HARGU LAL SINGH *v.* MUHAMMAD RAZA KHAN [I. L. R., 13 All. 119

204. ——— *Attachment of assets of a judgment-debtor outside the jurisdiction of the attaching Court—Practice—Procedure.*—The plaintiff having obtained a decree against the defendant in the Court at Bhusaval sought to execute it by attaching a moiety of the defendant's pay. The defendant was a sorter in the Railway Mail Service and travelled between Bhusaval and Nagpur at which latter place he resided and received his pay. By an order of attachment issued at the plaintiff's instance by the Bhusaval Court to the defendant's disbursing officer at Nagpore a moiety of pay having been withheld by that officer the defendant applied to the Bhusaval Court to cancel the order contending that it was illegal as neither he nor his disbursing officer resided at Bhusaval. On reference to the High Court.—*Held* that the order of attachment was *ultra vires* as neither the defendant nor his disbursing officer resided within the jurisdiction of the Bhusaval Court. The proper procedure was to send the decree of the Bhusaval Court for execution to Nagpore where the disbursing officer resided and the defendant's pay was available for satisfaction of the decree. PANGO JAIRAM *v.* BALKRISHNA VITHAL I. L. R., 12 Bom. 44

GOPAL *v.* LAVET I. L. R., 12 Bom., 45 note

205. ——— *Attachment before judgment—Termination of attachment—Sale in execution—Material irregularity in publishing or conducting sale without attachment—Waiver—Civil Procedure Code, ss. 311, 483.*—The plaintiff instituted a suit against the defendant for recovery of money and previous to judgment that is on the 8th January 1885 applied for and on the 11th obtained orders for attachment of several houses and premises belonging to defendant and such attachment was made. The suit was dismissed but eventually on appeal it was decreed but the attachment was never withdrawn. Plaintiff then applied for execution of his decree and his application was granted by an order directing that the property of the judgment-debtor should be notified for sale on the 1st February 1887 and accordingly on the 21st December 1886 a sale notification was issued. Judgment debtor twice applied for postponement of sale but his applications were refused and the sale took place on the date fixed. The judgment debtor then objected to the confirmation of the sale urging that the property sold was never attached in execution of the decree and the attachment previous to judgment was infructuous because afterwards the claim was dismissed by the Court of first instance that there had been several other irregularities in publishing and conducting the sale; and that owing to the irregularities property had been sold at a grossly inadequate price causing substantial injury. The Subordinate Judge overruling the objections confirmed the sale. On appeal by the judgment-debtor.—*Held* following *Mahadeo Dubey v. Bhola Nath Dichit*, *I. L. R. 5 All. 86* that a regularly perfected attachment is an essential preliminary to sales in execution of decrees for money and where there has been no such attachment any sale that may have taken place is not simply voidable but *de facto* void and may be set aside without any inquiry as to substantial injury being sustained by the judgment debtor for want of a valid attachment; and that an attachment before judgment like a temporary injunction becomes *functus officio* as soon as the suit terminates. Further that the phrase "a material irregularity in publishing or conducting" in the first paragraph of s. 311 of the Code of Civil Procedure should be liberally construed and that absence of attachment of property at the time of sale thereof is a material irregularity, attachment being the first step which a Court in executing a simple money decree has to take to assert its authority to bring property to compulsory sale. RAM CHAND *v.* PITAM MAL [I. L. R., 10 All., 506

206. ——— *Civil Procedure Code, ss. 268, 272—Official Trustee's Act (XVII of 1864)—Public officer—Attachment by notice.*—A decree against a married woman provided that the

ATTACHMENT—*continued*

4 MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*continued*

amount due under it should be payable out of the separate estate of the judgment debtor The judgment debtor was entitled to a life interest in certain trust funds under a settlement of which the Official Trustee was the trustee The decree holder proceeded to execute his decree against the life interest of the *judgment debtor by notice to the Official Trustee* under s 272 of the Code of Civil Procedure but there were no funds in the hands of the Official Trustee which would have been attachable under s 268 The decree holder now applied that the life-interest might be sold. *Held* that the interest of the judgment-debtor was not validly attached. *Semble*—The Official Trustee is a public officer within the meaning of s 2 of the Civil Procedure Code ABDOOL LATEEF *v* DOUTRE

[I. L. R. 12 Mad., 250

207 ———— *Attachment of equity of redemption—Civil Procedure Code (1882) ss 266 and 274—Transfer of Property Act (IV of 1882) s 60*—The equity of redemption of the mortgagor is immoveable property and is as such liable to be attached and sold in execution of a decree under s 266 of the Civil Procedure Code (Act XIV of 1882) Its attachment can be effected under s 274 of the Code by an order prohibiting the judgment debtor from dealing with it in any way and all persons from receiving it such order being proclaimed and notified as therein directed. PARASHRAM HARLAL *v* GOVIND GANESH PORGAUMKAR

[I. L. R., 21 Bom 226

208 ———— *Attachment of money in hands of Receiver—Attachment made without sanction of Court—Civil Procedure Code (1882) s 272*—An attachment of money in the hands of the Receiver made without previous permission or sanction of the Court for such attachment is improper and irregular and the Court will refuse to recognize it *Kahn* v *Alli Mahomed Haji Umar I L R 16 Bom 577* followed. MAHOMMED ZOHURUDDEEN *v* MAHOMMED NOORODDEEN

[I. L. R. 21 Calc 85

209 ———— *Attachment for arrears of rent—Notice of attachment before portion of arrears became due*—Where property was attached for arrears of rent—*Held* that the attachment was not vitiated by the circumstance that notice of the attachment was given before a portion of the arrears claimed had become due KAMALA NAYAK *v* RANGA RAU 1 Mad, 24

210 ———— *Copy of order for attachment not—fixed in Collector's office—Civil Procedure Code s 274—Copy of order for attachment not fixed up in Collector's office*—In execution of a money decree an order was issued under s 274 of the Civil Procedure Code for the attachment of property which was the joint ancestral estate of the judgment debtor and his father A copy of this order was not fixed up in the office of the Collector of the district in which the land was situate as required by s 274 *Held* that though the defect in the manner in which the attachment was made might render the attachment ineffectual for the purpose of voiding alienations made the attachment was effectual against the judgment debtor and the defect did not afford a ground for declaring the execution proceedings ineffectual RAI BALKISHEN *v* RAI SITA RAM I. L. R., 7 All. 731

5 PRIORITY OF ATTACHMENT

211. ———— **Question of priority of attachment**—*Attachment under decree of High Court of property already attached under decree of Small Cause Court—Claim to attached property by what Court to be decided—Civil Procedure Code (1882) s 272*—In execution of a decree obtained in the High Court the plaintiffs on the 22nd of March 1895 attached certain property of the defendant which however had been already attached on the 22nd of February 1895 by one *R* who had obtained a decree against defendant in the Court of Small Causes The plaintiffs attachment was therefore effected under s 272 of the Civil Procedure Code (Act XIV of 1882) by a notice addressed by the Prothonotary of the High Court to the Registrar of the Small Cause Court The claimant was mortgagee in possession and the defendants were his tenants. On the 26th February he had lodged a claim in the Small Cause Court to the said property as mortgagee in possession and on the 2 th March 1895 a consent order was passed by the Chief Judge of that Court directing that *R* s attachment should stand subject to the claimant s claim On the 22nd April 1895 the claimant applied to the Chief Judge of the Small Cause Court to issue a notice to the plaintiffs in this suit under s 272 of *the Civil Procedure Code to determine the question* of priority of claim to the attached property between him and the plaintiffs His application was refused the Chief Judge being of opinion that he could not interfere in a High Court suit The claimant then filed his claim in the High Court and took out this summons to remove the plaintiffs' attachment *Held* that under s. 272 of the Civil Procedure Code the Small Cause Court was the only Court to decide the question of priority between the claimant and the plaintiffs JEYNARAYAN MEGHRAJ *v* ISMAIL KURIMA

[I. L. R. 19 Bom., 710

6 ALIENATION DURING ATTACHMENT

212. ———— **Effect on alienation of setting aside ex parte decree**—*Civil Procedure Code s 240—Validity of attachment—Ex parte decree*—The effect of granting an application under s. 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid *A* obtained a decree *ex parte* against *B* Property belonging to *B* was attached in execution. While under attachment *B* sold the property to *C* Afterwards *B* applied for and obtained an order under

ATTACHMENT—*continued*

C ALIENATION DURING ATTACHMENT—*continued*

s. 119 of Act VIII of 1859 to set aside A's decree and for a new trial *Held* that C's purchase was not null and void under s. 240 of Act VIII of 1859 LALA JAGAT NARAYAN v TULSIRAM

[1 B L R, A. C., 71

JUGGUT NARAIN v TOOLSEE RAM

[10 W R. 99

213 ——— **Incumbrance pending attachment**—*Right of purchaser at sale at instance of second attaching creditor*—The purchaser of the right, title and interest of a judgment-debtor in certain immoveable property at an auction-sale which took place at the instance of a second attaching creditor was held to take the property subject to an incumbrance created by the judgment debtor pending the first but prior to the second attachment although the first attaching creditor was first paid out of the proceeds of the sale *Quære*—Whether the sale ought not to have been under the first attachment as against which the incumbrance would have been void. CHEY PRASAD SAHU v BINDA BIBI

[9 B L R, 180 18 W R, 279

214. ——— **Bonâ fide private alienation**—*Act VIII of 1859 s 240*—*Held* (MARKBY J dissenting) that a private *bonâ fide* alienation for value of property attached under Act VIII of 1859 made during the continuance of the attachment is by s. 240 of that Act null and void only as against the attaching creditor or persons who may acquire rights under or through the attachment and not as against the whole world. ANANDO LALL DASS v LADHAMOHAN SHAW

[2 B L R, F B, 49 11 W R O C, 1

Same case affirmed in the Privy Council ANUND LAL DASS v JULLODHUR SHAW

[10 B L R. 134 17 W R. 313
14 Moore's I. A 543

RAM CHARAN LAL v JHATU SAHU

[12 B L R. 413 note 14 W R. 25

BALMOKUND v RAMJIT DASS 13 W R. 134

215 ——— *Private alienation which does not interfere with any claim enforceable under a subsisting attachment*—The alienation which s. 276 of the Code of Civil Procedure is intended to prevent is an alienation which if permitted would defeat claims legally enforceable under the decree in execution of which the property alienated has been attached. When a private alienation of attached property is made under such circumstances that it in no way interferes with the rights secured by his decree to the attaching decree holder s 276 is no bar to such alienation *Narain Das* v *Sheambar Ahir Weekly Notes 1897 p 37* and *Anund Loll Doss* v *Jullodhur Shaw 10 B L R 134 14 Moore's I A 543* referred to ABDUL RASHID v GAPPO LAL

[I. L. R. 20 All. 421

216 ——— *Alienation during attachment*—*Civil Procedure Code (Act XIV of 1882) ss 483 484 485 486 487 488 489 490 276*—Any private alienation of a property attached before judgment during the continuance of the attachment is void as against all claims enforceable under the attachment The effect of an attachment of a property under the Civil Procedure Code whether made before or after decree is the same provided that in the former case a decree is made for the plaintiff at whose instance the attachment takes place *Raj Chunder Roy* v *Isser Chunder Roy Bourke O C, 139* referred to GANU SINGH v JANG LAL I. L. R. 26 Cal. 531

217 ——— **Effect of removal of attachment**—*Execution struck off from laches of decree holder*—Certain property was attached in execution of a decree and while the attachment was in force pottahs were granted to certain persons by the judgment-debtors Twelve years after the attachment no further steps having been taken in the matter the execution case was struck off the file and the property was afterwards mortgaged by the judgment debtors to P Subsequently a fresh attachment was issued at the instance of the heirs of the former attaching creditor under which the property was put up for sale subject to P's mortgage and P herself became the purchaser In a suit by R to set aside the pottahs granted during the continuance of the first attachment—*Held* that the prohibition against alienation of property under attachment avoids such alienation only as against the execution-creditor or persons entitled to claim under him A conveyance executed by the judgment debtor after an attachment has been removed and before a fresh attachment is issued is valid though the second attachment is under the same execution as the first *Quære*—Whether an alienation of property under attachment void as against the execution creditor becomes valid by relation when the attachment is removed. *Semble*—It may be presumed that an execution long neglected and finally struck off has ceased to be operative and in that case a judgment creditor's title will only date from any subsequent attachment which he may obtain PUDDOMONEE DOSSEE v ROY MUTHOORANATH CHOWDHRY

[12 B L R, 411 20 W R 133

GOONJESSUR KOONWAR v LUCHMEE NARAIN SINGH 20 W R. 418

ATONGINY DOSSEE v CHOWDHRY JUNMUNJOY MULLICK 25 W R 513

Quære—Would this decision apply where the delay was caused by the decree holder's willingness to give his debtor every indulgence and every opportunity of repaying the debt? *See per* GLOVER J INDURJEET KOER v LUCHMUN SINGH 24 W R 56

218 ——— *Presumption of abandonment of attachment*—A deed of alienation of certain property made pending an attachment of the property was held not to become valid by reason of the removal of the attachment It does not follow, because subsequent applications for attachment are made by a decree holder that the original one is abandoned DHIRAJ MAHATAB CHAND BAHADUR v SUBNOMOYEE DOSSEE

[12 B L R 414 note 15 W R 222

ATTACHMENT—*continued*

6. ALIENATION DURING ATTACHMENT —*continued*

219 ——————*Civil Procedure Code (1882) s 273—Dismissal for an application for execution—Attachment of a decree—Execution of attached decree*—The holder of a decree dated 1885 applied to execute it but his application was dismissed in March 1887 on the ground that no further steps had been taken' It did not appear that any notice was given to him before the order of dismissal was made Nevertheless the decree holder proceeded to execute a decree of the judgment debtor attached by him and brought to sale certain property which was in question in the present suit and it was purchased *bona fide* by the present defendant who obtained a sale certificate from the Court The present plaintiff claimed as assignee from the holder of the attached decree to execute it against the same land and now sued for a declaration that it was liable to be brought to sale by him and that the defendant s purchase was void as against him *Held* (1) that under the circumstances of the case the attachment in execution of the decree of 1885 was subsisting at the time of the purchase by the defendant (2) that a judgment creditor who attaches a decree is competent to execute it RANGASAMI CHETTI *v* PERIASAMI MUDALI I. L. R., 17 Mad. 58

220 ——————*Termination of attachment by abandonment*—The plaintiff had an attachment against certain property Owing to his not filing a necessary affidavit the execution petition was struck off Subsequently he applied for the sale of the property and the Court directed a fresh attachment to issue It was held that these facts did not amount to an abandonment of the first attachment by the plaintiff SRINIVASA SASTRIAL *v* SAMI RAU [I. L. R. 17 Mad. 180

221. ——————*Assignment of decree—Second attachment by assignee—Presumption as to cessation of prior attachment*—If at the date of the assignment of a decree the judgment debtor's property is already under attachment in execution of such decree it is not necessary for the assignee of the decree to apply for a fresh attachment When either the decree holder or his assignee applies to have attachment under the decree of property which has been previously attached under the decree it lies upon the decree-holder or the assignee of the decree as the case may be if the question is raised to show that the second application was unnecessary by reason of the first attachment being still subsisting Failing such evidence a Court may presume that the prior attachment had ceased before the application for a second attachment was made *Puddomonee Dossee* v *Muthoora Nath Chowdhry 12 B L R 411* referred to HAFIZ SULEMAN *v* ABDULLAH [I. L. R. 16 All. 133

222. ——————*Circumstances showing expiry of attachment*—An attachment which had at one time prohibited alienation of the property and on which the plaintiffs relied as having rendered the mortgage invalid was held under the circumstances to have been no longer in operation at the time when the mortgage was executed and the

ATTACHMENT—*continued*

6 ALIENATION DURING ATTACHMENT —*continued*

mortgage was upheld. MAHOMED MOZUFFER HOSSEIN *v* KISHORI MOHUN ROY [I. L. R. 22 Calc. 909 L. R., 22 I. A., 129

223 ——————*Order releasing property from attachment—Subsequent decree establishing attaching creditor's right to attached property—Mortgage of attached property between release and subsequent decree—Code of Civil Procedure (1882) ss 276 280 and 283*—A decree-holder attached the property of certain of the defendants who then obtained an order of release under s 280 of the Code of Civil Procedure and subsequently mortgaged the property The attaching creditor there upon sued for and obtained under s 283 of the Code a declaration that the mortgaged property was nevertheless liable to be sold under this attachment A few days after obtaining such decree he again attached the judgment debtor's property The mortgagees then sued on their mortgage and obtained a decree for sale The sale in execution of the attaching creditor's decree and that ordered by the decree in favour of the mortgagees were both advertised for the same day The plaintiff purchased at the sale under the attaching creditor s decree and then sued for a declaration that the property was not liable to be sold in execution of the mortgage-decree on the ground that the judgment creditor's attachment was restored by the decree under s 283 of the Code and that the mortgage executed by the judgment debtors was invalid as against the plaintiff the purchaser at the execution sale *Held* (affirming the decisions of the Subordinate Judge and the District Judge) that the plaintiff was entitled to the decree sought *Mahommed Waris* v *Pitambur Sein 21 W R 435* applied. BONO MALI LAI *v* PROSUNNO NARAIN CHOWDHRY [I L R. 23 Calc 829

224 ——————*Execution case struck off the file*—Where certain immoveable property having been attached the execution case was subsequently struck off the file and the judgment debtor applied again for attachment of the same property—*Held* looking to the particular circumstances of the case that a private alienation of the property after the date of such application but before attachment was not void under the provisions of s 240 of Act VIII of 1859 The principle of the High Court s decision in *Ahmud Hussain Khan* v *Muhammad Azim Khan 1 N W 51 Ed. 1873 48* followed. JAIB UN NISSA *v* JAIRAM GIR [I. L. R., 1 All. 616

225 ——————Alienation under irregular attachment—*Civil Procedure Code 1859 ss 239 240—Private alienation after attachment*—Certain land was attached in the execution of a decree in the manner required by s 235 of Act VIII of 1859 but a copy of the order of attachment was not as required by s 239 of that Act fixed up in a conspicuous part or in any part at all of the Court house of the Court executing the decree nor was it sent or fixed up in the office of the Collector of the

ATTACHMENT—*continued*

C ALIENATION DURING ATTACHMENT —*continued*

district in which the land was situated. Subsequently to the attachment of the land, the judgment-debtor privately alienated it by sale *Held* that as the attachment had not been made known as prescribed by law the provisions of s 240 of Act VIII of 1859 did not apply and the sale was not null and void. *Indra Chandra v Agra and Masterman's Bank* 1 B L R N X 90 10 W R 294 followed. NUR AHMAD v ALTAF ALI I. L. R., 2 All, 58

226 ———Alienation under attachment to satisfy future default—*Decree for money payable by instalments—Act VIII of 1859 ss 240 243 244* — A obtained a decree against B for a sum payable by instalments. B made default in payment of an instalment and A attached certain immoveable property belonging to B While under attachment B sold the property to C and out of the price he paid into Court the full amount of the debt then due and for which the property had been attached. A took out the money but applied for and obtained an order from the Munsif that the property should remain under attachment in order to satisfy any future sum which should fall due under the decree and in payment of which B should make default B failed to pay a further instalment when due and A obtained an order for sale of the property A himself became the purchaser and was put in possession by the Court notwithstanding the claim of C who had been in possession ever since his purchase In a suit by C to recover possession —*Held* the Court had no power to make the order continuing the attachment the right of attachment being only for sums actually due and the whole amount for which execution issued being satisfied out of the proceeds the alienation of the property to C was not void as against A RAMDHAN MITTER v KAILAS NATH DUTT

[4 B L R A C 20 12 W R 457

227 ———Alienation under attachment not properly executed—*Suit for money paid to stay foreclosure—Act VIII of 1859 s 240—Mortgage—Lien* —In execution of a decree A the judgment creditor obtained an order for the attachment of certain property of B the judgment debtor but it was not executed as required by Act VIII of 1859 The property was however advertised for sale and B obtained an order staying the sale on a petition alleging that A had agreed to give him time on condition that the attachment should remain good and declaring that he (B) would not alienate the property until the whole of the decree was satisfied. Subsequently B mortgaged a portion of this property to C A assigned his decree to D upon whose application the property was attached and sold and E became the purchaser C having taken steps to foreclose the mortgage E to prevent such foreclosure paid the amount into Court *Held* that E could not maintain a suit against C to recover the amount so paid by him. The mortgage by B was not an alienation null and void under s 240 Act VIII of 1859 B's petition did not create a charge upon the property in favour of A RAMESWAR SINGH v SANTANU GHOSE 4 B. L. R., A. C 24

PUTNESSUR SING v RAM TANOO GHOSE [12 W R. 491

228 ———Alienation made under agreement for satisfaction—*Sanction of Court Civil Procedure Code 1859 s 240* —The plaintiff sued to recover certain land which had been hypothecated to him in 1843 and subsequently sold to him in 1868 while under attachment in execution of a decree in a suit brought by the plaintiff to establish his hypothecatory claim The third defendant claimed under a mortgage prior in date to the hypothecation to the plaintiff and under a sale prior in date to the sale to the plaintiff made to the third defendant whilst the land was under attachment in execution of the decree to the plaintiff *Held* that the sale to the third defendant which was made not under any agreement with the plaintiff for the satisfaction of the decree through the Court was invalid by reason of s 240 of the Civil Procedure Code but that the alienation to the plaintiff the decree holder during the attachment to satisfy the decree which was duly sanctioned by the approval of the Court which issued the process of attachment was valid ANNAVUNADAVAN v IYASAWMY PILLAY 6 Mad. 65

229 ——— Sale by consent of judgment creditor—*Subsequent withdrawal of attachment* —Where a judgment debtor raised a sum of money by a sale of part of the attached property and devoted some part of that money to a payment on account to the judgment creditor and the judgment creditor thereupon withdrew from the execution and from the attachment of the property —*Held* that the attachment would not invalidate the sale PRANNATH MITTER v SUMBHOO CHUNDER NATH [7 W R., 430

230 ———Mortgage pending attachment—*Civil Procedure Code 1859 s 240* —*Held* by LOCH and L JACKSON JJ that a mortgage of any kind made after attachment is such an alienation as is contemplated by s 240 Act VIII of 1859 and is null and void MUNNOO LALL v REET BHUNGUN SINGH 9 W R. 544

231. ———*Civil Procedure Code (1882) s 276—Lease of property under attachment* —*Held* that a zuri peshgi lease and an ordinary agricultural lease made by a judgment debtor of property under attachment were alienations which were void by reason of the prohibition contained in s 276 of the Code of Civil Procedure DEVI PRASAD v BALDEO I. L. R. 18 All. 123

232 ———Requirements of attachment not complied with—*Civil Procedure Code 1859 s 240* —Before an attachment can be relied on under s 240 Code of Civil Procedure for the purpose of invalidating any subsequent alienation it must be shown to have been duly made by a written order issued and published *viz* the prohibitory notice prescribed by law DWARKANATH BISWAS v RAM CHUNDER ROY 13 W R., 136

ATTACHMENT—*continued*

6 ALIENATION DURING ATTACHMENT —*continued*

233 ——————— *Civil Procedure Code 1859 ss 235 239 and 240* —*Held* that the alienation of property cannot be declared void under the provisions of s 240 Act VIII of 1859 where no attachment order was issued or notified in the manner prescribed by ss 235 and 239 of the said enactment Where there was no attachment after the manner prescribed in Act VIII of 1859 but the property was advertised for sale and the judgment debtor encumbered the property with lien —*Held* that the decree holder could sell the property but subject to liens which were not otherwise proved to be collusive SAHOO CHUND v GEETUM SINGH [2 Agra, 206

234 —— Civil Procedure Code 1859 s 240 (1882 s 276) Object of—*Civil Procedure Code 1859 ss 240 270 and 271* —A private alienation of property while under attachment is null and void only as regards the attaching creditor and those who claim under or through the attachment *Anund Lall Doss* v *Jullodhur Shaw* 10 B L R 134 17 W R 313 followed Act VIII of 1859 s 240 is for the benefit of an attaching creditor (subsequent to and in defiance of whose attachment the private alienation thereby declared void has been made) and of those claiming under or through him and not for the benefit of puisne attaching creditors whose attachment is laid later than such private alienation BALAJI RAMCHANDRA v GAYANAN BABAJI 11 Bom., 159

235 ———— Effect of good attachment on alienation —*Voidable alienation* —An alienation of property while under attachment is not absolutely void for all purposes and as to all persons but voidable only and capable of confirmation MAHOMED ALI v GOKUL CHUND [1 N W 19 Ed 1873 18

e g as in case of the decree being set aside JUGGUT NARAIN v TOOLSEE RAM 10 W R. 99 [1 B L R. A. C 71

236 ——— ——— ——— *Voidable alienation*—*Civil Procedure Code 1859 s 240* —An alienation of property attached in execution of a decree made for the *bona fide* purpose of satisfying the decree in respect of which the attachment has been made and where the consideration for the alienation is applied to and is found to be sufficient for the satisfaction of the decree is not invalid under s 240 of the Code of Civil Procedure PURMESHUR RAI v HIDAYUTOOLLAH MEHPAL RAI v HIDAYUTOOLLAH 1 N W 60 Ed. 1873 114

237 ———— Alienation after satisfaction but before removal of attachment—*Civil Procedure Code 1859 s 240* —A judgment debtor satisfied a decree under which attachment of his property had been made He reported the satisfaction to the Court and on the following day he executed a mortgage of his property The day after the execution of the mortgage the attachment was removed by the Court *Held* that the mortgage if *bona fide* was not null and void under s 240 of the Code of Civil Procedure BULDEE SINGH v KANAHA 1 N W 71 Ed 1873 125

238 ———— Private alienation Meaning of—*Civil Procedure Code 1859 s 240*—*Insolvent Act s 7*—*Vesting order* —The expression private alienation in s 240 of the Code of Civil Procedure does not refer to an alienation effected by a vesting order of the Insolvent Court under s 7 of the Indian Insolvent Act such an alienation is rather an alienation by operation of law than one by the judgment debtor SARKIES v BUNDHOO BAEE 1 N W Part 6 p 81 Ed. 1873, 172

239 ———— Illegal alienation—*Civil Procedure Code 1859 s 240* —Any alienation of property after attachment is illegal under s 240 Act VIII of 1859 JADUBANUND POY v BEJOY GOBIND CHOWDRY 7 W R., 511
MOORUL SINGH v MOHUN KOOER 9 W R. 167
MONOHUR LALL v JUGGOMOHUN LALL [9 W R. 307

240 ———— Prior lease for attached property —Where landed property is attached in execution of a decree the party attaching is bound by a lease obtained for it prior to his attachment LEGREDO v MAHOMED MUDESSUR 15 W R. 75

241 ———— Alienation after one decree and before another—*Civil Procedure Code 1859 s 240* —Although under the provisions of s. 240 of Act VIII of 1859 a private alienation by sale of property after attachment can be impugned by the holder of the decree in execution of which it was attached if obstructive of the execution yet such alienation cannot be impugned by the holder of the decree under those provisions because it obstructs the execution of another decree obtained by him subsequently to the date of the alienation MAHBUBAN v RAHEEMUN 6 N W 217

242 ———— Alienation with knowledge and consent of creditor attaching—*Civil Procedure Code 1859 s 240* —While certain immoveable property was under attachment the judgment debtor mortgaged it for value to the Mussoorie Savings Bank with the knowledge of the attaching creditor the Delhi Bank which acquiesced in and benefited by the mortgage The property was subsequently released from attachment but was again attached and was brought to sale in execution of the decree held by the Delhi Bank and purchased by the defendants The Mussoorie Savings Bank sued the auction purchasers claiming the right to bring the property to sale on the ground of its being under mortgage to the Bank prior to its purchase by the defendants It was held that under the circumstances the defendants must take the consequences of having purchased the property without having satisfied themselves as to its condition Had it not been for the conduct of the Delhi Bank however the rule that a private *bona fide* alienation for value of property attached under Act VIII of 1859 is by

ATTACHMENT—continued

6 ALIENATION DURING ATTACHMENT—continued

virtue of s. 240 of the Act null and void only as against the attaching creditor or persons who may acquire rights under or through the attachment would have saved the defendants, and it would have done so, notwithstanding that the sale of the property in suit took place in pursuance of a second attachment DHURRUM DAS v. MUSSOORIE SAVINGS BANK

[6 N W. 290

243 ——— Civil Procedure Code (1882) s 276—Kanom granted during a subsisting attachment—Subsequent discharge of judgment-debt and other later attachments—Claim for rateable distribution—Effect of discharge in rendering first attachment inoperative as against all creditors—A kanom was executed by the karnavan of a tarwad in plaintiff's favour for valuable consideration for the discharge of judgment-debts decreed against the tarwad. On or before the date of the said kanom plaintiff's father had placed under attachment the properties covered by the kanom deed in execution of one of the said decrees but the claim having been satisfied no Court sale followed While the said attachment was still subsisting and at a date later than that of the kanom first defendant and other judgment-creditors applied for and obtained orders for the attachment of the same properties On plaintiff suing to establish the validity of his kanom it was contended that in consequence of the said attachment first defendant would be entitled to rateable distribution under s 295 of the Code of Civil Procedure and that this was a claim enforceable under the attachment within the meaning of s. 276 Held that the kanom was valid The attachment subject to which the kanom had been granted ceased to be operative both as regards the attaching creditor and the other judgment-creditors when the judgment-debt was discharged and there could be no sale by the Court and no right on the part of the other creditors in the circumstances to apply for such a sale KUNHI MOOSSA v. MAKKI

[I. L. R. 23 Mad 478

244. ——— Title acquired by private purchaser—Incumbrance created after attachment—Civil Procedure Code (Act VIII of 1859) s 240—The title obtained by the purchaser on a private sale of property in satisfaction of a decree differs from that acquired upon a sale in execution Under a private sale the purchaser derives title through the vendor and cannot acquire a title better than his Under an execution sale the purchaser notwithstanding that he acquires merely the right title and interest of the judgment debtor acquires that title by operation of law adversely to the judgment debtor and freed from all alienations and incumbrances effected by him after the attachment of the property sold In 1858 the respondent obtained a decree against B In 1863 in satisfaction thereof he caused to be attached a decree for mesne profits made in favour of B against the appellants in 1860 In May 1865 the respondent obtained an order for the sale thereof but instead of proceeding to execution sale he purchased in 1866 the whole of the mesne profits due under the decree of 1860 by private sale from B Meanwhile in September 1865 an order of Court had been made between B and the appellants on their consent (but without the respondent being a party to it) whereby the decree for mesne profits was set off pro tanto against a prior decree for a larger amount which the appellants had obtained against B Held that the sale of 1866 having been a private one and not in process of execution the respondent only obtained such title as B had in the decree of 1860—viz. a title subject to the effect of the order of September 1865 DINENDRONATH SANIAL v. RAMKUMAR GHOSE TARACHANDRA BHUTTACHARJIA v. BAIKANTNATH SANIAL

I. L. R. 7 Calc 107
[L. R. 8 I. A. 65 10 C L. R. 281

245 ——— Renewal of mortgage already existing —A renewal of a mortgage already existing on the property prior to attachment which does not enhance the charge is not an alienation within the meaning of s 276 of the Code of Civil Procedure MAHADEVAPPA v. SRINIVASA RAU

[I. L. R. 4 Mad. 417

246 ——— Alienation under attachment making material error in description of property—Civil Procedure Code 1877 s 276—Attachment of immoveable property—Private alienation after attachment —Application was made for the attachment in execution of a decree of a muafi holding belonging to the judgment debtor The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue paying lands and were not the numbers and areas of any lands held as muafi by the judgment debtor The order of attachment described the property as described in the application for attachment The judgment debtor having alienated by sale a muafi holding belonging to him the decree holders sued to have such alienation set aside as void under the provisions of s 276 of Act X of 1877 Held that having regard to the description given in the application for attachment and the order of attachment it could not be said that the muafi holding alienated by the judgment debtor was under attachment at the time of the alienation and its alienation was therefore not void under s 276 of Act X of 1877 Held also that the material misdescription of the property in this case in the order of attachment protected the alienees who are bonâ fide purchasers from having the alienation set aside as void under s 276 as the attachment could not under the circumstances be held to have been duly intimated and made known as required by that section GUMANI v. HARDWAR PANDEY

I. L. R. 3 All 698

247 ——— Conveyance under award directing it—Civil Procedure Code 1877 s 276—Decree in accordance with award—Execution of conveyance—Private alienation —By agreement between L and Q the parties to a suit the matters in difference between them were referred to arbitration

ATTACHMENT—*continued*

6 ALIENATION DURING ATTACHMENT —*continued*

An award was made directing that *L* should transfer certain property to *Q* by way of sale Between the day the award was made and the day a decree was made in accordance with the award such property was attached in execution of a decree against *L* After the attachment *L* in compliance with the decree made in accordance with the award executed a conveyance of such property to *Q* *Held* by the Full Bench (affirming the decision of STRAIGHT J and reversing that of SPANKIE J) that such conveyance was not a private alienation in the sense of s 276 of Act X of 1877 and was therefore not void under that section as against a claim enforceable under such attachment QURBAN ALI *v* ASHRAF ALI **I. L. R. 4 All 219**

248 ——— Expiry of attachment Effect of on alienation—*Civil Procedure Code s 276* —A private alienation of property under attachment is void under s 276 of the Civil Procedure Code as against all claims enforceable under the attachment only Where therefore property attached in execution of a decree was alienated and was after such alienation again attached the first attachment having expired and was brought to sale in pursuance of the second attachment and the purchaser sued for possession of the property claiming on the ground that the alienation of the property was void under the provisions of s 276 —*Held* that as no claim was enforced or was enforceable under the first attachment under which the property was alienated but the purchaser was claiming under the second attachment such alienation could not be assailed under the provision of s 276 GOBIND SINGH *v* ZALIM SINGH **I. L. R. 6 All. 33**

249 ——— Alienation after imperfect attachment of immoveable property—*Private alienation after such attachment—Civil Procedure Code ss 274 276 292 sch IV No 141* —A judgment debtor whose property had been attached in execution of a money decree sold the property and out of the price paid into Court the amount of the decree and prayed that the attachment might be removed. While the attachment was subsisting and prior to the sale the holders of other money decrees against the same judgment debtor preferred applications purporting to be made under s 295 of the Civil Procedure Code and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditor The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment debtor was a *bona fide* transaction entered into for valuable consideration *Held* that inasmuch as no order for attachment of the property was passed in favour of the decree holders in manner provided by s. 274 of the Civil Procedure Code their claims were not entitled to the protection conferred by s 276 against private alienations of property under attachment that these claims were not enforceable under the attachment which was made that the sale by the judgment debtor was valid; and that execution of the decrees could not take place *Per* MAHMOOD *J* —That s. 276 of the Civil Procedure Code being a restriction of private rights of alienation should be strictly construed that before property can be subjected to such restriction there must be a perfected attachment that the orders passed under s 295 did not amount to such attachment and that even assuming them to amount to such attachment they not having been duly intimated and notified could not make the prohibition of s 276 applicable to the case *Mahadeo Dubey* v *Bhola Nath Dichit I L R 5 All 86 Anand Lall Dass* v *Jullodhur Shaw 14 Moore s I A 543 10 B L R 131 Rameswar Singh* v *Ramtanu Ghose 4 B L R A C 24 Indro Chunder Baboo* v *Dunlop 10 W R 264 Gobind Singh* v *Zalim Singh I L R 6 All 33* and *Gumani* v *Hardiwar Pandey I L R 6 All 698* referred to GANGA DIN *v* KHUSHALI **[I. L. R., 7 All. 702**

250 ——— Claim to rateable distribution under s 295—*Civil Procedure Code ss 276 295* —A claim under s 295 of the Civil Procedure Code is not enforceable as an attachment against which an assignment is rendered void by the provisions of s 276 *Ganga Din* v *Khushali I L R 7 All 702* followed. In June 1883 *A B* and *C* obtained separate money decrees against amongst others *T* as executor under the will of his father Some time in 1884 *B* attached the whole of the testator s properties in execution of his decree and *A* and *C* applied for rateable shares in the sale proceeds On the 2nd June 1884 the parties came to an arrangement by which it was agreed that *B* s claims should be satisfied by means of all the attached properties with the exception of one which should be left free for the benefit of the other judgment creditors By a deed dated the 16th June but which was found to have been actually executed on the 17th *T* conveyed this property to *A* and on the 17th June all the other attached properties were sold in execution of *B* s decree and on the same day *B* put in an application for the removal of his attachment from this property *D* another decree holder on the 16th June applied to be included in the rateable distribution of the properties attached by *B* and on the 30th June *D* attached the property sold to *A* in execution of his decree *A* preferred a claim to the property which was disallowed and *A* thereupon brought a suit to establish her right to it on the ground (*inter alia*) that *B* s attachment had ceased to exist on the date of her purchase and that the sale was a valid one *Held* that the sale to *A* was valid against *D* DURGA CHURN ROY CHOWDHRY *v* MONMOHINI DASI **I. L R 15 Calc 771**

251 ——— Sale of tenant's interest by landlord pending attachment by Civil Court—*Madras Act VIII of 1865 s 39—Civil Procedure Code ss 276 295* —The interest of a tenant in certain land having been attached by his creditor in execution of a decree for money the landlord attached the same land for arrears of rent

ATTACHMENT—*continued*

6. ALIENATION DURING ATTACHMENT —*concluded*

brought it to sale and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid,—*Held* that the landlord's purchase was subject to the creditor's attachment. SUBBA MANYA v RAJARAM I. L. R. 8 Mad., 573

252. ———— **Attachment for arrears of revenue—Subsequent attachment in execution of decree**—*Madras Abkari Act (Madras Act I of 1866)*, s 28.—Certain land was put under attachment for arrears of revenue under the Madras Abkari Act, s. 28; the same land was subsequently attached in execution of a money decree against the defaulter, and the defendant purchased it at the Court sale. The Collector of the district intervened in execution and objected to the sale of the land in question, but his objection was rejected. A suit was now brought in the name of the Secretary of State for a declaration that the land was liable for the arrears of revenue in respect of which the attachment under Abkari Act had been made. *Held* that the plaintiff was entitled to the declaration asked for. SARANGAPANI v SECRETARY OF STATE FOR INDIA [I. L. R. 16 Mad., 479

7. ATTACHMENT PENDING APPEAL

253. ———— **Attachment before judgment**—*Continuation of attachment*.—A plaintiff before judgment attached defendant's property, but the suit was dismissed by the High Court on appeal. He filed an appeal to the Privy Council, and on his application the High Court held that it could not continue the attachment over the defendant's property pending the appeal of the plaintiff to the Privy Council, nor could it call on the defendant respondent to give security for the value of the property attached before being allowed to remove it. IN RE DITTA HARAKMAN SING 3 B L R F B 45

IN THE MATTER OF DITTA HARUCKMAN SINGH v MODHOOSUDUN PYNE 12 W R. F B 16

8. LIABILITY FOR WRONGFUL ATTACHMENT

254. ———— **Claim to attach property**—*Civil Procedure Code, ss. 278, 283, 483—Attachment before judgment—Liability of creditor who caused attachment of goods not belonging to the debtor—Damages after sale—Difference between English and Indian law on the subject*.—Orders for attachment in security under s. 483 of the Civil Procedure Code being issued on the *ex parte* application of the creditor, who is bound to specify the property which he desires to have attached and its estimated value, it follows that the attachment is the direct act of the creditor for which he is immediately responsible. Should the goods be proved not to belong to the debtor the litigation and delay and also any depreciation of the goods by an intermediate fall in the market between attachment and sale are the natural and necessary consequences of the creditor's unlawful act. The plaintiff having taken without success the summary proceeding under s. 278 to get the release of goods attached under s. 487 in a suit to which he was not a party, afterwards in a suit brought by him in accordance with s. 283 established his right of property in the goods. *Held* that (*a*) in order to entitle him to the full indemnity for the wrongful attachment he was not bound to allege and prove that the defendants had resisted his previous application under s. 278 maliciously or without probable cause; and that (*b*) the goods having been sold under the Court's order, the difference in market value of the goods at the time of their attachment (November 1883) and their price when they were sold (June 1884), the selling prices having fallen intermediately, must be added to the damages. *Held* also that, without bringing under review the judgment under s. 278, the effect of the judgment in the suit brought in accordance with s. 283 was to supersede the order under s. 278 and to render it inconclusive. The procedure on attachment not being the same in India as in England, where a judgment creditor is not responsible for the consequence of a sale, under a judicial order, of goods taken in execution in satisfaction of his debt, that proposition does not hold good under the Indian procedure, and *Walker v Olding*, 1 *H & C* 621; 9 *Jur N S* 53; 32 *L J Exch* 142, is inapplicable to the latter. KISSORIMOHUN ROY v HARSUKH DAS [I. L. R. 17 Calc 436
L R., 17 I A 17

9. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT

255. ———— **Effect of striking off execution proceedings, how it affects attachment**.—The striking an execution proceeding off the file is an act which may admit of different interpretations according to the circumstances under which it is done, and no general rule can be laid down which would govern all cases of that kind; but having regard to the circumstances of the present case, *viz.* that the Court below had no opportunity of considering the circumstances under which the several execution proceedings were dismissed, it could not be held that there was no subsisting attachment, and that the order of the Court was bad in law. BHAGWAN RAMANUJ DAS v KHETTER MONI DASSI [1 C W N 617

256. ———— **Revival of attachment on reversal of sale in execution of decree**.—An attachment once legally made, is revived upon the reversal of the sale in execution. GUNNO SINGH v MUDDUN MOHUN SINGH W R 1864 26

MOHESH NARAIN SING v KISHNANUND MISSER [2 Ind. Jur O S. 1: 5 W R. P C 7
Marsh. 592: 9 Moore's I. A 324

257. ———— **Striking off case for neglect to pay talabana fees**.—An attachment

ATTACHMENT—*continued*

9 STRIKING OFF EXECUTION PROCEEDINGS EFFECT OF ON ATTACHMENT —*continued*

cannot subsist when the suit has been struck off for neglect to pay in the talabana for the service of the necessary sale processes PURBHOO DOSS v GOMA BHUJUN SINGH 5 W R. Mis. 4

258 ———— Extinguishment of attachment—*Act VIII of 1859 s 270—Execution of decree—Striking off execution case—Money decree* —*A* obtained a decree against *C* for possession and mesne profits but no specific amount of mesne profits was then assessed In 1864 *A* in execution of his decree attached land belonging to *C* but the execution case was struck off the file in 1865 After several ineffectual proceedings *A* re-attached the property in March 1869 In execution of a decree against *C B* had in February 1869 attached the same property The property was sold under *A's* attachment in May 1869 and on the application of *A* the Subordinate Judge on the strength of *A's* attachment in 1864 gave priority to *A's* claim over that of *B* The balance of the sale proceeds after satisfaction of *A's* decree was only sufficient to cover a small portion of the decree obtained by *B* In a suit by *B* against *A* under s 270 Act VIII of 1859 to recover the amount of her claim which remained unsatisfied —*Held* that the attachment of *A* in 1864 on the strength of which *A's* claim was considered by the Subordinate Judge to have priority over that of *B* was not a sufficient and valid attachment under s 270 The attachment contemplated by that section means an attachment after a final money decree *Held* also that the striking off of the execution case of *A* in 1865 caused an extinguishment of the effect of the attachment of 1864 BINDA BIBEE v LALLA GOPEENATH

[14 B L R. 323 21 W R. 66

259 ———— *Striking off execution case* —The striking off of an execution proceeding affects only the files of the Court and the application for sale and does not interfere with the continuance of any attachment under the decree which is executed NADIR HOSSAIN v PEAROO THOVILDARINEE 14 B L R. 425 note 19 W R., 255

JUGOBUNDHOO SEIN v BHUGWAN CHUNDER DOSS 17 W R., 15

260 ———— *Effect upon maintenance of attachment of order dismissing application for execution* —Where property has once been attached in execution of a decree an order merely dismissing an application for execution which order does not contain specific words withdrawing the attachment and which is not an order declaring the decree incapable of execution will not have the effect of raising the attachment and if in appeal such order is set aside the decree holder will be in the same position as he was before and entitled to the full benefit of the attachment *Ganga Rai v Sakeena Begum 5 N W 72 Nadir Hossein v Pearoo Thorildar nee 14 B L R 425* and *Golam Yaheya v Sham Soonduree Kooeree 12 W R 142* referred to BANK OF UPPER INDIA v SHEO PRASAD

[I. L. R, 19 All. 482

ATTACHMENT—*continued*

9 STRIKING OFF EXECUTION PROCEEDINGS EFFECT OF ON ATTACHMENT —*continued*

261 ———— Continuation of attachment.—If property is once attached the attachment will subsist if not expressly abandoned by the party at whose suit it was issued until an order is issued for its withdrawal even although no further steps are taken on the attachment within a reasonable period A mere striking of the execution case off the file by the Court of its own motion without notice to or consent of parties will not invalidate an attachment JHATU SAHU v RAMCHARAN LAL

[3 B L R. Ap, 68 11 W R. 517

RAMCHARAN LALL v JHATU SAHU

[12 B L R., 413 note 14 W R., 25

262 ———— *Striking off execution case—Release from attachment* —The striking off of a case from the file while pending in execution does not release a property from attachment GOLAM YAHEYA v SHAMA SUNDORI KUARI

[3 B L R. Ap 134 12 W R. 142

Contra KHADEM HOSSEIN KHAN v KALEE PERSHAD SINGH 8 W R. 49

263 ———— Attachment before and after decree—*Striking off execution sale proceedings* —*Held* that attachment issued after suit supersedes the attachment order obtained during the pendency of the suit and that the former was taken off the property when the sale proceedings were struck off the file RAM JEWAN v RAM LALL

[2 Agra 190

264 ———— Implied withdrawal of attachment —The implied withdrawal of an order of attachment even though such order was not formally withdrawn but was understood to be withdrawn by the decree holder bars objection against the validity of alienation of the attached property by mortgage or otherwise JUGUN NATH v GHASEERAM

[1 N W 32 Ed. 1873 30

265 ———— Case struck off for convenience of Court—*Stay of execution for fixed period* —Execution cases in which a sale or other proceedings are stayed for a fixed period at the request of the debtor and with the consent of the decree holder should not be struck off till that period has expired and if struck off for the convenience of the Court by an order which provides for the continuance of the attachment sale may follow within the said period without a fresh attachment CHUMUN LALL CHOWDHRY v DOMUN LALL 9 W R. 205

266 ———— *Stay of execution for fixed period* —Certain property having been attached and advertised for sale in execution of a money decree the decree holder asked the Court to stay further proceedings for six weeks as the debtor had made part payment praying that the attachment might be considered to be still in force The execution case was accordingly removed from the file. *Held* that the order striking the case off the file for the convenience of the Court did not put an end to the attachment *Held* (JACKSON, J dissenting) that

ATTACHMENT—*continued*

9 STRIKING OFF EXECUTION PROCEEDINGS EFFECT OF ON ATTACHMENT —*continued*

the attachment continued in force notwithstanding a year's delay on the part of the judgment-creditor in applying again for execution DaCosta v Kaleb Ershad Singh 12 W R. 260

267 ——— Order striking off attachment pending appeal.—An order striking off an attachment pending an appeal does not release the property from attachment. Shew Narain Singh v Miller 17 W R. 234

268. ——— Re-attachment—*Abandonment of attachment*—*Semble*—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree Ramkrishna Das v Surbowji v Surfunnissa Begum [I. L. R. 6 Calc., 129

269 ——— Stay of execution, keeping attachment in force—*Case struck off the files of the Court*—Where a sale of attached property is stayed by a Court upon the application of the judgment-debtor on condition of the attachment remaining in force the subsequent striking off of the application for execution from the file of the Court does not affect the rights of the decree holder Mungul Pershad Dichit v Girja Kant Lahiri [I. L. R., 8 Calc., 51 11 C L. R., 113 L. R., 8 I. A., 123

270 ——— Order postponing sale and striking case off the file—*Effect of on attachment*—Where property has been attached in execution of decree and the parties applied that the sale might be postponed, the Court executing the decree ordered the sale to be postponed, and the case to be struck off the file *Held* by the majority of the Court—the Chief Justice and Roberts Turner and Spankie JJ (Ross and Pearson JJ dissenting)—that inasmuch as there was no order passed directing the removal of the attachment but on the contrary it appeared that it was the intention of the Court and of the parties that the attachment should continue the direction that the case should be struck off the file of pending cases did not operate to remove the attachment Ahmud Hossein Khan v Mahomed Azeem Khan 1 N W 5 Ed. 1873 48 [Agra F B Ed 1874 175

271. ——— Case struck off file of pending cases—*Effect of on attachment*—A case of execution of decree in which an attachment had been taken out was struck off the file of pending cases by the order of the Court executing the decree The plaintiff never asked for or consented to the withdrawal of the attachment nor did the Court by any formal order withdraw the attachment *Held* that the attachment was not terminated by the order which struck the case off the file of pending cases Mookheshur Rai v Ramphul Sahoo 5 N W 70

272. ——— *Effect of on attachment*—The attachment of property by a judgment-creditor ceases on his execution case being struck off the file and he is remitted to his former position of a simple judgment-creditor and must begin *de novo* and re-attach the property before a sale at his instance can take place Luchmeeput v Lekraj Roy [8 W R 415

273 ——— Attachment without direction that money should be held subject to further order—*Dismissal of suit*—*Effect of on attachment*—*Civil Procedure Code 1859 s 237*—Where an attachment of money in the hands of a Deputy Collector was made by a Civil Court without any such direction as is enjoined by s 237 Civil Procedure Code that the money should be held subject to the further order of the Court it was held that the attachment ceased to be binding when once the suit was dismissed. Luchmeeput Singh Doogur v Humphrey 14 W R. 101

274 ——— Release of property from attachment—*Civil Procedure Code 1859 s 246*—*Effect of decree in suit to establish right*—Certain property having been released from attachment on a claim made under Act VIII of 1859 s 246 the attaching creditor brought a suit and obtained a decree establishing his right of attachment *Held* that the effect of that decree was to set aside the order of release and to restore the state of things which it had disturbed Mahomed Wahris v Pitambur Sen 21 W R 435

275 ——— Stay of execution on security pending appeal—*Alienation pending attachment*—*Striking off execution case on inability to give security*—While an appeal from a decree was pending before the Privy Council the decree holder (*M*) applied for execution and attached the property of the judgment debtor (*B*) who thereupon obtained an order of the High Court for stay of sale until security could be furnished The decree holder having failed to furnish adequate security the execution case was struck off The appeal to the Privy Council having been dismissed the decree holder revived execution proceedings adding costs and interest to her original claim Upon this a third party intervened and objected to the attachment on the ground that he had obtained a mokurari pottah of the properties from *B* s representative The objection having been allowed under Act VIII of 1859 s 246 *M* brought a suit to have the mokurari declared to be invalid and fictitious *Held* that plaintiff was not required to cause *M* s admitted proprietary right to be sold before she could maintain her suit *Held* that the act of the Court in striking off the execution proceeding because of the inability of the decree holder to furnish the required security was only for the convenience of business and it left intact all the proceedings which had been taken up to that stage nor did the decree holder abandon the attachment which was therefore subsisting when the mokurari pottah was granted Accordingly the alienation of the property by the pottah was invalid and inoperative Soondur Singh v Buhoobia Alum Basheb [24 W R. 36

ATTACHMENT—*concluded*

9 STRIKING OFF EXECUTION PROCEEDINGS EFFECT OF ON ATTACHMENT —*concluded*

276 ———— **Sale at instance of one attaching decree holder during the pendency of other attachments**—*Priority of attaching creditors—Rival decree holders—Civil Procedure Code (Act VIII of 1859) ss 240 242 and 270 and Act XIV of 1882 ss 284 and 295* —When a property is sold in execution of a decree it cannot be sold again at the instance of another decree holder who may have attached it before the attachment effected by the decree holder under whose decree it is actually sold and when a judicial sale takes place all previous attachments effected upon the property sold fall to the ground. KASHY NATH ROY CHOWDHRY *v* SURBANAND SHAHA

[I L R 12 Calc, 317

277. ———— **Stay of execution and striking off case for the present** —*Duration of attachment—Effect of mortgage made after striking off of execution proceedings* —An application for execution of a simple money decree having been made on the 6th December 1873 and fresh attachment made thereon in terms of an arrangement between the judgment debtor and the decree holder the proceedings were on the 31st December 1873 stayed for a month and the execution case was by an order struck off for the present the judgment debtor undertaking not to alienate certain property in the meantime Nothing was done by the decree holder until the 30th November 1874 when a fresh application for attachment and sale was made On the 2nd February 1874 the judgment debor had mortgaged the property in question *Held* that on that date there was no subsisting attachment and that from that time the mortgage lien attached to the property GUNGA GOTTI PAL *v* RAM SUNDER DUTT

[8 C L R., 157

ATTAINDER LAW OF—

See ENGLISH LAW

[I. L. R. 16 Mad. 384

ATTEMPT TO COMMIT OFFENCE

See CRIMINAL INTIMIDATION

[I. L. R. 11 Bom 376

See RAPE I. L. R. 5 Bom. 403

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION 21 W R. Cr., 35

I. L. R. 3 All. 773

I. L. R., 5 Bom. 140

I. L. R. 14 Calc. 357

I. L. R. 17 All. 120 123

1. ———— **Acts necessary to constitute an attempt**—*Penal Code s 511* —S 511 of the Penal Code was not meant to cover only the penultimate act towards completion of an offence and not acts precedent if these acts are done in the course of the attempt to commit the offence are done with the intent to commit it and done towards its commission. Whether any given act or series of act

ATTEMPT TO COMMIT OFFENCE —*continued*

amounts to an attempt of which the law will take notice or merely to preparation is a question of fact in each case IN THE MATTER OF THE PETITION OF MACCREA I L R 15 All, 173

2 ———— *Mischief by fire —Possession of a fire ball* —*Held* by GLOVER J that incendiarism having on several occasions occurred in a village produced by a ball of rag with a piece of burning charcoal within it and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti which contained burning charcoal he is under s 511 of the Penal Code guilty of an attempt to commit mischief by fire The possession of the instrument to commit mischief by fire and the going about of the person with it are sufficient to raise a presumption that he intended to commit the act and had already begun to move towards the execution These facts are sufficient to constitute an attempt *Held* by MITTER J that the possession of a fire ball and moving about with it cannot support a conviction under ss 436 and 511 of the Penal Code These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling To constitute an offence under s 511 of the Penal Code it is not only necessary that the prisoner should have done an overt act towards commission of the offence but that the act itself should have been done in the attempt to commit it QUEEN *v* DAYAL BAWRI

[3 B L R A C., 55

3 ———— *Attempt when offence could not be committed* —A person cannot be convicted of an attempt to commit an offence under s. 511 of the Penal Code unless the offence would have been committed if the attempt charged had succeeded IN THE MATTER OF THE PETITION OF RIASAT ALI EMPRESS *v* RIASAT ALI

[I. L. R. 7 Calc 352 8 C L. R 572

4. ———— **Attempt to murder**—*Inconsistency between English Law and Penal Code* —In order to constitute the offence of attempt to murder under s. 307 of the Penal Code the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events *Aliter* under s. 511 taken in connection with ss 299 and 300 Therefore where the prisoner presented an uncapped gun at *F G* (believing the gun to be capped) with the intention of murdering him but was prevented from pulling the trigger —*Held* that he could not be convicted of an attempt to murder upon a charge framed under s 307 of the Penal Code but that under the same circumstances he might be convicted upon a charge of simple attempt to murder framed under s 511 in connection with ss 299 and 300 Apparent inconsistency between the English law with reference to attempts as laid down in *Reg v Collins 33 L J M C 177* and the provisions of the Indian Penal Code explained. REG *v* CASSIDY

[4 Bom Cr 17

5 ———— *Penal Code ss 307 —Murder* —The accused struck the deceased two blows on the head with a stick with the intention

ATTEMPT TO COMMIT OFFENCE—*continued*

of killing him The deceased fell down senseless on the ground. The accused believing that he was dead set fire to the hut in which he was lying with a view to remove all evidence of the crime The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death and that death was really caused by injuries from burning when the accused set fire to the hut *Held* (PARSONS J dissenting) that the accused was guilty of attempt to murder under s. 307 of the Penal Code *Per* PARSONS *J*—The accused was guilty of murder under s 302 of the Penal Code QUEEN EMPRESS *v* KHANDU I. L. R., 15 Bom. 194

6 ———— *Facts necessary to constitute such attempt*—S 511 of the Penal Code does not apply to attempts to commit murder which are fully and exclusively provided for by s. 307 of the said Code A person is criminally responsible for an attempt to commit murder when with the intention or knowledge requisite to its commission he has done the last proximate act necessary to constitute the completed offence and when the completion of the offence is only prevented by some cause independent of his volition QUEEN EMPRESS *v* NIDHA I. L. R. 14 All. 38

7 ———— *Intention—Knowledge of probable consequences of act—Presumption*—Where a woman of twenty years of age was found to have administered datura to three members of her family it was *held* that she must be presumed to have known that the administration of datura was likely to cause death although she might not have administered it with that intention QUEEN EMPRESS *v* TULSHA I. L. R. 20 All. 143

8 ———— A young Brahmin widow was confined of a child The chief constable of police acting as he stated on information that the accused was about to kill a baby went to search her house with a number of men and found her lying on the first floor and discovered on the second floor a living new born child wrapped up in a cloth with a cooking pot turned over it The Sessions Judge convicted the accused of attempt to murder The High Court on appeal reversed the conviction on the ground that the evidence was insufficient to support it REG *v* CHIMA [8 Bom. Cr 164

9 ———— **Attempt at dacoity**—S 511 of the Penal Code does not apply in a case of dacoity Where a prisoner was found guilty of an attempt at dacoity under that section and of causing grievous hurt in such attempt under s 397 and a sentence of three years rigorous imprisonment was passed on him the finding was amended by striking out ss 397 and 511 and substituting s 395 QUEEN *v* KOONEE [7 W R. Cr 48

10 ———— **Attempt to fabricate false evidence**—*Concealment of salt*—Facts showing that an accused person had dug a hole intending to place salt therein in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding would justify a conviction for an attempt to fabricate false evidence QUEEN *v* NUNDA 4 N W 133

11 ———— **Attempt to commit forgery**—*Penal Code ss 467 511—Intention to commit offence*—To constitute the offence of attempt under s. 511 Penal Code there must be an act done with the intention of committing an offence and for the purpose of committing that offence and it must be done in attempting the commission of the offence The provisions of s 511 Penal Code do not extend to make punishable as attempts acts done in the mere stage of preparation Although such acts are doubtless done towards the commission of the offence they are not done in the attempt to commit the offence within the meaning of the word attempt as used in the section QUEEN *v* RAMSARUN CHOWBEY [4 N W., 46

12. ———— *Penal Code ss 467 and 511—Forgery—Facts necessary to constitute an attempt—Abetment*—One *C* calling himself *K* the son of *B* went to a stamp vendor accompanied by a man named *A S* and purchased from him in the name of *A* a stamp paper of the value of 4 annas The two men then went to a petition writer and *C* again giving his name as *A* they asked the petition writer to write for them a bond for R 0 payable by *K* to *K S* The petition writer commenced to write the bond but his suspicions being aroused did not finish it but took *C* and *A S* to the nearest thana *Held* that under the above circumstances *A S* was rightly convicted of an attempt to commit the offence defined in s 467 of the Penal Code and *C* of abetment of the said attempt *Queen* v *Ram Sarun Choubey* 4 *N W* 46 referred to QUEEN EMPRESS *v* KALYAN SINGH [I L R. 16 All. 409

13 ———— **Attempt to cheat**—*Penal Code ss 417 511*—In a prosecution for an attempt to cheat under ss 417 511 of the Penal Code the accused was charged and convicted of having at the central octroi office made false representations as to the contents of certain kuppas (skin vessels) the object of which was to obtain a certificate entitling him to obtain a refund of octroi duty Prior to granting the certificate the octroi officers examined the contents of the kuppas and found that the representations of the accused regarding them were untrue In consequence of this discovery no certificate was given to him and he was charged and convicted as above mentioned. The procedure necessary for obtaining a refund of octroi duty was that the central office on satisfying itself that the articles produced were of the nature stated would grant a certificate which certificate would have to be indorsed by the outpost clerk when he passed the goods (on which refund was claimed) out of the town and the owner would have to take back the certificate so indorsed to the central office and present it to be cashed. *Held* that even assuming the accused to have falsely represented the contents of the kuppas as alleged he had not completed an attempt to cheat but had only made preparation for cheating and that the conviction must therefore be set aside QUEEN EMPRESS *v* DHUNDI I. L. R 8 All. 304

ATTEMPT TO COMMIT OFFENCE —*concluded*

14 ——————— *Currency Office—Application for payment of lost halves of currency notes*—A man may be guilty of an attempt to cheat although the person he attempts to cheat is forewarned and is therefore not cheated *R v Hensler 11 Cox C C 570* referred to *M* wrote a letter to the Currency Office at Calcutta enclosing the halves of two Government currency notes stating that the other halves were lost and enquiring what steps should be taken for the recovery of the value of the notes The Currency Office having upon enquiry discovered that the amount of the notes had been paid to the holder of the other halves and that the notes had been withdrawn from circulation and cancelled sent *M* the usual form of claim to be filled up and returned to it It appeared from the evidence that the Currency Office never contemplated paying *M* in respect of the notes The form was filled up and signed by *M* and returned by him to the Currency Office *Held* that although there was no intention on the part of the Currency Office to pay the amount of the notes *M* was guilty of an attempt to cheat GOVERNMENT OF BENGAL *v* UMESH CHUNDER MITTER I L R 16 Calc 310

ATTESTATION

See CASES UNDER DEED—ATTESTATION

See DEED—EXECUTION
[I L R 20 All 532
I L R 26 Calc 78 246
3 C W N 84
I L R 27 Calc 190
1 C W N 81
2 C W N 603

See STAMP ACT s 3 cl 4
[I L R 15 Mad 193
I L R 22 Calc 757
I L R 17 All 211

See CASES UNDER WILL—ATTESTATION

—— Want of—

See EVIDENCE ACT s 68
[I L R 18 Mad 29
I L R 26 Calc 222
3 C W N 228

ATTORNEY

See CASES UNDER ATTORNEY AND CLIENT

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT

See COUNSEL
[I L R 6 Calc 59 6 C L R 374

See GUARDIAN—LIABILITY OF GUARDIANS
[2 Ind Jur N S 269

See LETTERS PATENT HIGH COURT cl 10
[8 B L R 418

See PRIVILEGED COMMUNICATION
[12 B L R 249

See TAXATION OF BILL OF COSTS
[7 B L R Ap 50

ATTORNEY—*continued*

See WITNESS—CIVIL CASES—PERSON COMPETENT OR NOT TO BE WITNESS
[5 B L R Ap 28

——— Change of pending suit

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT I L R 19 Calc 368
[I L R 26 Calc 769

——— Improper conduct of—

See RECEIVER I L R 22 Calc 648

——— Lien of for costs

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT

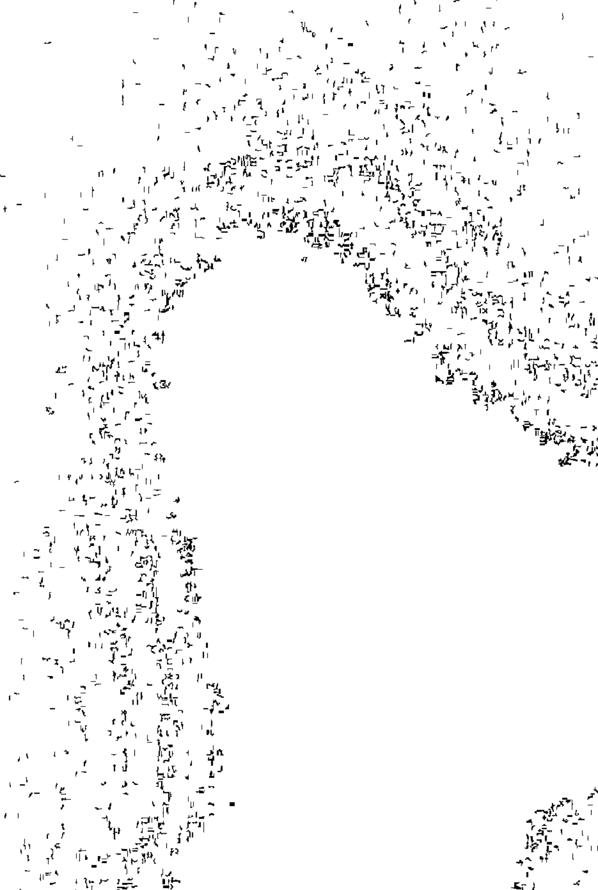
See SET OFF—GENERAL CASES
[I L R 4 Calc 742 4 C L R 122

1 ——— Striking off the roll—*Misconduct*—Where an attorney knowingly prepares a conveyance containing untrue recitals of the transaction between the parties thereto and attests the deed and a receipt for consideration money which to his knowledge was never paid or intended to be paid the production of such a document to the Court is sufficient ground for calling upon the attorney for an explanation of his conduct But if such explanation be given supported by evidence to the effect that there was no fraudulent intent and if no fraudulent use of the deed has in fact been made or attempted nor any injury caused thereby it is not sufficient ground for striking the attorney off the rolls of the Court *Semble*—The High Court in Calcutta is not authorized in striking an attorney off the rolls when such a step would not be sanctioned by the practice of the Courts in England IN THE MATTER OF STEWART
[1 B L R P C 55 10 W R P C 43

2 ——— Negligence—*Allowing clerk to file false affidavit*—Where an attorney had been guilty of negligence in allowing his clerk to act in his absence and file a false affidavit and adopted it without enquiring into its character he was suspended from practising in the High Court in its original jurisdiction for one year but he was at liberty to practise as vakeel on the appellate side It had not been proved that the clerk was acting as an attorney without a license or had a share in the profits. Had this been so the attorney would have been struck off the rolls IN THE MATTER OF POORNOO CHANDRA MOOKERJEE
[Bourke O C 377

3 ——— Practice as to non publication of name when charges are brought against an attorney—The practice which prevails in England as regards the non publication of the name of an attorney against whom a rule has been obtained approved of and followed IN THE MATTER OF AN ATTORNEY I L R 23 Calc 576

4. ——— Vakalatnamah—*Criminal Procedure Code 1872 s 186*—An attorney of the High Court, when appearing to defend a person in the Criminal Court under s. 186 of the Criminal



ATTORNEY AND CLIENT—*continued*

a further mortgage executed which included the original sum with the interest then due and the further advance Further advances were made in the same way in October 1871 and March 1876 In all these transactions the defendant had no independent professional advice and the mortgages were prepared in the plaintiff s office but not charged for In a suit to recover the sum due on the mortgages by sale of the mortgaged property the plaintiff abandoned any accumulation of interest since the date of the third mortgage *Held* that the defendant notwithstanding he had declined the offer of the plaintiff in 1869 to tax the bills and notwithstanding the delay that had taken place was entitled (having regard to the relation between the parties and to the fact that a portion of the costs was incurred in suits then pending) to have the bills taxed and to re-open the account Under the circumstances the Court would not infer acquiescence from the delay on the part of the defendant nor did the plaintiff s offer to tax and the defendant s refusal of that offer debar the defendant of his right to have the bills taxed in the usual way *Held* also that there is no rule which prevents an attorney from taking security or otherwise arranging with his client for the payment of costs which have actually become due and that the plaintiff was entitled to sale of the property to accumulations of interest prior to the date of the third mortgage calculated by allowing annual rests to interest at 10 per cent as being a fair rate for the client to have undertaken to pay when the mortgages were executed and to interest on his costs MONOHUR DOSS *v* POMANAUTH LAW [I. L. R 3 Calc 473

7 ———————— *Trustee—Purchase by attorney from client*—*T* had acted as trustee and agent for *M* and *F* had acted in the place of *T* during *T* s temporary absence *T* and *F* as attorneys in partnership did solicitors work for *M* *T* as trustee and agent for *M* invested money on a mortgage The equity of redemption was put up for sale at public auction in execution of a decree obtained by a third party against the mortgagors and a portion was purchased by *T* and *F* as attorneys in partnership *Held* that there was no equity compelling *T* and *F* to hold the equity of redemption for the benefit of *M* *Semble*—The agentship could not be separated from the attorneyship *Held* also that under the circumstances there was no equity calling for a sale in substitution of the foreclosure claimed by *M* MACKINTOSH *v* NOBINMONEY DOSSEE 2 Ind. Jur N S 160

8 ———————— *Trustees of insolvent retaining attorney to continue suit—Costs*—The contract to b[illegible] implied from the employment by th[illegible] tr[illegible]tee of an insolvent of an attorney to carry [illegible] a [illegible] suit already commenced by the [illegible]olvent as plaintiff and [illegible] which such att[illegible] [illegible]med for him [illegible] [illegible]ntract to pay al[illegible] sub[illegible] but not th[illegible] [illegible]ts incurred prior to [illegible] [illegible]t SHAMRAY [illegible] *v* TRUSTEE [illegible]AS [illegible] 5 L[illegible]

9 ———— Lien—*Costs—*[illegible] *covered by client—Attachment of* [illegible]

ATTORNEY AND CLIENT—*continued*

—The plaintiff obtained a decree against the defendant but before satisfaction of the decree the amount of the decree was attached in the hands of the defendant by a third person who had obtained a decree in a suit against the plaintiff On an application by the attorney for the plaintiff that the defendant might be ordered to pay to him his costs of suit out of the sum which had been attached in the defendant s hands and on which the attorney claimed to have a lien the Court held that the attorney had a lien for his costs on the sum so attached but that the only order it could make was an order to the defendant not to pay the sum attached to any one without notice to the attorney NAWAB NAZIM OF BENGAL *v* HEERALALL SEAL 10 B L R 444

10 ———————— *Lien for costs—Title deeds delivered for specific purpose—Right to re delivery*—*D* an attorney who had a lien against C for costs on the title-deeds of certain property belonging to *C* for whom he had been acting in negotiations for the sale of the property delivered the deeds at the request of *C* to *M* who was acting as attorney for *J* an intending purchaser *M* on obtaining the deeds signed a receipt for them by which he undertook to return them on demand without claiming any lien for costs or otherwise *D* subsequently ceased to act for *C* in the matter of the sale of the property of which *J* became the purchaser The title deeds remained with *M* *Held* that *D* was entitled to have re delivery of the deeds to him from *M* even independently of the express contract to return them He did not give up possession of them to *C* by delivering them to *M* though that was done at *C*'s request IN THE MATTER OF MACKERTICH 15 B L R Ap 15

11 ———————— *Lien for costs—Lien on documents—Discharge by dissolution of partnership—Contract Act (IX of 1872) ss 1 171*—Where a firm of attorneys dissolved partnership after the death of a client there being at that time papers and documents belonging to the client in their hands and a debt due in respect of costs from the client to them —*Held* that the dissolution of partnership operated as a discharge by the firm and that the attorneys were not entitled to retain the papers and documents until their costs were paid, but were bound to hand them over to the administrator of the client. S 171 of the Contract Act does not give an attorney an absolute lien. S 1 provides that nothing in the Act contained shall affect any usage or custom of trade and as no part of the English law is inconsistent with s. 171 cases arising in this country must be governed by the English authorities According to those authorities while the relation of attorney and client exists [illegible] [illegible]lient may either continue to employ the attorn[illegible] [illegible] him. When he claims to do the latter th[illegible] [illegible]l[illegible]ing willing to act he cannot ask the [illegible] [illegible] up papers in his possession without [illegible]g the lien. The attorney has his op[illegible] [illegible]he chooses either go on acting for his cl[illegible] [illegible] to act; if he adopt the latter course [illegible] [illegible] the papers On the death of the cl[illegible] [illegible]ands in exactly the

ATTORNEY AND CLIENT—*continued*

same position with respect to the attorney as the client did. IN THE MATTER OF MCCORKINDALE

[I. L. R. 6 Calc. 1 6 C L. R. 406

12. ————— *Lien for costs—Lien on translation of documents* —Messrs *P* and *W* were solicitors for the plaintiff in this suit from its commencement When the case was about to appear in the list for hearing Messrs. *P* and *W* wrote to the plaintiff requesting her to send them an advance of R1 000 to enable them to deliver briefs to counsel They received no reply from the plaintiff who afterwards obtained leave to sue as a pauper and appeared by other solicitors Messrs. *P* and *W* were subsequently served with a subpœna to produce at the hearing certain translations and other documents relating to the plaintiff s case which had remained in their possession and upon which they claimed a lien in respect of costs due to them by the plaintiff *Held* that Messrs *P* and *W* could not be compelled to produce A solicitor who is discharged by his client holds the papers entrusted to him subject to his lien for costs and the plaintiff by her conduct had discharged Messrs *P* and *W* from being her solicitors. A solicitor has the same lien upon translations as he has upon other documents and the fact that they have been made by the Court s interpreters makes no difference Having got the work done and paid for it he need not part with such translations or produce them except on terms which will secure him against fraud BAI KESSERBAI *v* NARANJI WALJI

[I. L. R. 4 Bom 353

13 ————— *Practice—Costs—Attorney's l en—Lien—Attaching cred tor—Fund in Court attached.*—A sum of money had been paid into Court as admittedly due to the plaintiff in a certain suit The plaintiff not having satisfied in full his attorney s taxed bill of costs the attorney applied for payment out of the fund in Court Previously to this application the fund had been attached by a third party *Held* that the attorney was entitled to enforce his lien as against the attaching creditor for all c sts incurred up to the date of attachment that the attaching creditor was then entitled to be satisfied before the attorney could claim payment out of the balance in Court of any sum remaining due to him on account of his costs SUPRAMANIAN SETTY *v* HURRY FROO MUG I L. R. 16 Calc 374

14 ————— Constructive notice—*Fraud in transaction with client* —The Court will not presume notice to have been given to his client by an attorney where such notice would involve a confession by the attorney of a fraud practised by himself HORMASJI TEMULJI *v* MANEKUVARBAI

[12 Bom. 262

15 ————— Purchase by attorney from client—*Benami transaction* —The principle that in transactions carried out by an attorney for a client the attorney should derive no benefit to himself is equally applicable to th relationship of vakil and client and in transactions of such a nature Courts should be careful not to allow them to be enforced in the name of a third person put forward as the real plaintiff FUZELUN BIBEE *v* OMDAH BIBEE

[11 B L. R. 60 note 10 W R. 469

16 ————— Attorney Change of—*Discharge of attorney—Refusal to act till costs already incurred are paid—Attorney Duty of—Practice* —An attorney having undertaken to act for a client is bound to continue to act for him so long as the relationship between them of attorney and client subsists and unless discharged by the client it is his duty to proceed with the diligent prosecution of the business or matter for which he has been retained No attorney has a right to insist on the payment of past costs as a condition to the further prosecution of his client s cause By declining to act further for a client until costs already incurred are paid an attorney discharges himself and the client is entitled to a change from him without prepayment of his costs *Quære*—Whether an attorney still has a lien on the papers and documents in his hands after he has discharged himself as aforesaid BASANTA KUMAR MITTER *v* KUSUM KUMAR MITTER

[4 C W N, 767

17 ————— Application to restrain attorney changing sides —An attorney who has acted for a party to a suit and has discharged himself cannot afterwards act for the opposite party and the Court will restrain him from doing so on an application made for that purpose *Earl Cholmondeley v Lord Clinton 19 Ves 261* followed RAM LALL AGARWALLAH *v* MOONIA BIBEE

[I. L. R. 6 Calc 79

18 ————— *Agreement as to costs between attorney and client—Change of attorney—R ght of attorney to his taxed costs*—Where *F* an attorney agreed to conduct a suit for his client and to accept R150 for his personal services and not in respect of out of pocket costs and counsel s fees and in the event of his client being successful to recover his full costs from the opposite party and to refund the R150 it was *held* upon the client desiring to change to another attorney that he could do so upon payment to *F* of his taxed costs GHASSEE JEMADAR *v* NASSIRUDDIN MISTRY

[I. L. R. 26 Calc 769

19 ————— *Rules of Madras High Court rule No 320—Leave of Court for proposed change of attorney—Grounds upon which leave will be given or withheld—Payment of costs due to attorney* —Leave will not be given by the Court for a change of attorney under rule No 320 of the Rules of the Madras High Court (which provides that leave must be obtained before such a change of attorney can be mad) until the costs of the attorney are first paid or provided for RAMASAMI CHETTI *v* SUBBU CHETTI I. L. R. 23 Mad. 134

20 ————— *Warrant of attorney—Filing appeal through another attorney witho t d scharging the former attorney—Sanction to prosecute—Appearance through another attorney—C vil Procedure Code (Act XIV of 1882) s 39—Belchambers Rules and Orders rule 93* —A warrant of attorney to defend, unless specially restricted in form empowers an attorney to act for the defendant and to establish his grounds of defence in his

ATTORNEY AND CLIENT—*concluded*

Court whether in its original or appellate jurisdiction An application for sanction to prosecute under s 195 Criminal Procedure Code is not a proceeding in connection with the suit within the words of the original warrant to defend and the defendant is entitled to appear through a new attorney without obtaining a discharge of his original warrant or retainer in favour of the original attorney CASSIM MAMOOJEE *v* GOPAL LALL SEAL [3 C W N 579

21. ———— **Delivery of bill of costs** —*Right to maintain suit—Executor*—There is no law in force in India to prevent an executor of an attorney from maintaining a suit for business done by the attorney without having previously delivered a bill of costs to the defendant and left it with him for a reasonable time before bringing the action and the fact that the defendant had notice that the bill was to be referred to taxation is immaterial WILKINSON *v* ABBAS SIRCAR [3 B L R O C 96

ATTORNMENT

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT

See LANDLORD AND TENANT—TRANSFER BY LANDLORD

———— **Notice of—**

See REGISTRATION ACT s 49 [I. L. R, 19 Bom. 36

AUCTIONEER.

See SALE BY AUCTION [I L R 16 Calc 702

AUCTION-PURCHASER.

See CASES UNDER CIVIL PROCEDURE CODE s 244—PARTIES TO SUIT

See CASES UNDER CIVIL PROCEDURE CODE s 244—QUESTIONS IN EXECUTION OF DECREE

See LIMITATION ACT 1877 s 10 [I. L. R. 15 Calc 703

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS

See SALE FOR ARREARS OF REVENUE—PURCHASERS RIGHTS AND LIABILITIES OF

See SALE IN EXECUTION OF DECREE—PURCHASERS RIGHTS OF

See SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

AUCTION SALE

See SALE BY AUCTION

AUDITOR.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS I. L. R 18 All, 12

AUTREFOIS ACQUIT PLEA OF—

See ACT XIII OF 1859 [I. L. R., 21 Calc 262

See CASES UNDER CRIMINAL PROCEDURE CODE 1882 s 403

See DISCHARGE OF ACCUSED [I. L. R. 12 Mad. 35

1 ———— **Former trial illegal and without jurisdiction.**—A former trial set aside on the ground of want of jurisdiction and illegality is not a bar to a second trial QUEEN *v* MUTHOORA PERSHAD PANDAY 2 W R. Cr 10

2 ———— **Complaint practically identical.**—Where a second complaint though altered and revised was practically the same as one on which defendant had been acquitted —*Held* the second conviction was illegal GOVERNMENT *v* DOULAT [2 Agra Cr 3

3 ———— **Criminal trespass Trial for after dismissal of charge of rioting** —*The dis*missal by one Court of the charge of rioting instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person although the two charges may substantially refer to the same occurrences QUEEN *v* MOBLY SHEIKH 6 W R. Cr 51

4 ———— **Forgery**—*Similarity of signature in different documents—Criminal Procedure Code 1861 s 55*—*D* was tried on a charge of forging etc document *A* and acquitted. In order to prove the charge evidence was given in respect of another document *B* which was also alleged to have been forged and the prosecutor mainly based his case on the alleged exact resemblance betweeen the signatures to *A* and *B* both of which it was said exactly resembled a third signature admitted to be genuine *Held* by PEACOCK *C J* and KEMP *J* (MARKBY *J* dissenting) that the acquittal in respect of the document *A* did not operate as an acquittal in respect of the document *B* so as to enable the accused to plead *autref is acquit* REG *v* DWARKA NAUTH DUTT [2 Ind Jur N S 67 7 W R Cr 15

5 ———— **Discharge by Sessions Court for irregularity of procedure**—*Criminal Procedure Code 1861 s 55*—Where a prisoner is released by the Court of Session on the ground that the proceedings had in his case were illegal and irregular there is no bar under s 55 of the Code of Criminal Procedure to his being subsequently tried and convicted of the same offence QUEEN *v* WAHED ALI 13 W R. Cr 42

6 ———— **Order for release of accused as guiltless**—*Acquittal*—The order for the release of the accused as nird sh (guiltless) was held to be an acquittal and not a discharge and therefore to have exempted them from a second trial for the same offence RAMJOY SURMAH *v* MIRZA ALI [18 W R Cr 10

AUTREFOIS ACQUIT PLEA OF—
—continued

7 ——— **Trial for murder after acquittal of grievous hurt**—*Criminal Procedure Code 1872 s 460*—*K P M N* and *O* appellants were convicted by the Court of Session of attempt at murder They had previously been tried by a Deputy Magistrate on a charge of voluntarily causing grievous hurt founded on the same facts and *K P* and *M* were then acquitted while *N* and *O* were convicted. *N* and *O* appealed to the Court of Session and that Court considering that the evidence showed that they had been guilty of an attempt at murder forwarded the record to the High Court when the conviction was quashed and a new trial ordered The order referred expressly only to *N* and *O* but proceedings were commenced *de novo* against all the five persons and they were committed to the Court of Session for trial on a charge of attempt at murder and convicted as stated above by that Court The pleas of *autrefois convict* and *autrefois acquit* could not be urged as an answer to the charge on which the appellants were convicted by any of them QUEEN *v* PANNA 7 N W 371

8 ——— **Theft and receiving stolen property**—*Acquittal of charge of theft*—Although a person who is convicted of theft cannot in respect of the same property be convicted at the same time of receiving stolen property yet a person who is acquitted of the theft of any property or who is not charged with stealing it may in respect of the identical property be charged with and convicted of receiving it knowing it to be stolen so that the mere fact of a person s having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen QUEEN *v* NYAZ ALI 25 W R Cr 47

9 ——— **Previous trial by competent Court**—*Trial under Bombay Abkari Act (Bom Act V of 1878) s 3 cl 5 and s 56*—*Criminal Procedure Code s 403*—All offences against the abkari law (Bombay Act V of 1878) being cognizable by a Magistrate of the second class (s 3 cl 5 and s 56) a person tried for any such offence by any such Magistrate and acquitted is not liable to be tried again for the same offence (s 403) unless the acquittal has been set aside by the High Court on appeal by the Government QUEEN EMPRESS *v* GUSTADJI BARJORJI I. L. R. 10 Bom. 181

10 ——— **Single act constituting several offences**—*Previous acquittal when no bar to further trial*—*Power of Appeal Court in disposing of appeal*—*Retrial Effect of order directing in case where one act constitutes several offences and there has been an acquittal on some charges and a conviction on others and an appeal from such conviction*—*Verdict*—*Criminal Procedure Code (1882) ss 236 403 and 423*—The word verdict as used in cl (*d*) of s 423 of the Code of Criminal Procedure in cases where an accused person is tried for various offences arising out of a single act or series of acts as contemplated by s 236 means the entire verdict on all the charges and is not limited to the verdict on a particular charge upon which an accused may have been convicted and appealed against Where an accused person is charged with and tried for various offences arising out of a single act or series of acts it being doubtful which of those offences the act or acts constitute and where he has been acquitted by the verdict of a jury of some of such offences and convicted of others and appeals against such conviction and where the Appellate Court reverses the verdict of the jury and orders a retrial without any express limitation as to the charges upon which such retrial is to be held such retrial must be taken to be upon all the charges as originally framed and the acquittal by the jury on the previous trial upon some of such charges is no bar to the accused being tried on them again as having regard to the provisions of s 423 of the Code of Criminal Procedure the provisions of s 403 in that respect cannot apply to such cases KRISHA DHAN MANDAL *v* QUEEN EMPRESS

I. L. R. 22 Calc. 377

AUTREFOIS ACQUIT, PLEA OF—
—concluded

AUTREFOIS CONVICT

See ACT XIII OF 1859
I. L. R., 21 Calc 262

AVA KINGDOM OF—

See CIVIL PROCEDURE CODE 1882 ss 387 391 (1859 s 177) 2 B. L. R. A C 73

AWARD

See CASES UNDER ACT XIII OF 1848

See CASES UNDER APPEAL—ARBITRATION

See CASES UNDER ARBITRATION

See MADRAS BOUNDARY ACT ss 21 25 28
I. L. R. 12 Mad. 1

See CASES UNDER RIGHT OF SUIT—AWARDS SUITS CONCERNING

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—ARBITRATION
3 N W 17
7 N W., 329
I. L. R. 13 Mad., 344

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—AWARD
4 B L. R. Ap 82
13 W R. 233
7 N W 157

See CASES UNDER SURVEY AWARD

——— **Application to file**—

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE
I. L. R. 16 Bom 240

See COSTS—SPECIAL CASES—AWARD
3 B L. R., A C 249
11 W R., 104

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS I. L. R., 19 Calc. 334

See JURISDICTION—SUITS FOR LAND—GENERAL CASE
I. L. R. 2 Calc., 44

AWARD—*concluded*

See LIMITATION ACT 1877 ART 176
[I. L. R. 7 Calc. 333
9 C L. R. 209

———— Claim under—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY
[7 B L. R. 186 14 Moore s I. A. 40

———— Effect of—

See HINDU LAW JOINT FAMILY—NATURE OF JOINT FAMILY AND POSITION OF MANAGER I. L. R., 16 All. 231

See JURISDICTION—TESTAMENTARY AND INTESTATE JURISDICTION
[I. L. R. 20 Bom. 238
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See NAWAB NAZIM S DEBTS ACT
[L. R. 19 I. A. 95
I. L. R. 19 Calc. 584 742

See PANCHAYET I. L. R. 15 Mad. 1

See RES JUDICATA—ADJUDICATIONS
[I. L. R. 18 Calc. 414
L. R. 18 I. A. 73
I. L. R. 19 Mad. 290
I. L. R. 20 Mad. 490

———— Loss of—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS I. L. R., 12 Mad. 331
[I. L. R. 15 Mad. 99

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BAD FAITH.

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

BAIL.

See ARREST—CRIMINAL ARREST
[I. L. R. 14 All 45

——— on arrest of ship

See COSTS—SPECIAL CASES—ADMIRALTY AND VICE ADMIRALTY
[I. L. R. 17 Calc. 84

See SALVAGE I. L. R. 17 Calc. 84

——— Order for—

See MAGISTRATE JURISDICTION OF—POWER OF MAGISTRATES
[I. L. R. 22 Bom 549

——— Petition for—

See PRACTICE—CRIMINAL CASES—PETITION FOR BAIL I. L. R. 15 Bom. 488

1. ———— Accused person—*Criminal Procedure Code 1872 s 390—Convicted person—Sessions Judge* —The Court of Session has no power under s. 390 Act X of 1872 to admit a convicted person to bail a *convicted person* not being an *accused person* within the meaning of that section QUEEN v THAKUR PERSHAD I. L. R. 1 All. 151

BAIL—*continued*

2. ———— Discharge for want of evidence—*Criminal Procedure Code (Act XXV of 1861) s 212—Act X of 1872 s 389*—The accused in a case of dacoity and assault were discharged by the Magistrate for want of evidence At the same time, he ordered them to give security to the amount of R250 to appear before him any time within six months if called upon The Judge referred the question of the legality of the order to the High Court by whom the order for security was quashed. RAMLAL TEWARI v SUPHARAM
[1 B L. R. S N 26 10 W R. Cr 34

3 ———— Insolvent convicted and sentenced to imprisonment under s 50 of the Insolvent Act (Stat. 11 & 12 Vict. c. 21) —*Appeal by insolvent under s 73—Power of High Court to admit insolvent to bail pending appeal* —An insolvent was convicted by the Insolvent Court of an offence under s 50 of the Indian Insolvent Act (Stat 11 & 12 Vic c 21) and sentenced to imprisonment Under s 73 of the Act he appealed against the decision and sentence of the Insolvent Court and applied to be admitted to bail pending the hearing of his appeal *Held* refusing the application that the High Court had no power to admit him to bail IN THE MATTER OF HORMASJI ARDESIR HORMASJI I. L. R. 17 Bom. 334

4. ———— Power of Sessions Court to admit to bail—*Criminal Procedure Code (Act XXV of 1861) ss 436 411* —A person sentenced to one month s imprisonment by a Magistrate from which sentence no appeal is allowed under s. 411 of Act XXV of 1861 is not an accused person within the meaning of s 436 of the same Act so as to be admitted to bail by the Court of Session when his case is referred to the High Court under s. 434 of the same Act QUEEN v MAHENDRANARAYAN BANGABHUSAN
[1 B. L. R. A. Cr 7

BAGDEE MANJEE v MOHINDRO NARAIN
[10 W R. Cr 16

5 ———— Further remand—*Evidence of guilt—Necessity of taking evidence before refusing bail* —When an accused person is first brought before a Magistrate and a remand is required by the prosecutor it is ordinarily sufficient to show by the evidence of a police officer that the police are in possession of information believed to be reliable that the accused has committed an offence; but when the accused is again brought up after remand and a further remand is needed some direct evidence of the guilt of the accused should be required to justify the Magistrate in refusing bail and with each remand the necessity for production of evidence of guilt becomes stronger PONNUSAMI CHETTI v QUEEN I. L. R. 6 Mad. 69

6 ———— *Criminal Procedure Code 1872 ss 190 194—Remand of case for evidence—Judicial proceeding—Reasonable ground for remand not supported by sworn testimony* —The proceeding in which it has to be determined whether an accused person should be admitted to bail by a Magistrate is a judicial proceeding and as such cognizable by the High Court under s 297 of the

BAIL—*continued*

Code of Criminal Procedure 1872 S 194 of the Criminal Procedure Code 1872 must be read as a proviso to s 190 and authorizes a Magistrate for reasonable cause to remand an accused person to jail without examining any witnesses Where evidence was available but it appeared necessary to the Magistrate to defer the examination of witnesses in order that further evidence might be produced (so that the enquiry when commenced might be continuous) —*Held* that such a reason recorded by the Magistrate although not sworn to justified a remand for five days and a further remand for four days An accused person has a right to have the evidence against him recorded at as early a period as possible and the fact that there is or may be a great body of evidence forthcoming against him is not a ground for detention for an inordinate period *Per* KERNAN *J* —When a Magistrate defers the examination of witnesses adjourns the enquiry and remands the prisoner under s 194 of the Code of Criminal Procedure 1872 he is bound to express clearly on the record the reasonable cause from which such action became necessary or advisable MANIKAM MUDALI *v* QUEEN I. L. R. 6 Mad 63

7 ———— Power of single Judge of High Court pending appeal—*Release on bail* —A single Judge of the High Court may order the release of a prisoner on bail pending the hearing of an appeal QUEEN *v* JALOO SIRDAR [W R. 1864 Cr 18

8 ———— Discretion of Magistrate to accept or refuse bail —The refusing or accepting bail is a judicial and not merely a ministerial duty and a mistake in the performance of that duty without malice will not be sufficient to sustain an action PARANKUSAM NARASAYA PANTULU *v* STUART [2 Mad. 396

9 ———— Contempt of Court—*Criminal Procedure Code 1861 s 163* —In a case of contempt the Court before which the offence is committed is bound under s 163 of the Code of Criminal Procedure to accept bail if sufficient bail is tendered QUEEN *v* CHUNDER SEEKUR ROY [12 W R Cr 18

10 ———— Power of Sessions Judge to give bail pending reference to High Court —A Sessions Judge has no power to release on bail persons convicted by the Magistrate pending a reference to the High Court under Act X of 1872 s 296 ARADHUN MUNDUL *v* MYAN KHAN TAKADGEER 24 W R. Cr 7

11 ———— Admission to bail after sentence—*Criminal Procedure Code 1872 s 390* —Act X of 1872 s 390 refers only to the period during which a case is under enquiry and when the party concerned is still in the position of an accused The Sessions Judge has no power to admit him to bail after he is sentenced and convicted QUEEN *v* RAM RUTTON MOOKERJEE 24 W R Cr 8

QUEEN *v* KANHAI SHAHU 23 W R Cr., 40

MOHESH MUNDUL *v* BHOLANATH MUNDUL [3 C. L. R 401

BAIL—*concluded*

MOHESH MUNDUL *v* BHOLANATH BISWAS [3 C L R 405 note

12 ———— Illegal practice—Police officer—Court duty of—*Criminal Procedure Code s 344* —The practice of leaving to the police the decision as to the sufficiency of bail when bail has been ordered by the Court is contrary to law The duty of deciding as to its sufficiency or otherwise is with the Court itself and not with the police QUEEN EMPRESS *v* GAYITRI PROSUNNO GHOSAL I. L. R 12 Calc 455

BAILEES

See CASES UNDER CARRIERS

See HOTEL KEEPER AND GUEST [I. L. R. 22 All. 164

See CASES UNDER RAILWAY COMPANY

BAILMENT

See CONTRACT ACT s 108 [12 B L R. 42
20 W R. 467
I. L R 9 All. 398

See CONTRACT ACT s 178 [I L R. 3 Calc 264

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT [I. L. R. 2 All. 756

See HOTEL KEEPER AND GUEST [I L. R. 22 All., 164

See ONUS OF PROOF—BAILMENTS [I. L. R. 9 All., 398

1 ———— Law applicable to the mofussil—*English law* —The general principles of the law of bailment are applicable in the mofussil and they are substantially the same as those which prevail under English law DOOMUN PEADAH *v* SHOOK CHAND PAUL 17 W R. 90

2 ———— Non-delivery of goods—*Bailee —Onus probandi* —*A* sent cotton to *B*s screw house to be screwed It was placed in *B*s godowns in charge of which was a servant of *B*s who kept entries of cotton received and given out. *B*s durwan kept the key of the godowns. *B* provided dunnage no rent was paid for godown room but it was shown that on several occasions when cotton had been left by owners for some time in the godowns and removed unscrewed rent had been paid; and it was allowed that it was for the mutual interest of both parties that the cotton should be so kept The custom was that the screwing charges should be paid by the purchasers of cotton to whom it was delivered by *B* by the direction of the vendors. In an action by *A* for the non-delivery of some of his cotton —*Held* per NORMAN *J* that *B* was a gratuitous bailee of the goods and that he was only bound to account for the manner in which they had been kept which he had satisfactorily done *A*s suit must be dismissed. Decree affirmed on appeal but per PEACOCK *C.J* —*Quære*—Was *B* a bailee at all? Per MARKBY *J* —

BAILMENT—*concluded*

B was a bailee for custody but not a gratuitous bailee MOOLCHAND *v* ROBINSON

[1 B L R O C 68

3 ———— Seizure of goods—*Interpleader suit—Costs—Execution of decree of Small Cause Court—Act IX of 1850 s 88*—*A* obtained a decree in the Small Cause Court against *B* In execution of the decree goods belonging to *B* but in the possession of a pledgee were seized by a bailiff of the Small Cause Court The pledgee brought an interpleader suit under s 88 of Act IX of 1850 to recover the goods *Held* the pledgee was entitled to have the goods released to him and to have the costs of his suit paid by the execution creditor BHINJI GOVINDJI *v* MONOHAR DAS

[5 B L R., Ap, 31 14 W R 303

4. ———— Bailee a lien for work done—*Work done—Contract—Quantum meruit—Act IX of 1872 (Contract Act) s 170*—*S* delivered *J* an organ to repair *J* promising to repair it for R100 *J* subsequently refused to repair it for that sum and claimed to be entitled to retain the organ until he received certain remuneration for the work done *Held* that as where there is an express contract it must be performed in its entirety or nothing can be claimed under it and there is only room for a *quantum meruit* claim where no express contract has been made *J* was not entitled to retain the organ until he was paid SKINNER *v* JAGER

[I L R 6 All., 139

BALANCE OF ACCOUNT

See CASES UNDER LIMITATION ACT 1877 ART 64

See CASES UNDER LIMITATION ACT 1877 ART 85 (1859 s 8)

BALANCE SHEET

See STAMP ACT 1879 SCH I CL. 1

[I L R 15 Calc 162

BALLOT FOR JURY

See JURY I L R 1 Bom., 462

BANDHUS

See HINDU LAW—INHERITANCE—GENERAL HEIRS—BANDHUS

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES

BANIAN OF FIRM.

See LIEN I L R 18 Calc 573

[L R 18 I A 78

———— Liability of—

See PRINCIPAL AND AGENT—LIABILITY OF AGENT 2 B L R O C 7

[2 Hyde 129 Cor 47

Bourke A O C 117 2 Hyde 301

BANIAN OF FIRM—*concluded*

———— Lien of on goods under agreement with firm.

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS

[3 B L R., O C 80

BANK MEMORANDUM.

See STAMP ACT 1869 SCH II CL. 7

[I L R 4 Calc. 829

BANK OF BENGAL

See PRESIDENCY BANKS ACT

[I L R 8 Calc., 300

1. ———— Act IV of 1862 s 10—*Loans and advances on security of land—Security for past loan*—The prohibition contained in s 30 of Act IV of 1862 which regulates the Bank of Bengal against making loans and advances on the security of land is no prohibition against the Bank taking land as security for a past loan and an existing debt IBRAHIM AZIM *v* CRUIKSHANK

[7 B L R., 653 16 W R 203

2. ———— Act XI of 1876 ss. 17 21—*Registration of transfer—Right of Bank to refuse to register*—The Bank of Bengal is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the Bank are closed under the powers given by s 21 Act XI of 1876 and after a public notification in accordance therewith Though the Bank may not have given this reason for not registering at the time of the application being made they are entitled to avail themselves of it subsequently when a suit is brought to compel them to register the transfer S 17 of Act XI of 1876 which entitles the Bank of Bengal to refuse to register the transfer of shares until payment of any debts due by the person in whose name the shares stand refers only to debts which are presently payable therefore where *R* was indebted to the Bank and gave bills as security therefor—*Held* the Bank would not be entitled to refuse under s 17 to register the transfer during the currency of the bills. MOTHOORMOHUN ROY *v* BANK OF BENGAL

[I L R., 3 Calc., 392 1 C L R., 507

BANK OF BOMBAY

See PRESIDENCY BANKS ACT

[I L R 24 Bom, 350

BANKER AND CUSTOMER

See LIMITATION ACT 1877 ART 59

[I L R 13 Bom. 338

See LIMITATION ACT 1877 ART 60 (1859 s. 1 CL. 9) 10 Bom., 300

[I L R 16 Calc. 25

I L R 18 Mad 390

———— Payment of cheque—*Evidence*—Case in which it was held on the evidence that the respondent Bank had on the presentation by the appellants servant of a cheque drawn upon it in favour of the appellants failed to pay the same in such manner as to be discharged of its obligation LALL CHAND *v* AGRA BANK L R., 18 I A 111

BANKERS

1. ———— Deposit of money—*Obligation to keep funds separate—Breach of trust—Commission agents*—The insolvents carried on business as bankers and commission agents receiving the money of their constituents on deposit for investment or for remittance charging a commission on each transaction and allowing 4 per cent interest on deposits An opposing creditor one of their constituents, sent them in April 1879 a letter instructing them to invest R40 000 in municipal debentures The insolvents failed in November and it was found on the evidence that they could not have procured the desired quantity of municipal debentures without paying more than the market price for them They purchased R18 000 worth of such debentures and were debtors to the opposing creditor for the balance. *Held* that the money was in their hands as bankers and not as agents and this being so they were not bound to keep the R40 000 separate from their own funds nor even after the letter received in April to set it apart for investment IN THE MATTER OF THE PETITION OF COWIE

[I. L. R. 6 Calc 70 7 C L. R. 19

2. ———— Loss of hundi—*Negligence—Criminal act of Bank servant*—*A* sent a hundi by post to a bank. The bank presented it for payment by one of its servants *B* who brought it back reporting that payment had been refused The manager of the bank with the intention of returning it to *A* placed it in an envelope sealed and stamped, which was laid upon the table ready for the post it being the custom of the bank to post all letters in that manner The hundi did not reach *A* and it afterwards appeared that *B* presented it for payment the following day and obtained cash for it *Held* that the bank was guilty of such neglect as to render it liable to *A* for the amount of the hundi PEOPLE S BANK v ODBARD

[2 Hyde 57

3 ———— *Lien of banker—Contract Act (IX of 1872) s 171—Deposit of security with bank to secure debts due to bank*—The plaintiff deposited certain jewels with the defendant bank to secure certain debts Afterwards he paid the secured debts and demanded the return of the jewels being then otherwise indebted to the bank *Held* that the plaintiff was not entitled to recover the jewels without discharging the other debts unless he proved that the defendant had agreed to give up its general lien KUNHAN MAYAN v BANK OF MADRAS

[I. L. R., 19 Mad. 234

4. ———— *Banking company registered under Companies Act (VI of 1882)—Criminal breach of trust by banker—Payment of dividends dishonestly out of deposits—Directors—Manager and accountant—Person entrusted with property or with dominion over property—Agent—Penal Code (Act XLV of 1860) ss 109 191 409 and 418—Cheating—Making false balance sheet—Companies Act (VI of 1882) s 215—Criminal Procedure Code (Act X of 1882) s 239*—When a bank takes a deposit from its customer it takes it on the understanding that that deposit is not to be used

BANKERS—*continued*

to pay dividends to shareholders at a time when the bank is insolvent and cannot legally pay dividends In the case of a bank registered under the Indian Companies Act as a company limited by shares and governed by the regulations contained in table A in the first schedule to the Act it was *held* that the directors had dominion over the property and the management of the funds of the bank that they were bound not to pay dividends except out of the profits of the bank; and that if they dishonestly that is knowingly and intentionally paid dividends to the shareholders out of deposits when there were no profits, intending to cause gain to themselves or others to which they were not entitled or to cause wrongful loss to other persons they were guilty of criminal breach of trust as bankers under s 409 of the Penal Code but that the manager and the accountant or assistant manager were not within the meaning of the section, persons who were entrusted with property or with dominion over property as bankers or agents and therefore did not come directly under s 409 though they might be guilty of abetment under s 409 read with s 109 by conspiring with the directors to commit criminal breach of trust if they assisted the directors to obtain the sanction of the shareholders to the illegal payment of dividends and did so for the dishonest purpose of causing wrongful gain or wrongful loss Whether the illegal payment of dividends under the circumstances stated could be regarded as causing wrongful loss to the bank as a corporate body *quære* Whether moneys deposited in the bank by its customers and not in any way ear marked could after such deposit be regarded as property of the depositors within the meaning of s. 409 *quære Held* also that if the directors manager and accountant dishonestly that is to obtain wrongful gain for themselves or to cause wrongful loss to others, put before the shareholders balance sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the bank and concealed its true condition and thereby induced depositors to allow their money to remain in deposit in the bank they were guilty of cheating in the aggravated form made punishable by s 418 of the Penal Code and if they acted together to put forward such a false balance sheet they were guilty of abetment by conspiracy to cheat *Semble*—The making of such a false balance sheet is not an offence within s. 191 of the Penal Code and where it is made prior to the commencement of the winding up of the company is not an offence within s 215 of the Companies Act (VI of 1882) A balance-sheet of a company under the Indian Companies Act must be a true balance sheet in the sense that it must represent the actual state of the company's assets and liabilities If it falsely states the condition of the company it is a false balance-sheet though it shows the accounts as shown in the books of the company and correctly represents what is in the books A balance-sheet which showed all the [illegible] of the company amounting to [illegible] lakhs under the head of assets without [illegible] with the form of balance-sheet annexed to [illegible], which of such debts were good and [illegible] good and unsecured and which [illegible] and doubtful

BANKERS—*concluded*

and also showed a divisible balance of profits amounting to R19 000 the facts being that out of the R23 lakhs some R13 lakhs were bad and irrecoverable and that the capital reserve fund and other provision for bad debts had been lost and that the company instead of making profits was and long had been insolvent was found to be false and misleading Having regard to the nature of the charges above referred to the Court under s 239 of the Code of Criminal Procedure rejected an application by the defence that the accused should be tried separately QUEEN EMPRESS v MOSS I. L. R 16 All. 88

BANKERS BOOKS EVIDENCE ACT (XVIII OF 1891)

——— s 2—*Admissibility in evidence of certified copies of entries in books of banks to which that Act does not apply*—Copies of entries in the books of a bank which does not come within the definition of a Company as given in sub s (1) of s 2 of the Bankers Books Evidence Act though certified in accordance with the form prescribed by that Act are not admissible in evidence under the provisions of that Act QUEEN EMPRESS v MCGUIRE 4 C W N 433

BANK NOTE

See GOVERNMENT CURRENCY NOTE [7 Bom. O C 1

BANKRUPTCY IN MAURITIUS

See DEBTOR AND CREDITOR [I. L R 16 Mad. 85

BANKRUPTCY ACT 1869

See INSOLVENT ACT s 40 [13 B L R. Ap 2 9
I. L. R. 2 Mad. 15

BANNS OF MARRIAGE PUBLICATION OF—

See BIGAMY I. L. R. 1 All. 316

BARRISTER.

See CASES UNDER ADVOCATE

See CASES UNDER COUNSEL.

——— Receipt of fees by—

See STAMP ACT 1879 SCH II ART 15
[I. L. R. 9 Mad. 140
I. L. R. 16 All. 132

1. ——— Suspension from practising—*Malus animus—Ground for suspension*—An order of a High Court suspending a barrister from practice for five years set aside on the ground that although there had been grave irregularity there was no *malus animus* to show an intention to commit a fraudulent act. IN RE NEWTON [10 B L. R. 88 17 W R. 65
14 Moore s I A 237

BARRISTER—*continued*

2 ——— Agreement with client as to fee—*Disability to contract—Pleader—Suit by client for fees—Act I of 1846 s 8*—*A* engaged *G* a barrister practising in the mofussil to conduct a suit for him and promised to pay him a sum of money as a present in addition to the fee allowed by Regulation XIV of 1816 provided that the decree awarded to *A* a sum above R1 000 The condition being fulfilled *G* collected moneys for *A* under the decree and retained the sum promised It was not proved that *A* assented to the appropriation by *G* of the sum retained in payment of the promised present *A* sued *G* to recover the sum retained *Held* (1) that if *G* was to be regarded as a barrister he was under a disability to contract with *A* as to his fees (2) that if *G* was to be regarded as a pleader he was prohibited by a Circular Order of the Sudder Adalut from enforcing this contract *Semble*—The decision in *Kennedy v Brown 13 C B N S 677* governs all agreements made by members of the English Bar in that character ACHAMPARAMBATH CHERIA KUNHAMMU v GANTZ I L R. 3 Mad. 138

3 ——— Right of client to sue for return of fee when barrister was absent—*Advocate and client*—Taking it that the rule of English law that the relation of counsel or advocate and client creates mutual incapacity to make a binding contract of hiring and service either express or implied governs the relation of advocate and client generally in this country there must be the relation of advocate and client to give rise to the incapacity and the incapacity is strictly confined to contracts relating to service as an advocate in litigation and matters ancillary to such service The degree of barrister is but one of the qualifications for admission and enrolment as an advocate of the High Court Where the defendant a barrister who was not admitted an advocate of the High Court or specially authorized to plead in the superior Court accepted a vakalatnamah from the plaintiff to defend him upon a charge pending in the Session Court and the defendant failed to appear on the day to which the trial of the plaintiff was adjourned and the plaintiff sued the defendant to recover the amount of the fee paid—*Held* that the suit was maintainable KISHTNA ROW v MUTTUKISTNA 4 Mad., 244

4. ——— Right to sue for fees for professional services—*Barrister enrolled as advocate*—A barrister enrolled as an advocate of the High Court is incapacitated from making a contract of hiring as an advocate and cannot maintain a suit for the recovery of his fees. SMITH v GUNESHEE LAL [3 N W., 83

5 ——— *Barrister with right to act as advocate and attorney*—Where a barrister renders services which go beyond his profession as a barrister his incapacity to recover fees as a barrister does not extend to such extra professional services and where as in Burma the law enables an advocate to recover fees and a barrister acts both as an advocate and in other capacities the remuneration claimed by him ought to be divided into two parts and while in that part of his services in which he acts as attorney he should be allowed to recover fees

BARRISTER—*concluded*

not much in excess of those allowed in Calcutta no attorney's charges whatever should be allowed for that part of his services which are extra professional the commission or other allowance made for such services being the only proper and a full remuneration for them. LAND MORTGAGE BANK OF INDIA v ELMES 25 W R. 332

6 ———— Barrister or pleader appearing as litigant in person—*Practice*—In cases where a barrister or pleader appears before the Court as a litigant in person he must not address the Court from the Advocate s table or in robes but from the same place and in the same way as any ordinary member of the public IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY [I. L. R. 9 All. 180

BASTARDY PROCEEDINGS

See CASES UNDER MAINTENANCE ORDER OF CRIMINAL COURT AS TO

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R. 16 Calc 781

BASTI LAND

See CALCUTTA MUNICIPAL CONSOLIDATION ACT 1888 s 2 [I. L. R. 21 Calc. 528

BAZARS

See BENGAL REGULATION XXVII OF 1793 s 5 15 W R. 48 [16 W R. 268 11 W R 112 21 W R. 383

BENAMIDAR.

See CASES UNDER BENAMI TRANSACTION

See BENGAL TENANCY ACT s 173 [I. L. R. 21 Calc 554

See LIMITATION ACT 1877 ART 179—NATURE OF APPLICATION—GENERALLY [I. L. R. 20 Calc 388

See LIMITATION ACT 1877 ART 179—STEP IN AID OF EXECUTION—GENERALLY I. L. R. 9 Calc. 633 [12 C L. R. 146 I. L. R. 16 Calc. 355

See CASES UNDER PARTIES—PARTIES TO SUITS—BENAMIDARS

See PARTIES—PARTIES TO SUITS—SURETIES 2 B L. R. A. C 237 [11 W R. 120

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES [B L. R. Sup Vol., 759 2 Ind. Jur N S 327 8 W R. 428 5 B L. R. 321 13 W R. 157 I. L. R. 15 Mad. 267

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES [I. L. R. 20 Calc. 418 1 C W N 279

BENAMI TRANSACTION

See ATTORNEY AND CLIENT [11 B L. R. 60 note 10 W R. 469

See ESTOPPEL—ESTOPPEL BY CONDUCT [Marsh. 293 569 2 Hay 157 3 W R. 88 18 W R. 526 15 W R. 333 17 W R. 192 I L R. 16 Calc 137 148 I L. R. 20 Calc 236 I. L R. 22 Calc 909 L.R. 22 I. A 129

See FRAUD—EFFECT OF FRAUD [I. L. R. 11 Bom. 708

See LIMITATION ACT 1877 s 10 (1859 s 2) [2 B L R. A C 284 11 W R. 72

See MAHOMEDAN LAW—GIFT [I. L. R. 19 All 267 L. R. 24 I. A., 1

See CASES UNDER PARTIES—PARTIES TO SUITS—BENAMIDARS

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES [5 B L. R. 321 13 B. L. R. 157 B L. R. Sup Vol. 759 2 Ind Jur N S 327 8 W R. 482 I. L. R. 15 Mad. 267

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859 [I. L. R. 14 Calc., 109 L. R. 13 I. A. 160 I. L. R. 15 Calc 350

1 GENERAL CASES

1. ———— Custom—*Recognition of benami transactions*—Benami transactions are a custom of the country and must be recognized till otherwise ordered by law Meanwhile the extent of their compatibility with an honest purchase depends upon the peculiar circumstances of each case KALLY MOHUN PAUL v BHOLANATH CHAKLADAR 7 W R., 138

2. ———————— *Presumption as to ownership*—The habit of holding land benami though inveterate in India does not justify the

BENAMI TRANSACTION—*continued*

1 GENERAL CASES—*continued*

23 ——— **Evidence of ownership**—*Title to property seized in execution—Evidence—Suspicion*—In determining the right to property seized in execution the Court must not declare a person claiming as purchaser to be a benamidar for the debtor upon suspicion merely but its decision must rest upon legal grounds established by legal testimony FAEZ BUX CHOWDHRY *v* FAKIRUDDIN MAHOMED AHASAN CHOWDHRY

[9 B L R., 456 14 Moore s I A 234

Reversing decision of lower Court in FUKEEROOD DEEN MAHOMED AHSUN CHOWDHRY *v* KUREEM BUKS CHOWDHRY　5 W R. 43

24 ——— **Breach of covenant**—*Cause of action—Plaint—Consent of benamidar*—The plaint alleged that the three first defendants with a brother since deceased purchased a patni mehal therein described that the same was thereafter sold for arrears of rent and purchased by the said three defendants with their own funds but that the Collector in compliance with their petition entered the name of their mother the fourth defendant as the purchaser The plaint then alleged a subsequent sale by the three first defendants to the plaintiff that they the said defendants caused a kobala to be executed by the fourth defendant and that they being the real owners became witnesses to the deed and received the whole of the consideration money and prayed by reason of ouster and disturbance alleged for damages against all the defendants for breach of the following covenant contained in the kobala: If any one making any objection to the sale by me of the said mehal give you trouble in any way then I will put matters straight If I fail to do so I will return the consideration money If I do not return it you will realize it by means of a suit The Civil Judge in whose Court the plaint was filed held that no cause of action was shown, and the High Court on appeal remanded the case to try whether there had been the ouster and disturbance alleged, and whether, under the circumstances they constituted a breach of the contract. The High Court however dismissed the suit against the three first defendants holding that the mother only was bound by the contract *Held* by the Privy Council that the plaint disclosed a cause of action against all the defendants and that the case must be remanded accordingly One *issue raised by* the plaint was whether the kobala was really entered into by the mother as the agent and on behalf of the three first defendants and by their authority BISHESWARI DEBYA *v* GOVIND PRASAD TEWARI

[L R., 3 I A. 194 26 W R. 32

Varying the decree of the High Court in

[21 W R., 398

25 ——— **Suit on bond executed benami**—*Money lent by wife for husband*—Where a woman sues to recover money advanced on a bond executed to her [illegible] it is open to the obligor to plead that the money was not lent by the woman but that the bond was merely an acknowledgment of indebtedness from him to her husband. BHOOBUNESSUR POY CHOWDHRY *v* JUGGESSUREE CHOWDHRANI

[22 W R 413

BENAMI TRANSACTION—*continued*

1 GENERAL CASES—*continued*

26 ——— *Money lent by person other than holder of bond*—In a suit upon a bond where defendant pleads that the bond though executed in the name of the plaintiff was really executed in favour of a third party if it is found that plaintiff is not the real holder of the bond, the suit must be dismissed JUDOONAUTH DEY *v* GIRIJA BHOOSUN MITTER　23 W R. 446

27 ——— **Benami purchase by judgment debtor of property subject to mortgage decree**—*Effect of*—*P L* brought a suit against *H* and while it was pending executed a bond in favour of *R C* hypothecating the property in dispute The suit was dismissed with costs and another suit was brought by one *P M* upon the bond and while it was pending the property in dispute was sold in execution of *H*'s decree for costs and purchased by *S* The day after this *i e* on 10th November 1868 *P M* obtained a mortgage decree which he transferred to *R B* who executed it and attached the property in dispute when *S* intervened objecting that the mortgage the mortgage decree and the transfer of the decree were all fictitious and collusive and brought about by *P L* This objection having been rejected a suit was brought on the same ground against *R B* *P M* and the widow of *P L* to establish *S*'s rights and to stop the pending sale The property was however sold and purchased by *D* who was then made a defendant in the suit Both the lower Courts found that *R B* was a benamidar for *P L* and upheld the title of *S* in preference to that of *D* *Held* on the principle of *In re Suroop Chunder Hazra B L R Sup Vol 938 9 W R 230*—*viz* that the purchase by a judgment debtor extinguishes the decree—that the same result followed in a benami transaction when the decree was a mortgage decree and therefore although *S* by virtue of his auction purchase was not entitled to the property in dispute yet he was entitled to a declaration that so far as the amount of his purchase money went to satisfy the decree of November 1868 it should be considered a charge on the property DHONDHAI SINGH *v* SULEE MOODDEEN HOSSEIN　24 W R 359

28 ——— **Benami transfer—Mutation of names in settlement record.**—A transfer from a husband of a share in a village was not formally carried out otherwise than by its being evidenced by mutation of names in the settlement record and a son claiming as his father's heir alleged that his mother's name was only used benami by the father *Held* that a finding that such mutation was not for the purpose of putting the property into the name of the wife benami for the husband but for her own benefit was substantially correct THAKRO *v* GANGA PARSAD

[I L R., 10 All., 197 L R 15 I A., 29

29 ——— **Person allowing property to be purchased benami**—*Sale by ostensible owner*—If a person allows property to be purchased for him in the name of another and takes no steps to show to the world that he is the owner he must make out a clear right to relief against any one who

BENAMI TRANSACTION—*continued*

1 GENERAL CASES—*continued*

purchases that property *bona fide* from the ostensible owner NIDRA DOSSEE v ABDOOL WAHED [25 W R 532

30 ———— Suit on bond the consideration for which was advanced benami—*Right of assignee of bond* —Where in a bond given by *A* to secure the repayment of money lent by *B* to *A* it is stated that the money was lent by *C* it is no answer to a suit on the bond brought against *A* by a person who has purchased the bond from *C bona fide* without notice that the money advanced belonged to *A* A person who lends money in the name of another must accept the consequences if an innocent purchaser deals with the person whose name appears upon the document as the party really entitled to the receipt of the money DOKHINA KALLY DEBEE v DENO NATH ROY CHOWDHRY 3 C L R. 9

31 ———— Benamidar Right of to sue in his own name—*Purchase by a non agriculturist in name of an agriculturist—Suit by benamidar for redemption—Court fees payable as if real purchaser was plaintiff—Dekkhan Agriculturists Relief Act (Act XVII of 1879)* —Where a purchase is made benami and a suit is brought by the benamidar in order that the real purchaser may escape the consequences to which the latter would be liable if he purchased and sued in his own name the Court will look behind the record to see who the real purchaser is A benamidar may maintain a suit in his own name but the Court will put the defendant in the same position as if the real were the actual plaintiff One *D* an agriculturist purchased certain land benami for *K* a non agriculturist and brought a suit for redemption under the provisions of the Dekkhan Agriculturists Relief Act Under the notification of the Government of India No 2092 dated the 29th July 1881 the fees in case of suits by agriculturists for redemption were remitted and the plaintiff therefore paid no stamp duty on the plaint *Held* that *D* might maintain the suit in his own name but must pay the usual stamp fees and that the suit should proceed as an ordinary suit as though *K* was the nominal as well as the real plaintiff DAGDU v BALVANT RAMCHANDRA NATU I L R 22 Bom 820

32 ———— Right of benamidar to sue on negotiable instrument—*Suit on promissory note* —The payee and holder of a promissory note is not debarred from suing on it by reason of the fact that a third person is really interested in it. BOJJAMMA v VENKATARAMAYYA [I L R 21 Mad 30

33 ———— Benami purchase by a Government officer prohibited from acquiring land—*Suit for declaration against benamidar* —The plaintiff sued for declaration of his title to certain land which had been purchased by him in the name of the defendant The object of the transaction was to conceal from the Collector the fact that the plaintiff who was a tahsildar had acquired property in his taluhh contrary to the rules of his department *Held* that the plaintiff was entitled to the declaration sought LOBO v BRITO [I L R 21 Mad. 231

34 ———— Suit by benamidar to eject tenants—*Madras Revenue Recovery Act (Madras Act II of 1864) s 38—Madras Revenue Recovery Amendment Act (Madras Act III of 1884) s 1 (6)—Sale for arrears of revenue—Benami purchaser—Right of suit* —Land forming part of the endowment of a chattram was brought to sale for arrears of revenue and was purchased by the plaintiffs who now sued to eject the tenants who were in occupation of the land. *Held* (1) that the defendants were entitled to plead that the plaintiffs had purchased benami from the managers of the chattram (2) that the above plea having been substantiated the plaintiffs were not entitled to maintain the suit TIRUMALAYYPA PILLAI v SWAMI NAIKAR I L R 18 Mad. 469

35 ———— Benami deed executed with intention to defraud creditor—*Relief against fraudulent benami deeds executed by predecessor in title* —*K* executed in 1850 four benami documents with intent to defeat the claim of his employer on account of money embezzled by him two of the documents were hibas (deeds of gift) in favour of *P* his elder wife in respect of a moiety of properties 1 2 and 3 and two were kobalas (conveyances) in favour of *G* that wife's brother in respect of the other moiety of those properties *K* remained in possession of the properties till his death in 1860 After his death *P* remained in possession of the properties 1 2 and 3 and *S* the younger widow remained in possession of other properties In November *P* executed in respect of the 8 annas of the properties covered by the hibas a kobala in favour of *G*'s son then a minor *S* died in 1868 and *P* died in 1871 A daughter of *K* by *S* succeeded them and that daughter died in August 1882 In a suit brought by a son of that daughter on 4th January 1893 for the recovery (*inter alia*) of possession of his share of properties 1 2 and 3 from *G*'s son with mesne profits and for a declaration that the deeds executed by *K* were colourable transactions and that the kobala executed by *P* was not valid and binding —*Held* as to the contention that plaintiff was not entitled to be relieved against the consequences of the fraud of his predecessors in title that the balance of authority is decidedly in favour of the proposition that it is always open to a party to show that a document simply executed but not carried into effect is a benami and colourable document and to recover possession of property against the party claiming under such document *Symes v Hughes L R 9 Eq 475 Phool Bibee v Goor Surun Doss 18 W R 485 Sreenath Roy v Pundoo Bashinee Debia 20 W R 112 Debia Chowdhrain v Bimola Soonduree Debia 21 W R 422 Bykunt Nath Sen v Goboollah Sikdar 24 W R 391 Mulun Mull ck v Ramjan Sardar 9 C L R 64* referred to. *Kalyn th Kur v Doyal Kristo Deb 13 W R 87* not followed

BENAMI TRANSACTION—*continued.*

1 GENERAL CASES—*concluded*

Rangammal v *Venkatachari* *I L R 18 Mad 378* and *Chenttrappa bin Virbhadrappa* v *Puttappa bin Shivbasappa I L R 11 Bom 708* distinguished *Taylor* v *Bowers L R 1 Q B D 291* followed *Kearley* v *Thomson L R 24 Q B D, 742* referred to SHAM LALL MITRA v AMARENDRO NATH BOSE I. L. R 23 Calc, 460

36 ——— Colourable conveyance in fraud of creditors—*Fraud carried into effect —Suit by real owner against benamidar and his transferee—Right of suit* —Plaintiff with the object of defeating the claims of his creditors executed a colourable conveyance of his property in favour of another person and the transferee successfully resisted the creditors of the plaintiff from seizing the property in execution of their decrees The transferee then conveyed the property to a third party who took possession *Held* following the case of *Kali Charan Pal* v *Rasik Lal Pal I L R 23 Calc 962 note* that the plaintiff was precluded from maintaining an action for the recovery of the property *Held* also that there is a distinction between those cases in which the fraud was only attempted and those in which it was actually carried into effect and that in the latter class of cases the Court would by granting relief to the wrong doer be making itself a party to the fraud GOBERDHAN SINGH v RITU ROY I. L. R. 23 Calc 962

37 ——— *Fraud carried into effect—Suit by the real owners against benamidar —Right of suit* — Where property has been conveyed benami with the object of placing it beyond the reach of creditors and the fraudulent purpose has been carried into effect the real owner ought not to be permitted to succeed in a suit instituted by him for recovery of the property A distinction exists between such a case and a case where the fraud has not been carried into execution *Debia Chowdhrain* v *Bimola Soonduree Debia 21 W R 422* explained KALICHARAN PAL v RASIK LAL PAL [I. L. R 23 Calc. 962 note

38 ——— *Suit by real owner against benamidar—Fraudulent purpose given effect to by claim successfully preferred by the benamidar* —A suit does not lie for a declaration that a conveyance executed by the plaintiff is a benami and fictitious transaction when the alleged transaction has been used to accomplish the fraudulent purpose for which it was intended The fraudulent purpose is accomplished when the property conveyed being attached by a decree holder the benamidar is allowed to prefer a claim to it and the claim is allowed by the Court BANKA BEHARY DASS v RAJ KUMAR DASS I. L. R., 27 Calc 231 [4 C W N 289

2 SOURCE OF PURCHASE MONEY

39 ——— Source of purchase money —*Evidence of beneficial ownership* —It is not a principle of law that the issue to be framed in a case of benami purchase is from what source the purchase money came though that is an excellent criterion and test for determining the character of the purchase BRIJO BEHAREE SINGH v WAJED HOSSEIN [14 W R 373

BENAMI TRANSACTION—*continued*

2 SOURCE OF PURCHASE MONEY—*continued*

40 ——— *Evidence of beneficial ownership* —In cases of benami purchase in India the criterion of beneficial ownership is the source from which the purchase money is derived GOPEEKRIST GOSSAIN v GUNGAPERSAUD GOSSAIN [6 Moore s I. A 53

AKBUR ALI v MAHOMED FAIZ BUKSH [15 W R., 12

41 ——— *Possession* —In coming to a conclusion in a case of a benami purchase the circumstances and probabilities are to be carefully considered and weighed —*e g* the object of the purchase whether the purchase money really belonged to the purchasers and whether possession was taken after purchase and if not why possession was not taken BHOOBUN MOHUN BURRAL v NAGOREE DOSSIA 15 W R 15

42 ——— *Proof of consideration* —Where a deed of sale is executed benami under circumstances which suggest an intention to defraud creditors it is not sufficient that the sale was formally made and the deed duly registered; the Court must be satisfied as to consideration having actually passed from the purchaser to the former owner and as to the source from which the purchase money was derived. MUTHUROOLLAH v TORABOODEEN 15 W R 305

See LUCHMEE KOER *alias* BHUGOBUTTY KOER v FUTTEH SINGH 24 W R. 400

43 ——— *Mahomedan Purchase by* —Where a Mahomedan husband was found to have paid the purchase money for a patni talukh standing in the name of his wife it was held that his having been in possession of the money was *primâ facie* evidence that the patni talukh belonged to himself and not to his wife and that presumption was not rebutted by the fact that he purchased the patni in the name of his wife SURNOMOYEE v LUCHMEEPUT DOOGUR 9 W R. 338

44 ——— *Property acquired by separate funds* —In a suit for certain property as belonging to plaintiff s judgment debtor in which the defendant the adoptive mother of the judgment debtor claimed the property as purchased by her *bonâ fide* in the name of her son but with her own funds —*Held* that this case could not be judged by the criterion laid down by the Privy Council in the case of *Gossain* v *Gossain 6 Moore s I A 53* viz whence came the purchase money for the question in that case related to property acquired by a member of a joint Hindu family where the presumption would ordinarily be that all the property is joint NADIRJAN BIBEE v KUREEMOONISSA CHOWDHRAIN 12 W R. 122

45 ——— *Hindu and Mahomedan Law—Presumption* —In cases where the

BENAMI TRANSACTION—*continued*

2. SOURCE OF PURCHASE MONEY—*concluded*

question is, whether property bought and held in the name of another than the party claiming as the real purchaser is the property of that other or merely bought and held in his name (benami) for the claimant, the criterion is to consider from what source the purchase-money came; the presumption is that a purchase made with the money of *A* in the name of *B* is for the benefit of *A* and where the purchase is by a father whether Mahomedan or Hindu in the name of his son, there is no presumption of an advancement in favour of the son Upon the facts the decision of the Court below reversed. AZHAR ALI *v* ALTAF FATIMA

[4 B.L.R. P C 1 13 W R P C 1

UZHAR ALI *v* ULTAF FATIMA

[13 Moore's I. A. 232

46. ———— *Benami purchase—Whether property was held benami for the claimant or was a gift to the holder—Evidence of ownership—Source of purchase-money* —The claimant having supplied the purchase money on the sale of the village in suit took the transfer by sale deed in the name of the first defendant who remained in possession of it, receiving rents The claim was for proprietary possession by the purchaser on the ground that the property was held benami for him The first Court decreed the claim. The Appellate Court reversed this decision. The first Court had attributed too much to the fact that the plaintiff had supplied the purchase-money—an important fact in most of the cases raising the question of benami or not benami but not the only test of ownership Here the source of that money was consistent with the claimant's having as the defence alleged intended to make a gift of the property to the holder of it and the right inference from the fact was that it was not held benami for the claimant but belonged to the defendant. RAM NARAIN *v* MUHAMMAD HADI

[I. L. R. 26 Calc. 227
L R 26 I A., 38
3 C W N, 113

3 ONUS OF PROOF

47 ———— Onus probandi—*Purchase by member of joint Hindu family in name of son—Presumption—Conveyance in English form* —Where a purchase of real estate is made by a Hindu in the name of one of his sons the presumption of the Hindu law is in favour of its being a benami purchase and the burden of proof lies on the party in whose name it was purchased to prove that he was solely entitled to the legal and beneficial interest in such purchased estate Purchase of a talukh in Bengal by a Hindu in his eldest son's name the conveyance though in the English form of lease and release held to be a benami purchase and the son in whose name it was purchased declared to be a trustee for the father and the talukh part of the father's estate GOPEEKRISTO GOSAIN *v* GUNGA PERSAUD GOSAIN 6 Moore's I A., 53

BENAMI TRANSACTION—*continued*

3 ONUS OF PROOF—*continued*

48 ———— *Registration of name* —The benami system being one of the recognized institutions of the country a purchaser does not discharge himself of the onus which lies upon him by looking only to the apparent title Nor is the onus discharged by the mere fact of the name of the defendant's vendor being alone registered in the zamindar's books as the exclusive owner of the patni or of the vendor only being sued by the zamindar for the rent of the patni JEEBUNISSA *v* UMUL CHUNDRA CHACKLANUVIS 18 W R 151

49 ———— *Evidence of ownership* —In cases of alleged benami sales effect should be given to the evidence of possession and enjoyment since the purchase as showing who is the substantial owner The burden of proof lies on the person who maintains that the apparent state of things is not the real state of things and the apparent purchaser must be regarded as the real purchaser until the contrary be proved. DEO NATH *v* LEER KHAN 3 Agra, 16

50 ———— *Parol evidence —Proof of purchase* —As between Hindus oral evidence is admissible to show that land nominally purchased for *A* and conveyed to him by an instrument in writing was really purchased for *A B* and *C* POLINAYAPPA CHETTI *v* ARUMUGAM CHETTI

[2 Mad. 26

Following in this GOPEEKRISTO GOSAIN *v* GUNGA PERSAUD GOSAIN 6 Moore's I A 53

51. ———— *Purchase at sale in execution of decree Assignment of* —Where a person became the purchaser of a talukh under a decree for sale obtained by judgment creditors of the owner and an assignee of a judgment creditor sued to have it declared that the purchase did not affect any transfer of the ownership of the talukh — *Held* that the onus was on the plaintiff to prove that the talukh in question was still the property of the judgment debtors and not the property of the purchaser In matters of this description it is essential to take care that the decision of the Court rests not upon suspicion but upon legal grounds established by legal testimony SEERAMUNCHUNDER DEY *v* GOPAL CHUNDER CHUCKERBUTTY

[7 W R., P C 10

KADERNATH DUTT *v* OKHOY COOMAR BHUTTACHARJEE 9 W R 202

52. ———— *Benami lease—Proof of beneficial interest* —Where there is an allegation that a lease is held benami it is not sufficient for the party in whose name the lease is drawn out to produce the documents but it is necessary for him to prove that he has the beneficial interest in the property SARODAMOHUN ROY CHOWDHRY *v* SHAMA SOONDERY DOSSIA

[7 W R., 209

53 ———— *Property purchased at sale in execution of decree* —A decree holder in execution of his decree put up for sale certain property of his judgment debtor which was

BENAMI TRANSACTION—*continued*

3 ONUS OF PROOF—*continued*

purchased by plaintiff ostensibly on his own account Having reason however to believe that the purchase was benami for the judgment debtor the decree holder again took out execution against the same property and advertised it for sale Plaintiff intervened but his objections were disallowed by the Court which found the judgment debtor in *bonâ fide* possession on his own account The property was then sold and one of the defendants bought it Plaintiff then sued to have the execution proceedings set aside and to have it declared that the property had been bought on his own account and with his own money *Held* that the onus of proof lay on the plaintiff MUDDUN MOHUN SHAHA *v* BHARUT CHUNDER ROY 11 W R. 249

54. —— *Presumption—Creditors claiming against benamidar—Evidence* —Although a purchase by a Mahomedan with his own money of an estate in the name of his son raises a presumption of the son's name being used benami for his father proof that the father's object was to affect the ordinary rule of succession as from him to that property is sufficient to give as respects strangers a title to the son independent of and adverse to the father Where *bona fide* creditors of the ostensible owner of property are claimants on that property the Court will require strict proof on the part of any one seeking to have it declared that he held it only benami PUKNADAWLA NOWAB AHMED ALI KHAN *v* HURDWARI MULL 5 B L. R. 578

AJMUT ALI KHAN *v* HURDWAREE MULL [14 W R. P C 14 13 Moore's I. A. 395

55 —— *Proof of beneficial ownership—Presumption from possession on receipt of rents* —Where there are benami transactions and the question is who is the real owner the actual possession on receipt of the rents of the property is most important. In a suit against a purchaser at a sale under Act XI of 1859 s. 13 the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs executed by the heirs of the last of a series of benamidars and it appearing that the last benamidar had actual ownership of one fourth of the property comprised therein —*Held* that the incumbrance was good to the extent of such fourth IMAMBANDI BEGUM *v* KUMLESWARI PERSHAD [L. R. 13 I. A. 160 I. L. R. 14 Calc. 109

56 —— *Purchase by Hindu widow for a relation* —A step-son made over property to his step mother for her support Out of the produce she bought properties for her nephew in the name of other parties *Held* under the circumstances that the purchased property on her death went to the nephew and not to the step-son as heir of her husband. Although the defendant by his written statement denied the fact of the purchases being with the widow's money and it was proved that they were made with her money —*Held* that this did not remove from the plaintiff the burden of proving that the purchases were made benami for her CHANDRANATH ROY *v* RAMJAI MUZUMDAR [6 B. L. R., 303 15 W R. P C., 7

57 —— *Creditors of benamidar Right of—Credit given to benamidar in good faith* —Certain property having been attached in execution of a decree against *B* the plaintiff instituted a suit claiming the property and alleging that *B* was his benamidar The allegation was established. It was contended that the public and the creditor at whose instance the attachment was made in execution of a decree for money advanced to *B* had been misled by the benami transaction *Held* that the creditor was bound to prove that he had actually advanced the money believing in good faith that the property belonged to *B* GOLUK CHUNDER DASS *v* BHAGMUT DASS [11 C L. R. 106

58 —— *Benami purchase by Hindu or Mahomedan—Property bought by a father in his son's name—Advancement—Presumption—Evidence—Nature of evidence to rebut* —When purchase is made by a Hindu or a Mahomedan in the name of his son the presumption is in favour of its being a benami purchase and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate When the rights of creditors are in issue in such a transaction very strict proof of the nature of the transaction should be required from the objector to such rights and the burden of proof lies with more than ordinary weight on the person alleging that the purchase was intended for the benefit of the son. NAGINBHAI *v* ABDULLA [I L. R 6 Bom. 717

59 —— *Allegation of benami conveyance* —*A* and *B* were co sharers. *B* leased his share to *D* taking rent separately from him and *A* sold his share to *C* so that *B* and *C* became co-sharers Afterwards *B* conveyed his share to *E* and delivered *D*'s kabuliat to him the conveyance which was registered reciting payment of the consideration Subsequently *E* sold the share to *C* for valuable consideration In a suit brought by *C* for possession, *B* alleged that his conveyance to *E* was a benami transaction of which *C* was cognizant *Held* that the onus of showing that was on *B* and that *primâ facie* *C* was justified in supposing that *E* had a good title to convey SATYA MONI DASI *v* BHUGGOBUTTY CHURN CHATTOPADHYA 1 C L. R. 466

60 —— *Husband and wife—Proof of bonâ fide purchase* —In a case of purchase after a decree where the vendor is only a *benamidar* and the vendor's husband (supposed to be the real owner) wrote the deed and received the purchase-money (thereby making himself a consenting party) the onus lies on the plaintiff to prove that he is a *bonâ fide* purchaser for value exercising due care and diligence MAN TURUNGINEE DABEE *v* BOISTUB CHURN BHUDDER 1 W R., 110

See ALLI KHAN *v* MEER NASEER ALI [1 W R. 115

61. —— *Benami advance of money for mortgage* —Where a plaintiff sued

BENAMI TRANSACTION—*continued.*

3. ONUS OF PROOF—*continued.*

alleging that a certain deed of mortgage was executed by *M B* benami for the benefit of *H B* through whom the plaintiff claimed, and also alleging that *H B* had advanced the money for the mortgage out of her own moneys it was held that if it could be shown that the money advanced was the money of *M B* who executed the mortgage it was immaterial to consider who was the nominal mortgagee as the plaintiff could not set up a title inconsistent with the title set up in the lower Courts In the absence of proof sufficient to establish the title of *H B* and to show that the money was advanced by *H B* the plaintiff's suit was dismissed. BHAWUN DOSS v MAHOMED HOSSEIN

[13 W R., P C., 38 13 Moore s I A., 346

See ROOP CHAND ASWAL v KABFOOL

[25 W R 54

62. ——— *Suit for declaration of title* —When defendants admitted the execution of a document purporting to be a conveyance by them of certain land to the plaintiff for valuable consideration but contended that the deed was not intended to have any effect and was merely a benami transaction —*Held* in a suit for declaration of his right by a plaintiff in possession of the land that under the circumstances of the case the onus was on the plaintiff to show that the deed was what it appeared to be and not a mere paper transaction. MOOKTO KESHEE DEBEE v ANUNDO CHUNDER CHATTOPADHYA 2 C L R 48

63 ——— *Bonâ fide purchase—Certified purchaser* —The burden of proof is upon him who alleges that the certified purchaser and registered owner is a benamidar BAIJ NATH SAHAY v RUGHO NATH PERSHAD SINGH

[12 C L R 186

64. ——— *Purchaser bonâ fide from benamidar* —Where a plaintiff claims land as purchaser in good faith from a benamidar who has been registered as owner and who by the act of the true owners had been allowed to become the apparent owner the burden lies upon him RUTTO SINGH v BAJRANG SINGH 13 C L R., 280

65 ——— *Purchase ism farzi in the name of a person other than the real purchaser—Proof of the actual transaction* —In liquidation of a mortgage debt the mortgagors sold the mortgaged property and executed a sale deed with a recital that they had received from the wife of the mortgagee the amount of the mortgage debt and interest with also a small sum of money In after years the husband now plaintiff and the wife defendant contested which of the two was the real purchaser *Held* that the burden of proving that the mortgagee gave the consideration for the sale was upon him at the outset as he claimed contrary to the tenor of the admitted document which burden had been discharged by his evidence that he substantial consideration for the sale by the mortgagors was the extinction of the mortgage debt due to him. This proof shifted on to the wife the burden of showing that this extinction was effected by her money or of showing that she had continuous possession in accordance with the sale deed. She did not prove that any money was paid by her either to the vendors or to the mortgagee nor was there such an amount of possession proved as affected the question either way The conclusion was that the wife s name was used ism farzi for the husband s as alleged SULEIMAN KADR BAHADUR v MEHNDI BEGUM

[I L R 25 Calc 473
L R 25 I A 15
2 C W N 186

BENAMI TRANSACTION—*continued*

3 ONUS OF PROOF—*concluded*

4 CERTIFIED PURCHASERS

(*a*) ACTS XII OF 1841 I OF 1845 AND XI OF 1859

66 ——— Act XII of 1841—*Suit to oust certified purchaser at sale for arrears of revenue* —S 22 Act XII of 1841 did not apply to a suit for a declaration of the plaintiff s title in right of inheritance as against other members of the family MAHOMED WAYEZ v SUGEEROONISSA 6 W R 38

67 ——— Act I of 1845—*Purchaser at sale for arrears of revenue* —The ruling of the Full Bench in *Bihari Kunwar* v *Bihari Lall 3 B L R F B 15; 11 W R F B 16* that a benami purchaser is debarred from setting up his title in opposition to a certified purchaser was held not to apply in a suit in which the plaintiff was a certified purchaser who had bought at a sale for arrears of revenue under Act I of 1845 BIRJO BEHAREE SINGH v WAJID HOSSEIN 14 W R, 372

68 ——— s 21—*Purchases made benami* —S 21 Act I of 1845 does not protect purchases made in the name of third parties from the operation of decrees against the persons beneficially entitled to the purchased property AMEEROONISSA BEEBEE v BENODE RAM SEIN 2 W R 29

69 ——— *Property purchased by member of joint family* —Property purchased by a member of a joint family with money out of the common estate is family property even if purchased in the name of his son Even if the son is a certified purchaser at a sale under Act I of 1845 the other members of the family are not debarred by s 21 from claiming a share of the purchase as joint property BOONIADI LALL v DEWKEE NUNDUN LALL 19 W R 223

70 ——— *Onus probandi* —In a suit to recover possession by the ostensible purchaser of an estate sold for arrears of revenue under Act I of 1845 where it was found that plaintiff had stood by ever since his purchase and had for 11 years allowed defendants to remain in possession and enjoy the usufruct as proprietors —*Held* that the burden of proof was rightly thrown on the plaintiff *Jadub Ram Deb* v *Ram Lochun Muduck 5 W R 56* and *Bihary Kunwar* v *Bihari Lall 3 B L R F B., 15 11 W R F B 16* —the former on s 36 Act XI of 1859 and the latter on s 260 Act VIII of 1859 —considered and applied to a case

BENAMI TRANSACTION—*continued*

4 CERTIFIED PURCHASERS—*continued*

under s 21 Act I of 1845 JOHUR ALI v BRINDA BUN CHUNDER 14 W R 10

71. ——————— *Certified purchaser*—S 21 Act I of 1845 does not apply to a suit brought to oust the certified purchaser on the ground that the purchase was made on behalf of another person but to make void a pottah granted by his mother BISSONATH SURMA BHUTTACHALJEE v MORAN W R, 1864, 353

72. ——————— *Fraudulent purchase*—Act I of 1845 was not intended to afford statutable protection to a purchaser at a sale brought about by fraudulent default on a preconcerted arrangement for the purposes of title MUNSOOR ALI KHAN v OJOODHYA RAM KHAN 8 W R., 399

73 ——————— *Sale of arrears of revenue—Purchase by manager of joint Hindu family—Suit by one member to recover his share*—A purchase by a managing member of a joint Hindu family in his own name at a revenue sale held under Act I of 1845 is not affected by s 21 of the Act A suit by one of the members for recovery of possession of his share of the property purchased by the managing member in his own name but for the use of the family is not a suit to oust a certified purchaser and therefore not affected by s 21 Act I of 1845 TUNDAN SINGH v PUKH NARAYAN SINGH

[5 B L R 546; 13 W R 347

Confirmed by P C on 9th June 1874

[22 W R, 199 L R 1 I A., 342

74 ——————— *Act XI of 1859 s 36—Act XII of 1841*—*Held* (by MITTER J) that s 21 of Act I of 1845 and s 36 Act XI of 1859 do not apply to a purchase under Act XII of 1841 BOOA RUSSOOLEE v NAWAB NAZIM OF BENGAL

[11 W R 382

75 ——— Act XI of 1859 s 36, Construction of—*Title of benami purchaser how limited—Benami property its liability to claims against true owner*—The object of s 36 of Act XI of 1859 is to prevent the true owner from disputing the title of his benamidar (certified purchaser) and not to preclude a third party from enforcing a claim against the true owner in respect of the benami property CHUNDRA KAMINY DEBEA v RAMRUTTUN PATTUCK I L R. 12 Calc, 302

76 ——————— *Suit to oust certified purchaser*—*A* purchased a mehal in the name of *B* s brother and obtained possession He then sued *B* who was acting as his tahsildar for an account and for delivery of certain papers connected with that mehal *Held* that the terms of s. 36 of Act XI of 1859 did not apply to bar the suit BRINDABUN CHUNDER KUNDU v RAM SUNDER MOZUMDAR

[I. L. R. 21 Calc., 375

77 ——————— *Penal section Construction of—Suit to oust an assignee from a certified purchaser—Maintainability of suit*—Plaintiff in trust ed defendant No 2 to purchase a certain property at a revenue sale on his behalf; defendant No 2 purchased it in his own name but with the money of the plaintiff and afterwards agreed to execute a deed of release in favour of plaintiff but without doing that he fraudulently executed a deed of sale in favour of defendant No 1 who had notice of plaintiff's title In a suit by plaintiff for recovery of possession and declaration of title of the property it was contended that s 36 of Act XI of 1859 was a bar *Held* per MACLEAN C J and GHOSE J that s 36 of Act XI of 1859 is a penal section and ought to be construed strictly and literally and in construing the section the Court ought not to go beyond the strict letter of the language used or to put a construction upon that language which would have the effect of materially extending the operation of the section *Held* further by MACLEAN C J that s 36 is no bar to the suit, inasmuch as this is not a suit to oust the certified purchaser but to oust somebody else although he claims through the former; and the true ground upon which the suit is based is the fraud of defendant No. 2 of which defendant No 1 had notice *Held* per GHOSE J that the suit might well be regarded as based upon the ground of fraud and in this view of the matter the case falls outside the provisions of s 36 of the Revenue Sale Law *Buhuns Kowur* v *Lalla Beharee Lall* 14 *M I A* 496 *Lokhee Narain Roy Chowdhry* v *Kalypuddo Bandopadhya L R 2 I A 151 Toondun Singh* v *Pokhnarain Singh L R 1 I A., 342* referred to Per TREVELYAN J (dissenting)—S 36 of Act XI of 1859 applies just as much to a suit to oust the assignee of a certified purchaser as it does to a suit to oust that purchaser The Legislature in enacting s 36 intended to give to a certified purchaser in possession a statutory title against the person if any on whose behalf he had purchased, and therefore this protection should devolve upon his heir or assignee who would take a title in continuation of that of the certified purchaser RAJ CHUNDER CHUCKERBUTTY v DINA NATH SAHA

[2 C W N, 433

(b) CIVIL PROCEDURE CODE 1882 s 317 (1859 s 260)

78 ——————— *Civil Procedure Code 1882 s 317—Sale for arrears of revenue—Act XI of 1859 s 36—Certified purchaser suit against*—*A* the certified purchaser of a talukh at a sale held under the provisions of Act XI of 1859 for arrears of revenue and who had obtained symbolical possession had at the time of the sale agreed with *B* the former owner of the talukh to re-convey to him (*B*) after the sale had been completed. In a suit by *B* to compel specific performance of the contract alleging that he had never quitted actual possession of the talukh, objection was taken that the suit was not maintainable under s 36 of Act XI of 1859 and s. 317 of Act XIV of 1882 *Held* that the suit not being one to oust the certified purchaser from possession was not barred by s 36; and that neither was it barred by s. 317 of the Civil Procedure Code that section applying only to sales in execution of decrees of Civil Courts held under the Procedure Code FAZAL RAHAMAN v IMAM ALI I. L. R, 14 Calc., 582

BENAMI TRANSACTION—*continued*

4 CERTIFIED PURCHASERS—*continued*

79 ——— *Civil Procedure Code 1859 s 260—Party not a certified purchaser* —S 260 of Act VIII of 1859 does not preclude a person purchasing benami from setting up his title against a person not being the certified purchaser or claiming through him. SHOROSUTTY DASSEE *v* GOPEESOONDARY DASSEE Marsh., 423 2 Hay 512

80 ——— *Suits between benamidar and beneficial owner* —Suits between the benamidar and the beneficial owner are alone referred to in s. 260 Act VIII of 1859 SEETANATH GHOSE *v* MADHUB NARAIN ROY CHOWDHRY 1 W R, 329

81. ——— *Purchase in another's name at Court sale—Liability of property to creditors of benamidar* —The immoveable property of *A* at a Court's sale was purchased by *B* with the money and on behalf of *A* *B* subsequently conveyed the property to *C* for the benefit of *A*. *Held* that the property could be taken in execution by the creditors of *A*. *Quære*—Whether but for the subsequent conveyance *B* under the operation of ss 259 and 260 of the Civil Procedure Code would not have had a good title against the creditors of *A* SATAPU VALAD DAU DONGRE *v* KARBASAPA 7 Bom., A. C 21

82. ——— *Agreement to reconvey* —*A*'s property was sold under a decree to *B* a *bonâ fide* purchaser who offered to *A* to reconvey to him on being repaid the purchase money *Held* that, if *A* accepted the proposal s 260 of the Civil Procedure Code did not preclude a contract from arising MOR JOSHI *v* MUHAMMAD IBRAHIM [10 Bom. 344

83 ——— *Suit for possession against certified purchaser* —Suit for possession by purchaser from certified purchaser at an execution sale Defendant in possession not only denied plaintiff's title but that of his vendor whose purchase was clearly fraudulent being made in collusion with the judgment debtor to defraud creditors. *Held* that s 260 Act VIII of 1859 did not prohibit a defendant under such circumstances from questioning the plaintiff's title; that it provided for the dismissal of a suit brought to question the title of the certified purchaser but did not prohibit a defendant from questioning that title when the auction purchaser sought to oust him. KHYRAT ALI *v* SYFULLAH KHAN [8 W R., 130

84. ——— *Previous possession of party claiming to be the real purchaser* —The correct interpretation of s 260 Act VIII of 1859 is to the effect that a suit by a party claiming to be the real purchaser of immoveable property sold in execution of a decree cannot be brought against the certified auction purchaser even though the claimant has had previous possession BYKUNT CHUNDER MOOSTAFEE *v* KHEMA MOYEE DEBIA [9 W R., 380

85 ——— *Certified purchase—Purchaser under second sale in execution of decree* —The certified purchaser of property which had been a second time attached and sold in the execution of a decree as the property of the judgment debtors sued to be confirmed in possession of the property by virtue of his certificate of sale and to obtain the cancelment of the second sale and the order disallowing his objections to that sale *Held* that the provisions of s 260 of Act VIII of 1859 did not prohibit the consideration of the circumstances of the first sale when the question for determination was whether at the time of the second attachment the judgment debtors were in possession as owners of the property or merely as lessees of the certified purchaser GANESH PERSHAD *v* SHEO CHURUN LALL [6 N W 197

86 ——— *Suit by decree holder against certified purchaser* —S 260 of Act VIII of 1859 does not preclude the Courts from entertaining a suit brought by a decree holder against the certified purchaser of property to bring the property to sale in execution of his decree as the property of his judgment-debtor on the allegation that the certified purchaser had purchased the property benami for the judgment debtor who had remained in possession as owner from the date of purchase and was in possession as such at the time of attachment SOHUN LALL *v* LALA GYA PERSHAD [6 N W 265

87 ——— *Onus probandi* —Where plaintiff as heir of the ostensible auction purchaser sued to oust defendant who had been twelve years in possession and the latter pleaded that the sale was made benami —*Held* that the long possession would go to prove the truth of defendant's allegation that the auction purchaser was merely a trustee for him and it would be for plaintiff to show that his ancestor paid for the purchased property *Held* that ss 259 and 260 Act VIII of 1859 did not apply as the sale was made before that law came into operation ZOOLFEKAR ALI *v* MAHOMED TUKEE 9 W R, 438

88 ——— *Certified purchaser* —The purchaser of immoveable property sold in execution of a decree of a Civil Court got a certificate under s 259 of Act VIII of 1859 and subsequently sued for possession of that which he had purchased. *Held* that the defendant (who was in possession) was by s 260 debarred from pleading that he himself was the real purchaser and that the purchase was made benami for him in the name of the plaintiff the certified purchaser JOKHEE LALL *v* HUNS KOOER 10 W R 167

89 ——— *Certified purchaser—Certificate of sale Form of—Liability of property to son's creditors* —There is nothing fraudulent or illegal in a father making provision that property over which he has complete control shall not go into the hands of an insolvent son; but a benami conveyance to female members, the father continuing the absolute and uncontrolled owner during his life and the son entering into possession after his death cannot exclude the claim of the son's creditors Where a purchaser at a sale in execution was named in the sale certificate as mother and

BENAMI TRANSACTION—*continued*

4 CERTIFIED PURCHASERS—*continued*

guardian of her infant son the title to the property was held to be vested by the certificate in the minor absolutely HEMANGINEE DOSSEE v JOGENDRO NARAIN ROY 12 W R., 236

90 ——— *Certified purchaser—Fraud* —S 260 Act VIII of 1859 does not apply when the name of the certified purchaser has been inserted by fraud and contrary to the wishes of the purchaser KOOSUMBA v TUFUZZUL HOSSEIN [13 W R., 85

91 ——— *Suit by purchaser* —In a suit for possession of a tank on the allegation that plaintiff purchased it in execution of a decree against one *S D* and that after being put in possession she was subsequently ousted defendant s plea being possession after prior purchase at an execution sale under a decree against the same *S D* the lower Court found that the defendant s purchase was a fictitious transaction being in reality for the benefit of *S D* who was in actual possession and enjoyment of the property at the time of the plaintiff s purchase *Held* that the case did not come under the purview of s 260 Act VIII of 1859 TARA SOONDUREE DABEE v OOJUL MONEE DASSEE [14 W R. 111

92 ——— *Right of suit—Fraud* —*J* and *B* borrowed a sum of money on a mortgage of property Shortly after this they granted a mokurari of the property to plaintiff and afterwards sold their rights as proprietors to one *R R* Subsequently to this the mortgagee brought a suit against the mortgagors and obtained a decree declaring the property liable to be sold in satisfaction of his debt The property was accordingly sold in execution and purchased by one *R D* and the sale proceeds were made over to the judgment-creditor Plaintiff as mokuraridar now sues to obtain possession on the ground that the debt being paid off the mortgage is no longer in existence The Judge having found that the purchase by *R D* was not *bonâ fide* but for and on the part of *R R* who was in actual possession —*Held* that s 260 of the Code of Civil Procedure was no bar to the suit the ground of fraud alone giving plaintiff sufficient right to question the legality of the sale SHAMA KESHEE v RAJ KISHORE 14 W R 179

93 ——— *Suit against certified purchaser* —If a person is the person to whom under s. 259 Act VIII of 1859 a Court is directed to grant a sale certificate he is entitled to be regarded as the certified purchaser at any time after the acceptance of his bid at the execution sale even though the certificate may not actually have been granted to him before any suit against him, in connection with the property purchased by him has been instituted and s 260 applies so as to bar a suit by the alleged real purchaser against him BUNDA ALI KHAN v AMEERUN 25 W R., 493

9[illegible] ——— *Suit by certified purchaser*—[illegible]

Pla[illegible] instructed [illegible] f Act VIII of 1859 must be c[illegible] erty at a rev[illegible] rally and is applicable only [illegible] 2 purchased in a certified purchaser to assert a benami title against him Where the certified purchaser is a plaintiff the real owner if in possession and if that possession has been honestly obtained, may show in defence that the holder of the certificate is a mere trustee LOKHEE NARAIN ROY CHOWDHRY v KALYPADDO BANDOPADHYA

[L R, 2 I A, 154 23 W R, 358

95 ——— *Sale in execution of decree—Certified purchaser—Benami purchase* —A talukh in possession of a mortgagee was put up for sale under an execution against the mortgagor and was bought by *A* in his own name but benami for the mortgagee *A* obtained a certificate as purchaser and was put formally in possession the mortgagee remaining in actual possession In a suit by *A* in ejectment to recover possession of the property purchased —*Held* (*dissentiente* L S JACKSON *J*) that the defendant was debarred not only by *s. 260* but by *the general provisions of the Act from* pleading that the plaintiff the certified purchaser, purchased not on his own behalf but benami for him, the defendant Such defendant must show a transfer of title to him from the purchaser in whom alone under the certificate the title of the judgment debtor has vested The object of s 260 is to prevent any enquiry between the purchaser *de facto* and any person on whose behalf he is alleged to have purchased. *Held* on appeal (reversing the decision of the High Court) that s 260 of Act VIII of 1859 is to be construed strictly and that no suit would lie by *A* against the mortgagee to redeem BIHANS KUNWAR v BEHARI LAL

[3 B L R F B 15 11 W R F B 16

On appeal 10 B L R 159

[18 W R 157 14 Moore s I A. 496

MUTHOORA NATH DASS v RAIEKOMUL DOSSEE [24 W R. 278

96 ——— *Civil Procedure Code s 317—Suit by purchaser at sale in execution of decree* —At a sale in execution of a decree in February 1875 the plaintiff purchased certain property in the name of *M* who was recorded as the purchaser In 1886 eleven years after the execution sale *M* sold the property to *H* whose name was subsequently registered as owner notwithstanding the plaintiff s objections. The plaintiff thereupon in 1888 brought a suit against *H* for a declaration of his title to the property on the grounds that it had originally been purchased on his behalf at the execution sale and that he had been in possession for more than twelve years —*Held* that the suit did not fall within s 317 of the Civil Procedure Code *Buhuns Koonwur* v *Lalla Buhoree Lall 10 B L R 159; 14 Moore s I A 496* relied on. KARAMUDDIN HOSAIN v NIAMUT FATEHMA

[I L R 19 Calc. 199

97 ——— *Civil Procedure Code (1882) s 317—Suit against heir of certified purchaser* —*Held* that s. 317 of the Code of Civil Procedure would not preclude a suit against a person who claimed title through the certified purchaser based on the allegation that the certified purchaser

BENAMI TRANSACTION—*continued*

4. CERTIFIED PURCHASERS—*continued*

was not the real purchaser but only purchased benami for the person through whom the plaintiff claimed. *Buhuns Kower* v *Lalla Buhooree Lall 10 B L R 159 14 Moore's I A 496* referred to SIBTA KUNWAR v BHAGOLI

[I. L. R., 21 All. 196

98 ———————— *Suit for declaration that the name of certified purchaser was inserted fraudulently* —S 260 Act VIII of 1859 is no bar to a suit for a declaration that the name of the certified purchaser was inserted in the certificate of sale fraudulently and without the consent of the real purchaser GOSMIAH v TAFFUZZUL HOSSEIN

[4 B L. R. Ap 32

99 ———————— *Purchase by member of joint family in his own name with joint funds*—The provisions of s. 260 Act VIII of 1859 apply to ordinary benami purchases at execution sales, but do not affect purchases of property by one member of a joint Hindu family in his own name but with the joint funds BODH SINGH DOODHOORIA v GUNESH CHANDRA SEN

[12 B L. R. P C., 371 19 W R. 356

100 ———————— *Execution of decree—Certified purchaser* —*A* sued for declaration that *P* the certified auction purchaser of certain immoveable property was merely a trustee for *R* *P*'s judgment debtor that the purchase in *P*'s name was made with the intent of defeating or delaying him in the execution of his decree and that he was at liberty to apply for execution against the property as the property of his judgment-debtor *Held* following *Sohun Lall* v *Lala Gya Pershad 6 N W 265* that s. 260 Act VIII of 1859 was in no way a bar to the suit PURAN MAL v ALI KHAN

[I. L. R 1 All. 235

101. ———————— *Suit by certified against actual purchaser* —The certified purchaser of certain property at a sale in execution of a decree sued to establish his right to the property and for possession thereof *Held* that the defendant in the suit was not precluded by s 260 Act VIII of 1859 from resisting the suit on the ground that he was the actual purchaser of the property JAN MUHAMMAD v ILAHI BAKHSH I L R 1 All. 290

102. ———————— *Civil Procedure Code 1877 s 317—Suit by member of Hindu family against his father and a purchaser who has bought benami for him for partition* —The provisions of s 317 of the Code of Civil Procedure are no bar to a suit for partition brought by a Hindu son against his father and a certified purchaser of family property who has bought benami for the father with the family funds at a sale in execution of a decree against the father NATESA AYYAR v VENKATARAMAYYAN I L R 6 Mad. 135

103 ———————— *Certified purchaser—Suit against certified purchaser—Grant of sale certificate after institution of suit* —*A* sued *K* the purchaser of certain immoveable property sold in execution of a decree under Act VIII of 1859 for a declaration that *K* had purchased such property on her behalf The suit was instituted after Act VIII of 1859 was repealed and Act X of 1877 came into force. When the suit was instituted *K* did not hold a sale certificate *After it was instituted he applied* for and obtained a sale certificate under s 317 of Act X of 1877 *Held* that when the suit was instituted it was maintainable as the defendant not being a certified purchaser under s 260 of Act VIII of 1859 that section did not apply and that when the defendant obtained a certificate under s 317 of Act X of 1877 he became a certified purchaser and the suit would only be maintainable if the plaintiff made out a case falling within the provisions of the last part of s 317 ALDWELL v ILAHI BAKHSH

[I L. R 5 All 478

104. ———————— *Benam purchaser—Stranger to the transaction not affected*— In a suit by *A* against *B* and *C* to recover land *A* alleged that *B* bought the land at a Court sale on his behalf *B* did not contest the suit *C* who did not claim under *B* pleaded that *A* could not recover by reason of the provisions of s 317 of the Code of Civil Procedure *Held* that s 317 only enabled the certified purchaser and those claiming under him to avoid arrangements made with him in the nature of a trust and was no bar to the suit RAMAKRISHNAPPA v ADINARAYANA

[I L. R 8 Mad. 511

105 ———————— *Suit for property purchased at execution sale* —In a suit to obtain possession of certain property purchased at an execution sale the plaintiff who alleged that the purchase had been made for his benefit and that the certified purchaser was his benamidar made the certified purchaser who admitted his allegation a defendant along with the person in possession *Held* that the case came within the rule laid down in *Buhuns Koowur* v *Lalla Buhooree Lall 14 Moore's I A 496 10 B L R 159* and that the suit was not barred by s 317 of the Civil Procedure Code HAZI ARJUN MULLICK v FARUTULLA

[9 C L R 295

106 ———————— *Civil Procedure Code (1882) s 317—Benami transaction—Fraud—Suit against purchaser buying benami—Sale certificate granted in name of benamidar* —Certain property belonging to a judgment debtor was brought to sale and purchased by a person in the benami name of her daughter then an infant and the sale certificate was made out in the name of the latter Subsequently the mother mortgaged the property and the mortgagee brought a suit obtained a decree and had the property sold and purchased it himself Upon his being resisted by the daughter in attempts to get his name registered as proprietor he instituted a suit against both mother and daughter to establish his rights to the property The daughter thereupon objected that such suit would not lie by reason of the provisions of s 317 of the Civil Procedure Code *Held* that the provisions of that section which were intended to prevent fraud were inapplicable to the

BENAMI TRANSACTION—*continued*

4 CERTIFIED PURCHASERS—*continued*

facts of the case and that the suit was maintainable KANIZAK SUKINA v MONOHUR DAS

[I. L. R., 12 Calc, 204

107 ———— *Civil Procedure Code (1882) s 317—Benami purchase at execution sale for judgment debtor—Remedy of subsequent purchaser for value—Misjoinder of parties*—In a suit to redeem a kanom brought by the plaintiff who had purchased the land in execution of a decree against the jenmi it appeared that the land had previously been purchased in the name of one who was joined as a supplementary defendant with the funds of the jenmi s tarwad and with the object of defrauding the creditors of that tarwad. A decree for redemption was passed which was reversed on appeals filed by the supplementary defendant and the kanomdar respectively The plaintiff preferred a second appeal against the decree in the first mentioned appeal joining the kanomdar as respondent *Held* that the plaintiffs could not succeed as the kanomdar was not a party to the appeal against which the second appeal was preferred *Semble* apart from the above objection the plaintiff was not entitled to a declaration that the purchase by the supplementary defendant was benami for the tarwad of the original jenmi and consequently invalid as against the plaintiff *Kanizak Sukina v Monohur Das I L R 12 Calc 204* dissented from. RAMA KURUP v SRIDEVI I. L. R 18 Mad. 290

108 ———— *Civil Procedure Code (1882) s 317—Suit by execution creditor for declaration that property is liable to be sold in execution of decree as belonging to his debtor*—The plaintiff lent money to F on a bond and after his death sued his representative to recover the money out of the deceased s assets and obtained a decree in execution of which he attached certain property S preferred a claim to the property on the ground that she was the purchaser of it at an execution sale and it was released. The plaintiff then brought a suit against S and F's representative for a declaration that the property was the property of his debtor F and was therefore liable to be sold in execution of his decree *Held* that the suit was not barred by s 317 of the Civil Procedure Code *Kanizak Sukina v Monohur Das I L R 12 Calc 204 Seetanath Ghose v Madhub Narain Roy Chowdhry 1 W R 329 Khyrat Ali v Syfullah Khan 8 W R 130 Sohun Lall v Lala Gya Pershad 6 N W 265* and *Puran Mal v Ali Khan I L R 1 All 235* followed *Rama Kurup v Sridevi I L R 16 Mad 290* dissented from SUBHA BIBI v HARA LAL DAS I. L. R., 21 Calc 519

109 ———— *Civil Procedure Code (1882) ss 317 and 244—Purchase by a benamidar with funds belonging to a joint Hindu family—Right of member of family not being a party to benami transaction to sue for his share*—A Hindu sued for partition of his share of the family property and obtained a decree which he partially executed He then died without issue leaving a widow The rest of the family remained undivided and the plaintiff was born into it after the decree was passed. Some of the members of the family arranged for the purchase of the late decree holder s property with their money benami for them and for a similar purchase of other portions of the family property at Court sales held s further execution of the decree The plaintiff now sued for partition of *inter alia* those portions of the family property which had been the subject of the benami transaction *Held* that the plaintiff was entitled to share therein and was not precluded from asserting his right by Civil Procedure Code s 244 or s 317 MINAKSHI AMMAL v KALIANRAMA RAYER

[I. L. R., 20 Mad., 349

110 ———— *Civil Procedure Code (1882) s 317—Sale in execution of decree—Right to prove purchase benami*—Certain property was mortgaged in 1881 and again in 1882 In 1883 the interest of one of the mortgagors in the property was brought to sale subject to the mortgages in execution of a decree against him and was purchased by the assignor of defendant No 6 In 1884 a decree for sale was obtained on the mortgage of 1882 neither defendant No 6 nor his assignor having been brought on to the record. In execution of that decree the property now in question was purchased by the predecessor in title of the plaintiff who now brought this suit for redemption averring that the purchase of 1883 was benami for the mortgagors. *Held* that the plaintiff was not debarred by the Civil Procedure Code s 317 from proving this averment KOLLANTAVIDA MANIKOTH OVAKKAN v TIRUVALIL KALANDAN ALIYAMMA I L R, 20 Mad. 362

111 ———— *Civil Procedure Code (1882) s 317—Assignment from a certified purchaser*—A person taking an assignment from a certified purchaser at a Court sale is not entitled under Civil Procedure Code s 317 to object to the maintainability of a suit to recover the land purchased on the ground that the purchase was made benami. THEYYAVELAN v KOCHAN

[I L R 21 Mad., 7

112 ———— *Civil Procedure Code (1882) s 317—Effect of benami purchase and purchase as execution debtor's agent—Right of suit for possession*—Where the purchaser at an execution sale is the agent of the execution debtor and buys the property as such though he advances the purchase money on the understanding that he is to be repaid a suit for possession of the property is maintainable by the latter against the former Such a transaction is not a mere benami purchase and is not a bar to such a suit under s 317 of the Civil Procedure Code. SANKUNNI NAYAR v NARAYANAN NUMBUDRI I. L. R. 17 Mad., 282

113 ———— *Civil Procedure Code (1882) s 317—Sale under mortgage decree—Benami purchaser—Purchase on account of a subsequent usufructuary mortgagee—Right of suit for possession*—Certain land was hypothecated to A and subsequently put in the possession of B under a usufructuary mortgage A obtained a decree upon

BENAMI TRANSACTION—*continued*

4. CERTIFIED PURCHASERS—*continued*

his hypothecation for the sale of the property against *B* and the mortgagor In execution the land was purchased by the agent of *B* with his money and he agreed to execute a conveyance to *B* This agreement was not carried out and the nominal purchaser ejected *B*'s tenant *Held* the suit was not barred by s. 317 of the Civil Procedure Code that *B* was entitled to a decree for delivery of possession and execution of a conveyance KUMBALINGA PILLAI *v* ARIAPUTRA PADIACHI I. L. R. 18 Mad. 436

114. ——— *Civil Procedure Code (1882) ss 291 317—Trusts Act (II of 1882) ss 82 88—Purchase by alleged agent of decree holder at sale in execution*—Certain decree-holders (appellants) were refused permission to purchase at the sale in execution and subsequently the defendant alleged by the decree holders to be their agent but of whose general duty the making of such purchase was not a part purchased the property and got his name entered in the sale certificate The decree holders hearing of the purchase supplied the purchase-money ratified the purchase and agreed to take a conveyance of the property after confirmation of the sale On the refusal of the defendant to execute the conveyance the decree-holders sued for a declaration that they were the real purchasers and for possession of the property *Held* that under such circumstances the second paragraph of s 317 of the Code of Civil Procedure did not exclude the application of the first paragraph of that section. *Held* further that ss 82 88 of the Indian Trusts Act (II of 1882) did not apply *Sankunni Nayar* v *Narayanan Nambudri I L R 17 Mad 282* and *Kumbalinga Pillai* v *Ariaputra Padachi I L R., 18 Mad 436* distinguished. *Monappa* v *Surappa I L R 11 Mad 234* referred to GANGA BAKSH *v* RUDAR SINGH [I. L. R. 22 All. 434

115 ——— *Interference by benamidar with tenants of real purchaser—Real purchaser's right to sue benamidar—Civil Procedure Code (1882) s 317*—At a sale in execution of a decree the plaintiff purchased certain property in the name of the defendant and continued in undisturbed possession of the property for eight years after the sale He then brought a suit against the defendant for a declaration of his right and for an injunction to restrain him from interfering with it *Held* affirming the decision of the Subordinate Judge that the suit did not come within the scope of s 317 of the Civil Procedure Code but was maintainable SASTI CHURN NUNDI *v* ANNOPURNA [I. L. R. 23 Calc 699

116 ——— *Civil Procedure Code (1882) s 317—Application for execution of decree against a person alleged to be the beneficial owner though not the certified purchaser*—The provisions of s 317 of the Code of Civil Procedure contemplate suits between the certified purchaser and the beneficial owner and will not operate so as to bar a third party from asserting that the certified purchaser is not the beneficial owner *Sohun Lall* v *Lala Gya Pershad 6 N W 265* *Puran Mal* v *Ali Khan I L R 1 All 235* and *Subha Bibi* v *Hara Lal Das I L R 21 Calc 519* referred to UNCOVENANTED SERVICE BANK *v* ABDUL BARI [I. L. R. 18 All 461

117 ——— *Purchase by pleader of client's interest—Duty of pleader—Code of Civil Procedure (1882) s 317*—At a sale in execution of a decree against the plaintiffs the pleader who had acted for the plaintiffs purchased their property with his own money but in the name of his mohurrir and for a very inadequate sum The plaintiffs thereupon brought this suit against the defendants (the pleader and his mohurrir) for a declaration that the pleader defendant in so purchasing was a trustee on their behalf for an order directing the defendants to reconvey the property to the plaintiffs and for other relief At the time of filing the suit possession of the land sold had not been given to anybody *Held* affirming the decision of the Subordinate Judge that the suit was not barred having regard to the case made in the plaint by s 317 of the Code of Civil Procedure (Act XIV of 1882) *Held* also (on the merits) that the pleader could not according to equity and good conscience retain for his own benefit the property so purchased by him AGHORE NATH CHUCKERBUTTY *v* RAM CHURN CHUCKERBUTTY I. L. R., 23 Calc 805

118 ——— *Civil Procedure Code (1882) s 317—Sale in execution of decree—Benami purchase—Suit by creditor on the ground that the certified purchaser is not the real purchaser*—*Held* that the provisions of s 317 of the Code of Civil Procedure are subject to no limitation other than such as is contained in the section itself namely that the suit the maintenance of which is prohibited by that section should be (1) brought against a certified purchaser and (2) based upon the ground that the purchase was made on behalf of a person other than the certified purchaser The question of who the plaintiff may be is not material The judgment of KNOX J in *Delhi and London Bank* v *Chaudhri Partab Bhaskar I L R 21 All 29* approved *Ram Kurup* v *Sri Dev I L R 16 Mad 290* followed *Uncovenanted Service Bank* v *Abdul Bari I L R 18 All 461* distinguished *Buhuns Kowur* v *Lalla Buhooree Lall 14 Moore's I A 496* and *Williamson* v *Norris 68 L J Q B 34* referred to KISHAN LAL *v* GARURUDDHWAJA PRASAD SINGH I. L. R. 21 All. 238

119 ——— *Suit by benamidar—Effect of decision in suit on beneficial owner—Proof of benami transaction*—So long as the benami system is recognized in this country it is to be presumed in the absence of any evidence to the contrary that a suit instituted by a benamidar has been instituted with the full authority of the beneficial owner and any decision made in such suit will be as much binding upon the real owner as if the suit had been brought by the real owner himself *Meheroonissa Bibee* v *Hur Churn Bose 10 W R 229* *Kalee Prosunno Bose* v *Dino Nath Mullick 11 B L R 56 19 W R 434* and *Sita Nath Shah* v *Nobin Chunder Roy 5 C L R, 102* discussed. Where

BENAMI TRANSACTION—*continued*

4. CERTIFIED PURCHASERS—*continued*

an application made by *C* and *D* to have their names registered in respect of certain malikana as to right to which there was a dispute between *A* and *B* was opposed by *E* who alleged that *A* had been acting throughout as his benamidar and was eventually rejected in 1876 on reference by the Collector to the Civil Court —*Held* in a suit brought by *C* and *D* against *E* for a declaration of their right to the malikana and for a reversal of the order refusing to allow their names to be registered in respect thereof that inasmuch as the allegation made by *E* in the proceedings held in 1876 on the application by *C* and *D* before the Collector and afterwards upon the reference before the Civil Court that *A* had been acting in the matter merely as his benamidar was uncontradicted by *C* and *D* in their plaint in the present suit there was sufficient evidence upon which to hold that that fact was true GOPI NATH CHOBEY *v* BHUGWAT PERSHAD **I. L. R, 10 Calc 697**

120 ——— *Suit against benami purchaser at Court sale by owner to recover the land after ejectment* —If after obtaining a certificate of sale in execution of a decree the purchaser acknowledges that his purchase is benami and gives up possession or does some act which clearly indicates an intention to waive his right or restores the property to the real owner such act may by reason of the antecedent relation of the parties operate as a valid transfer of property Defendant acted benami in buying certain land at a Court sale for plaintiff paid part of the purchase money for plaintiff and allowed plaintiff to remain in possession on the understanding that defendant was to transfer the property on repayment of the balance of the purchase money Defendant having ejected plaintiff plaintiff sued to recover the land *Held* that s 317 of the Code of Civil Procedure was no bar to plaintiff's suit MONAPPA *v* SURAPPA **I. L. R. 11 Mad., 234**

121. ——— *Civil Procedure Code (Act XIV of 1882) s 317—Sale in execution of a decree—Suit against heirs or mortgagee of the certified purchaser* —S 317 of the Civil Procedure Code is no bar to a suit against any person claiming through or under the certified purchaser such as his heir or mortgagee *Buhuns Kowur* v *Lalla Buhoree Lall 14 Moore s I A 496 10 B L R 159 18 W R 157* and *Lokhee Narain Roy Choudhry* v *Kallypuddo Bandopadhya L R 2 I A 154 23 W R 358* referred to *Raj Chunder Chuckerbutty* v *Dina Nath Saha 2 C W N 433* and *Theyyavelan* v *Kochan I L R 21 Mad 7* followed. DUKHADA SUNDARI DASI *v* SRIMONTA JOARDAR **I. L. R. 26 Calc. 950 3 C W N 657**

(*c*) N W P LAND REVENUE ACT (XIX OF 1873) s 184

122. ——— *Sale for arrears of Government revenue—Alleged benami purchase—Suit on a mortgage against the debtor and the certified purchasers alleged to be benamidars of the debtor—Civil Procedure Code s 317* —Per KNOX *J* —The operation of s 184 of Act No XIX of 1873 is not confined to disputes between certified auction purchasers and persons who allege that such auction purchasers purchased on their behalf as their benamidars but extends to cases where the dispute is between the certified purchasers and third persons who allege that the certified purchasers are not the real purchaser In such a case the claimants cannot succeed without proof of fraud *Buhuns Kowur* v *Lalla Buhooree Lall 14 Moore's I A 496 Sohun Lall* v *Lala Gya Pershad 6 N W 265 Kanizak Sukina* v *Monohur Das I L R 12 Calc 204 Chundra Kaminy Debea* v *Ram Ruttun Pattuck I L R 12 Calc 302* and *Tara Soonduree Debee* v *Oojul Monee Dossee 14 W R 111* referred to *Per* BANERJI *J* —S 184 of Act XIX of 1873 contemplates a suit between the person claiming to be the real purchaser and the certified purchaser and not a suit by a creditor of such person in which the creditor seeks to establish that the purchase was in reality made by his debtor and that the certified purchaser is only the benamidar of the debtor S 184 does not preclude a creditor of the beneficial owner from suing the certified purchaser on the allegation that his purchase was benami for the debtor and that the latter is the real purchaser *Buhuns Kowur* v *Lalla Buhooree Lall 14 Moore s I A, 496 Bodh Sing Doodhooria* v *Gunes Chunder Sen 12 B L R 317 Lokhee Narain Roy Chowdhry* v *Kalypuddo Bandopadhya L R 2 I A 154 Uncovenanted Service Bank* v *Abdul Bari I L R 18 All 461 Sohun Lall* v *Lala Gya Pershad 6 N W 265 Puran Mal* v *Ali Khan I L R 1 All 235 Kanizak Sukina* v *Monohur Das I L R, 12 Calc 204 Subha Bibi* v *Hara Lal Das I L R 21 Calc 519 Ameer-oon-nissa Beebee* v *Binode Ram Sein 2 W R, 29* and *Chundra Kaminy Debea* v *Ram Ruttun Pattuck I L R 12 Calc 302* referred to DELHI AND LONDON BANK *v* CHAUDHRI PARTAB BHASKAR **I. L. R. 21 All 29**

BENCH OF MAGISTRATES

1. ——— **Trial of cases under Criminal Procedure Code s 530** —A Bench of Magistrates has no power to deal with cases coming under s. 530 of the Criminal Procedure Code A Bench may be empowered under s 50 of the Code to try such cases or such class of cases only and within such limits as the Government may direct The definition of the term trial shows that it refers to trials for offences and these do not come within the miscellaneous matters mentioned in s. 530 SUFFERUDDIN *v* IBRAHIM **I. L. R., 3 Calc 754**

2 ——— **Salaried officer of municipality Disqualification of**—*Criminal Procedure Code (Act X of 1882) s 555—Municipal offence* —Notwithstanding anything contained in s 555 of the Criminal Procedure Code a conviction for an offence against any municipal law or regulation had before a Bench of Magistrates which includes a salaried officer of the municipality is bad IN THE MATTER OF THE PETITION OF NOBIN KRISHNA

BENCH OF MAGISTRATES—*continued*

MOOKERJEE NOBIN KRISHNA MOOKERJEE v CHAIRMAN SUBURBAN MUNICIPALITY [I L R 10 Calc. 194

3 ——— Power of Bench—*Criminal Procedure Code 1872 ss 222 224 225*—A Bench of Magistrates, whether empowered under s 224 or 225 cannot try a case of breach of the peace or any offence except those mentioned in ss. 222 and 225 of the Criminal Procedure Code 1872 QUEEN v BEBHEKI PATHAK 21 W R, Cr., 12

4. ——— Jurisdiction of Bench—*Offence of lurking house trespass—Penal Code s 457*—A Bench of Magistrates has no jurisdiction to try a charge for lurking house-trespass by night or house-breaking by night under s. 457 of the Penal Code QUEEN v BACHUN KADIR 23 W R, Cr 6

5. ——— *Criminal Procedure Code 1882 s 261—Madras Police Act (XXIV of 1859) s 48—Offences against Conservancy clauses—Obstruction to and nuisance in road*—Offences under the Madras Police Act s. 48 are within the cognizance of a Bench of Magistrates. QUEEN EMPRESS v OOLAGANADAN [I L R 13 Mad 142

6 ——— Conviction on proper materials—*Interference by High Court*—Where a Bench of Magistrates has before it materials which are sufficient in law to support a conviction the High Court has no authority to disturb it ABDOOL HUQ CHOWDHRY v. IDRAK 21 W R., Cr., 57

See QUEEN v DWARKANATH MULLICK [21 W R Cr 45

7 ——— Irregularity in trial—*Absence at adjourned trial of some members of the Bench before whom the case first came*—A case triable only by a Magistrate exercising powers of the 1st class came before a Bench of Magistrates neither of whom individually exercised those powers but sitting together the Bench was so invested At the adjourned trial only one of these Magistrates was present *Held* that he was not competent to try the case alone and the orders passed by him were set aside as illegal IN THE MATTER OF BARODA PROSONNO CHUCKERBUTTY [2 C L R 348

8 ——— *Absence of member from sitting and signature by him of final order*—In a trial before a Bench originally constituted of a stipendiary and two Honorary Magistrates one of the latter after the commencement of the trial was absent and important evidence was recorded in his absence On the following day he returned to the Bench and signed the final order convicting the accused. *Held* that the conviction was bad on the ground of irregularity SHUMBHU NATH SARKAR v RAM KOMUL GUHA 13 C L R 212

9 ——— *Order irregularly made—Hearing of part of case by one Bench and decision by another*—Where in a summary case a Bench of Magistrates after recording the evidence for the prosecution postponed the case for the hearing of evidence for the defence and on the day fixed for hearing another Bench of Magistrates, none of whom had been members of the former Bench recorded the evidence for the defence and acquitted the accused—*Held* on a reference to the High Court that the order must be set aside as being irregularly made RAM SUNDER DE v RAJAB ALI [I L R 12 Calc, 558

10 ——— *Absence of member of Bench—Hearing of part of case by one Bench of Magistrates and decision by another—Criminal Procedure Code 1882 ss 16 350—Rules framed by Local Government for the guidance of Benches of Magistrates under s 16 Criminal Procedure Code—Ultra vires*—Rule 8 of the rules framed by the Local Government for the guidance of Benches of Magistrates is *ultra vires* An Honorary Magistrate may not give judgment and pass sentence in a case unless he has been a member of the Bench during the whole of the hearing of the case HARDWAR SING v KHEGA OJHA I L R 20 Calc 870

11. ——— *Criminal Procedure Code (Act X of 1882) ss 15 16—Constitution of the Bench under the rules of the Government of Madras*—The accused was tried on a charge under the Penal Code s 3 2 by a Bench of Magistrates consisting of a pensioned District Munsif who had been appointed Chairman of the Bench and one Special Magistrate The Magistrates differed in opinion but the Chairman gave his casting vote for conviction and the accused was convicted and sentenced *Held* that the Court was not legally constituted under the rules of the Government of Madras and the conviction should be set aside QUEEN EMPRESS v MUTHIA [I L R 16 Mad. 410

12 ——— *Criminal Procedure Code (1882) ss 16 and 350—Change in constitution of the Court during a trial—Offence under Madras Towns Nuisances Act (Madras Act III of 1889)*—A trial under the Town Nuisances Act of 1889 was begun before a Bench of Magistrates and adjourned. On the adjourned date the Bench was constituted differently only one Magistrate being present of those who attended on the first occasion but the trial was proceeded with and resulted in a conviction. *Held* that the conviction was illegal and should be set aside *Hardwar Singh* v *Khega Ojha I L R 20 Calc 870* followed QUEEN EMPRESS v BASAPPA I L R 18 Mad., 394

13 ——— *Absence of member of Bench—Hearing of part of the case by two Magistrates and decision by three—Criminal Procedure Code (1882) s 350*—Only those Magistrates who have heard the whole of the evidence can decide a case There is no provision of law which provides for a change in the constitution of Benches of Magistrates during the hearing of a case S 350 of the Criminal Procedure Code does not apply to cases tried by Benches of Magistrates *Shumbhu Nath Sarkar* v *Ram Komul Guha 13 C L R 212* and *Hardwar Sing* v *Khega Ojha I L R 20 Calc 870* followed. DAMRI THAKUR v BHOWANI SAHOO I L R 23 Calc., 194

BENCH OF MAGISTRATES—*concluded*

14 ———— *Criminal Procedure Code (Act X of 1882) ss 16 350—Madras District Municipalities Act (Act IV of 1884) ss 263 264*—A trial on the charge of making an encroachment upon public land under the Madras District Municipalities Act 1884 ss 167 263 and 264 was begun before a Bench of seven Magistrates and ended in a conviction by five of the Magistrates in the absence of the other two *Held* that on the facts of the case the conviction under s 263 was right and that it was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun KARUPPANA NADAN *v* CHAIRMAN MADURA MUNICIPALITY
[I L R 21 Mad, 246

BENEFIT SOCIETY

See MADRAS MUNICIPAL ACT 1884 s 103
[I L R, 11 Mad. 253

BENGAL ACT—1862—VI

See CASES UNDER APPEAL—MEASUREMENT OF LANDS

See CASES UNDER BENGAL RENT ACT 1869 ss. 25 31, 37 38 41 43—49 58

See CASES UNDER MEASUREMENT OF LANDS

———— s 16

See CLAIM TO ATTACHED PROPERTY
[10 W R 21

———— s 20—*Suit for account and for money misappropriated by agent—Cause of action—Bengal Act I of 1879 s 146—Agency Creation of*—Where an agency for the collection of rents of tokes *G* and *H* was created in district *M* in which district toke *G* was situated toke *H* being situated in district *L*—*Held* in a suit brought against the agent for an account and for money fraudulently misappropriated and instituted in district *M* that so far as the suit related to toke *H* the Court of *M* had no jurisdiction to try it Bengal Act VI of 1862 requires a suit to be brought in some Court within the district in which the land lies in respect of which the agency was created and the question where the cause of action arose is material only in determining in which sub division of the district the suit is to be brought NILMONI SINGH DEO *v* NILU NAIK I. L. R 20 Calc 425

———— VIII

See ZAMINDARI DAKS 4 W R 6
[8 W R 100
8 W R., 45

———— IX—Mohurrir appointed under—

See PUBLIC SERVANT 20 W R., Cr 49

———— 1863—III

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS
[2 Ind. Jur., N S., 180

BENGAL ACT—1863—III—*concluded*

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BENG ACT III OF 1863
[10 W R., Cr., 30

———— V

See NAZIR
[11 B L R 256 19 W R, 335

See PEONS APPOINTMENT OF
[9 W R., 333
11 W R., 158 159

———— VI

See CALCUTTA MUNICIPAL ACT 1863

———— 1864—III

See BENGAL MUNICIPAL ACT 1864

———— V, s 16

See OBSTRUCTION TO NAVIGATION
[2 B L R A C 23 11 W R., Cr 18

———— VII

See SALT ACTS AND REGULATIONS RELATING TO—BENGAL.

———— 1865—VI.

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS
[2 Ind. Jur., N S, 180

———— ss 31 and 32—*Protector of labourers Powers of—Wages of labourers—Mode of taking account—Criminal Procedure Code (XXV of 1861) s 444*—*Held* that until an enquiry is made under s 31 Bengal Act VI of 1865 the Protector of labourers is not competent to act under s 32 that the procedure under s. 31 must be conducted in accordance with s. 444 of the Criminal Procedure Code 1861; that to support a conviction under s 32 Bengal Act VI of 1865 it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current the payments are not to be appropriated for the wages of the month in which the pay ment was made IN THE MATTER OF THE NORTHERN ASSAM TEA COMPANY
[3 B L R., A Cr 39 12 W R, Cr., 29

———— VII

See SLAUGHTER HOUSE 6 W R., Cr., 77
[16 W R Cr 4
6 B L R., Ap 28 14 W R, Cr., 67

———— VIII

See SALE FOR ARREARS OF RENT—INCUMBRANCES

See SALE FOR ARREARS OF RENT—UNDER TENURES SALE OF

———— 1866—I

See FERRY 15 W R., 132

———— II

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
[21 W R., 289

BENGAL ACT—*continued*

———1866—IV

See CALCUTTA POLICE ACT 1866.

See POLICE MAGISTRATE.
[1 B L. R., O C, 39

———VI.

See CONVICTION 1 B L. R., O Cr., 41

———1867—II

See CASES UNDER GAMBLING

——— Offence under—

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE I. L. R., 27 Calc 144

———1868—VI, sch. K.

See JUDICIAL OFFICERS LIABILITY OF
[14 B. L. R., 254 21 W R., 391

———VII.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
[3 C L R 508

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT

See CASES UNDER SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE

——— s 1—*Estate—Lands not permanently settled—Sunderbund estate—District of which portion only is permanently settled—Bengal Regulations IX of 1816 and III of 1828—Estate—Bengal Act VII of 1868*—The plaintiff was the auction purchaser at a sale under Act XI of 18 9 by the Collector of the 24-Pergunnahs for arrears of revenue of an estate in the Sunderbunds on which the defendant was the holder of a mokurari mourasi jungleburi tenure under which he was to clear away the jungle and then to cultivate the land with paddy The estate was one borne on the register of revenue paying estates in the C llect rate of the 24 Pergunnahs and therefore within that Collectorate with regard to the provisions f Bengal Act VII of 1868 s 10 The d strict of the 24 Per gunnahs is a permanently settled district but the portion of it forming the Sunderbunds was declared by Regulation III of 18-8 s 13 not to be included in the permanent settlement The Sunderbunds tract was moreover under Regulation IX of 1816 formed into a separate jurisdiction for settlement purposes under an officer styled the Commissioner of the Sunder bunds who is subject to the direct control of the Board of Revenue and independent of the Collector of the 24 Pergunnahs *Held* that th ugh there was no permanent settlement of the lands sold to the plain tiff they fell within the definition of an estate as given in Bengal Act VII of 1868 BHOLANATH BANDYOPADHYA *v* UMACHURN BANDYOPADHYA UMACHURN BANDYOPADHYA *v* BHOLANATH BANDYOPADHYA I. L. R 14 Calc 440

——— s 2

See REVIEW—POWER TO REVIEW
[I. L. R 22 Calc, 410

BENGAL ACT—1868—VII—*concluded*

——— s 18

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS I. L R 3 Calc 771
[I. L R 25 Calc 789
I. L. R 27 Calc 698
4 C W N 586

———1869—II

See CHOTA NAGPORE TENURES ACT 1869

——— VIII.

See BENGAL RENT ACT 1869

———1870—III, s 3

1. ——— Object of section—*Transfer of decree for execution*—The object of s 3 Bengal Act III of 1870 was that a person against whom a decree was passed should not be harassed by two sets of proceedings in execution simultaneously carried on in two different Courts MUDDEN MOHUN BISWAS *v* PUDDO MONEE DASSEE 17 W R 139

2. ——— Decree pending when Act came into operation.—A decree in which no actual proceedings were pending in the Collector's Court at the commencement of Bengal Act III of 1870 (*i e* where an order for attachment had been issued but the attachment came to an end) was held to have been properly transferred to the Civil Court under s 3 of that Act HURO PERSHAD ROY CHOWDRY *v* FOOL KISHOREE DASSEE 16 W R 308

3 ——— Decree transferred to Civil Court for execution—*Appeal—Bengal Act VIII of 1869 s 108—Act X of 1859 ss 153 155*—In a suit brought for recovery of R75 for arrears of rent the plaintiff obtained an *ex parte* decree on 18th March 1869 in the Court of the Deputy Collector In October 1871 he applied to the Munsif for and sued out execution of his decree In January 187 one of the defendants applied to the Deputy Collector for a review of his judgment and the Deputy Collector admitted the review and dismissed the plaintiff's suit On appeal the Judge held that the Deputy Collector had no jurisdiction to entertain the application for review or to hear the case the decree having been transferred under Bengal Act III of 1870 to the Munsif for execution and reversed the judgment of the Deputy Collector *Held* that the suit having been decided by the Deputy Collector before Bengal Act VIII of 1869 came into operation the procedure therefore would be that laid down by s 108 of the Act *i e* under Act X of 18 9 and the appeal would lie to the Collector not to the Judge under ss. 153 and 155 of that Act The decree al ne was trasferred to the Civil Court and the application for review was rightly made to the Court of the Deputy Collector IN THE MATTER OF RAM COONDER BANDOPADHYA 10 B L. R. Ap 21

RAMSOONDER BANERJEE *v* DOORGA CHURN BABUI
[19 W R. 128

IN RE JUGGODUMBA DASSEE
[10 B L R. Ap 22 note.
15 W R. 75

BENGAL ACT—1870—III—*concluded*

4. ——— *Application to set aside decree—Jurisdiction* —When an *ex parte* decree of a Revenue Court has been transferred to the Civil Court under the provisions of s 3 of Bengal Act III of 1870 an application to set aside the decree must be made to the Civil Court and not to the Revenue Court KRISHNA KISHORE PODDAR *v* WOOMESH CHUNDER ROY 13 B L R F B 214 21 W R 448

IN RE WOOMA CHURN ROY MOZOOMDAR [13 B L R 215 note

WOOMA CHURN MOZOOMDAR *v* CHUNDER KANT ROY CHOWDHRY 16 W R 255

OODWUNT MAHTOON *v* BIDDHI CHAND CHOWDHRY [13 B L R 216 note 18 W R, 207

MOHESH CHUNDER SINGH SURMA *v* BHOOBUN MOYEE DEBIA [13 B L R 217 note 18 W R 252

5 ——— Where a decree of the Collector was by the operation of Bengal Act III of 1870 s 3 transferred to a Civil Court for execution the effect was to make it as it were a case of execution or a decree of that Court and in dealing with an order in such a case made by the Civil Court in execution the High Court was bound to assume that the lower Court had acted properly and with jurisdiction and its appellate jurisdiction followed as a matter of course DINDYAL PARAMANICK *v* DINOBUNDHOO CHOWDRY 21 W R 412

——— IV (Court of Wards Act, 1870)

See COLLECTOR 18 W R 466

See CASES UNDER COURT OF WARDS

See LUNATIC 8 B L R, Ap 50 [17 W R 180

——— VI.

See VILLAGE CHOWKIDARS ACT

——— 1871—IX s 27

——— Notice of suit—*Tolls paid in excess of powers given—Suit for refund of money* —In certain suits brought against a toll collector for the refund of money alleged to have been exacted by him improperly as toll under Bengal Act IX of 1871 the defendant pleaded that no notice of suit in accordance with s 27 of that Act had been given *Held* that such notice not having been given, the suits should be dismissed *Waterhouse* v *Keen 4 B & C 200* followed RAM PITAM SHAH *v* SHOOBUL CHUNDER MULLICK I L R 15 Calc 259

——— X.

See BENGAL CESS ACTS (X OF 1871)

———1872—II s 34

See STORING JUTE 19 W R Cr 4

———1873—III

See BENGAL EXCISE ACT (III of 1873)

——— VI

See EMBANKMENTS. [I. L R 7 Calc 505 8 C L R 553

BENGAL ACT—*concluded*

———1875—V

See BENGAL SURVEY ACT

———1876—I

See CHEATING I L R 17 Calc 606

See EVIDENCE—CIVIL CASES—MARRIAGE REGISTRATION OF [I. L. R., 10 Calc 607

——— II

See OPIUM 13 C L R, 336

——— IV

See CALCUTTA MUNICIPAL ACT 1876.

——— V

See BENGAL MUNICIPAL ACT 1876

——— VII

See LAND REGISTRATION ACT (BENGAL) 1876

——— VIII

See ESTATES PARTITION ACT 1876

———1878—VII

See BENGAL EXCISE ACT

——— 1879—I

See CHOTA NAGPORE LANDLORD AND TENANT ACT

——— IX.

See COURTS OF WARDS ACT (BENGAL).

———1880—VII

See PUBLIC DEMANDS RECOVERY ACT 1880

——— IX.

See BENGAL CESS ACTS (IX OF 1880)

———1881—III

See COURT OF WARDS ACT (BENGAL).

——— IV

See BENGAL EXCISE ACT AMENDMENT ACT

———1882—II ss 61 76 and 80

See EMBANKMENTS [I L R 11 Calc 570

———1884—III.

See BENGAL MUNICIPAL ACT 1884.

———1888—II

See CALCUTTA MUNICIPAL CONSOLIDATION ACT 1888

——— 1889—II

See BENGAL PRIVATE FISHERIES PROTECTION ACT

———1892—I—(Village Chowkidars)

See CONFESSION—CONFESSIONS TO POLICE OFFICERS 2 C W N 637

——— 1895—VII

See BHOOTAN DUARS ACT (XVI OF 1869)

BENGAL CESS ACTS (X OF 1871 AND IX OF 1880)

——— **Bengal Act X of 1871 (Road Cess Act)**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS 22 W R. 193

See FISHERY RIGHT OF [I. L. R 9 Calc., 183

1. ——— **Income tax**—*Suit for arrears of rent—Set off—Effect of Act on agreement made before passing of Act*—In 186_ at the time the income tax was in force *A* made a patni settlement of certain lands with *B* *B* agreeing to pay any enhancement of the revenue that might be made by Government at any time or any impost in future to be levied by Government the income tax to be paid by *A* according to his income *B* having nothing to do with the same In 1876 *A* brought a suit against *B* for arrears of rent *B* under the contract, claimed to have set off as a tax on income a sum which he had paid under the Road Cess Act which had been passed in 1871 after the Income Tax Act had been repealed. *Held* that the tax imposed by the Road Cess Act passed by the Bengal Council could not be considered to be a tax on income the income tax having been a tax imposed by the Government of India on a person's annual income levied upon whatever actually came to his hands as income and not upon the value of his property and that therefore *B* could not set off the amount as being income tax. *Held* also that although the Road Cess Act contains no saving clause in favour of contracts it does not prohibit in future the making of contracts which shall interfere with the incidence of the road cess as directed by the Act nor vacate contracts that may have been made before the passing of the Act and in the absence of any provisions to that effect an agreement entered into before the passing of the Act could not be affected by the subsequent passing of the Act SURNOMOYEE DABEE *v* PURRESH NARAIN ROY [I L R 4 Calc 576

2 ——— **Construction of kabuliat**—*Suit for rent—Right of set off*—The defendants executed a kabuliat dated 1st October 1870 which contained the following stipulation If in future any chowkidari tax or any other new abwab or tax or fee or kor or any additional fee or jumma be fixed upon the mehal by Government I will pay that separately In a suit by the zamindar for increase of rent the defendants claimed to set off a sum representing the amount which the zamindar was bound to contribute under the Road Cess Act and Public Works Cess Act and which amount they had paid to the Collector *Held* that the amount in question came within the terms of the kabuliat and that the defendants were not entitled to the set off claimed by them. *Surnomoyee Dabee* v *Purresh Narain Roy* *I L R 4 Calc 576* followed SHUMBHU NATH MOOKHOPADHYA *v* HURRO SUNDARI DABIA CHOWDHRAIN 11 C L R 140

1 ——— s 3—*Liability of chakran or service tenure for road cess—Tenure*—A chakran or service tenure comes within the definition of tenure in s 3 of Bengal Act X of 1871 and is therefore liable for Road Cess and Public Works Cess under that Act JOY SUNKUR ROY *v* SIDHI MOHAM 7 C L R 373

2. ——— **s 3 and ss 9 10 23 25 and 26**—*Sale for arrears of road cess Effect of—Right of purchaser—Interpretation clause construction of*—In a suit on a bond by which certain land admittedly lakhiraj was mortgaged the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Bengal Act X of 1871 was added as a defendant and the lower Courts holding that the effect of such a sale was to pass the property to the defendants free of incumbrances made a decree excluding that portion from liability in respect of the mortgage bond. *Held* on the construction of Bengal Act X of 1871 that the sale had no such effect and that the whole of the property was liable to be sold in satisfaction of the plaintiffs' claim. Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature It does not follow therefore that because lakhiraj property is defined in the Road Cess Act 1871 to be a tenure all the interests and consequences attached by other Acts to tenures generally or to particular classes of tenures become annexed to lakhiraj property UMACHURN BAG *v* AJADANNISSA BIBEE [I. L. R. 12 Calc 430

——— **ss 5 7 and Part II sch. A part ii**—*Bhowli tenures—Suit for rent*—S 5 of the Road Cess Act requires the holders of any estate or tenure of which the annual rent shall exceed one hundred rupees to lodge returns of all lands comprised in an estate or tenure bhowli lands are therefore to be included in such returns Where such a return has not been made the holder of the estate or tenure is precluded from suing for or recovering any rent due therefor JUGMOHUN TEWARI *v* FINCH [I. L. R. 9 Calc. 62 11 C L. R. 100

——— **s 25**

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT [I. L. R., 8 Calc. 290

——— **Bengal Act IX of 1880 (Road and other Cesses) ss 34 and 35**—*Preparation and publication of valuation roll—Liability to pay cess*—In the case of rent paying lands the publication of the valuation rolls under s 35 of the Cess Act (Bengal Act IX of 1880) is not a condition precedent to the attaching of liability to pay road cess in accordance with the valuation rolls *Ashanullah Khan* v *Trilochan Bagch* *I L R 13 Calc 197* distinguished BHUGWATI KUWERI CHOWDHRANI *v* CHUTTERPUT SINGH I. L R 25 Calc 725 [2 C W N 407

BENGAL CESS ACTS (X OF 1871 AND IX OF 1880)—*continued*

——— s 41—*Landlord and tenant—Cess liability of tenant to pay although tenure not assessed* —When the Collector has determined the annual value in respect of certain land and a portion of that land is subsequently granted as a tenure to an under tenant and the Collector has not separately assessed the annual value of the land of the tenure so created the under tenant will nevertheless be liable for any cesses in respect of that land. In such a case it is competent to the Court to ascertain the annual value of the land comprised in the defendants tenure HARIMOHAN DALAL *v* ASHUTOSH DHUR 4 C W N., 776

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS [I L R 21 Calc 70 L R, 20 I A 165

——— s 47

See APPEAL—ACTS—BENGAL TENANCY ACT s 153 [I. L. R 20 Calc., 254

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL [I L. R., 16 Calc. 638

——— *Sale in execution of decree for arrears of Cess—Procedure—Purchasers Rights of*—Although the procedure for the realization of cesses may be the same as the pr cedure laid down for the realization of rent due upon the tenure yet it does not necessarily follow that the effect of a sale for cesses should be the same as that of a sale for arrears of rent for which the tenure itself is liable to be sold. *Umachurn Bag* v *Ajadannissa Bibee I L R 12 Calc 430* followed Notwithstanding therefore that s 47 of the Cess Act 1880 provides that every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve and a half per centum per annum in the same manner and under the same penalties as if the same were arrears of rent due to him the effect of a sale by the Collector in execution of a decree for cesses against some of the owners of a tenure is not to convey to the purchaser the whole tenure but only the right title and interest of the particular persons against whom the decree had been obtained MAHANUND CHUCKERBUTTY *v* BANI MADHUB CHATTERJEE [I L R 24 Calc 27

——— ss 50-71—*Cesses—Rent free lands—Notice*—Plaintiffs sued to recover arrears of road and public works cesses on account of certain rent fr e land claiming double the amount under s 58 of the Cess Act (Bengal Act IX of 1880) It was found that no notice of the valuation had been published as required by s 53 of the Act and it was held by the lower Court that the plaintiffs were therefore not entitled to recover double the amount under s. 58 It was then contended that he was at any rate entitled to recover the amount of the cesses with interest under s. 62 *Held* that the latter section did not give the holder of the estate or tenure a right to recover the cesses payable under s 56 before publication of notice and that the plaintiff was therefore not entitled to a decree and that his suit must be dismissed RAS BEHARI MUKERJEE *v* PITAMBORI CHOWDHRANI [I L R 15 Calc. 237

——— ss 52 53—*Evidence Act s 114—Presumption* —Where under an Act certain things are required to be done before any liability attaches to any person in respect of any right or obligation it is for the person who alleges that that liability has been incurred to prove that the things prescribed in the Act have been actually done *Held* that the notice provided by s 52 of the Road Cess Act did not come within the presumption of s. 114, cl (*e*) of the Evidence Act and must be proved. ASHANULLAH KHAN BAHADUR *v* TRILOCHUN BAGCHEE [I L R, 13 Calc, 197

——— s 56

See CESS I L R 10 Calc 743 [I L R 19 Calc, 783

——— s 95

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS [3 C W N 343

BENGAL CIVIL COURTS ACT (VI OF 1871)

See CASES UNDER SUBORDINATE JUDGE JURISDICTION OF

——— **Power of High Court to hear appeals** —*Per* JACKSON J—The power of the High Court to hear appeals from the Civil Courts in the interior is regulated by Act VI of 1871 RUNJIT SINGH *v* MEHARBANS KOER [I L R 3 Calc 662 2 C L R 391

——— s **11—Court of Subordinate Judge and District Judge** —The Court of a Subordinate Judge is inferior to the Court of a District Judge within the meaning of s 11 of the Bengal Civil Courts Act PROSAD DOSS MULLICK *v* RUSSICK LALL MULLICK PROSAD DOSS MULLICK *v* KEDAR NATH MULLICK [I. L. R. 7 Calc. 157 8 C L R 329

——— s 15

See CIVIL PROCEDURE CODE 1882 s 2 [3 C L R, 508

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE [3 C L R 508

——— s 17

See HOLIDAY I L R 9 All 366

——— s 19

See TRANSFER OF CIVIL CASE—GENERAL CASES 25 W R 21

——— s 20

See MUNSIF JURISDICTION OF [I. L. R., 15 Calc 104

BENGAL CIVIL COURTS ACT (VI OF 1871)—*continued*

——— ss 20 22

See VALUATION OF SUIT—SUITS
[I L R 4 All 320
I L R 13 Calc 255
I L R 8 All 438
I L R 12 All 506

——— s. 22

See CASES UNDER VALUATION OF SUIT—APPEALS

——— s 24.

See MAHOMEDAN LAW—DEBT
[I L R 11 Calc 421

See MAHOMEDAN LAW—GIFT—LAW APPLICABLE TO
[6 N W., 2 Agra F B Ed. 1874 286

See MAHOMEDAN LAW—GIFT—VALIDITY
[6 N W 338
I L R 9 All 213

See MAHOMEDAN LAW—PRE EMPTION—RIGHT OF PRE EMPTION—GENERALLY
[I L R 7 All 775

See MAHOMEDAN LAW—PRESUMPTION OF DEATH I L R 7 All 297

See RELIGION OFFENCES RELATING TO
[I L R 7 All, 461

See RIGHT OF SUIT—CHARITIES
[I L R 5 All 497

See TRANSFER OF PROPERTY ACT s 10
[I L R 7 All 516

1. ——— **Hindu Law—Mahomedan Law**—*Convert— Justice equity and good conscience* —To entitle a person to have the Hindu or Mahomedan law applied to him under the first paragraph of s 24 of Act VI of 1871 he must be an orthodox believer in the Hindu or Mahomedan religion The mere circumstance that he calls himself or is called by others a Hindu or Mahomedan as the case may be is not enough His only claim to have a special kind of law applied to him is that he follows and observes a particular religion that of itself creates his law for him If he fails to establish his religion his privilege to the application of its law fails also and he must be relegated to that class of persons whose cases have to be dealt with under the latter paragraph of s 24 of Act VI of 1871 according to justice equity and good conscience *B* alleging that his family was a joint undivided Hindu family sued *R* his father for a declaration that certain property was joint ancestral property and for partition of his share according to the Hindu law of inheritance of such property *viz* one moiety *R* set up as a defence to the suit that the members of the family were Mahomedans and were therefore not governed by the Hindu law The evidence in the suit established that the members of the family were neither orthodox Hindus nor Mahomedans It also established that the Hindu law of inheritance had always been followed in the family *Held* following the principle enunciated above that the family not being Hindus nor Mahomedans the rule of decision applicable to the suit was neither Hindu nor Mahomedan law but justice equity and good conscience that the Hindu law of inheritance having always been followed in the family it was justice equity and good conscience to apply that law to the suit and that therefore *B* was entitled to demand partition of half of the family estate *Abraham* v *Abraham 9 Moore's I A 199* referred to RAJ BAHADUR v BISHEN DAYAL
[I L R 4 All 343

2 ——— **Mahomedan Law—Pre emption.**—Under s 24 of Act VI of 1871 Mahomedan law is not strictly applicable in suits for pre emption between Mahomedans not based on local custom or contract but it is equitable in such suits to apply that law The application of Mahomedan law in a suit for pre emption between a Mahomedan claimant of pre emption and a Mahomedan vendee on the basis of that law is not precluded by the circumstances of the vendor not being a Mahomedan CHUNDO v ALIMOODDEEN 6 N W 28
[Agra F B Ed. 1874 305

See MOTI CHAND v MAHOMED HOOSEIN KHAN
[7 N W 147

——— s 29

See RIGHT OF APPEAL 16 W R 227

BENGAL EMBANKMENT ACT (II OF 1882)

——— ss 6 76 and 80

See EMBANKMENT
[I L R 11 Calc 570

BENGAL EXCISE ACT (XXI OF 1856)

See ABETMENT 7 W R Cr 53

1. ——— **Excise Act X of 1871 Effect of**—Act XXI of 1856 was not repealed so far as it related to the Lower Provinces of Bengal by Act X of 1871 QUEEN v KHETTER NATH SHAHA
[22 W R Cr 31

2. ——— **Abkari Laws**—*Realisation of fine—Criminal Procedure Code (Act XXV of 1861) s 61—Act VIII of 1869* —The provisions of s 61 of the Criminal Procedure Code 1861 did not apply to fines imposed under Act XXI of 1856 such fines cannot be levied by distress and sale of the offender's property QUEEN v JUNGLI BELDAR
[8 B L R Ap 47

GOVERNMENT v JUNGLI BELDAR
[17 W R, Cr 7

3 ——— s 22.—A Magistrate may impose a fine exceeding R1 000 under Act XXI of 1856 s 22 of the Criminal Procedure Code 1861 notwithstanding QUEEN v SUROOP CHUNDER DUTT
[7 W R Cr 29

4. ——— ss 38 and 50—*Illegal sale of opium—Revocation of license* —According to s 38 Act XXI of 1856 no conviction can be had under

BENGAL EXCISE ACT (XXI OF 1856) —*concluded*

s 50 against a person whose license has not been recalled. QUEEN v RAM DASS 16 W R Cr 69

5 ——— — s 43—*Liability to penalty—Licensees servants*—Under s 43 Act XXI of 1856 only persons holding licenses and not their servants are subject to the penalties specified in the section QUEEN v RAMKISHEN 8 W R Cr 4

6 ——— — *Sale of liquor by agent*—Where a person sells liquor in contravention of and under colour of a license which stands not in his own name but in that of the person for whom he is the recognized agent he cannot be allowed to evade the provisions of s 43 of Act XXI of 1856 by setting up that it is not a license to himself IN THE MATTER OF THE PETITION OF ISHEN CHUNDER SHAHA 19 W R Cr 34

7 ——— ss 43 44—*Sale by servant—Liability of owner of shop*—Where a sale of an excess quantity of ganja took place and the man effecting the sale pleaded that he was only a servant while the owner contended that he did not conduct the shop and gave no authority to his servant to sell ganja in excess of his license—*Held* that the owner of the shop was responsible for the offence committed and liable to the fine which had been imposed on him. QUEEN v SRISTIDHUR SHAHA 25 W R, 42

8 ——— ss 48 and 90—*Distillation of spirits*—To warrant a conviction under Act XXI of 1856 s 48 the accused must have manufactured some country spirit made by the native process of distillation as described in s 90 of the Act or they must have sold spirituous or fermented liquors or intoxicating drugs QUEEN v KOYLAS BOONA [22 W R, Cr, 8

——— s 49

See SUMMARY TRIAL. [I L R 3 Calc, 366 1 C L R, 442

——— s 53

See OPIUM 20 W R Cr 54

BENGAL EXCISE ACT (III OF 1873)

See MANDAMUS 11 B L R 250

BENGAL EXCISE ACT (VII OF 1878)

See CANTONMENT MAGISTRATE [I L R 15 Calc 452

See OPIUM 13 C L R 336

See STATUTES CONSTRUCTION OF [I L R 8 Calc 214

——— Revenue Protection of—*Contract Act (IX of 1872) s 23—Public policy*—The Bengal Excise Act of 1878 is not an Act framed solely for the protection of the revenue but is one embracing other important objects of public policy as well An agreement therefore for the sale of fermented liquors entered into by a person who has not obtained a license under that Act is void and cannot be recovered on. BOISTUB CHURN NAUN v WOOMA CHURN SEN I L R 16 Calc, 436

BENGAL EXCISE ACT (VII OF 1878) —*continued*

——— s 4 and ss 40 and 75—*Bengal Excise Act Amendment Act (Bengal Act IV of 1881) s 3—Right of search—Gurjat ganja—Exciseable article—Foreign exciseable article—Resistance to wrongful search by police—Penal Code ss 141 and 353*—In a case where an Excise Sub Inspector attempted to search a house for gurjat ganja a "foreign exciseable article" under the Excise Act (Bengal Act VII of 1878) and resistance was offered—*Held* that gurjat ganja being a foreign exciseable article under s 4 of the Act as amended by Bengal Act IV of 1881 the Excise Officer had no legal authority to enter and search the house under s 40 of the Act he had authority only to enter and search for any exciseable article as defined in s 4 of the Act and that no offence either under s. 141 or s 353 of the Penal Code was committed *Held* also that s 75 of the Act does not apply to a foreign exciseable article JAGARNATH MANDHATA v QUEEN EMPRESS [I L R 24 Calc 324 1 C W N 233

——— ss 9 58 74—Introduction into Calcutta of spirituous liquor manufactured elsewhere—*Limits fixed by Collector—Additional punishment—Alternative sentence of imprisonment*—The provisions of s 74 of the Bengal Excise Act as to additional punishment where there has been a previous conviction for a like offence contemplate merely the case of the offender having been already convicted of an offence punishable with a fine of R200 or upwards and being again convicted of another offence punishable with the same punishment it is not necessary that he should have been previously convicted of the same offence The accused were sentenced by the Presidency Magistrate under ss 58 and 74 of the Bengal Excise Act to a fine of R200 each in default to three months imprisonment and in addition to six months' imprisonment which was the maximum term that could be awarded under s 74 *Held* that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s 12 of the Presidency Magistrates Act the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under s 58 No limits with regard to any distilleries in Calcutta having been fixed under s 9 of the Act within which spirituous liquor manufactured otherwise than in that particular distillery shall be introduced or sold without a special pass and the fixing of such limits being necessary to a conviction of an offence under s 58 the convictions in this case were set aside RAM CHUNDER SHAW v EMPRESS [I L R 6 Calc 575 8 C L R 250

——— s 14

See CANTONMENTS ACT 1880 [I L R 15 Calc 452

——— ss 15 17 and 61—*Specified quantity of spirits—Maximum amount*—Where under s 15 Bengal Act VII of 1878 the Chief Commissioner of Assam exercising the powers of the

BENGAL EXCISE ACT (VII OF 1878)
—continued

Board of Revenue fixed by a circular order the limit at six quart bottles of country spirit as allowable for retail sales and an accused was charged under s 17 with possessing more than that quantity but the amount he had was less than the amount stated in s. 15—*Held* that he was not guilty of any offence under s 61 and that no lesser quantity than that specifically mentioned in s 15 of country spirits which might have been declared to be the maximum quantity by any such order made under the provisions of s 15 could be deemed to be the quantity specified in s. 15 within the meaning of s. 61. EMPRESS *v* KOLA LALANG

[I. L. R. 8 Calc 214
10 C L R. 155

———ss 15 and 60—*Sale by wholesale*—A sale of more than twelve quart bottles or two gallons of spirituous or fermented liquors of *the same kind* made at one transaction is a sale by wholesale *Quære*—Whether a sale of twelve quart bottles of one kind of liquor and three quart bottles of another kind, at the same time comes within the prohibition in the explanation clause of s 15 EMPRESS *v* NUDDIAR CHAND SHAW I. L. R. 6 Calc. 832
[10 C L R. 389

——— ss 39 40

See ARREST—CRIMINAL ARREST
[4 C W N 245

——— ss 41 42 and 59—*Sale of liquor by servant—Breach of condition of license—License Product on of*—The conviction of servants of a licensed vendor of spirits for a breach of the license is not necessarily illegal *In re Ishur Chunder Shaha 19 W R Cr 34* followed *Empress* v *Nuddiar Chand Shaw I L R 6 Calc 832 8 C L R 152* dissented from Two servants of a licensed vendor of spirits were charged with having committed two breaches of the conditions of the license and the maximum fine for each breach was inflicted. *Held* that the Magistrate was competent to punish each of the servants separately in this manner The excise officer to whom a licensed vendor of spirits is bound to produce his license must be an excise officer of the higher grades not any police officer who may be exercising the powers of an excise officer IN THE MATTER OF THE PETITION OF BANEY MADHUB SHAW EMPRESS *v* BANEY MADHUB SHAW

[I. L. R., 8 Cal., 207 10 C L. R. 389

1. ——— s 53—*Sale by licensed vendor contrary to terms of his license*—S 53 of the Bengal Excise Act does not apply to sales by a licensed vendor contrary to the terms of his license That section provides for a breach of the condition of a license not covered by the second clause of s 59 of the Act EMPRESS *v* NOBOCOOMAR PAL

[I L. R 6 Cal 621

2 ——— *Sale by servant of licensed vendor in presence of master—Liability of servant*—The accused who was the servant of a licensed retail vendor of spirituous and fermented liquors under Bengal Act VII of 1878 was convicted of an offence under s. 53 of that Act for selling exciseable liquor without a license The sale charged against him was of a quantity of puchawai in excess of that allowed to be sold under the license of his master The sale was made in the presence of the master the licensee the accused merely handing the liquor to the purchaser at his master's request *Held* that the conviction was bad as the facts did not establish a *sale* by the accused the mere mechanical act of handing the liquor to the purchaser not constituting a *sale* by the accused. QUEEN EMPRESS *v* HARRIDAS SAN I L R 17 Calc 566

3 ———*Spirituous liquor—Medicinal preparation containing alcohol*—The term spirituous liquor in s 53 of the Excise Act (Bengal Act VII of 1878) is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition The case would be different if alcohol were manufactured separately for the purpose of being used in the preparation of a medicine GONESH CHUNDER SIKDAR *v* QUEEN EMPRESS I. L R 24 Calc 157

EMPRESS *v* GONESH CHANDRA SIKDAR
[1 C W N 1

4. ——— and ss 60 61—*Sale by servant of licensed vendor—Cooly employed by servant*—The servant of a licensed vendor sold eight quart bottles of country spirit and employed a cooly to carry them as he directed. The servant was convicted under s 60 Bengal Act VII of 1878 and the cooly was convicted under s 61 of the same Act It was suggested that the servant should have been convicted under s 53 and that the cooly had committed no offence *Held* that the conviction of the cooly was illegal and must be set aside *Held* also that the servant was properly convicted and whether under s 60 or s 53 was immaterial *In re Ishur Chunder Shaha 19 W R Cr 34* and *Empress* v *Baney Madhub Shaha I L R 8 Calc 207 10 C L R 389* followed EMPRESS *v* ISHAN CHUNDER DE
[I. L. R. 9 Calc 847 12 C L. R. 451

——— s 59—*Liability of servant*—The licensed vendor and not his servant is liable under s 59 of the Excise Act Bengal Act VII of 1878 for contravention of the Act IN THE MATTER OF NOMULU AKOND 11 C L R. 416

1. ——— s 60—*Liability of servant*—The licensed retail vendor himself is the only person liable to conviction under s 60 EMPRESS *v* NUDDIAR CHAND SHAW

[I L R. 6 Calc 832 8 C L R. 152

See contra EMPRESS *v* BANEY MADHAB SHAW
[I L R 8 Calc 207 10 C L R 389

2 ——— ss 60 74— *Like offence*—*Punishment on second or subsequent conviction under Bengal Excise Act—Selling retail with wholesale license*—The offence of selling wine retail by a person who has only a wholesale license is an offence of a like nature to that of selling wine without a license at all within the meaning of the term like offence as used in s 74 of the Bengal

BENGAL EXCISE ACT (VII OF 1878) —*concluded*

Excise Act *Ram Churn Shaw v Empress, I L R 9 Calc 575* followed. SCHEIN v QUEEN EMPRESS [I L R 16 Calc, 799

——— s 61.

See CRIMINAL PROCEDURE CODE s 403 [I L R., 23 Calc 174

——— *Imported liquor—Possession—Pass—Consignee—Agent*—Certain liquors arrived in Calcutta per S S *Navarino* consigned to *M & Co* at Agra who requested *A* to pay on their behalf the duty and landing charges and forward the goods to Agra. While on the way from the steamer to the railway station the goods were seized as being in the possession of *A* without a pass within the meaning of s 61 of Bengal Act VII of 1878 and *A* was convicted and sentenced to a fine under the provisions of that Act *Held* that the conviction was bad IN THE MATTER OF THE PETITION OF KYTE EMPRESS v KYTE [I L R 9 Calc 223 11 C L R., 427

BENGAL EXCISE ACT AMENDMENT ACT (IV OF 1881)

——— s 3

See BENGAL EXCISE ACT 1878 s 4 [I L R 24 Calc 324

BENGAL MUNICIPAL ACT (III OF 1864)

——— **Power of Municipal Commissioners to close or divert public highways**—Bengal Act III of 1864 which vested public highways in Municipal Commissioners for the purposes of the Act did not by so vesting them give power to the Municipal Commissioners nor *à fortiori* to the Vice Chairman alone to stop up or divert such public highways EMPRESS v BROJONATH DEY I L R 2 Calc 425

——— ss 6 79—*Power of Municipal Commissioners to administer oath—Order to close burning ground*—Every Municipal Commissioner being vested by Bengal Act III of 1864 s 6 with the powers of a Magistrate under s 23 of the Criminal Procedure Code is authorized to administer an oath if the purposes of the Act require that he should do so BRINDABUN CHUNDER ROY v MUNICIPAL COMMISSIONERS OF SERAMPORE [19 W R 309

——— s 10—*Public highways—Roads vesting in Commissioners—Subsoil of roads Right to—Civil Procedure Code (Act XIV of 1882) s 13—Res Judicata*—S 10 of Bengal Act III of 1864 does not deprive a person of any right of private property that he may have in land used as a public road nor does it vest the subsoil of such land in a municipality and when such land is no longer required as a public road the owner is entitled to claim its possession A decision in a suit brought by the plaintiffs' predecessor in title to recover certain land from a municipality which had been taken up as a public road and vested in the municipality subsequently under Bengal Act III of 1864 s 10 on the ground that the plaintiffs had been ousted therefrom by reason of the municipality stacking stones on a portion thereof having been dismissed held not to be *res judicata* in a suit brought by the plaintiffs for ejectment and declaration of title to such land against a purchaser of the land from the municipality MODHU SUDAN KUNDU v PROMODA NATH ROY [I L R, 20 Cal, 732

——— s 19—*Refusal to permit excavation of tanks—Discretion of municipality*—By s. 19 of the bye laws of the Howrah Municipality framed under s 84 Bengal Act III of 1864 and confirmed by the Lieutenant Governor it is within the discretion of the municipality to refuse permission for the excavation of a tank and the Courts have no power to interfere with the *bona fide* exercise of such discretion BHYRUB CHUNDER BANNERJEE v CHAIRMAN OF THE HOWRAH MUNICIPALITY [17 W R 215

——— s 27—*Warrant of arrest—Criminal Procedure Code 1861 Ch XV (ss 257 272)*—A Magistrate or Municipal Commissioner has no power under Act III of 1864 Bengal Council to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge under s. 27 of that enactment for using premises as a straw or wood depôt without a license *Per* LOCH *J*—The provisions of Ch XV of the Code of Criminal Procedure are not applicable to offences under Bengal Act III of 1864 IN THE MATTER OF THE PETITION OF BISSESSUR CHATTERJEE 16 W R, Cr., 1

——— s 33—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I L R, 1 Calc 409

1 ——— s 57—*Obstruction of drain by tree blown down*—The obstruction of a drain by a tree blown down by a cyclone is not an obstruction within the meaning of s. 57 of Bengal Act III of 1864 ANONYMOUS 3 W R Cr 33

2 ——— *Blocking up private drain*—The municipal authorities have no power under s 57 Bengal Act III of 1864 to impose a fine on a person for blocking up a drain which is not shown to be public property or along the side of any highway QUEEN v BANI MADHUB BANERJEE [14 W R Cr 23

1. ——— s 63—*Right to pull down ruinous house—Notice of action*—By s 63 Bengal Act III 1864 Municipal Commissioners if they deem a house or building to be in a ruinous state may after the notice prescribed by that section cause the same to be taken down GOPEE KISHEN GOSSAIN v PYLAND 9 W R 279

2 ——— *Bye law of municipality—Covering buildings with inflammable material*—A bye law made by the Howrah municipality in the exercise of the authority vested in it by Bengal Act III of 1864 s. 63 which forbid the erection or renewal of the external roof and walls

BENGAL MUNICIPAL ACT (III OF 1864)—*continued*

of buildings with inflammable materials was con strued to forbid the renewal even of a portion of the roof with such material CHAIRMAN OF THE HOWRAH MUNICIPALITY v MONTANEE BEWAH [24 W R Cr 70

——— s 67

See RIGHT OF SUIT—MUNICIPAL OFFICERS SUITS AGAINST 23 W R, 222

1. ——— *Fine for suffering premises to be in filthy state—Owners and occupiers*—The Municipal Commissioners were empowered under s 67 Bengal Act III of 1864 to fine either the owner or occupier of the land who suffered it to be in a filthy state Where the land was occupied by tenants and the owner admittedly lived in another district, and there was nothing to show that he suffered the land to be in a filthy state—*Held* that the imposition of a fine on owner was not a proper exercise of the discretion given by s 67 of the Act QUEEN v DWARKNATH HAZRA 8 B L R Ap 9 [16 W R Cr 70

2 ——— *Allowing ground to remain in filthy stat*—The owner of ground is answerable under s 67 Bengal Act III of 1864 whether his ground was made dirty by himself or by somebody else ANONYMOUS 3 W R Cr 33

Unless he has let it then the occupiers are liable

QUEEN v PARBUTTY CHURN SIRCAR [3 W R Cr 57

QUEEN v BROJO LALL MITTER [8 W R Cr 45

——— ss 67 73—*Omission to clear away jungle—Power of Magistrate as Municipal Commissioner*—If upon a notice being served on a party under Bengal Act III of 1864 s 73 he does not choose to clear away the jungle referred to it is open to the Magistrate as Commissioner of the Municipality either to clear the jungle at the expense of the party in possession or to proceed under s 67 and inflict a fine IN THE MATTER OF THE PETITION OF GOOPEE KISHEN GOSSAIN 24 W R Cr 79

——— s 73—*Expense of clearing away jungle after notice to defendant*—The Municipal Commissioners were held entitled under s 73 Bengal Act III of 1864 to recover from the defendant the expense of clearing away any jungle which they found on his land upon his failure after notice to clear it himself within the time specified in the notice BROWNE v WOOMESH CHUNDER ROY [7 W R, 213

1. ——— s 77—*Notice of action—Suit against Municipal Commissioners*—A notice of action against Municipal Commissioners is absolutely necessary under s 77 Bengal Act III of 1864 A notice of objecting to and asking for a reconsideration of the order complained of is not sufficient ABHOY NATH BOSE v THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE MUNICIPAL COMMITTEE OF KISHNAGUR 7 W R 92

BENGAL MUNICIPAL ACT (III OF 1864)—*continued*

2 ——— *Omission to take out license*—Where the accused was charged with a breach of s 77 Act III of 1864 in not taking out a license for a wood yard and he pleaded that the yard had been in existence prior to 1864 it was held that the Magistrate was wrong in refusing to enquire into the allegation as to the existence of the yard prior to 1864 CHAIRMAN OF THE SUBURBAN MUNICIPAL COMMISSIONERS v UMBICA CHURN MOOKERJEE [15 W R Cr 84

3 ——— *Using premises for offensive trades*—The words uses any premises in s 77 Bengal Act III of 1864 means using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v ZAMIR SHEIKH 16 W R Cr 4

4 ——— *Burning bricks for private use*—S 77 of Bengal Act III of 1864 refers to the burning of bricks for trading purposes and not to cases where bricks are made for the particular use of the person burning them such person need not take out a license for that purpose IN THE MATTER OF THE PETITION OF SRIRAM CHUNDER HALDAR v CHAIRMAN OF THE HOWRAH MUNICIPALITY [20 W R Cr 65

——— s 79—*Procedure—Medical report—Closing burning ground*—A proceeding taken under Bengal Act III of 1864 s 79 is not a judicial proceeding and the evidence referred to therein means evidence without oath Regular reports signed by medical men would constitute evidence within the meaning of that section S 79 does not authorize Municipal Commissioners to close a burning ground which has been used for very many years merely because they think that the burning of dead bodies is offensive It allows them to interfere only when it shall appear to them upon the evidence of competent persons that any burning ghat or burying ground is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof BRINDABUN CHUNDER ROY v MUNICIPAL COMMISSIONERS OF SERAMPORE 19 W R 309

——— s 81—*Notice of action—Mistake in notice*—A notice under any of the sections of Bengal Act III of 1864 preceding s 81 may under that section either be served upon the person addressed or left with some servant of the family The mistake of a few rupees in a notice caused by an error in addition is not sufficient to impeach or affect the demand where the directions of the Municipal Act have been substantially complied with s 48 protecting the Commissioners against such mistakes GOPEE KISHEN GOSSAIN v RYLAND [9 W R 562

1 ——— s 87—*Cause of action—Suit for possession against Municipality as wrong doers*—Plaintiffs as proprietors sued the Howrah Municipal Committee to recover possession of land from which they alleged they had been ousted by defendants stacking stones thereon; and they regarded

BENGAL MUNICIPAL ACT (III OF 1864)—*continued*

their cause of action as arising when the Municipal Commissioners refused to remove the stones Defendants ca e was that the land had been in possession of Government till Bengal Act III of 1864 was extended to Howrah since which time the Commissioners had held the land *Held* that the plaintiffs cause of action could not be considered to have first arisen on the refusal of the Municipality to remove the stones. *Held* (by BAYLEY J) that the Municipal Commissioners had acted properly under the law and were entitled to the application of s 87 Bengal Act III of 1864 *Held* (by PHEAR J) that s 87 could only protect defendants if sued for damages consequent on a wrong done by them in the reasonable belief that they were exercising their lawful powers not if they were sued by parties kept out of possession by their continued wrong-doing POORNO CHUNDER ROY v BALFOUR 9 W R 535

2 ——— *Notice of action—Municipal Commissioners*—Municipal Commissioners are entitled to one month s notice of action under s 87 Bengal Act III of 1864 while they have been acting *bonâ fide* in the belief that they were exercising powers given to them by that Act not if their proceedings were not justified by that Act and only colourably done under cover thereof GOPEE KISHEN GOSSAIN v PYLAND 9 W R 279

3 ——— *Suit against Municipal Commissioners for possession of land*—Previous to the institution of the present suit one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share The other shareholders were made *pro formâ* defendants in the suit This suit was dismissed as barred by the law of limitation After the dismissal of the suit the plaintiff brought the present suit for recovery of his share of the land on the allegation that his tenant had relinquished the land within three months in consequence of his having been dispossessed by the Municipal Commissioners *Held* that s 87 Bengal Act III of 1864 did not apply *Semble*—Bengal Act III of 1864 s 87 relates only to actions brought in respect of acts done by the Commissioners under that Act for the purpose of the Act PRICE v KHILAT CHANDRA GHOSE 5 B I R Ap 50 13 W R, 461

4. ——— *Cause of action Accrual of—Damages for detention of omnibus*—In a suit for the recovery of damages on account of a daily fine imposed by the Municipality of Howrah and the detention of an omnibus which fine had been set asid by the High Court and the detention pronounced illegal—*Held* that if the plaintiff had any cause f action it accrued upon the seizure of the omnibus and n t upon the order of the High Court which all wed the conviction to stand as to one rupee and that he could not under the circumstances treat the continued detention of the omnibus as a fresh cause of action from day to day and his suit not having been bro ght within three months was barred by s 87 Bengal Act III of 1864 HUGHES v MUNICIPAL COMMISSIONERS OF HOWRAH [19 W R 339

BENGAL MUNICIPAL ACT (III OF 1864)—*concluded*

5 ——— *Suit to recover possession of land taken by Municipal Commissioners*—S 87 of Bengal Act III of 1864 is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise or honestly supposed exercise of their statutory powers The notice in the earlier part of the section is meant to give the defendant an opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation CHUNDER SIKUR BUNDOPADHYA v OBHOY CHURN BAGCHI [I L R 6 Calc 8

BENGAL MUNICIPAL ACT (V OF 1876)

——— s 32—*Municipal Corporations—Commissioners—Right of way—Compensation—Land Acquisition Act X of 1870*—S 32 of Act V of 1876 the Bengal Municipal Act enacts that all roads bridges embankments tanks ghats wharves jetties wells channels and drains in any municipality (not being private property) and not being maintained by Government or at the public expense now existing or which shall hereafter be made and the pavements stones and other materials thereof and all erections materials implements and other things provided therefor shall vest in and belong to the Commissioners *Held* that the word roads in this secti n does not include the soil beneath the roads CHAIRMAN OF THE NAIHATI MUNICIPALITY v KISHORI LAL GOSWAMI [I. L. R. 13 Calc 171

——— s 216 and ss 215 and 180—*Bench of Magistrates Power of—Omission to remove obstruction*—A notice was issued under s 215 Bengal Act V of 1876 requiring *A* to remove an alleged obstruction The requisition was not complied with and *A* was prosecuted for non compliance therewith under s 216 before a Bench of Honorary Magistrates *Held* that the Court had power to enquire whether the alleged obstruction was in point of fact an obstruction or not IN THE MATTER OF THE MUNICIPAL COMMITTEE OF DACCA MUNICIPAL COMMITTEE OF DACCA v SOMEER [I L R 9 Calc 38

——— s 234.

See BENGAL MUNICIPAL ACT 1884 s 2 [I. L R 20 Calc, 699

——— s 313—*Bye law— Ultra vires*—*Bengal Municipal Act (Bengal Act III of 1884) s 2*—Where a municipality passed a bye law purporting to be made under the provisions of s 313 of Bengal Act V of 1876 which was duly sanctioned by the Local Government to the effect that persons failing to trim trees overhanging tanks which were likely to foul the water with their falling leaves after service of n tice on them to that effect should be liable to a penalty and where subsequent to the repeal of that Act by Bengal Act III of 1884 a person was convicted and fined for having disobeyed such bye law —*Held* that the conviction was bad as the bye law was not one authorized by the terms of s 313,

BENGAL MUNICIPAL ACT (V OF 1876) —*concluded*

and was consequently *ultra vires* and that s 2 of Bengal Act III of 18 4 could not make valid a bye law which was originally invalid. BENI MADHUB NAG v MATI LAL DAS I L R 21 Calc 837

BENGAL MUNICIPAL ACT (III OF 1884).

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES

[I. L R., 24 Calc. 107
I. L. R 26 Calc 811
3 C W N., 73 503
I L. R 27 Calc 849

——— Prosecution under—

See MAGISTRATE JURISDICTION OF GENERAL JURISDICTION

[I. L. R 23 Calc 44

——— s 2.

See BENGAL MUNICIPAL ACT 1876 s 313

[I. L R 21 Calc 837

——— *Notification Meaning of— "Order under Bengal Act V of 18 6 s 234—Extension of Municipal Act to Balasore—Order notified* —The word n tification in s 2 Bengal Act III of 1884 includes an order made under s 234 of Bengal Act V of 1876 An order therefore made and notified under s 234 of Bengal Act V of 1876 extending the provisions of Chap VII of the Act is under the provisions of s 2 of Bengal Act III of 1884 to be deemed to have been made and n tified under the provisions of the Act of 1884 BAIKANTHA NATH DAS v LOLIT MOHUN SARKAR

[I L R 20 Calc 699

——— s 45 and s 353—*Powers of Chairman, Delegation of—Prosecution for obstructing dra n* —The proviso to s 45 of the Bengal Municipal Act 1884 cannot be considered as altogether overriding the body of the secti n and relates only to specific acts in which an express or implied consent may have been given or held to have been given It cannot be held to apply to a general authority verbally given by a Chairman to a Vice Chairman to institute prosecutions under the Act as such power can only under the body of the section be delegated by a written order In a pr secution instituted by a Vice Chairman for obstructing a drain where it appeared that the Chairman had some months previ usly verbally given the Vice Chairman general authority to institute all such prosecutions under s 353 of the Act and it appeared that a conviction had been obtained before a Bench of Magistrates and that on appeal to the Magistrate the conviction had been upheld the Magistrate himself being the Chairman and hearing the appeal with the express consent of the accused and where it was contended in revisi n before the High Court that although there was no written order by the Chairman d legating his powers it must be taken up n the facts proved and the circumstances of the cas that the prosecution had been instituted with the express or implied consent of the Chairman obtained both previously and subsequently within the terms of the proviso to s 45 —*Held* that the pr viso did not apply to the case that the p secution had not been properly instituted and that the conviction and sentence must be set aside KHEBODA PROSAD PAUL v CHAIRMAN OF THE HOWRAH MUNICIPALITY

[I L R 20 Calc 448

——— ss 85 114 116

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES

[I L R 27 Calc 849

——— ss 85 (a) 112 and 363—*Liability to assessment—Persons occupying the holdings—Limitation—Notice —Held* that under the Bengal Municipal Act s 85 (*a*) persons living with a particular individual occupying a holding by reason of some connecti n with or relation to him such as sons or servants would not be separately assessable by reason of possessing separate incomes *Held* also that the right to obtain a declaration that the plaintiffs were not liable to assessment under the Act was a recurring right and an action to obtain such a declaration would be maintainable even if brought more than three months after the assessment *Held* further that a refund of the m ney paid under protest can be claimed under these circumstances without giving a notice under s 363 of the Act respecting the refund claimed as the word act used in the section refers to tortious acts and not to any act arising out of a contractual or quasi contractual basis AMBIKA CHURN MOZUMDAR v SATISH CHUNDER SEN

[2 C W N 689

——— ss 113 116—*Persons occupying holdings—Liability to assessment—Municipal Commissioners power to tax—Assessment to tax* —The word liability in the second paragraph of s 113 of Bengal Act III of 1884 means liability apart from the question of occupation and must be taken to refer to the liability to assessment or rating of a pers n who is the occupier of a holding The same restricted meaning must be placed upon the word liability in s 116 which section has no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding and a suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding is not therefore barred by the provisions of s 116 DWARKA NATH DUTT v ADDYA SUNDARI MITTRA

[I. L. R. 21 Calc 319

——— s 133—*False statement contained in application for l cense—Municipal Commissioners Power of to institute prosecution under Penal Code—Penal Code ss 182 199 417 and 511 —Revisional po er of High Court in pending proceedings* —On the 5th May 1894 *C* applied in writing under the provisions of s 133 of Bengal Act III of 1884 to a municipality for a license to be granted to him in respect of two carriages and six p nies and filled up and signed the usual statement required by the section The sum payable in respect of the lic nse was received and the license asked for by *C* was granted to him and at the same time the statement was sent to an overseer of the Municipality f r verification On the 7th May the overseer reported that *C* had in his possession eight ponies and

BENGAL MUNICIPAL ACT (III OF 1884)—*continued*

one horse On the 8th May the Chairman of the Municipality passed an order directing C to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license On the 9th May C presented a petition asking that the tax on the three animals might be received and stating that he did not think he was liable to take out a license for them as they were old and diseased and unfit for work On the 13th May the Chairman passed an order on this application that he had no power to interfere as the prosecution of C had already been ordered Meanwhile on the 9th May a paper was sent to the Magistrate headed List of municipal cases under Act III of 1884 in which C appeared as charged with an offence under s 199 of the Penal Code for filing a false statement that is to say putting down in the schedule six ponies only instead of eight ponies and one horse On the 12th May the Deputy Magistrate directed a summons to issue to C returnable on the 23rd On the 18th May the District Magistrate passed an order to the effect that the Municipality could not institute a prosecution under the Penal Code but that the Deputy Magistrate had power to do so and that he should consider the provisions of ss 182 and 417 read with s 511 of the Penal Code as applicable to the facts of the case On the 19th May the summons was issued and the case was heard on the 23rd and 24th May and 19th June on which date formal charges under ss 199, 182 and 417—511 of the Penal Code were framed Thereafter the hearing proceeded till the 16th July when on an application to the High Court the proceedings were stayed and a rule issued to show cause why they should not be quashed. It was contended at the hearing of that rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction *Held* that the High Court has power to interfere at any stage of a case and that when it is brought to its notice that a person has been subjected as in this case for over two months to the harassment of an illegal prosecution it is its bounden duty to interfere *Held* further that it was quite clear that the Municipality had no power to institute the proceedings and that having regard to the provisions of s. 191 of the Code of Criminal Procedure it did not appear that the Deputy Magistrate having no private complainant before him had power of his own motion to institute them; but that whether he had such power or not the admitted facts of the case did not in law constitute any of the offences with which C was charged and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code There is no penalty in the Act attached to the omission to make a return under s 133 and no words in the Act constituting the making a false return a penal offence and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable the Court has no power to import them The Municipal Commissioners in such a case have the remedy provided by the Act itself CHANDI PERSHAD *v* ABDUR RAHMAN [I. L. R 22 Calc 131

———— ss 142 and 146— *Habitually used Meaning of—Liability to pay a fine for non registration of a cart* —The accused kept his cart outside the limits of the Chanduria municipality but used to bring it within the limits twice a week throughout the year *Held* he could not be said to be habitually using the cart within the municipal limits and was therefore not liable to pay a fine under s 146 of the Bengal Municipal Act (Bengal Act III of 1884) LEGAL REMEMBRANCER *v* SHAMA CHARAN GHOSE I L R. 23 Calc. 52

———— ss 155 and 156—*Ferry Meaning of—Boat plying for hire without license within prescribed limits of ferry—Right of ferryman to demand tolls* —The expression a ferry in the Bengal Municipal Act means the exclusive right to carry passengers across the stream from one bank to the other on payment of certain prescribed tolls The object of s 155 of that Act appears to be to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits *Semble* therefore that the mere crossing of the bar of a khal leading into the limits of a municipal ferry would not constitute a breach of the Act A ferry man has no authority to demand tolls from persons who are merely passengers in an unlicensed boat The remedy against the person who keeps a ferry boat without a license plying within the prescribed limits is provided by s 156 of that Act GOVERNMENT OF BENGAL *v* SENAYAT ALI I. L. R 27 Calc 317 [4 C W N 348

———— s 204—*Projection caused by restoring a portion of an old building which has been pulled down with the object of its being rebuilt —Meaning of the words which may have been so erected or placed —Metropolis Management Amendment Act 1862 (25 & 26 Vic c 102) s 75* —S 204 of the Bengal Municipal Act (Bengal Act III of 1884) does not apply to the case of a projection forming part of a building which is merely in substitution for an old building, which has existed upon the same site before the date on which the District Municipal Improvement Act 1864 or the District Towns Act 1868 or the Bengal Municipal Act 1876 as the case may be took effect in the municipality The words which may have been so erected or placed in s 204 mean erected or placed for the first time ESHAN CHANDER MITTER *v* BANKU BEHARI PAL I L R. 25 Calc 160 [1 C W N., 660

———— s 217—*Obstructing road not vested in Municipality over which public have a right of way —Road* —The term road in cl 5 of s 217 of Bengal Act III of 1884 is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of a Municipality under that clause with obstructing a path through

BENGAL MUNICIPAL ACT (III OF 1884)—*continued*

his paddy field by erecting a fence at either end of it. It was found that the public had a right of way over the path and the lower Courts convicted the accused of an offence under that clause. In revision it was contended that the conviction was bad as the clause could only refer to a road which had vested in the Municipal Commissioners. *Held* for the above reasons that the conviction was right and must be upheld. RAM CHANDRA GHOSE v. BALLY MUNICIPALITY I. L. R., 17 Calc. 684

——— ss. 224 245 and 246—*Acts done in accordance with ss 245 and 246 whether subject to the jurisdiction of a Civil Court—Notice under s 246 whether sufficient for the purpose of the removal of huts in a basti as well as a pucca privy*—Where a Municipality having proceeded in accordance with ss 245 and 246 of the Bengal Municipal Act decide that certain works are necessary that conclusion in the absence of *mala fides* or fraud or considerations of that nature cannot be questioned in a Civil Court. The action of the Municipality so far as a privy was concerned, was held not to be *ultra vires* although in the notice issued in accordance with s 246 of the Bengal Municipal Act they directed the plaintiff to remove not only certain huts but also a pucca privy inasmuch as the Municipality had a right to require him to remove the privy under s. 224 of the Act. DUKE v. RAMESWAR MALIA

[I. L. R. 26 Calc., 811
3 C. W. N., 508

——— ss 237 238 and 273—*Notice of intention to build—Commencing to build before sanction—Refusal of sanction within the period of six weeks—Liability to fine*—If a person after giving notice in writing of his intention to erect a house under s 237 of the Bengal Municipal Act (Bengal Act III of 1884) commences to build without waiting for the six weeks mentioned therein [as he is not bound to do under the Act there being no such provision in it] he does not necessarily contravene the law yet when he so acts the reasonable view must be that he does it at his risk his act being liable to be treated as one in contravention of any legal order of the Commissioners issued within the statutory period of six weeks if such order does not sanction the proposed building the above appears to be the only reasonable view of s 238 of the Act. CHUNDRA KUMAR DEY v. GONESH DAS AGARWALLA

[I. L. R., 25 Calc. 419

——— s 320

See FACTORIES ACT

[I. L. R. 25 Calc. 454

——— s 337 and ss 338 339 344—*License for a provision market—Market—Order prohibiting use of unlicensed market—Powers of Municipal Commissioners to grant or withhold licenses*—It is entirely within the discretion of the Municipal Commissioners under the provisions of s 339 of the Bengal Municipal Act (Bengal Act III of 1884) to grant or refuse a license for a market and the Courts have no longer any jurisdiction to control such power however arbitrarily exercised. *Moran v. Chairman of the Motihari Municipality I. L. R. 17 Calc. 329* approved. A landowner on whose land a market had been held for some years previous and which land lay within the bounds of a municipality was prosecuted under s 344 of the Bengal Municipal Act and convicted and fined for using such market without having obtained a license under s 338. He alleged that he had applied for a license, and that it had not been granted him and that the neglect to grant it was due to the fact that his market interfered with a new market established by the Municipal Commissioners and their desire to close his market. It appeared that some time previous to the institution of the prosecution the Municipal Commissioners at a meeting passed a resolution that the provisions of s 337 of the Municipal Act (Bengal Act III of 1884) be extended to this municipality and it was contended that by this resolution licenses became necessary to sell at any market any of the provisions mentioned in that section and that selling without such license rendered the accused liable to prosecution and fine under s 344. It appeared further that Part X of the Act which includes s. 337 had been previously extended to the municipality by an order of the Government of Bengal. *Held* that the resolution of the Commissioners was not an order such as is contemplated by s 337 as it was not sufficiently precise to convey any definite meaning and purported only to do what the Bengal Government had already done some time previously. *Held* further that the conviction and sentence must be set aside there being no proper order under s 337. QUEEN EMPRESS v. MUKUNDA CHUNDER CHATTERJEE

[I. L. R. 20 Calc. 654

——— s 339—*Obligation of Municipality to grant license—Interpretation of statute—"May" "shall"*—There are no words which render it obligatory on a municipality to grant a license under s 333 of Bengal Act III of 1884. The word "may" in s 339 of that Act is not to be construed as "shall". MORAN v. CHAIRMAN OF THE MOTIHARI MUNICIPALITY

[I. L. R. 17 Calc. 329

——— ss 353 218—*Continuous offence—Removal of obstruction*—The petitioner was convicted of an offence of having erected culverts on pucca drains belonging to a municipality and prosecution for such offence was made six months after the date on which the commission was first brought to the notice of the Chairman. *Held* that though the offence was continuous in its nature the prosecution was barred under s 353 of the Bengal Municipal Act and that s 218 had no application to a case of this kind. LUTTI SINGH v. BEHAR MUNICIPALITY

[1 C. W. N. 492

BENGAL MUNICIPAL ACT AMENDMENT ACT (IV OF 1894.)

——— s 85

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L. R., 27 Calc., 849

BENGAL N W PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887)

See SONTHAL PERGUNNAHS SETTLEMENT REGULATIONS I L R, 18 Calc 133

See VALUATION OF SUIT—APPEALS [I L R 16 All, 286

——— s 13

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION [I L R 25 Calc 315 I L R 27 Calc, 272

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION [I L R 22 Calc, 871

——— s 19

See VALUATION OF SUIT—SUITS [I L R, 17 All 69

——— s 20

See APPEAL—DECREES [I L R 19 Calc 275

——— s 21

See APPEAL—RECEIVERS [I L R, 17 Calc 680

See VALUATION OF SUIT—APPEALS [I L R, 13 All 320 I L R 23 Calc 536

See VALUATION OF SUIT—SUITS [I L R 17 Calc 680 704 I L R 17 All, 69

——— s 22

See SUBORDINATE JUDGE JURISDICTION OF I L R, 16 All 363

——— s 23

See PROBATE—JURISDICTION IN PROBATE CASES I L R, 25 Calc 340

——— ss 23 and 24

See DISTRICT JUDGE JURISDICTION OF [I L R 13 All 78

——— s 36—*Meaning of the word officer*—The word officer in s 36 of the Bengal N W P and Assam Civil Courts Act includes an officer with judicial powers HALADHAR MAHATO *v* KALI PRASANNA GHOSE 2 C W N 127

——— s 37

See MAHOMEDAN LAW—PRE EMPTION MISCELLANEOUS CASES [I L R 12 All 234

See MAHOMEDAN LAW—PRE EMPTION—RIGHT OF—GENERALLY [I L R, 16 All 644

See VENDOR AND PURCHASER—PURCHASE MONEY AND OTHER PAYMENTS BY PURCHASER I L R 24 Calc 897

BENGAL PRIVATE FISHERIES PROTECTION ACT (II OF 1884)

——— s 3—*Fishing in private waters—Adjoining fisheries—Bonâ fide dispute as to boundaries—Summary trial—Jurisdiction of the Criminal Court*—Where in a charge under s 3 of the Private Fisheries Protection Act of having fished in the waters of another person the matter in dispute was really a claim to a particular fishery and the accused pleaded a *bonâ fide* claim to it and it was shown that there had been various disputes and litigations between the parties —*Held* that the matter should not be tried by a Criminal Court and still less in a summary way Per STANLEY *J* that the Magistrate acted without jurisdiction in going into this charge and s 3 of the Fisheries Act was not intended to meet a case of this nature SRIRAM CHANDRA ROY *v* DINA NATH MUKHOPADHAYA [4 C W N, 247

BENGAL REGULATION—1793—I s 9

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES [13 W R, 397

See RIGHT OF SUIT—REGISTRATION OF NAME 13 W R 397

——— III

See CASES UNDER LIMITATION—REGULATION III OF 1793

——— s 8

See JURISDICTION OF CIVIL COURT—SOCIETIES 3 B L R A C 91

——— IV

——— *Rules for decision in suits regarding Succession Inheritance Marriage Caste etc—Law applying to one sect*—According to the true construction of the rules for decision in suits regarding succession inheritance marriage and caste and all religious usages and institutions provided in Bengal Regulation IV of 1793—*viz* that Mahomedan law with respect to Mahomedans and Hindu law with regard to Hindus are to govern such decisions—the Mahomedan law of each sect ought to prevail as to the litigants of that sect and not the general or Suni Mahomedan law DEEDAR HOSSEIN *v* ZUHOORDONNISSA 2 Moore's I A 441

——— s 9

See BENGAL REGULATION XLVIII OF 1793 s 21 4 B L R Ap 44

——— s 15

See RESTITUTION OF CONJUGAL RIGHTS [8 W R, P C 3 11 Moore's I A 551

——— s 25—*Landed proprietors*—S 25 of Regulation IV of 1793 was applicable to landed proprietors JOGHOOBUR DUTT *v* GOVERNMENT 6 W R, Mis 50

——— VIII

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALUKHDARS

BENGAL REGULATION—1793—VIII —concluded

——— ss. 5 and 50

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE I. L. R. 22 Calc. 214 [L. R. 21 I. A. 131

See GHATWALI TENURE [I. L. R., 3 Calc., 251

See ONUS OF PROOF—ENHANCEMENT OF RENT 4 B. L. R., P. C., 8

See PRESUMPTION—RIGHT TO RESUME [5 Moore's I. A. 467

See SALE FOR ARREARS OF REVENUE—PURCHASERS' RIGHTS AND LIABILITIES OF 2 B. L. R., P. C. 23

——— s. 41.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUIT N. W. P. [I. L. R. 8 All., 552

——— s. 46—*Suit for recovery of malikana.*—A suit for recovery of malikana was barred by limitation if the malikana has not been received for a period of twelve years *Quære*—Whether under Regulation VIII of 1793 s. 46 a suit for recovery of malikana will lie at all BHULI SING *v.* NEHMU RERU [4 B. L. R. A. C. 29 12 W. R. 498

——— ss. 54, 55 and 61

See CESS I. L. R. 15 Calc. 828 [L. R. 16 I. A., 152 I. L. R. 17 Calc. 131 I. L. R. 17 Calc. 726 I. L. R. 22 Calc. 680

——— X.

See ACT XL OF 1858 s. 3 16 W. R., 231

——— s. 33

See COURT OF WARDS [I. L. R., 1 Calc. 289 I. L. R. 8 Calc. 620

——— XI

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION [I. L. R. 1 Calc. 186 19 W. R. 8

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY 9 W. R. P. C. 15 [12 Moore's I. A. 1

See MAHOMEDAN LAW—CUSTOM [2 Moore's I. A. 441

——— XV

See MESNE PROFITS—RIGHT TO AND LIABILITY FOR [B. L. R. Sup. Vol. 613

See CASES UNDER MORTGAGE—ACCOUNTS

1 ——— s. 6—*Reg. XVII of 1806, s. 3—Interest, Rate of.*—Under s. 6 Regulation XV of 1793 interest claimable under a bond must not exceed the amount of the principal. S. 3 Regulation XVII of 1806 is not inconsistent with the application of

BENGAL REGULATION—1793—XV —continued

Regulation XV of 1793 inasmuch as the Regulation of 1806 refers to *rates* of interest and the Regulation of 1793 to accumulations of interest irrespective of rate. BARDAKANT RAI *v.* BHAGWAN DAS [I. L. R. 1 All. 344

2 ——— *Interest in excess of principal—Act XXVIII of 1855.*—S. 6 Regulation XV of 1793 (prohibiting the Courts from awarding as interest a sum larger than the principal) is not applicable to a suit instituted after the passing of Act XXVIII of 1855. Even under Regulation XV of 1793 it was the practice of the Court to allow interest in excess of principal where the interest had accumulated owing to reasons not ascribable in any degree to procrastination on the part of the creditor. HUROMONEE GOOPTIA *v.* GOBIND COOMAR CHOWDHRY 5 W. R. 51

3 ——— *Interest in excess of principal.*—Regulation XV of 1793 (prohibiting award of interest in excess of principal) applies to sums decreed only and not to interest which has accumulated through the neglect of the judgment-debtor to pay. SHIB CHUNDER GOOPTO *v.* ALLAD MONEE DOSSIA 5 W. R. Mis. 22

4 ——— *Interest in excess of principal.*—Where under s. 6 Regulation XV of 1793 interest upon the principal prior to the institution of the suit was adjudged to the plaintiff limited to a sum equal to the principal, although that regulation was repealed when the suit was brought, yet looking to the time when his contract was made the plaintiff was held not entitled to any further interest before suit, but interest upon the principal was allowed to him from the date of suit to the date of decree. JEEBNATH SINGH *v.* KUREEMUN BIBEE [7 W. R. 172

5 ——— *Usurious transaction.*—To an action for recovery of arrears of rent due to the plaintiff under a sub-lease of a pergunna the defendant pleaded that the sub-lease was part of a loan transaction for the purpose of securing to the plaintiff an illegal interest upon the loan, and was void under Bengal Regulation XV of 1793. *Held* by the Privy Council (confirming the decision of the Courts below) that it was an usurious transaction and that the suit should be dismissed. WISE *v.* KISHEN KOOMAR BOSE 4 Moore's I. A. 201

——— ss. 8 and 9—*Maintenance of suit—Usury.*—Regulation XV of 1793, ss. 8 and 9, forbids the maintenance of any suit arising out of an usurious transaction. WISE *v.* JAGADANDHU BOSE [2 B. L. R. P. C. 69 12 Moore's I. A. 477

1. ——— ss. 9 and 10—*Rate of interest—Usufructuary mortgagee.*—In a suit on a bond executed together with an assignment to the plaintiff of the rent of certain mehals farmed out to other parties, the Judge dismissed the suit under s. 9 Regulation XV of 1793, holding that a deduction of a certain sum from the jumma of the assignment was a device to obtain more interest than the legal rate. *Held* that under the decision of the Privy Council in *Anundo Mohun Pal Chowdhry v. Kishe Chunder*

BENGAL REGULATION—1793—XV —concluded

Bannerjee 8 Moore's I A 358 that section does not apply where the transaction of the bond and the assignment are one and the same and where the plaintiff has a claim to be treated as a usufructuary mortgagee under s 10 of the same law RASSMONEE DOSSEE v MONSHAR ALLY 1 Hay, 483

2 ———— *Interest—Usury* —Interference with the rate of interest in India was a thing of positive law and cannot be extended beyond the provisions of the Regulation (XV of 1793) S 9 of the Regulation does not declare that where an attempt has been made to elude the usury laws the contract is itself void nor does it direct the return of the pledge without redemption. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent the maximum allowed by s 10 of the Regulation SHAH MAKHUNLAL v SRI KRISHNA SINGH 2 B L R P C 44 [11 W R P C 19 12 Moore's I A 157

TASADUK HOSSAIN v BENI SINGH [13 C L R, 128

———— XIX

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT 4 Moore's I A 466

———— s 6—*Dependent talukhdar —Expiration of settlement Effect of on omission to renew lease* —A lessee whose interest is that which is declared by Regulation XIX of 1793 s 6 is a dependent talukhdar and does not forfeit his lease by simply omitting to renew his temporary settlement on its expiration JUNMEJOY MULLICK v GUNGA RAM DUTT 21 W R 26

———— s 10

See GRANT—POWER TO GRANT [B L R, Sup Vol 75 774 12 W R 251 I L R 2 All 545 732

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P [I L R 8 All 552

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY [8 B L R Ap 82 note 83 note 85 note 87 note 89 note

See RESUMPTION—RIGHT TO RESUME [15 W R 483 B L R Sup Vol Ap 8 B L R Sup Vol, 109 8 B L R 566

———— XXVI, s 2

See COURT OF WARDS [I L R, 1 Calc 289 L R 3 I A 72 25 W R 235 I L R 8 Calc, 620

See MAJORITY AGE OF [15 B L R 67 23 W R, 208 L R, 2 I A, 87 W R 1864, 83 5 W R, 2, 5 7 W R, 181 503

BENGAL REGULATION—*continued*

———— 1793—XXVII

See MUNSIF JURISDICTION OF [I L R, 19 Calc 8

See RESUMPTION—RIGHT TO RESUME [5 Moore's I A 467

See SETTLEMENT—CONSTRUCTION OF SETTLEMENT I L R 17 Calc, 458

1 ———— s 5—*Bazars made since 1793* —S 5 Regulation XXVII of 1793 had no application to bazars which did not exist in 1793 AFTABOODEEN AHMED v MOHINEE MOHUN DASS [15 W R, 48

CHUNDER NATH ROY v ZEMADAR [16 W R 268

RAM MANICK ROY v ASGUR 11 W R 112

2 ———— *Contract to collect duties* —There is nothing illegal in a contract under a farming lease from the owner of a hat to collect a portion of the proceeds of sale from persons exposing their goods for sale in the hât under temporary sheds or in open places and such collections are not in the nature of internal duties but of rent for the use of land The provisions of Regulation XXVII of 1793 applied only to hâts and bazars existing at the time BUNGSHO DHUR BISWAS v MUDHOO MOHULDAR [21 W R 383

———— XXXVI s 17

See REGISTRATION—BENGAL REGULATION XXXVI OF 1793 8 W R, 438

———— XXXVII s 15

See GRANT—CONSTRUCTION OF GRANTS [2 Agra 284 I L R 15 Bom. 222

———— XLIV

See GHATWALI TENURE [13 B L R, 124 L R I A Sup Vol. 181

———— ss 2, 5

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALUKHDARS I L R 14 Calc, 133

———— s 5

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE I L R, 4 Calc 612

See SALE FOR ARREARS OF REVENUE—PURCHASERS RIGHTS AND LIABILITIES OF 2 B L R, P C 23

———— XLV

See LIMITATION ACT 1877 ART 12 (1859 s 1 CL. 3) 11 W R 261

———— s. 12.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY [8 Moore's I A, 427

BENGAL REGULATION—*continued*

——— 1793—XLVIII s 14.

——— *Quinquennial registers—Attestation of Zillah Judge*—According to Regulation XLVIII of 1793 s 14 no counterpart quinquennial registers in the native language are considered authentic unless attested by the Zillah Judge. GOBIND CHUNDER SHAHA *v* PUDDO MONEE DASEE 17 W R 400

——— s 24—*Reg IV of 1793 s 9—Jurisdiction of Collector*—S 24 Regulation XLVIII of 1793 and s. 9 Regulation IV of 1793 directed the Zillah and City Courts to transmit their decrees to the Collector but did not authorize those Courts to make any orders on the Collector as to how he shall enter the result of such decrees in his books NIMDHARI SING *v* KACHUN SING
[4 B L R Ap., 44 13 W R 162

——— 1795—XIII, s 15

See GRANT—CONSTRUCTION OF GRANT
[2 Agra 284

——— XLI s 10

See ONUS OF PROOF—PRESUMPTION AND ASSESSMENT 1 Agra 167

——— 1796—XI.

See FORFEITURE OF PROPERTY
[7 W R P C 18 47

——— 1797—IV

See OFFENCE COMMITTED BEFORE PENAL CODE I L R 1 All 599
[I L R 2 Calc 225

——— s 24 cl. (2)

See LIMITATION ACT 1877 ART 179 (1859 s 20)—STEP IN AID OF EXECUTION—MISCELLANEOUS ACTS OF DECREE HOLDER 4 B L R A C 158

——— XVI s 4.

See CASES UNDER APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL

——— 1798—I

See APPEAL—REGULATIONS
[18 W R 122

See MESNE PROFITS RIGHT TO AND LIABILITY FOR B L R Sup Vol. 613

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION
[B L R Sup Vol. 598
20 W R 387

——— 1799—V s 5

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY
[4 B L R Ap 60

1 ——— s 7—*Moveable property*—S 7 of Regulation V of 1799 only applied to moveable property SHIB RAM LALL *v* RAJ COOMAR MITTER
[6 W R 48

BENGAL REGULATION—1799—V—*concluded*

2. ——— *Property of intestate without heirs—Widow with certificate*—A died leaving a widow and two daughters and property in cash and Government securities None of his heirs being present at the time the Magistrate took possession of the property *Held* that it should have been made over to the Civil Court under s 7 Regulation V of 1799 and that Court should treat such property as in its temporary care *Held* also that the widow having obtained a certificate under Act XXVII of 1860 though opposed by one *H* who alleged himself to be a cousin of the deceased and who had appealed from the decision granting the certificate the property might be delivered to the widow who held the certificate on her furnishing proper security for the purpose of indemnifying the appellant *H* ABID HOSSEIN *v* REAZUN 15 W R 302

——— VII

See LIMITATION—BENG REG VII OF 1799
[B L R Sup Vol Ap 10 5 W R 100

1. ——— *Decree—Act VIII of 1859 s 206*—S 206 Act VIII of 1859 did not apply to decrees under Regulation VII of 1799 GOPAL CHANDRA DEY *v* PEMU BIBI
[1 B L R, A C 76 10 W R 104

2 ——— *Beng Reg VIII of 1831—Repeal Effect of*—A summary suit for rent under s 15 Regulation VII of 1799 was pending when Act X of 1859 came into force and was therefore governed by Regulation VIII of 1831 s 4 of which declared that the decision in the summary suit should be final subject to a regular suit By s 1 Act X of 1859 Regulation VII of 1799 ss 1 to 20 and Regulation VII of 1831 were repealed except as to proceedings commenced before the date of the Act coming into force *Held* that the repealing section did not take away the right to bring a regular suit GOBIND CHUNDER MOOKERJEE *v* KALLA GAJEE
[B L R Sup Vol. 626 2 Ind Jur N S 119

GOBIND CHUNDER MOOKERJEE *v* KALA GAZI
[7 W R 185

——— s 25—*Under-renter—Sale on default in payment of rent*—A raiyat holding a jote for which he pays a particular rent to a Collector who holds the land under khas management was an under renter within the meaning of s 25 Regulation VII of 1799 and if he made default in the payment of rent the proper procedure for the Collector was to sell his land at the end of the year RUNGO KOPOHOOA *v* DEHASSUR MUSSULMAN
[13 W R, 302

——— 1800—X

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION I L R 1 Calc 186

See MAHOMEDAN LAW—CUSTOM
[2 Moore s I A 441

——— 1803—II s 18 cl. (3)

——— *Good and sufficient cause—Limitation*—The words other good and sufficient

BENGAL REGULATION—1803—II

—*concluded*

cause in cl. 3 s 18 Regulation II 1803 of the Bengal Code include insanity whether there has been or is a commission of lunacy or the like or not and the word precluded in the same clause does not mean precluded during the whole term of twelve years or merely at its commencement but means in effect precluded during any part of it In computing the twelve years period of limitation there should not be reckoned any time elapsing while the person for the time being entitled to seek redress was not free from disability TROUP v E I COMPANY DYCE SOMBRE v F I COMPANY
[4 W R P C 111 7 Moore's I A., 104

——— XXXI s 6

See GRANT—CONSTRUCTION OF GRANTS
[I L R., 21 All 12

——— XXXIV

See MORTGAGE—ACCOUNTS
[I L R., 2 All, 593

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE I L R 8 All., 402

——— LII.

See COURT OF WARDS
[I L R., 5 All 142
8 W R P C 9
I L R 22 All., 294

———1805—II.

See LIMITATION—BENG REG II OF 1805

——— XII, s 34

See JAGHIR W R F B 85

———1806—XVII.

See LIMITATION ACT 1877 ART 135
[I L R 16 Calc. 693

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE 11 B L R 301

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION
[7 B L R 136 13 Moore's I A. 560

See ONUS OF PROOF—MORTGAGE
[B L R Sup Vol., 415

See PRE EMPTION—RIGHT OF PRE EMPTION
[I L R 11 All 164

——— Operation of in Chupra.—Regulation XVII of 1806 came into operation in the district of Chupra on September 11th 1806 BUKSHUSH HOSSEIN v FUZEELONISSA
[W R 1864 189

——— s 3

See BENG REG XI OF 1793
[I L R 1 All., 344

——— s 7

See LIMITATION ACT 1877 ART 120
[I L R 14 All. 405

BENGAL REGULATION—1806—XVII

—*concluded*

See LIMITATION ACT 1877 ART 132
[I L R., 20 Calc. 269

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE
[I L R 4 All. 276

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE 5 B L R., 389

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE 3 B L R A C., 141
[I L R 3 All 653
I L R., 9 All. 20

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION
[B L R Sup Vol. 598
I L R 9 All., 20

See TRANSFER OF PROPERTY ACT s 2
[I L R 6 All 262
I L R 11 Calc. 582
I L R 12 Calc., 583

——— s 8

See LIMITATION ACT 1877 ART 120
[I L R., 14 All., 405

See LIMITATION ACT 1877 ART 132
[I L R 20 Calc. 269

See LIMITATION ACT 1877 ART 144—ADVERSE POSSESSION
[I L R 11 All., 144

See CASES UNDER MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE I L R., 16 All., 69
[I L R 23 Calc. 228
L R 22 I A., 183

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE I L R., 9 All. 20

See TRANSFER OF PROPERTY ACT s 2
[I L R 6 All 262
I L R 11 Calc. 582
I L R 12 Calc. 583
I L R 14 Calc. 451, 599
I L R 15 Calc. 357

——— *Notice of foreclosure*—*Year of grace*—The year mentioned in s 8 of Regulation XVII of 1806 is to be reckoned from the date of the service of the notice of foreclosure under that section MAHESH CHANDRA SEN v TARINI
[I B L R F B 15

S C MOHESH CHUNDER SEN v TARINEE
[10 W R F B, 27

——— XIX

——— Petition under—

See RES JUDICATA—PARTIES—INTERVENORS I L R., 3 Calc., 705

BENGAL REGULATION—*continued*

——— 1810—XIX.

See Act XX of 1863 s 18
[15 B L R 167
I L R 19 Calc 275

See Endowment I L R 18 All 227

——— 1812—V

——— *Notice of suit for arrears of rent—Decree in former suit*—A suit for arrears of rent at a certain rate decreed in a former suit may be maintained without notice under Regulation V of 1812 the decree itself being held to be sufficient notice Ramjeebun Bose v Tripoora Dossee
[W R, F B 93 Marsh. 396 2 Hay 440

——— ss 2 and 3

See Cess I L R, 15 Calc, 828
[I L R, 17 Calc 726

See Enhancement of Rent—Notice of Enhancement—Service of Notice
[I L R, 11 Calc 608

——— s 26

See Appeal—Regulations
[12 B L R 366

1. ——— *Beng Reg V of 1827—Dispute as to right to collect rents of undivided estate*—A dispute as to the right to collect the rents of a joint undivided estate in a certain proportion must be dealt with under Circular Order No 10 of 18th April 1863 and s 26 Regulation V of 1812 as amended by Regulation V of 1827 S 318 of the Code of Criminal Procedure 1861 did not apply Ramrunginee Dossee v Gooroodoss Roy 18 W R Cr, 36

In S C a review was applied for and rejected and it was held that a consideration of the rights of private individuals and not only the interests of the public with reference to the Government revenue or otherwise was sufficient to bring a case under Regulation V of 1812 Gooroodoss Roy v Ramrunginee Dossee 20 W R 54

2 ——— *Beng Reg V of 1827—Manager of joint undivided estate—Power of Judge*—A Judge had power to order the person appointed under Regulation V of 1812 s 26 and Regulation V of 1827 to manage an estate to make over the surplus after payment of revenue and other outgoings to the person or persons entitled to receive the same In the matter of the petition of the Collector of Lungpore B L R Sup Vol. 655
[2 Ind. Jur N S 178 7 W R 273

3 ——— *Collector Position of—Beng Reg V of 1827—Possession by Collector*—A Collector in taking charge of property which came under attachment by an order of the Civil Court under s 6 Regulation V of 1812 as modified by s 3 Regulation V of 1827 was held to have taken and retained charge on behalf of the parties entitled and unless and until anything could be shown to have changed the state of things during such attachment the parties in possession at the time when it commenced must be held to have continued in possession throughout the attachment Purchasers subsequently put into possession by the Civil Court who took from the Collectorate rents relating to an antecedent period did not thereby exercise rights of ownership for such period Soolochuna Dayee v Durp Narain Bose 12 W R 95

BENGAL REGULATION—1812—V—*concluded*

4 ——— *Beng Reg V of 1827 s 3—Attachment—Jurisdiction of Collector*—On an application under Act VIII of 1859 s 200 the Judge ordered the attachment of certain properties and thereafter sent a precept to the Collector under Regulation V of 1827 and ordered him to hold the properties in question and two others in attachment and to appoint a person for the due care and management of the same *Held* that Regulation V of 1827 was not intended to apply to any other cases of attachment of landed property than those provided for in the Regulation mentioned therein and the order was therefore made without jurisdiction Collector of Noakally v Paxwell 20 W R. 78

5 ——— *Beng Reg V of 1827—Power of Collector after order made by Judge*—When a Judge has made an order in the terms of Regulation V of 1812 s 26 as modified by Regulation V of 1827 he is *functus officio* and it then lies upon the Collector as manager and holder to take at his own proper risk and upon his own responsibility everything that he finds to be part of the joint estate Ram Runginee Dossee v Gooroo Doss Roy 22 W R 212

———XVIII s 2.

See Cess I L R 15 Calc. 828

——— XX s 5

See Limitation Act 1877 art 84 (1859 s 1 cl 9) 9 W R 113

——— *Hundis*—S 5 Regulation XX of 1812 (concerning the registration of bonds promissory notes and generally of obligations for the payment of money) was not applicable to hundis or other similar negotiable mercantile securities Boistub Churn Doss v Prem Chund Mitter 4 W R. 98

——— 1814—I.

See Evidence—Civil Cases—Reports of Ameen and other Officers
[9 W R, 89

——— XIX

See Jurisdiction of Civil Court—Revenue Courts—Partition
[I. L. R 4 Calc, 510
2 W R, Mis, 51
20 W R, 102
I L R, 6 Calc, 128

See Cases under Partition

BENGAL REGULATION—1814—XIX —*concluded*

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY [8 B L R 230

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS [5 B L R 135 17 W R 21

——— s 9

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS [3 B L R A C, 65

——— XXVII

See PLEADER—REMUNERATION [1 Ind Jur N S 334 6 W R 108

——— ss 13 and 21

See PLEADER—APPOINTMANT AND APPEARANCE I L R 16 All 240

——— XXIX

See GHATWALI TENURE [Marsh. 117 W R F B 34 14 W R 203 I L R 5 Calc 389 I L R 9 Calc 187 I L R 22 Calc 156

See LAND ACQUISITION ACT 1870 s 39 [18 W R 91

——— 1816—IX

See BENGAL ACT VII OF 1868 s 1 [I L R 14 Calc 440

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 18 9 [I L R 14 Calc 440

——— XI

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY 3 W R, 116

——— XIV

See PRISONS ACT XXVI OF 1870 [4 N W 4

——— 1817—V

See TREASURE TROVE 4 W R Mis 8 [7 Mad. 150 7 B L R Ap 3 15 W R 525

——— XII s 16

See EVIDENCE ACT s 35 [I L R 23 Calc 366

See EVIDENCE ACT s 74 [I L R, 18 Calc. 534

——— XX

See CONFESSION—CONFESSIONS TO POLICE OFFICERS 2 C W N 637

——— s 21

See PENAL CODE s 188 7 C L R 575

BENGAL REGULATION—1817—XX —*concluded*

——— *Village chowkidar Liability to pay wages of—Land owner*—A liability on the part of a landholder to pay the wages of a village chowkidar appointed under s. 21 Regulation XX of 1817 cannot be inferred from the fact that the chowkidar's salary was fixed by the heads of the village and apportioned among the several house holders without objection made by any of them but must be proved in order to sustain a suit brought by the chowkidar against the land holder GOLAMEE *v* PASLAN 18 W R 298

——— 1818—III

See ACT OF STATE 6 B L R, 392

See HABEAS CORPUS [6 B L R, 392 459

1 ——— Validity of—*Act XXXIV of 1850 and Act III of 1858—Arrest of native subject—Power of Indian Legislature—13 Geo III c 63 s 36—37 Geo III c 142 s 8—21 Geo III c 70—3 & 4 Will IV c 85 s 43*—Regulation III of 1818 was applicable only to natives and those subject to the jurisdiction of the provincial Courts It was passed under 37 Geo III c 142 s 23 not 13 Geo III c 63 s 36 It was passed by a legislative authority having full power in that behalf Considering the circumstances under which it was enacted Act III of 1858 which extended the effect of that Regulation to Calcutta was not *ultra vires* IN THE MATTER OF AMEER KHAN [6 B L R 392

2 ——— *Act XXXIV of 1850—Act III of 1858*—Assuming the power of a Judge of the High Court to issue a writ of *habeas corpus* and assuming the right of appeal against an order refusing such writ —*Held* that it appearing that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818 the detention was legal The detention to be legal need only be covered by an actually existing warrant of the Governor General in Council in the form prescribed without regard to the lawfulness of the arrest The Regulation is not confined to prisoners *of war or foreigners held in confinement for political reasons* The substance of Regulation III of 1818 was expressly re-enacted by Act XXXIV of 1850 and Act III of 1858 and therefore as the result of these later Acts alone the detention would be legal Those Acts are not contrary to the power conferred on the Indian Legislature by 3 & 4 Will IV c 85 s. 43 IN THE MATTER OF AMEER KHAN [6 B L R, 459 17 W R, Cr 15

3 ——— Warrant of arrest and commitment under—*Effect of*—The Governor General in issuing a warrant of commitment under Regulation III of 1818 does not in any way act *judicially or as a Court of Justice nor is* he to be considered as having adjudicated that the person placed under personal restraint had been guilty of some specific offence The proceeding is not in the nature of a conviction of the person placed under restraint; therefore the person so placed under restraint cannot in any future proceeding taken against

BENGAL REGULATION—1818—III —concluded

him plead that he has been already tried convicted and punished. QUEEN v AMEER KHAN
[9 B L R 36

———— 1819—II.

See SETTLEMENT—RIGHT TO SETTLEMENT
[5 B L R 528 note 529 note
8 B L R 524

———— s 28

See SANAD 12 B L R 120

———— s 30

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY
[8 B L R, Ap 82 note 83 note
85 note 87 note 89 note

See PARTIES—PARTIES TO SUITS—GOVERNMENT 8 B L R 524

See CASES UNDER PRESUMPTION—PROCEDURE

———— VI ss. 3 and 6

See FERRY 4 N W 146

———— s 13 cl. (2)

See FERRY 7 W R, Cr 32

See *JURISDICTION OF CIVIL COURT—FERRIES* 4 N W 146
[B L R Sup Vol 630

———— VIII

See BENGAL TENANCY ACT sch III ART 2
[I L R 23 Calc 191

See LIMITATION ACT 1877 ART 144—ADVERSE POSSESSION
[I L R 19 Calc 787

See *CASES UNDER SALE FOR ARREARS OF RENT*

1. ———— Transfer of tenure—A transfer of his tenure by a patnidar is not binding on the zamindar unless made strictly in accordance with the provisions of Regulation VIII of 1819 WATSON v COLLECTOR OF RAJSHAHYE
[3 B L R P C 48 13 Moore s I A 160

2. ———— *Application of Beng Reg XLIV of 1793*—Regulation VIII of 1819 was intended to apply to leases which might have been avoided by the grantor or his heirs during the time that Regulation XLIV of 1793 was in force but which so far from having been avoided had been acted upon by the parties after the expiration of ten years and were treated and considered as in existence at the time when Regulation VIII of 1819 was passed SHEO PERSHAD SINGH v KALLY DASS SINGH I L R 5 Calc. 543

3. ———— *Suit for Rent—Patni tenure Transfer of by sale—Bengal Tenancy Act (VIII of 1885) s 195 (e)*—Regulation VIII of 1819 is not affected by the Bengal Tenancy Act of 1885; the Regulation being specially saved from its operation by s 195 (e) of that Act GYANADA KANTHO ROY BAHADUR v BRONMOYI DASSI
[I L R 17 Calc 162

BENGAL REGULATION—1819—VIII —continued

———— ss 3 and 6

See PATNI TENURE
[I L R 25 Calc 445

———— s 5

See BENGAL TENANCY ACT s 15
[I L R, 19 Calc. 504

———— s 6

See APPEAL—REGULATIONS
[I L R 1 Calc 383
5 C L R 138

———— s 8

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL
[I L R 20 Calc 86

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

———— s 13—*Profits—Adjustment of accounts between defaulting tenure holder and person who has held possession as mortgagee under Reg VIII of 1819 s 13*—The word profits in the 4th clause of s 13 of Regulation VIII of 1819 means that which is left to the tenure holder after payment of the rent of the tenure A person who enters into possession of a tenure as mortgagee under the provisions of that section is bound in the first place to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt and the defaulter is not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee LALA BHARUB CHANDRA KARPUR v LALIT MOHUN SINGH I L R, 12 Calc. 185

See SET OFF—GENERAL CASES
[2 C L R 414

———— s 14

See VOLUNTARY PAYMENT
[I L R 26 Calc. 826

———— s 15 cl. (1)

See REGISTRATION ACT 1877 s 17
[I L R 5 Calc 226

———— s 17 cl. (3)—*Arrears of rent of a patni*—By cl 3 s 17 of Regulation VIII of 1819 arrears of rent for a patni being considered personal debts a person who was no party to an original decree for arrears of rent on account of a patni cannot be held liable for them INDER CHUNDER BANERJI v ESHAN CHUNDER ROY 1 Hay 474

———— s 18 cl. (4)

See LIMITATION—BENG REG VII OF 1799 B L R, Sup Vol Ap 10

———— s 18—*Attachment—Attachment for arrears of rent—Wrongful attachment*

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—*Liability to account for receipts and disbursements under*—Under Regulation VIII of 1819 a sezawal cannot be deputed and lands attached under its provisions unless the arrears of rent claimed shall have been actually due for an entire month before the date of attachment Whenever a person is proved to have exercised the power of attachment alluded to above illegally he is bound to give a true and full account of all receipts (unauthorized cesses not excepted) and disbursements made by his agents during his attachment and only such disbursements as are shown to be necessary and *bond fide* can be allowed GOBIND CHUNDER BURMONO *v* ALLABUX 2 Hay, 347

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See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS [3 Moore's I A 100

——— 1822—VII

See CASES UNDER ACT XIII OF 1848

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—ILLEGAL CESSES
[1 Agra 207
2 Agra, 338

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—GENERAL LIABILITY
[I. L. R., 16 Calc 586

See EVIDENCE ACT s 74
[I L R., 4 Calc, 79

See GOVERNMENT OFFICERS ACTS OF
[4 B L R, P C 38

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION
[4 N W 129
7 N W 9
15 W R 537
6 C L R, 365

See CASES UNDER LIMITATION ACT 1877 ART 45

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859
[14 W R. 1
15 W R 141

See SETTLEMENT—MISCELLANEOUS CASES
[23 W R 436
I. L R. 16 Calc 586

See SETTLEMENT—MODE OF SETTLEMENT
[2 Agra 258
6 C L R. 365

——— s. 33

See SURVEY AWARD 1 Agra 267
[11 W R., 389

——— X

See BOUNDARY 8 W R., 343
[9 W R. 426

BENGAL REGULATION—*continued*

———1822—XI, s 9

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P
[I. L. R. 1 All. 373

——— s 29

See LIMITATION ACT 1877 ART 134
[I. L. R., 9 All. 97

——— ss 30 33

See CASES UNDER SALE FOR ARREARS OF REVENUE—INCUMBRANCES—BENG REG XI OF 1822

———1823—VI s 5, cl (2)

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT 3 Agra 77

——— s 5 cl (4)—*Contract to sow indigo—Default in sowing*—*Held* that in a contract to sow indigo not sowing would be *primâ facie* evidence of dishonesty; and that in order to claim the benefit of cl 4 of s 5 of Regulation VI of 1823 it was necessary to show that the negligence to sow had been accidental LAL MAHOMED BISWAS *v* WATSON 1 Ind Jur, N S, 3 4 W R, 62

——— s 8—*Joint liability in contract—Specification of liability*—In a suit to recover the value of the produce of land from defendants who had agreed to cultivate it but had failed to do so it was held that as defendants were jointly liable a specification of liability was not required as the case did not come within s 8 of Regulation VI of 1823 MUNRAJ MUHTON *v* HUDSON
[12 W R 309

———1824—I

See RAILWAY COMPANY 10 B L R, 241

——— **Assessment of land formerly occupied for Government salt works**—Upon the relinquishment by the Government of lands within the ambit of a permanently settled zamindari continuously used before and since the perpetual settlement of salt works from the commencement of salt making by the Government until after the passing of Regulation I of 1824 the provisions of that Regulation are applicable to the mutual rights of the zamindar and of the Government. Such lands were held by the officers of the Salt Department in terms of cl 11 of that Regulation free of rent and under a perpetual title of occupancy whether belonging to a permanently settled estate or not The force of the Regulation and the right of the Government to assess such lands are not affected by khalari payments having been made among other compensations by the Government to the zamindar; and cl 11 appears to contemplate some such payment On a settlement of the relinquished lands khalari payments being sums remitted to the zamindars and to be allowed in perpetuity within the meaning of cl 4 of s. 9 of Regulation I of 1824 must be continued to the zamindar; or if a settlement should be made with others he should be assessed only for the

BENGAL REGULATION—1824—I —*concluded*

land retained by him SECRETARY OF STATE FOR INDIA IN COUNCIL *v* ANANDOMOYI DEBI [I. L. R 8 Calc 95

Reversing the judgment of the High Court in a decision unreported given after remand in GUJAN DEO NARAIN ROY *v* COLLECTOR OF MIDNAPORE [23 W R 197

——1825—VII s 7

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT [20 W R. 433

—— IX.

See ACT XIII OF 1848 [10 Moore s I. A 511 2 B L R. P C 111

See COLLECTOR, JURISDICTION OF [7 N W 302

—— XI.

See CASES UNDER ACCRETION

See ACT IX OF 1847 6 B L R 25

See BOUNDARY 9 W R, 426

See LAND ACQUISITION ACT, 1870 s 39 [I. L. R, 11 Calc 696

See CASES UNDER LANDLORD AND TENANT—ACCRETION TO TENURE

See SETTLEMENT—EFFECT OF SETTLEMENT [I L R 20 Calc, 732

—— XIV

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT 4 Moore s I. A 466

—— s 3

See SANAD 12 B L R 120

—— XX

See JURISDICTION OF CRIMINAL COURTS—EUROPEAN BRITISH SUBJECTS [13 B L R 474

——1826—XII.

See STAMP—BENGAL REGULATION XII OF 1826 W R., 1864, 289

——1827—V

See CASES UNDER BENGAL REGULATION V OF 1812

——1828—III

See BENGAL ACT VII OF 1868 s 1 [I L R 14 Calc 440

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859 [I L R 14 Calc., 440

See SPECIAL COMMISSIONERS [1 W R P C 20

See SUNDERBUNS SETTLEMENT REGULATION 2 B L R P C 33 [4 C W N., 513

BENGAL REGULATION—*concluded*

——1828—XXVIII s 11

—— *Succession to mokurari tenures*—S 11 Regulation XXVIII of 1828 requiring successions to mokurari tenures to be reported to the Collector within six months referred only to the security of the revenue and not to private interests UMRITH NATH CHOWDHRY *v* KOONJ BEHARY SINGH [W R F B 34

——1829—XIV

See SECURITY FOR COSTS—APPEALS [7 Moore s I A 431

——1831—VIII

See BENGAL REGULATION VII OF 1799 [B L R Sup Vol. 626

See SALE FOR ARREARS OF RENT—INCUMBRANCES 10 B L R 139 150 note

——1832—VII

See MAHOMEDAN LAW—DOWER [6 B L R., 54

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See CASES UNDER RENT SUIT FOR

—— Act X of 1859

See LIMITATION ACT 1877 s 14 [I L. R 18 Calc., 368

See WITHDRAWAL OF SUIT—SUITS [I. L. R., 21 Calc. 428, 514

1. —— Assam Rent Law—The Rent Law Act X of 1859 was held to be in force in Assam HOOTABOO RAOOT *v* LOOM RAOOT I. L. R. 7 Calc., 440 note

JULLOW SURMA PATWAREE *v* MADHUB RAM ATOI BURHA BHUKUT 16 W R. 202

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

2. ———————— Dehra Dhoon, District of—The Rent Law Act X of 1859 was held not to be in force in the Dehra Dhoon district The Dhoon forms part of the territories not subject to the General Regulations DICK *v* HESELTINE [1 N W, 196 Ed. 1873 280

———— Bengal Act VIII of 1869

See LIMITATION ACT 1877 s 7 [I L R 17 Calc 263

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT [I L R 21 Calc 129

———— s 2 (Act X of 1859 s 2)

See KABULIYAT—FORM OF KABULIYAT [6 B L R 356

———————— Suit for delivery of pottahs —The Rent Act contemplates suits for delivery of pottahs by raiyats in possession only BHARUT CHUNDER SEIN *v* OSEEMOODDEEN [6 W R, Act X 56

———— ss 3 and 4 (Act X of 1859 ss 3 and 4)

See CASES UNDER ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION

———— s 6 (Act X of 1859 s 6)

See CASES UNDER RIGHT OF OCCUPANCY

———— s 7 (Act X of 1859 s 7)

See RIGHT OF OCCUPANCY—MODE OF ACQUISITION 17 W R 552
[25 W R 114
8 B L R, 165 166 note

1. ———— s 8 (Act X of 1859 s 8)—*Tenant without right of occupancy* —If a raiyat has a right of occupancy and insists on that right he impliedly undertakes to give a kabuliat at fair and equitable rates if his landlord requires him to do so But if the right of occupancy is absent the raiyat can only remain on the land by the permission of the landlord on such terms as may be agreed upon between the landlord and himself SUTTO CHURN GHOSAUL *v* GOUREE PERSHAD ROY 13 W R 117

2. ———————— *Right to pottah—Agreement fixing rent* —A tenant not having a right of occupancy is not entitled to a pottah under s 8 Act X of 1859 unless there is an agreement with his landlord fixing the rate of rent NUBUDEEP CHUNDER SIRCAR *v* LALLA SHEEB LALL Marsh. 325

———— s 10 (Act X of 1859 s 9)

KABULIYAT—REQUISITE PRELIMINARIES TO SUIT
[B L R Sup Vol., 25 202
W R Act X, 2 37 60
5 W R Act X, 88

See KABULIYAT—REQUISITES PRELIMINARY TO SUIT—TENDER OF POTTAH
[Marsh 400

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

———— s 11 (Act X of 1859) s 10

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRACT
[1 B L R S N, 13

1. ———————— *Damages for withholding receipts for rent* —The damages mentioned in s 10 of Act X of 1859 are not penalties invariably to be decreed against persons withholding receipts for rent but they are to be ascertained by an actual enquiry into the circumstances of each particular case and never to exceed double the amount for which receipts have been withheld RASHMONEE DEBEA *v* RAMJOY SHAHA
[2 Hay, 516

2 ———————— *Power to award damages* —Under s 10 Act X of 1859 the power of a Judge to award damages for receipts withheld is discretionary only as to the amount to be awarded. The tenant being entitled by law to double the amount paid as rent the Judge cannot refuse him costs on the ground that he had demanded double what was due to him ZOOMEEROODUNNISSA KHANUM *v* PHILLIPE SADUT ALI KHAN *v* PHILLIPE
[1 W R 290

3 ———————— *Money paid as rent* —Damages under s 10 Act X of 1859 are recoverable only in respect of money actually paid as rent SUMEERA BEBEE *v* KOYLASH CHUNDER ROY
[6 W R Act X 79

4. ———————— *Receipt* —A chillan bearing a mublakbundi or total in figures and some mark not a signature of the tehsildar is not a 'receipt' within the meaning of s 10 Act X of 1859 JOHEEROODEEN MAHOMED *v* DABEE PERSHAD SINGH 13 W R 22

———— s 13 (Act X of 1859 s 12)

See PARTIES—PARTIES TO SUITS—AGENTS
[16 W R 254

———— s 14 (Act X of 1859 s 13)

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT

See LEASE—CONSTRUCTION
[I L R 14 Calc. 99

———— s 15 (Act X of 1859 s 14)

See ENHANCEMENT OF RENT—RESISTANCE TO ENHANCEMENT

———— s 16 (Act X of 1859 s 15)

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION—GENERALLY 3 B L R Ap., 40

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALUKDARS 15 B L R 120

———— ss. 16 and 17 (Act X of 1859 ss 15 and 16)—*Districts to which permanent settlement has not been extended—Such r ... tenures*

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

in Cuttack—Transferable tenures—The provisions of ss. 15 and 16 of Act X of 1859 apply to the whole of the Provinces of Bengal Behar Orissa and Benares and not only to such of the districts in those provinces to which the Permanent Settlement has been extended. Surborakari tenures in Cuttack are permanent hereditary and transferable SADDA NUNDO MAITI v NOWBATTAM MAITI [8 B L R, 280 16 W R 289

——— s 17 (Act X of 1859 s 16)

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION—GENERALLY I L R 4 Calc 793

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION—PROOF OF UNIFORM PAYMENT [8 W R 284 22 W R 487

——— s 18 (Act X of 1859 s 17)

See CASES UNDER ENHANCEMENT OF RENT—GROUNDS OF ENHANCEMENT

——— s 19 (Act X of 1859 s 18)

See ABATEMENT OF RENT [17 W R 449 1 Ind. Jur O S 7 I L R 11 Calc 284

See LIMITATION ACT 1877 ART 120 [I. L. R 11 Calc 284

——— s 20 (Act X of 1859 s 19)

See CASES UNDER RELINQUISHMENT OF TENURE

——— s 21 (Act X of 1859 s 20)

See CASES UNDER INTEREST—ARREARS OF RENT

See RIGHT OF SUIT—SURVIVAL OF RIGHT [10 W R 59

——— Established usage Meaning of.—S 20 Act X of 1859 referred to the established usage in the pergunnah and not to the established usage between the parties CHYTUNNO CHUNDER ROY v KEDARNATH ROY 14 W R 99

——— s 22 (Act X of 1859 s 21)

See LANDLORD AND TENANT—EJECTMENT—GENERALLY I L R 14 Calc 33

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT [I L R, 8 Calc 612

——— s 23 (Act X of 1859 s 22)

See RECEIVER I. L. R. 11 Calc 496

——— s 26 (Act X of 1859 s 27)

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY 9 W R 606

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES [1 B L R A C 175

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—DIVISION OF TENURE ETC [3 B L R A C 349 15 W R 320

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS [4 B L R F B 43

1. ——— *Registration of tenure*—A patnidar is not bound to split up a tenure and to record separately the jumma payable by the holder of a share Instead also of the latter bringing a suit in the first instance to compel the patnidar to register his share he should have made an application for registration to the patnidar under s 27 Act X of 1859 BHOOPUTTEE ROY v UMBICA CHURN BANERJEE 17 W R 196

2 ——— *Registration of transfer*—The purchaser of the rights and interests of a cultivator is not bound under s 27 to notify his purchase to the zamindar SUTTEESCHUNDER ROY v MUDDOOSOODUN PAUL CHOWDHRY [W R. 1864 Act X, 91

3 ——— *Non registration of transfer—Knowledge by zamindar*—Mere cognizance or supposed cognizance by the zamindar of the fact of a party having purchased a tenure is not sufficient to cure the defect of non registration of such tenure in the zamindar s sherista SARKIES v KALI COOMAR ROY W R. 1864 Act X 98

4 ——— *Transfer of tenure—Registration of tenure*—The transferee of a tenure not in possession instead of depositing the rents in Court under this section should take steps under s 27 Act X of 1859 to register his transfer in the sherista of the zamindar and to apply to the Collector in case of the refusal of the zamindar to do so DULLI CHAND v MEHER CHAND SAHOO [8 W R 138

5 ——— *Tenure not intermediate*—Where the tenure is not one intermediate between the zamindar and the cultivator s 27 Act X of 1859 does not apply UMA CHARAN SETT v HARI PROSAD MISRY 1 B L R S N, 7 WOOMA CHURN SETT v HUREE PERSHAD MISREE [10 W R. 101

6 ——— *Registration of transfer of tenure—Intermediate tenures*—In determining whether a tenure is a permanent transferable interest within the meaning of s 26 Bengal Act VIII of 1869 the issues should be so framed as to raise distinctly the question whether the tenure was an intermediate one between the landlord and the raiyat SHIBCHURUN SEN v JONARDHON DEY [1 C L R 397

7 ——— *Mortgagee who has obtained foreclosure*—When the mortgagee of a jote obtains a foreclosure decree it is his duty

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

under s 26 Bengal Act VIII of 1869 to have his name registered in the lessor's sherista WATSON v GONESH CHUNDER SAHOO 3 C L R 240

——— s 27 (Act X of 1859 s 30)

See BENGAL TENANCY ACT SCH III ART 3 [I L R 16 Calc 741

1. ——— *Act I of 1868*—In a suit under Bengal Act VIII of 1869 to recover possession of land on the allegation that the plaintiffs had acquired a right of occupancy and had been dispossessed the Court following the interpretation of year given in Act I of 1868—*Held* that the computation of the limitation must be according to the English calendar KHASRO MANDAR v PREMLAL

[9 B L R, Ap, 41 18 W R, 403

2. ——— *Suit for illegal exaction of rent*—The fact that incidentally the genuineness of a kabuliat has to be determined does not make a suit for illegal exaction of rent one not determinable under the Rent Act KASHEE RAM v GUNGA PERSHAD 2 N W 304

3 ——— *Suit for excess rent collected under lease*—A suit for excess rents collected under a lease under which the lessee was in consideration of a certain sum of money to pay the Government revenue and reimburse himself from the remainder of the assets and which provided for an annual measurement and assessment was held not cognizable under the Rent Act as a suit for illegal excess of rent SHORAFUT ALI v RAMZAN

[W R, 1864 Act X, 53

PROSUNOMOYEE DOSSEE v SOONDER COOMAREE DEBIA 2 W R Act X, 30

MADHUB CHUNDER BIDYARUTTON v TARA SOONDEREE GOOPTANEE 2 W R Act X, 92

NILMONEY SINGH DEO v SHARODA PERSHAD MOOKERJEE 16 W R 173

4. ——— *Suit to recover excess of rent—Act X of 1859 ss 10 and 23 cl 2—Exaction of sum in excess of rent*—Contemporaneously with the execution of a pottah it was verbally agreed that the tenant should supply the zamindar with a certain quantity of rice and that a deduction should be made from the rent reserved in respect thereof The zamindar took proceedings against the tenant under Regulation VIII of 1819 for the recovery of the entire amount of rent notwithstanding the tenant had supplied the rice and was entitled to the reduction. The tenant without contesting his liability or demanding an investigation as to the amount due paid the entire amount *Held* that this was not "an exaction from the raiyat of a sum in excess of the rent specified in the pottah within the meaning of s 10 Act X of 1859 (Bengal Act VIII of 1869 s 11) and that a suit was not maintainable in respect of it under the Rent Act CHUNDERMONEE CHOWDRAIN v DEBENDERNAUTH ROY CHOWDRY Marsh 420 2 Hay, 519

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

5 ——— *Suit against zamindar for excess rents collected under zur-i peshgi lease*—A zamindar after he had granted a zur i peshgi lease collected the rent from the raiyats *Held* that the lessee was entitled to recover from the zamindar the amount of rents so received in excess of the rent due under the lease and that a suit to recover such excess was properly instituted under the Rent Act. RAMPERSHAD VOGUT v RAM TOHUL SINGH Marsh., 655

6 ——— *Suit to contest notice of enhancement*—A suit under s 14 Act X of 1859 (s 15 Bengal Act VIII of 1869) to contest a notice of enhancement is properly instituted under the Rent Act though *quære* whether it is a suit for illegal exaction of rent. SOROOP CHUNDER PAUL v DURUP DE DOMBAL 1 W R, 72

7 ——— *Suit by sub lessee to recover from lessor malikana which he was compelled to pay*—A suit brought by a sub-lessee to recover from his lessor the amount of malikana which he was compelled to pay and which was properly payable by his lessor is not one for illegal exaction of rent and should not be brought under the Rent Act TARSANAH v KADHAREY LAL 5 N W, 1

8 ——— *Suit for rent illegally exacted*—Plaintiff took from defendant a lease of a certain quantity of land at a stipulated rate Finding however that the land fell short of the quantity specified in the lease and that defendant notwithstanding realized the full rent from him he obtained a decree for abatement under Act X of 1859 The present suit was brought for the excess rent levied from plaintiff between the date of taking possession and of the Act X decree *Held* that if the suit did lie at all it would be a suit for an illegal exaction of rent and should be brought under the Rent Act SURBO CHUNDER DOSS v WOOMANUND ROY 11 W R, 412

9 ——— *Suit to recover money deposited to pay rents*—A suit to recover money deposited with the defendants to be applied in payment of rents (the deposit having been unsuccessfully pleaded in a suit for rent) should not be brought under the Rent Act. DABEE GOLAM SINGH v CHUNDER KANT MOOKERJEE 3 W R, 109

10 ——— *Suit for money paid in excess of road cess—Limitation Act (XV of 1877) sch II art 96*—In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess—*Held* (reversing the decisions of the Courts below) that the suit was governed not by the special law of limitation contained in s 27 Bengal Act VIII of 1869 but by art 96 sch II of the Limitation Act XV of 1877 MATHURA NATH KUNDU v STEEL

[I L R, 12 Calc, 533

11. ——— *Suit for abatement of rent—Land Diluvion of*—A suit for abatement of jumma and refund of excess rents paid co

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

account of diluviated lands is cognizable under the Rent Act. BARRY v ABDOOL ALI
[W R 1864 Act X 64

12. ———— *Suit for abatement of rent* —So is a suit for abatement of rent by a patnidar MAN GURBOBINEE DOSSEE v KHETTUR CHUNDER GHOSE 2 W R. Act X 47

PROSUNNOMOYEE DOSSEE v SOONDUR COOMAREE DEBIA 2 W R Act X, 30

13 ———— *Suit for abatement of rent—Land sold with erroneous description* —Where *A* conveys to *B* an interest in land under a description as to title which turns out to be erroneous a suit by *B* against *A* for diminution of rent on the ground of the erroneous description ought to be brought under the Rent Act. NEELMONEY SINGH DEO v GORDON STUART & Co
[1 Ind. Jur N S 356
6 W R 152

14. ———— *Suit for abatement of rent—Eviction from part of tenure* —In a suit by tenants for abatement of rent in consequence of having been dispossessed of two mauzahs which were included in their lease and for which separate rents were fixed the landlord pleaded limitation *Held* that Bengal Act VIII of 1869 s 27 did not apply to a case of this description In such a case the eviction might either give the tenant a cause of action for damages or suspend the rent during the time it lasts In the latter case the cause of action would not arise until the landlord sought or threatened to recover rent AITCHISON v NILMONEE SINGH DEO
[20 W R 347

15 ———— *Suit for abatement of rent—Suit for declaration of liability to pay less rent* —A suit by a tenant against his original lessors for a declaration that he is not liable to pay them the whole rent payable under his pottah in consequence of a third person having subsequently to the grant of such pottah by suit established a right to a share of the rent is not a suit for abatement under Bengal Act VIII of 1869 and therefore not subject to the rule of limitation prescribed by s 27 of that Act CHAND MONI DASI v LOKENATH CHATTERJI 6 C L R 494

16 ———— *Ejectment Suit for*—A suit by a patnidar to recover khas possession of land against a tenant who has sold his rights and interests to a third party may be brought under the Rent Act KEDAR MONEE DOSSEE v CHUNDER KOOMAR ROY 2 W R Act X 75

17 ———— *Suit for land with hut on it* —If the land is the substantial thing let out the mere fact of there being a hut on it will not prevent the suit to recover possession from the tenant being brought under the Rent Act MATUNGINEE DOSSEE v HARADHUN DOSS 5 W R, Act X, 60

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

18 ———— *Suit for ejectment* —Suit for ejectment cannot be brought under the Rent Act in the following cases —

Suit for dispossession between raiyats RADHANATH MOZOOMDAR v PURIKHIT BODEIK
[W R 1864 Act X 60

KALLY DOSS BANERJEE v BONOMALEE DOSS
[W R 1864 Act X 61

OBHOY CHURN NEWGEE v SRISTIDHUR BAGDEE
[1 W R., 101

MODHOO SOODUN CHUCKERBUTTY v NUFUR BAWUL 1 W R. 196

BHUGGOBUTTY CHURN MOOKERJEE v HUROMOHUN MOOKERJEE 2 W R., Act X 55

TEELUCK CHUNDER OSWAL v GOURCHUNDER SHAHA 2 W R. Act X 100

19 ———— Suit for ejectment of a raiyat who the plaintiff alleges possesses no right of occupancy BUDREE DOSS v HUNWANT SINGH
[4 N W 69

20 ———— Suit where the tenant is a mere tenant at will GOOR BUKSH v CHOONNOO LALL 1 Agra Rev 70

21. ———— *Suit for possession of land* —A suit to recover possession of lands which the plaintiff alleged he had leased to the defendant as manager of an indigo factory and also of other lands over which he had given a zur i peshgi lease should not be brought under the Rent Act MACDONALD v RAJARAM ROY
[3 B L R. Ap, 28 11 W R., 371

22 ———— *Suit for possession of land* —Nor should a suit by a landlord to recover possession of land from a raiyat who had ceased to pay rents but whom the landlord had omitted to sue when he first ceased payment and set up an adverse title SHIB PERSHAD CHUCKERBUTTY v MUDDUN MOHUN CHUCKERBUTTY
[W R. 1864 Act X 80

See contra UMA KISHOREE DASSI v HURO GOBIND SHAHA 5 W R. Act X, 95

23 ———— *Suit for possession after establishing title* —A suit against a raiyat who sets up title as tenant to a hostile zamindar against both of whom (as defendants) the plaintiff established his title to the land of which he sues to recover possession is not a case that falls within the Act FAKEER POHOMAN v BHABOSOONDERY DABEA
[1 W R. 232

24 ———— *Suit for possession against alleged trespasser who sets up a permanent raiyati tenure* —Nor is a suit which is brought to recover possession of lands with mesne profits from one who is alleged to be in possession as a trespasser notwithstanding the defence set up is that in respect of part of the land the defendant has a permanent raiyati tenure HARI NATH DAS v ASMUT ALI
[6 B L R Ap 118 15 W R. 171

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

25 ——— *Suit for possession against trespasser* —Where plaintiff alleged that defendant was a trespasser and on the ground of that trespass sued for possession the suit should not be brought under the Rent Act NOBIN CHUNDER POY CHOWDHRY v PHOWANEE PERSHAD DOSS [W R. 1864 Act X 52

GOBIND CHUNDER MOZOOMDAR v BISSUMBHUREE DOSSEE 2 W R. 5

BANEE MADHUB BANERJEE v JOY KISHEN MOOKERJEE 4 W R. Act X 16

26 ——— *Suit to eject raiyat* —A suit by a zamindar to eject a raiyat who holds on after the period of his lease is not cognizable under the Rent Act SADAT ALI v SADATTUNISSA [3 B L R. Ap 101 12 W R., 37

27 ——— *Suit against transferee of tenure* —Nor is a suit for possession against an occupant by transfer whom the landlord does not recognize as his tenant TARAMONEE DOSSEE v BIRRESSUR MOZOOMDAR 1 W R., 86

28 ——— *Suit for ejectment and possession for forfeiture of lease* —Nor a suit by a proprietor for possession and ejectment of the lessee on the allegation that by cancelment of his lease the lessee after having resigned his lease has forcibly taken possession of the demised property KAFAETOOLLAH KHAN v FUTTEH ALI [1 Agra Rev, 28

29 ——— *Suit for ejectment for forfeiture by transfer of tenure* —Unless it be proved that by express contract or local custom an alienation by the tenant by way of sale or mortgage renders the holding liable to be forfeited a suit for ejectment on such ground should not be brought under the Rent Act but the remedy of the zamindar is by suit to have the transaction set aside RAM DYAL v JANKEY DOBEY 3 Agra, 274

KUTHOO v DAN SUHAI 2 Agra 279

IMAM BUKSH v HOOB ALI 3 Agra, Rev 8

30 ——— *Suit for ejectment for forfeiture by transfer of tenure* —A suit for ejectment against tenants who are alleged to have illegally alienated their tenant rights cannot be brought under the Rent Act against the vendor because he is alleged to be out of possession nor against the vendee because he is not the plaintiff's tenant. CHUMMAN SHAH v ISHREE PERSHAD NARAIN SINGH 4 N W 175

31. ——— *Suit for ejectment for nonpayment of arrears of rent* —Where a lessor sued to eject the lessees for non payment of arrears of rent and to the amount claimed joined a claim for arrears due at the commencement of the leases the latter claim being based on a stipulation contained in the leases that the lessees would pay such arrears, or on failure would pay the expenses of the servants of the lessors who might be sent to realize such arrears —*Held* that the claim was not one cognizable under the Rent Act. GULABI SINGH v RAI NORMAL CHUND 6 N W 342

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

32 ——— *Suit for ejectment—Act X of 1859 s 30* —In 1857 the plaintiff gave a lease of a garden to defendant who agreed to plant within five years from the date thereof 2 000 betel nut trees The defendant failed to do so. In 1867 the plaintiff brought the present suit for ejectment on account of the breach of the contract entered into by the defendant *Held* that by s 30 Act X of 1859 the suit was barred by limitation KALI KAMAL MAZUMDAR v SHIB SUHAI SUKUL [3 B L R, Ap, 47 11 W R. 452

33 ——— *Suit to eject for breach of contract—Act X of 1859 s 30* —*Held* that a suit to eject a cultivator for a breach of contract by planting a bagh must be brought within one year under s 30 of Act X of 1859 from the date of the first accruing of the cause of action RUHMUTOOLLAH v TUFFUZZOOL HOOSEIN 1 Agra, Rev 67

34 ——— *Breach of contract in planting trees on land let for agricultural purposes* —S 27 of Bengal Act VIII of 1869 only relates to such suits as could be brought either by the landlord or tenant under Act X of 1859 and will not apply to an alternative claim put forward in a suit for ejectment to compel the defendant to remove trees from certain lands leased to him for agricultural purposes Art 120 of sch II of Act XV of 1877 is applicable to such claims GUNESH DOSS v GONDOUR KOORMI [I. L. R., 9 Calc, 147 12 C L R 418

35 ——— *Suit to eject raiyat for making a well—Act X of 1859 s 30* —*Held* that the limitation of one year under s 30 Act X of 1859 in a suit by a landlord to eject a cultivator for sinking a well should be computed from the date when the building of the well has assumed such a form that there can be no doubt of the purpose for which it was intended HEERA KOOREE v NOOR ALI 3 Agra Rev 1

36 ——— *Suit for possession after refusal to give possession under award in arbitration* —Where the parties agree to refer the question of title to arbitration and the award being adverse to the defendant he refuses to give up possession a new cause of action arises and one of a different character from any mentioned in Bengal Act VIII of 1859 s 27 RAJ NARAIN ROY v MODHOO SOODUN MOOKERJEE 20 W R. 19

37 ——— *Suit to cancel lease and for arrears of rent* —A suit to cancel a lease for breach of the conditions and for arrears of rent should be brought under the Rent Act BEHAREE COOMAREE v SOODRUN SINGH 2 W R. Act X, 12

RAMCHUNDER DUTT v DIN DAYAL PORAMANICK 2 W R., Act X, 16

38 ——— *Suit to set aside lease—Act X of 1859 s 23 cl 5* —A suit to set aside a lease as null and void is not cognizable under the Rent Act even though plaintiff mentions that a balance of rent is due by defendant. TAJEH MAHOMED PURDHAN v JOGENDRO DEB ROYKUT [8 W R., 309

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

39 ———— *Suit to cancel zur-i peshgi lease* —A suit to cancel a zur i peshgi by which the lessee was to receive the usufruct as interest for his advance and to repay the principal by the rent reserved is of the nature of an usufructuary mortgage and as such cannot be brought under the Rent Act RUTTON SINGH *v* GREEDHAREE LALL [8 W R 310

MAHOMED ALI *v* BATOSH DAO NARAIN SINGH [1 W R 52

40 ———— *Suit to get release from tenancy on ground of fraud* —Where the tenant seeks to have himself released from a contract of tenancy on the ground of fraud the suit is not one to be brought under the Rent Act BHOLANATH KHAN *v* RAM CHUNDER SIRCAR 7 W R, 62

41 ———— *Suit where lease is alleged to be forged* —Nor where the lease is said to be a forgery MAHMOOD LUSHKUR *v* PAKAR KHAN [Marsh. 496

42 ———— *Suit for possession after ejectment—Suit for possession on declaration of title* —The words suits to recover the occupancy or possession of any land in cl 6 of s 23 Act X of 1859 (s. 27 Bengal Act VIII of 1869) refer only to possessory actions against the person entitled to receive the rent and not to suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in pursuance of that title GOOROODOSS ROY *v* RAMNARAIN MITTER GOOROODOSS ROY *v* BISHTOO CHURN BHUTTACHARJEE B L R Sup Vol. 628 [2 Ind. Jur N S 112 7 W R 186

SERAJ MUNDUL *v* BISTOO CHUNDER ROY [7 W R. 459

GUNGA GOBIND ROY *v* KALA CHAND SURMA GANGOOLY 20 W R. 455

LALLJEE SAHOO *v* BHUGWAN DOSS [8 W R 337

Contra GOOROO CHURN COOMAR *v* KHETTER MOHUN ROY W R 1864 Act X 79

and in PUDDOLABH DEO *v* OBHOYRAM SINGH [W R. 1864 Act X 30

it was held that a suit to try whether the tenant had been rightly evicted was properly tried under the Rent Act

43 ———— *Act X of 1859 s 23—Possessory suits—Limitation* —Following a Full Bench decision —*Gooroodoss Roy* v *Ramnarain Mitter B L R Sup Vol 628 7 W R 186* as to the proper interpretation of Act X of 1859 s 23 it was held that the same words in Bengal Act VIII of 1869 s 27 described only possessory actions against persons entitled to receive rent and not suits setting out title and seeking to have right declared and possession given in pursuance thereof and that consequently the limitation prescribed by s 27 applied only to simple cases of possessory action NISTARINEE *v* KALEE PERSHAD DOSS CHOWDHRY 21 W R 53

SURJOO PERSHAD *v* KASHEE RAWUT [21 W R 121

BROJO KISHOR RAKHIT *v* BASHI MUNDUL [21 W R 251

ASMAN SINGH *v* ABEEDODDEEN [23 W R. 460

RAMJOY MUNDUL *v* RAM SUNDER MUNDUL [2 C L R 4

44 ———— *Suit for possession—Landlord and tenant—Limitation* —In a suit for possession of land it appeared that the defendants had obtained a darpatni lease of the land in question in 1271 (1865) and that they had immediately dispossessed the plaintiff and had never acknowledged him to be their tenant The plaintiff instituted his suit within twelve years from the date of dispossession *Held* that the suit was not barred by limitation under s 27 of Bengal Act VIII of 1869 That section only applies to cases where the relation of landlord and tenant exists and cannot be pleaded in bar by a defendant who does not admit that such relation has existed NILMADHUB SHAHA *v* SRINIBASH KURMOKAR [I. L R. 7 Calc 442 9 C L R. 137

45 ———— *Suit for possession after ejectment* —When the dispute between the parties was whether the plaintiffs who by themselves and their ancestors had long held the land in dispute could be lawfully dispossessed by the defendant who claimed it under a pottah recently granted by the zamindar —*Held* that the matter was not one for adjudication under the Rent Act not being a question between landlord and tenant AFA KHAN *v* KISHEN MOONJOREE DOSSEE [W R 1864 Act X 17

MOFUZZEL HOSSEIN *v* TUSSOODUK ALI KHAN [W R 1864 Act X 89

UFSUROODEEN *v* AKBUR ALI [2 W R Act X 77

46 ———— *Suit by purchaser against raiyats and zamindar* —A suit by the purchaser of a mokurari tenure against the raiyats and the zamindar for illegal dispossession and for establishing permanent title to the property should not be brought under the Rent Act NOBBO DOORGA DEBEE *v* KISTAREENEE DOSSEE 1 W R. 48

KANAYE MOLLAH *v* DEBNATH ROY [3 W R Act X, 161

OOMADHUR BHUT *v* MAHOMED LUTEEF [1 W R. 229

GOKOOL PERSHAD *v* RAJENDUR KISHORE SINGH W R. 1864 Act X 4

47 ———— *Suit for confirmation of title and possession* —A suit for confirmation of the plaintiff's title and possession as shikmi talukhdar under the defendant is not cognizable under the

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

Rent Act BROJO SOONDUR MITTER v RAM CHUNDER ROY 2 W R. Act X, 40

48 ——— *Suit for confirmation of possession by raiyat*—Suits by raiyats for confirmation of possession in a tenure which is threatened are not cognizable under the Rent Act RITTOO RAI RAI v JUGGESHUR RAE [1 N W, Part 2, p 40 Ed. 1873 98

49 ——— *Suit by transferee for declaration of title as tenant*—A suit by the purchaser of a permanent transferable tenure for a declaration of his title as tenant to possession is not cognizable under the Act NOBEEN KISHEN MOOKERJEE v SHIB PERSHAD PATTUCK [8 W R., 96

50 ——— *Suit where purchaser is opposed—Suit against zamindar by purchaser of transferable tenure*—A case where the zamindar opposes the entry of the purchaser of a transferable raiyat's tenure would come under the Rent Act DIGUMBUREE DABEA v SHAMASOONDUREE DEBEA [W R., 1864, Act X, 81

51 ——— *Suit for land—Suit for declaration of right to share in produce of trees—Act X of 1859 s 23 cl 6*—A suit for the declaration of the right of the plaintiff to a share in the produce of certain trees, on the allegation that those trees were planted by a person whose rights had passed to the plaintiff by a bill of sale is not cognizable under the Rent Act RAMZAN ALI v ANWAR ALI [2 B L. R. Ap., 19 11 W R. 52

52. ——— *Suit to establish right to use and cut trees*—*Held* that a suit by a cultivator to establish his right to cut and make use of the trees situate on the borders of his holding was not a suit of the nature triable under the Rent Act PUCHOOA v MAHOMED TALA ASSUD-OOLLAH 2 Agra 217

53 ——— *Suit for maintaining possession*—There must have been ejection therefore a suit for maintenance of possession in the holding from which the plaintiff was not actually ejected does not come within the Act DOWLAT RAI v GYA MISSER 2 Agra 95

54. ——— *Suit by holder of lease who has never been in possession*—Nor does a case where a plaintiff sued to recover possession of land of which he had never been in possession but which he claimed under a pottah alleged to be valid on the allegation that he had been illegally ejected JODOO NATH GHOSE v SOOKHMOYE DOSSEE 1 W R., 201

55 ——— *Suit by purchaser who has never obtained possession*—So with a purchaser of an under-tenure who has never obtained any real substantive possession. ANUND NATH ROY v JUNMEJOY BISWAS 6 W R. 240

56 ——— *Ejectment of cultivators—Dispossession of farmer*—The disturbing or dispossessing the cultivators is tantamount to ejecting and disturbing in the receipt of rent the farmer to whom they pay rent for which a suit will lie under the Rent Act LUNGUT MAHTOON v RAMESHUR ROY [W R. 1864, Act X, 54

57 ——— *Mode of dispossession*—It matters not how the ejectment is brought about, whether under colour of award of a Criminal Court or otherwise, so long as it is between landlord and tenant the suit to recover possession can be brought under the Rent Act MUTHOORANATH KOOND v SAMEERUDDEE MOLLAH 1 W R., 42

UMBIT LALL BANERJEE v BHOOBUN MOHINEE DOSSEE 7 W R., 24

58 ——— *Dispossession irregularly made—Act X of 1859 s 23 cl 6*—Where a zamindar pursues his right to eject in a manner which is not legal possession will be restored although, if the zamindar had proceeded legally he could have ejected his raiyat such cases are contemplated by s 23, cl 6 of Act X of 1859 and Bengal Act VIII of 1869 s 27 GUNGA GOBIND ROY v KALA CHAND SURMA GANGOOLY 20 W R., 455

59 ——— *Suit to set aside illegal ejectment—Cause of action*—Where a tenant was restored to his holding by a decree to set aside the auction sale of his right—*Held* that the cause of action for the tenant to sue under cl 6 s 23 Act X of 1859 arose on the zamindar's refusal to admit him into possession of his holding; and a suit brought within one year from the date of such refusal which was practically an illegal ejectment by the zamindar would not be barred under s. 30 of that enactment. LUCHMUN SINGH v MAHOMED HOSSEIN [1 Agra, Rev., 42

60 ——— *Suit by tenant—Suit by shikmi talukhdar for possession*—A shikmi talukhdar may sue under the Rent Act to recover possession RAJ CHUNDER SURMA GOSSAIN v ALI NEWAZ KHAN W R., 1864 Act X, 133

Provided he sue the zamindar and not only in respect to a portion of his tenure HUR PERSHAD v MATA BUKSH 3 Agra, 225

61. ——— *Suit by lakhirajdar*—A suit by a lakhirajdar does not come within the Act GOOROO PERSHAD ROY v NIMAYE CHAND PUTSHANI 3 W R. Act X, 5

62. ——— *Suit by patnidar*—But a suit by a patnidar against the zamindar may be brought under it THAKOOR DOSS MOZOOMDAR v RADHA SOONDERY DOSSEE 2 W R., Act X, 3

63 ——— *Suit by dar-maurasidar*—Where a zamindar sold a maurasi tenure for arrears of rent and purchased it himself and then evicted the dar maurasidar and made a fresh settlement for the tenure with a third party—*Held* that a suit for ejectment by the dar maurasidar against the zamindar was cognizable under the Rent Act. WOOMA SUNKOREY v ALLY ASHRUFF [W R. 1864 Act X 96

64 ——— *Suit by tenant with right of occupancy*—So is a suit to recover possession by a

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

tenant with a right of occupancy illegally ejected by the zamindar with or without the assistance of the Collector RAM BHUJUN BHUKUT *v* KETAYE RAM CHOWDHRY 6 W R., Act X 21

TARANATH BHUTTACHARJEE *v* OBHOY CHURN HALDAR 7 W R. 471

65 ——— *Suit by tenant with right of occupancy* —Where plaintiffs alleged themselves to be tenants with rights of occupancy and as such not liable to ejectment by defendant the owner of the land, under a religious grant as alleged by them (plaintiffs),—*Held* that the suit was exclusively cognizable by the Revenue Court under cl 6 s. 23 Act X of 1859 SEWAK RAM *v* LAM BHAWAN OJHA [1 Agra 212

66 ——— *Suit to recover possession as heir of occupancy raiyat* —Where the plaintiff sues on the ground that having been in possession of and cultivated land of an occupancy raiyat during her lifetime he is entitled to succeed to possession at her death he might sue under the Rent Act but when never having been in possession he claims as heir by Hindu law to succeed to the occupancy right he should not PEM KOOER *v* UPPER BALEE SINGH [2 N W 86

67 ——— *Suit by zamindar to establish his right against maafeedar and for possession—Act X of 1859 s 23 cl 6* —*Held* that the Rent Act which refers to suits to recover occupancy in any land farm or tenure from which a raiyat farmer or tenant has been illegally ejected by a person entitled to receive the rent does not apply to a suit brought by a zamindar against a maafeedar to establish his right as such and to recover possession and malikana allowance secured to him at the time of settlement RADHA MOONEE *v* KISHNA 2 Agra Pt II 188

68 ——— *Ejectment—Limitation—Suit for possession on declaration of title* —The only remedy for a party in the position of an occupancy raiyat who alleges he has been ejected in contravention of the proviso to s 22 of Bengal Act VIII of 1869 is a suit on the ground of the illegal ejectment and such a suit must under s 27 Bengal Act VIII of 1869 be brought within one year from the ejectment GOLABOLEE *v* KOOTOOSBOOLLAH SIRCAR I. L. R. 4 Calc. 527

69 ——— *Suit to recover possession after ejectment* —Where a raiyat having a mere right of occupancy in certain land has been wrongfully dispossessed by the zamindar his suit to recover possession must be brought under s 27 of Bengal Act VIII of 1869 within one year from the date of dispossession BRINDABUN CHUNDER SIRKAR *v* DHUNUNJOY KUSHKUR [I. L. R 5 Calc 246 4 C L R. 443

70 ——— *Possession under zur-i peshgi mortgage—Landlord and tenant—Limitation* —Where the plaintiff claimed a right to enjoy possession of certain land for a term of years on the footing of a mortgage transaction (zur i peshgi) it having been a part of his contract with the mortgagor-defendants that he should repay himself the money advanced by taking the rent reserved on the zur i peshgi lease during its pendency —*Held* that the relation between the parties was different from that of landlord and tenant contemplated in Bengal Act VIII of 1869 s 27 and that the suit could not be governed by the limitation prescribed in that law PARTAG DUTT ROY *v* FEKOO ROY [19 W R. 160

71. ——— *Ejectment by a suit against person entitled to rent* —The only suits for recovery of possession that are cognizable under the Rent Act are suits by a tenant who has been illegally ejected by the person entitled to receive the rent of the land or tenure RAJ COOMAR SINGH *v* RAJBUNSEE KOOER W R. 1864 Act X 108

LUCKEE PRESA DABEA *v* JUGGODUMBA DABEA [3 W R. Act X 8

HOSSEINEE KHANUM *v* RUBIA KHANUM [5 W R. Act X 14

DEBRANI DOSSI *v* SHITAL KABEEGUR NILUMBER SEN *v* HARANUND SOOREE [W R. 1864 Act X 10

GOBIND MONI *v* RAJENDRO KISHORE CHOWDHRY 15 W R. 18

72. ——— *Suit against ijaradar—Act X of 1859 s 30* —A suit on the ground of illegal ejectment can be brought where the defendant is the ijaradar entitled to the rents GOBIND MONEE *v* RAJENDRO KISHORE CHOWDHRY 15 W R. 18

See BROJO MOHUN DE SIRCAR *v* DENGU [7 C L R. 141

— a case under s 27 Bengal Act VIII of 1869 where it was held that person entitled to receive the rent means all the persons if there are more than one and when the suit was brought against one ijaradar only out of several it was held that the section would not apply

73 ——— *Ejectment not directly by landlord* —To bring a case of ejectment within the Rent Act there must have been some direct act on the part of the person entitled to receive the rent towards ejecting the tenants either personally or by his servants or by joining with those who actually ejected them JOYKISSEN MOOKERJEE *v* MUDOOSOODUN KULLIAH W R. 1864 Act X 90

WISE *v* HURO CHUNDER SHAHA [6 W R. Act X 90

AMJAD ALI KHAN *v* GHOLAM HYDER KHAN [1 W R. 313

MODHOOSOODUN CHUCKERBUTTY *v* NUFUR BAWAL [1 W R 196

74. ——— *Landlord and tenant—Limitation* —Where a landlord does not himself directly take steps to interfere with the rights of cultivation of his tenants but does so through other persons whose acts he may if it so pleases him afterwards ignore he is not in a position to set up a special plea of limitation under the Rent Law

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

(Bengal Act VIII of 1869 s 27) KALLIDA PERSHAD DUTT v RAM HARI CHUCKERBUTTY [I L R 5 Calc 317

75 ——— *Ejectment not by amindar*—A suit by plaintiff complaining of having been ejected by the defendants who were not the zamindars of the land in dispute or the persons entitled to collect rent from the plaintiff cannot be entertained under the Rent Act The mere allegation of the defendants that they were the zamindars unless admitted to be true by the plaintiff will not give jurisdiction under that Act KISHUN MOHUN SINGH v TOOLSEE SINGH 2 N W 102

RAM DEHUL PANDEY v KASHEE PAWUT [14 W R, 232

HURISH CHUNDER ROY v SHONASHEE DALAL [14 W R 466

76 ——— *Suit by raiyat for possession against transferees of zamindari*—The ownership of a zamindari having changed hands under a decree a raiyat with a right of occupancy brought a suit on the ground of illegal dispossession by the new zamindars *Held* that the suit was maintainable under the Rent Act SHEO PROKASH MISSER v FUKEER ROY 13 W R 20

77 ——— *Suit after ejectment by purchaser from Government*—The Government purchased the zamindari rights in a pergunnah under Regulation XXI of 1822 at a sale for arrears of Government revenue and re settled one of the talukhs in the pergunnah which talukh had been created subsequently to the Decennial Settlement with the plaintiffs as talukhdars Subsequently and after the expiration of the terms for which they had re settled with the plaintiffs the Government sold their zamindari rights to the defendant who ejected the plaintiffs. In a suit by the plaintiffs for possession—*Held* that it was properly brought under the Rent Act ASSANOOLLAH v OBHOY CHURN ROY [13 W R P C 24 13 Moore s I A 317

78 ——— *Suit against other than person entitled to rent*—If a tenant in a suit to recover possession of land from which he has been ejected finds it necessary to implead a person other than the person entitled to receive the rent of the land he should not bring his suit under the Rent Act RITTOO RAJ IAE v JUGGESHUR RAE [2 N W Pt. II p 40 Ed. 1873, 98

NUFFER MYTEE v MONOHUR SIRDAR [13 W R, 334

AMIRTA v NUND KISHORE 2 Agra 333

BUSHEEROODDEEN v DAL CHUND 3 Agra 236

As for instance a person alleged to be in collusion with the zamindar to eject SOWANTEE v SEWA RAM [3 N W, 35

MUGNEE ROY v LALL KHOONEE LAL [6 W R Act X, 19

MADHUB CHUNDER DEY v RAM DYAL GUHO [8 W R 303

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

MAHOMED JAKEE v GOPEE ROY 10 W R, 5

SREEKANT ROY CHOWDHRY v KITABOODDEEN SIRDAR 10 W R 49

79 ——— *Suit by shikmi raiyat against tenants*—A suit by a shikmi cultivator or under tenant to recover possession of land from which he has been illegally ejected by the defendants themselves only tenants and not zamindars is cognizable under the Act JEY SINGH v MOORLEE [2 N W, 98 Agra F B Ed. 1874 194

80 ——— *Suit for possession of land assigned as security for a loan—Act X of 1859 s 23 cl 6 and s 25*—Neither cl. 6 s 23 nor s 25 of the Rent Act applies to a suit for recovery of possession on expiry of assignment of land assigned over for a term of years as security for a loan and as the means for its repayment KHETTUR MOHUN PAUL v RAM COOMAR PAUL [5 W R, Act X, 2

81 ——— *Suit against person entitled to rent for wrongful ejectment—Act X of 1859 s 23 cl 6*—*A* after the grant of a patni talukh to *B* fraudulently granted a pottah of the same land to his own daughter and by means thereof she intervened in a suit by *B* against a raiyat for rent and prevented *B* from recovering in the suit *Held* that this was evidence to support a suit by *B* against *A* under Act X of 1859 s 23 cl 6 for illegally ejecting him from the tenure and the pottah being a mere device Notwithstanding the daughter was joined as a defendant in the suit the suit could be entertained under the Rent Act HUREE DYAL CHUKEE v BIRJESSUREE DOSSEE Marsh. 604

82 ——— *Question of title—Ejectment—Limitation*—S 27 of Bengal Act VIII of 1869 applies only to such suits for possession as the Court is asked to decide irrespectively of any title but simply on the ground that the plaintiffs have been ousted otherwise than by legal means. FORBES v SHEE LAL JHA I L R 8 Calc 365

83 ——— *Suit for possession—Title—Limitation*—The limitation provisions of s 27 Bengal Act VIII of 1869 have no application to a case in which the plaintiff relies upon his title and seeks to recover possession upon the strength of that title and in which the defendant denies that title *Gooroo Doss Roy* v *Ramnarain Mitter B L R Sup Vol, 628; 7 W R, 186 Nistarinee* v *Kali Pershad Dass Chowdhry 21 W R 53* and *Nilmadhub Shaha* v *Srinibash Kurmokar I L R 7 Calc 442* referred to. JOYUNTI DASI v MAHOMED ALLY KHAN [I. L. R., 9 Calc, 423

84 ——— *Landlord and tenant—Possession Suit for on dispossession by landlord—Title Claim for declaration of.*—Where a suit by a tenant against his landlord is both in form and substance one to recover possession on the ground of illegal dispossession by the landlord and no question of the plaintiff's title is raised, the insertion in the plaint of a claim for declaration of

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

the plaintiff's title is not sufficient to prevent the application of the limitation prescribed by s 27 of Bengal Act VIII of 1869 *Dhurjobutty Chowdrain* v *Chumroo Mundul* 25 *W R* 217 distinguished IMAM BUKSH MUNDUL v MOMIN MUNDUL

[I. L R. 9 Calc 280

85 ——— *Suit for possession on declaration of title—Limitation*—Where a suit was brought to recover possession of land of which plaintiff alleged that he was dispossessed by the zamindar in Jeyt 1281 and the zamindar rejoined that plaintiff had relinquished the greater portion of the land in suit in Bysack 1280 and was now barred by limitation —*Held* that as this was a suit to recover possession by establishment of title plaintiff was at liberty to bring it within twelve years and was not barred by the lapse of one year An objection of limitation is not most suitably sustained by evidence of relinquishment from a period the lapse of time from which exceeds the period of limitation DHURJOBUTTY CHOWDRAIN v CHAMROO MUNDUL

[25 W R. 217

86 ——— *Suit for possession with mesne profits—Defendants—Title—Limitation*—A suit for possession of certain lands by establishing the plaintiff s howla right and for mesne profits, brought against a shareholder of the talukh in which the lands are situated a former talukhdar and certain raiyats who paid rent to the first defendant is not a suit to recover the occupancy of the land from which the plaintiff has been illegally ejected by the person entitled to receive the rent within the meaning of s 27 of Bengal Act VIII of 1869 and is not governed by the limitation provided by that section. ASHANOOLLAH v RAMDHONE BHUTTACHARJEE I. L. R 1 Calc 325

87 ——— *Question of title—Limitation*—In a suit to recover possession of certain land as the ancestral maurasi mokurari jote of the plaintiffs from which they had been dispossessed by the defendant the latter denied the dispossession and alleged that the plaintiffs had themselves relinquished the land in question It was found that although the alleged title was not proved that the plaintiffs had established an occupancy right but had been dispossessed by the defendant On appeal it was contended that the suit was barred under s 27 of Bengal Act VIII of 1869 as not having been brought within one year from the date of the dispossession *Held* that the suit involved a question of title and that the limitation of a year prescribed by s 27 of the Rent Act therefore did not apply TAMIZUDDIN MUNSHI v HURO NATH PAL 9 C L R 253

88 ——— *Suit for possession—Question of title—Limitation*—Where the plaintiff alleged that he was the holder of a jote under the defendant by whom he had been forcibly dispossessed and sued for declaration of his title and for restoration to possession and the defendant did not question the plaintiff s tenure nor his original title but denied the forcible dispossession and alleged that the plaintiff had relinquished the land —*Held* that the suit was not one to try a question of title but was governed by the one year s period of limitation prescribed by s 27 Bengal Act VIII of 1869 *Jonardun Acharjee* v *Haradun Acharjee* *B L R Sup Vol* 1020 9 *W R* 513 and *Imam Buksh Mondul* v *Momin Mondul* *I L R* 9 *Calc* 280 approved SRINATH BHATTACHARJI v RAM RATAN DE I L R 12 Calc 606

89 ——— *Limitation—Suit for possession—Question of title*—Where the plaintiff alleged that he was the holder of a jote under the defendant by whom he had been forcibly dispossessed and sued for a declaration of his title and for recovery of possession claiming a right of occupancy and the defendant while admitting that the plaintiff had for one or two years been a tenant of a small portion of the land in suit denied his title to the remainder or that he had acquired a right of occupancy —*Held* that the suit was one to try a *bona fide* question of title and that it was not barred by one year's limitation under s 27 of Bengal Act VIII of 1869 but was maintainable within 12 years from the date of the cause of action *Srinath Bhattacharji* v *Ram Ratan De* *I L R* 12 *Cal* 606 distinguished. BASARUT ALI v ALTAF HOSAIN

[I. L R 14 Calc 624

90 ——— *Wrongful distraint—Suit for damages—Act X of 1859 s 143*—A suit for recovery of damages by reason of wrongful distraint is cognizable under s 143 of the Rent Act X of 1859 s 99 (Bengal Act VIII of 1869) RAM CHANDRA CHOWDRY v SUBAL PATRO

[3 B L R Ap 74 11 W R. 539

SHUMBHOONATH BANERJEE v TARINEE CHURN BOSE 6 W R Act X 33

91. ——— *Wrongful distraint—Act X of 1859 ss 139 143 and 323*—*A* distrained the paddy of *B* alleging that it belonged to *C* who was *A* s raiyat It was found that there was no relation of landlord and tenant between *A* and *B* and that *C* was acting in collusion with *A* *B* attempted under s 139 Act X of 1859 to get possession of the distrained paddy from *D* and *E* to whose custody it had been made over under s 118 of Act X of 1859 but was unsuccessful In a suit by *B* against *A* *C* *D* and *E* for damages —*Held* that the suit was one falling either under s 139 or s 143 of Act X of 1859 and came under s 23 of that Act and was cognizable under the Rent Act All suits which are specially provided for by Act X of 1859 and which arise out of the exercise of the power of distraint or out of any acts done under colour of the exercise of the said power are within the provisions of s 23 of that Act JOY LALL SHEIKH v BROJONATH PAUL CHOWDHRY 9 W R 162

92 ——— *Wrongful distraint—Suit for damages by under tenant*—A suit for damages for an illegal distraint upon an under tenant who has paid his rent for rent due from his lessor to the superior landlord lies under the Rent Act GHOLAM ALLY v NUNDAYA Marsh 264 2 Hay 108

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

93 ——— *Wrongful distraint—Suit to set aside collusive decree for rent—Question of title* —A suit by *A* to set aside an alleged collusive decree for rent obtained by *B* against *C* under which decree *A* was ejected from his lands and his crops seized is distinguishable from a case of illegal distraint by a landlord. Such a suit raises a question of title and should not be brought under the Rent Act GOOPENATH DUTT *v* PREONATH SIRCAR
[6 W R., Act X, 7

94 ——— *Wrongful distraint—Suit for property illegally distrained* —A suit by a raiyat for the recovery of the value of his property illegally distrained as the property of another raiyat is one which should be brought under the rent Act RAM BHISTO ACHARJEE *v* CHEYT LALL TEWARY
[15 W R. 451

95 ——— *Wrongful distraint—Illegal distraint of crops—Suit for damages* —Certain sub-lessees sued the zamindar and others employed by him for the value of crops seized and carried away under a certificate as was alleged by the defendants granted to them by the Collector but which they failed to produce *Held* the suit was properly brought under the Rent Act RADHA MOHAN NASKAR *v* JADU NATH DAS
[3 B L R., A C, 261 12 W R., 68

96 ——— *Wrongful distraint—Misappropriation of distrained crops* —The Rent Act makes no provision for a case where before the sale of the distrained property because the defaulter paid the debt demanded by the landlord, the crops distrained and alleged by the plaintiff to be his were made over to the raiyat who the plaintiff stated, had misappropriated them In such a case a suit for damages cannot be brought under that Act GUREEB OOLLAH *v* SYEFOOLLAH 7 W R. 41

1. ——— s 28 (Act X of 1859 s 31) —*Suit to determine rate of rent—Offer to give pottah—Conditional offer* —A suit under s 28 Bengal Act VIII of 1869 asking the Court to determine the rate of rent which plaintiff is entitled to receive and offering to execute a pottah at that rate must be accompanied by an unconditional offer by the plaintiff to execute a pottah at the rate directed by the Court The omission of such an offer is fatal to the claim and plaintiff has no right to make it a condition to the execution of such a pottah that all previous arrears should be paid at the rates to be so fixed REILY *v* JUDOO NATH GHUTTUCK 25 W R., 175

2. ——— *Suit by co-parcener to assess land—Act X of 1859 s 23 cl 1* —*Held* that a suit by plaintiff a co-parcener in the land in question against another co-parcener holding as his sir land to assess the same was not one cognizable under the Rent Act. JODHA SINGH *v* OMAID SINGH
[2 Agra Rev., 5

3. ——— *Resumption Effect of—Creation of tenancy* —In a suit in a Civil Court a decree was obtained in 1863 declaring the land of the defendant ' to be resumed and subject to assessment of revenue the amount to be fixed by the Collector,' —*Held* that the decree was conclusive that the lands were not considered mal at the time of the settlement in 1790 and further that their resumption in 1863 did not create a tenancy and that therefore s. 28 of Act VIII of 1869 did not apply FORBES *v* BHUJLOO ROY 6 C L R. 301

——— s 29 (Act X of 1859 s 32)

See CASES UNDER LIMITATION ACT 1877, ART 110 (1859 s 1, CL. 8)

1. ——— *Suit for rent* —The limitation in a suit for arrears of rent brought under the Rent Act X of 1859 was that provided by s 32 of that Act and not that provided by Act XIV of 1859 UNNODA PERSAUD MOOKERJEE *v* KRISTO COOMAR MOITRO 15 B L R., P C 60 note
[19 W R., 5

POULSON v MODHUSUDAN PAL CHOWDHRY
[B L R. Sup Vol 101
2 W R Act X, 21

2 ——— *Special period of limitation* —The period of limitation specified in Act X of 1859 has reference exclusively to suits brought under that Act PROSONNO COOMAR PAL CHOWDHRY *v MUDDUN MOHUN PAL CHOWDHRY*
[11 B L R. Ap, 31 note 13 W R, 390

SURBESSUR DEY *v* MAHOMED SIRCAR
[7 W R., 243

3 ——— *Computation of time according to English calendar* —*Held* in accordance with former decisions of the High Court that for the purpose of computing the period of limitation prescribed by s 29 of Bengal Act VIII of 1869 the calculation is to be made according to the English calendar MAHOMED FLAHEE BUKSH *v* BROJO KISHORE SEN , I. L. R , 4 Calc. 497
[3 C L R., 398

And month means a calendar month. LUCHMEEPUT SINGH BAHADOOR *v* RAJCOOMAREE DABEA
[23 W R. 275

KASHEE PERSHAD SEN NEOGEE *v* JAMIR PAIKAR
[3 C L R. 265

SARODA PERSHAD GANGULI *v* PATIALI MAHANTI
[I. L. R. 10 Calc 913

4 ——— *Act X of 1859 s 32—Construction of "after passing of the Act"* —The words in Act X of 1859 s. 32 limiting suits for arrears of rent due at the passing of the Act to a period of three years after the passing of the Act refer to the date when the Act passed and not to the subsequent date fixed for its coming into operation. I EARY MOHUN DOSS *v* MCARTHUR Marsh., 637

MOHAN *v* BINDUBASINEE DEBIA
[W R., 1864 Act X 5

WATSON *v* PUTNOKANT ROY
[W R., 1864 Act X, 19

5 ——— *Act X of 1859 s 32—Suit brought for period preceding Act* —When a sui

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

was brought within three years from the passing of Act X of 1859 for arrears of rent of 1266 to 1269 and three months of 1269 —*Held* that the suit was not barred by limitation under s 32 and that the claim for the arrears of 1266 which were not due till 1267 was in time though that was a period preceding the passing of the Act MASHISHUREE DOSSEE v RAM SAGUR SINGH

[W R., 1864, Act X, 69

6 ——— *Act X of 1859 s 32 and s 30—Suit for arrears of rent after enhancement* —A landlord having obtained a decree for enhancement against his tenant sued him for arrears of rent *Held* (with reference to ss 30 and 32 of Act X of 1859) that the suit might be brought within one year from the date of the final decree fixing the rent in the suit for enhancement or within three years from the end of the month of Jeyt of the Fusli or Willayati year for which such rent was claimed. JOYMONEE DASEE v HURRONATH ROY

[2 W R. Act X 51

See HURRONATH ROY v GOOROO DOSS BISWAS [3 W R Act X 19

7 ——— *Act X of 1859 s 32—Suit for arrears of rent—Cause of action* —An arrear of rent is not due within the meaning of s 32 Act X of 1859 until the rent itself has been determined COMUL LOCHUN ROY v MORAN

[2 W R, Act X, 82

8 ——— *Act X of 1859 s 32—Suit for arrears of rent* —Act X of 1859 does not authorize the recovery of only three years rent Thus where a suit was commenced within three years from the end of the Bengal year 1268 the plaintiff was held entitled to recover the whole of that year's rent DOORGA DOSS CHATTERJEE v NOBIN MOHUN GHOSAL 6 W R. Act X, 63

9 ——— *Act X of 1859 s 32—Suit for arrears of rent* —S 32 Act X of 1859 does not authorize the recovery of only three years rent but requires suits for the recovery of rents to be instituted within three years from the end of the Bengali or Fusli year as the case may be GOSSAIN UMUR NARAIN POOREE v ARURUT LALL *alias* BABOO JAN 7 W R. 301

10 ——— *Act X of 1859 s 32—Suit for arrears of rent* —Under s 32 Act X of 1859 the rent of any portion of one year (1273) is recoverable at any time up to the last day of the third year (1276) after its close BYKUNT RAM ROY v SHURFOONISSA BEGUM 15 W R 523

11 ——— *Award of damages in former suit—Cause of action* —Where rents are not sued for within three years from the end of the year for which they are alleged to be due the fact that damages were awarded against the plaintiff in a former suit for not giving receipts for that year will not create a cause of action HURO PERSHAD ROY CHOWDRY v WOOMA TARA DEBEE

[15 W R 194

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

12 ——— *Suit to contest enhancement of rent* —Where a raiyat s suit contesting a notice of enhancement was dismissed and the dismissal confirmed in special appeal in the month of May the landlord s suit brought in December of the same year for rent at an enhanced rate according to notice was held to be barred by s 32 Act X of 1859 HUREE KISHORE GHOSE v KOMODINEE KANT BANERJEE 10 W R 41

13 ——— *Suit for arrears of rent* —The words of s 29 Bengal Act VIII of 1859 are intended to apply specially and exclusively of Act XIV of 1859 to the same class of cases as those to which s 32 Act X of 1859 applied though that class cannot now be defined as it formerly could by reference to the jurisdiction of the Court in which the cases fall to be entertained. The class is limited to suits for arrears of rent simply as arrears of rent are defined in s 21 Bengal Act VIII of 1869 GOBIND COOMAR CHOWDHRY v MANSON

[15 B L R. 56 23 W R 152

14 ——— *Suit for arrears at enhanced rates—Limitation* —The intention of s 29 of Bengal Act VIII of 1869 is that a suit for arrears at enhanced rates should not be deferred beyond the third month after the year for which enhancement is claimed. GLASSCOTT v RAJCHUNDER MOOCHY MUNDUL 25 W R, 381

15 ——— *Suit for compensation for land* —A suit to make the defendant liable for compensation in the shape of rent for the land which he held in the name of his servant is not a suit for rent to which s 29 of Bengal Act VIII of 1869 applies KISHENBUTTY MISRAIN v ROBERTS

[16 W R 287

16 ——— *Suit for arrears of rent—Act XIV of 1859 s 1 cl 16—Pro formâ defendants—Limitation* —The plaintiffs sued the defendants who were ijaradars of the property in which they were co-sharers for arrears of rent extending over a period of six years The suit was first brought in the Revenue Court and as their co sharers had not joined in the suit the plaintiffs made them defendants and their being defendants preventing the plaintiffs from continuing the suit in the Revenue Court they instituted it afresh in the Civil Court after Bengal Act VIII of 1869 came into operation The defendants objected that under the limitation provided by s 29 of that Act no more than three years' rent could be recovered but the Judge held affirming the decision of the Munsif that the case was governed by cl 16 s 1 Act VIII of 1859 and that six years rent could be decreed *Held* on special appeal to the High Court that the fact of the co-sharers being made *pro formâ* defendants did not alter the real character of the suit which was to recover arrears of rent and that therefore the provisions of s 29 Act VIII of 1869 were applicable, and a decree for three years rent only was given GUNGA GOBIND SEN v GOBIND CHUNDER DASS

[11 B L R. Ap 31 19 W R. 347

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

17 ———— *Suit for arrears of rent—Limitation*—The period of limitation within which a suit for arrears of rent may under Bengal Act VIII of 1869 s 29 be instituted must in the absence of any special agreement be calculated from the last day of the year following the expiration of the year for which such rent is claimed WOOMESH CHUNDER BOSE *v* SOORJEE KANTO ROY CHOWDHRY

[I L R., 5 Calc., 713 6 C L R., 49

18. ———— *Suit for arrears of rent—Limitation*—The last day on which a suit for the recovery of arrears of rent can be instituted under s 29 Bengal Act VIII of 1869 is the last day of the third year from the close of the year in which the rent became payable The word "arrear" in that section means rent in arrear *Woomesh Chunder Bose v Soorjee Kanto Roy Chowdhry I L R 5 Calc 713 6 C L R 49* over ruled KASIKANT BHUTTACHARJI *v* ROHINIKANT BHUTTACHARJI

[I. L. R., 6 Calc, 325 7 C L. R., 342

19 ———— *Suit for arrears of rent—Suit against registered tenant*—A suit having been brought in 1284 for arrears of rent of a dar patni for the years 1281 83 and part of 1284 against *A* as the widow and heiress of the former dar patnidar who died in 1256 *A* pleaded that she was not the representative of her husband as in 1276 she had adopted a son Whereupon in 1285 more than three years from the time the rent of 1281 became due the son was made a defendant It appeared that from the time of her husband's death *A* had allowed her own name to remain on the sherista of the plaintiffs and that the plaintiffs had no notice of the adoption *Held* reversing the decision of the lower Appellate Court that the claim for the rent for the year 1281 was not barred as against *A* and the tenure but that no decree could be made against the son in respect of it DWARKANATH MITTER *v* NOBONGO MONJORI DASSI

[7 C L. R., 233

20 ———— *Suit for arrears of rent—Limitation*—It having been decided in a former case that the zamindar's claim against defendants for the rent of 1271 being a suit for arrears of rent recoverable upon a liability arising out of matters not within the cognizance of a Revenue Court was not governed by the special limitation prescribed by s. 32 Act X of 18 9 but by the ordinary law of limitation Act XIV of 18 9,—*Held* that the zamindar's present claim of a precisely similar nature against the same parties in respect of th y r 12[illegible] was n t barred by the special limitati n prescribed by s 29 B ngal Act VIII of 1[illegible] corresponding to s. 32 Act X of 18 9 [illegible]O [illegible]NNO COOMAR LAL CHOWDHRY *v* RAM [illegible] CHATTERJEE

18 W R., 8

21. ———— *Suit for arrears of rent—Limitation*—Certain suits brought in the Collector's Court for rent of 1270 and subsequent years having been dismissed in consequence of the defendant's plea that the whole of the estate had been resumed and that there was no distinct land for which plaintiff was entitled to any separate rent plaintiff was obliged to bring a civil suit to establish his right to recover those rents Having obtained a decree he brought a suit for arrears of rent from 1271 to 12,9 but obtained a decree for the rents of three years only the cause of action for the years previous to 1277 having been considered to be barred. *Held* that this decision was right as there was nothing to prevent the plaintiff from including in the civil suit which he brought or any previous suit a claim for rent as well as for declaration of right BURODA KANT ROY *v* CHUNDER COOMAR ROY

[23 W R. 281

22. ———— *Act X of 1859 s 32—Suit to recover rent in cash and kind with declaration of plaintiff's right*—A suit to recover rent in cash and kind which comprehended a claim to have a particular share of the rent declared as the property of the plaintiff was held to be one which a Collector acting under Act X of 1859 would have refused to entertain and therefore to be governed not by the limitation prescribed by Bengal Act VIII of 1869 s 29 but by the ordinary law of limitation HEERA SINGH *v* MEER AKBUR ALI

[24 W R., 382

23 ———— *Act X of 1859 s 32—Pendency of suit for enhancement—Limitation*—The three years' limitation provided by s 32 Act X of 1859 is in general terms and does not admit of any exceptions *e g* the pendency of a suit for enhancement for 1265 will not save limitation in respect to the rent for 1260 NOBOKANTH DEY *v* BORODAKANTH ROY **1 W R. 100**

DAKHINA DABEA *v* ROMESH CHUNDER DUTT

[1 W R., 142

24. ———— *Grant of perwannah—Contingency*—When a person lets land under a kabuliat and subsequently grants a perwannah undertaking not to ask for rent till a certain contingency occurs the perwannah will not alter the original agreement so far as to prevent limitation applying to a suit for rent BEBEE *v* MAHOMED GHONSI **1 Ind. Jur., N S. 31**

25 ———— *Act X of 1859 s 32—Cause of action—Suit for enhancement of arrears of rent*—A suit for arrears of rent at an enhanced rate brought more than three years after the rent had accrued due was held to be barred by lapse of time under s. 32 of Act X of 1859 notwithstanding that it was commenced within one year from the date of a decree made in a suit brought in the Civil Court declaring that the plaintiff was entitled to enhance The cause of action was the non payment of the rent at the enhanced rate and not the declaration of the Civil Court that the plaintiff had a right to enhance DOYAMOYEE CHOWDRANEE *v* BHOLANATH GHOSE

[B. L. R., Sup. Vol., 602 6 W R., Act X, 77

26 ———— *Act X of 1859 s 32—Suit for arrears of rent*—The plaintiff

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

had sued the defendant at the end of the year 1272 to recover arrears of rent for 1271 and to eject him for non payment The litigation lasted till 1276, when the plaintiff obtained a decree which however was not executed as the defendant paid the amount and costs within fifteen days In 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years. *Held* that the plaintiff's claim for the rents of 1272 was not barred by the lapse of three years under s. 32 Act X of 1859 DINDAYAL PARAMANIK *v* RADHA KISHORI DEBI 8 B L R. 536 17 W R. 415

ISHAN CHANDRA ROY *v* KHAJA ASHANULLA [8 B L R. 537 note 16 W R. 79

Contra MADHUB CHUNDER GHOSE *v* RADHIKA CHOWDHRAIN 7 W R. 405

Rejecting review of same case in [6 W R. Act X, 42

HURONATH ROY CHOWDHRY *v* GOLUCKNATH CHOWDHRY 19 W R. 18

27 ——— *Act X of 1859 s 32—Sale for arrears of rent—Sale afterwards set aside—Subsequent suit for arrears of rent*—*A* a zamindar sold the rights of *B* his patnidar for arrears of rent under Regulation VIII of 1819 This sale was subsequently set aside at the suit of *B* for irregularity *A* then sued *B* for the arrears under Act X of 1859 and *B* raised the defence that the suit was barred more than three years having elapsed from the close of the year in which the arrears became due *Held* (reversing the decision of the High Court) that upon the setting aside of the patni sale the patnidar took back the estate subject to the obligation to pay the rent and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place and plaintiff could sue within three years from the close of that year SWARNAMAYI *v* SHASHI MUKHI BARMANI 2 B L R. P C 10 11 W R. P C 5 [12 Moore's I. A 244

28 ——— *Suit for arrears of rent—Allowance of time occupied by suit for ejectment*—Where limitation is pleaded in a suit for arrears of rent deduction must be allowed to the landlord for the time he was suing to eject defendant as trespassers ESHAN CHUNDER ROY *v* KHAJAH ASSANOOLLAH [16 W R. 79

29 ——— *Act X of 1859 s 32—Suit for arrears of rent—Assignment of rent in payment of bond*—Plaintiff a zamindar being indebted on a bond gave the bond holder an assignment on the patnidars for the greater portion of the patni rent to be paid to the bond holder until the debt was liquidated. The bond holder not receiving his money sued the zamindar in the Small Cause Court whereupon the zamindar brought this suit against the patnidars for the rent due The lower Appellate Court reversing the decision of the first Court held that the claim for the rent of 1273 was not barred by limitation because brought within three years from the time that plaintiff knew of the non payment of the rent by defendants *Held* upon the principle of the decision of the Privy Council in *Swarnamayi v Shashi Mukhi Barmani 2 B L R P C 10 11 W R P C 5* that plaintiff was entitled to recover the rent of 1273 MOHESH CHUNDER CHAKLADAR *v* GUNGA MONEE DOSSEE 18 W R. 59

30 ——— *Suit delayed pending final decision as to rent*—A previous suit was brought in 1859 which was not finally decided in appeal by the High Court until December 1855 the effect of which decision was to take the talukh then in dispute out of the class of those protected by s 51 Regulation VIII 1793 and to make it liable to enhancement *Held* that the plaintiff's cause of action for rent did not accrue until ascertainment of the rent by that decision and that her present suit for about five years rent from 1st July 1859 having been brought within one year from the date of that decision could be maintained MADHUB CHUNDER GHOSE *v* RADHIKA CHOWDHRAIN [6 W R., Act X 42

31 ——— *Act X of 1859 s 32—Suit for arrears of rent—Deduction of time when boná fide suing defendant as a trespasser*—A landlord can be allowed a deduction in respect of limitation for the time he is suing a tenant as a trespasser only when he is acting under a *boná fide* belief that the tenant is a trespasser and not in suits when from the circumstances of the case he must have known of the defendant's right to hold as a tenant HURONATH ROY CHOWDHRY *v* GULUCKNATH CHOWDHRY 19 W R. 18

32 ——— *Tenancy in abeyance—Res judicata—Limitation*—*A* the zamindar granted a patni lease of certain talukhs to *B* who assigned it to *C* and *D* On *B*'s death *C* and *D* applied to the Collector for registration of the patni talukh in their names as assignees of *B* *A* objected to the registration on the ground that the lease insured only for the life of *B* *A*'s objection being overruled he instituted a regular suit to eject *C* and *D* the present defendants which was decided against *A* finally by the Privy Council in 1874 During the pendency of this litigation the zamindar sued to recover the rent for the year 1868 not upon the basis of the patni lease but for use and occupation treating the tenants as mere trespassers This suit was dismissed on the ground that the plaintiff ought to have sued on the lease In 1875 the plaintiff brought the present suit for the rent of 1868 on the patni lease The defendants pleaded *res judicata* and limitation The plaintiff contended that the suit was within time on the ground that the right to recover the rent was in suspense during the pendency of the litigation regarding the lease *Held* that the suit though not *res judicata* was barred under s 29 of Bengal Act VIII of 1869 *Swarnamayi v Shashi Mukhi Barmani 2 B L R P C 10* distinguished. WATSON & CO *v* DHONENDRA CHUNDER MOOKERJEE [I. L R. 3 Calc. 6

33 ——— *Deduction of time whilst another suit was pending—Limitation*—*A* sued for

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

enhancement of rent of certain lands for a specified year On the dismissal of this suit *A* more than five years after the rent fell due sued for arrears of rent for the same year *Held* that *A* was not entitled to deduct the time occupied in the conduct of his enhancement suit from the period which elapsed since the rent first fell due in order to bring his case within the period of limitation prescribed for such last mentioned suits by s 29 of Bengal Act VIII of 1869 BROJENDRO COOMAR ROY *v* PAKHAL CHUNDER ROY I L R 3 Calc 791

34 ——————— *Limitation—Holiday*—A rent suit under Bengal Act VIII of 1869 must be brought strictly within the term of three years prescribed by s 29 of that Act which contains the only law of limitation applicable to the case Where therefore the last day of the term so fixed was a close holiday and the plaint in such a suit was filed on the following day —*Held* that inasmuch as s 29 contains no provision for relaxing the term fixed by it such as is contained in the general law of limitation the suit was barred PURRAN CHUNDER GHOSE *v* MUTTY LALL GHOSE JAHIRA

[I L R. 4 Calc 50 2 C L R., 543

35 ——————— *Limitation—Suit for arrears of rent*—After the expiration of the period prescribed by s 29 of Bengal Act VIII of 1869 a plaintiff suing for arrears of rent cannot insist on the pendency of another suit brought by him for possession of the land as preventing limitation from running where there has been no time during which such rent could not have been recovered if he had acted on his right of suing for it In *Rani Surnomoyee v Shoshee Mookhee Burmonia 12 Moore's I A 244 2 B L R P C 10* the claimant of rent was until the setting aside of the sale that had taken place in the position of a person whose claim had been satisfied The right to sue in that case had been suspended and it was therefore distinguishable from the present The plaintiff's ancestor purchased a talukh from the Government subject to an ijara therein held by the defendants which expired in 1866 A suit brought by the plaintiff in 1874 for possession was dismissed finally in 1876 the defendant's claim to remain in possession under another tenure being allowed The plaintiff in 1876 sued the defendants for arrears of rent for the years 1866—1872 *Held* that the suit was barred under s 29 notwithstanding the proceedings of 1874 HURO PERSHAD ROY *v* GOPAL DAS DUTT

[I L R. 9 Calc 255 12 C L R. 129
L R. 9 I A. 82

Affirming the decision of the High Court in HURO PROSAD ROY *v* GOPAL DOSS DUTT

[I. L. R. 3 Calc. 817 2 C L R. 450

36 ——————— *Limitation—Suit for arrears of rent*—The defendant held a patni in respect of a share in a zamindari which share was held and the patni granted by a Hindu *widow who died in* Pous 1281 The plaintiffs were the heirs who succeeded to the zamindari on the death of the widow

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

In Pous 1284 they brought a suit against the defendant for the purpose of setting aside the patni and on the 16th Pous 1285 obtained a decree declaring the patni invalid and giving them khas possession with mesne profits This decree was however reversed on appeal on the 6th Srabun 1288 and their suit was dismissed In a suit for arrears of rent from 128? to 1288 —*Held* that the plaintiff was not protected from the operation of the law of limitation during the pendency of his suit to set aside the patni and that his suit was barred except as to the arrears accruing within three years preceding the suit *Hurro Pershad Roy v Gopal Doss Dutt I L R 9 Calc 255* followed *Rani Surnomoyee v Shoshi Mookhi Burmonia 2 B L R P C 10* distinguished SHERIFF *v* DINA NATH MOOKERJEE

[I L R., 12 Calc, 258

——————— s 30 (Act X of 1859 ss 24 and 33)

See JURISDICTION OF REVENUE COURT
[13 W R. 433

A suit under the Rent Act X of 1859 s 24 was not maintainable unless the defendant was an agent or servant employed in the management of lands or collection of rents The Bengal Rent Act 1869 however does not define who are agents

1 ——————— *Agent Suit against—Suit for papers in possession of sadar amlahs*—It was held that a suit for papers in the possession of sadar amlahs employed in keeping the books of the office and in performing the other duties incidental to the office of sadar amlahs and not mofussil amlahs was not one cognizable under the former Act MOHENDRONARAIN SINGH *v* LALLA RUTTUN

[Marsh 239 2 Hay 278

OODOY NARAIN SIRCAR *v* KRISTO CHUNDER ROY CHOWDHRY 13 W R. 433

2. ——————— *Agent Suit against—Tehsildar*—A suit to recover from defendant rent collected by him for the plaintiffs as their tehsildar for the due performance of which office he had bound himself by agreement under security was held to be maintainable under the Rent Act 1869 GRANT *v* RAM TONOO BHOOMICK 10 W R. 83

SHRISTEEDHUR BOSE *v* SHAMA CHURN GHOSE
[14 W R 53

3 ——————— *Agent Suit against—Tehsildar*—A claim for moneys collected by the defendant as plaintiff's tehsildar was held to be one cognizable under the Rent Act and the fact that the matter was referred to arbitration and an award made was held to make no difference SHOSHEE MOHAN SHAHA *v* SHEER SIRCAR 5 W R. Act X 13

4 ——————— *Agent Suit against—Naib or gomashta*—The suit of a zamindar against a naib or a gomashta for papers accounts and moneys collected is cognizable under the Rent Act KALEE NATH GHOSAL *v* CHUNDEE CHURN SIRCAR

[10 W R. 51

See however KADUMBINEE DOSSEE *v* BHOGOBUTTY CHURN GHOSE 10 W R., 7

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

5. ———— *Agent Suit against—General manager* —Where an agent was employed as the manager of a trading business and as a general manager and in that capacity received rents collected by sub-agents employed by the zamindar —*Held* that a suit for rendition of accounts against such agent was not cognizable under the Rent Act BUTAS KOONWAR v JANKEE PERSHAD 3 Agra, 293

6 ———— *Agent Suit against—Agent and sureties* —A suit by a zamindar against an agent and his sureties for money received by the agent in collection of the rents of the zamindari should be brought under the Rent Act WOOZEER ALI v DOORGA CHURN ROY 5 W R. Act X, 79

7 ———— *Agent Suit against—Suit for accounts from heir of agent*—*Semble*—A suit for the delivery of accounts under the Rent Act X of 1859 lay against the heir of an agent the Act being intended to facilitate the recovery of accounts by zamindars and to make the heir of an agent equally responsible with the agent GOWHAR HOSSEIN v RAM COOMAR CHOWDHRY 8 W R. 481

8 ———— *Agent Suit against—Suit against agent for rent received and misappropriated* —An agent may be sued under the Rent Act for rents received by him whether or not he has committed with respect to such rents an offence under the Penal Code SKINNER v PUTUB ALI KHAN [2 W R. Act X, 105

9 ———— *Act X of 1859 s 33—Agent Suit against—Accounts*—S 33 Act X of 1859 gives the benefit of the extended period of limitation to a man who shows reasonable diligence but not to one who having the means of knowledge carelessly neglects to investigate the accounts DHANPUT SINGH DOGAR v LAHMAN MANDAL [2 B L R, A C, 289 11 W R 163

S C before remand [2 B L R. A C 270 note 9 W R. 329

10 ———— *Discovery of fraud—Agency Suit for an account and for money misappropriated by agent* —Where the plaintiff alleged that the fraud committed by the agent came to his knowledge on a certain date and the suit was brought within one year from such date and within three years from the termination of the agency —*Held* that the case came within the proviso of s 33 of Act X of 1859 and the suit was not barred by limitation *Held* further that in suits for money misappropriated by an agent where fraudulent accounts have been rendered the plaintiff has an extended period of limitation of one year which in the words of s 33 of Act X of 1859 runs from the time when the fraud is first known to him; but in any particular case the Court having regard to the nature of the fraud the facility with which it may be known and the likelihood of attention being called to it may infer such knowledge when the means of knowledge first come or have for a reasonable time been within the plaintiff's reach or in other words may hold the plaintiff fixed with constructive knowledge of the fraud The Court must therefore in every such case ascertain when the plaintiff first had knowledge actual or constructive of the fraud *Mackintosh v Woomesh Chunder Bose* 3 W R Act X 121 *Dhunput Singh v Pohomun Mundul* 11 W R 163 and 9 W R 329 and *Huree Mohun Gooho v Anund Chunder Mookerjee* 5 W R Act X 63 referred to NILMONI SINGH DEO v NILU NAIK I L R., 20 Calc 42

11 ———— *Act X of 1859 s 33—Suit on account stated—Agent*—By s 33 of Act X of 1859 suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent may be brought at any time during the agency or within one year after the determination of the agency of such agent *Held* where an agent was dismissed and after such dismissal rendered an account showing a balance due to the landholder that a suit for such money might be maintained notwithstanding the lapse of more than a year from the dismissal of the agent before the suit was commenced because a cause of action arose out of the admitted balance of account *Semble*—That a suit may be maintained upon such account stated in which the period of limitation would be regulated not by Act X of 1859 but by Act XIV of 1859 *Semble*—If the account so rendered were fraudulent then the latter clause of s 33 of Act X of 1859 that if any fraudulent account shall have been rendered by the agent the suit may be brought within one year from the time when the fraud shall have been first known to such person would apply to extend the time CHOWDHRY CHATTERPAL SINGH v FOUJDAR RO [Marsh. 405 2 Hay, 50

See PEAREE MOHUN GHOSE v JARDINE SKINNER & Co 22 W R., 33

12 ———— *Act X of 1859 s 33—Suspension of agent—Determination of agency*—If a principal suspends an agent the agency must be held to have been determined within the meaning of s 33 Act X of 1859 MUDDUN MOHUN ROY v GOPI MOHUN ROY W R. 1864 Act X

MAHATAB CHAND v JUDOO MOHUN MITTER [5 W R. Act X, 9

13 ———— *Act X of 1859 s 33—Suit against agent and surety of agent*—A suit by a zamindar against his agent and the agent's surety for money improperly and fraudulently charged by the agent in his accounts is barred if not brought within one year from the rendering of the accounts which is the time of the accruing of the plaintiff's cause of action he then having the means of knowing of the fraud MACKINTOSH v WOOMESH CHUNDER BOSE [3 W R. Act X, 12

HURO CHURN NARAIN SINGH v ROOCHEE DOBEY [6 W R. Act X, 3

14. ———— *Act X of 1859 s 35—Suit against surety of agent for losses occasioned by embezzlement*—A suit under Act X of 1859 against the surety of an agent employed in the collection of rents for losses occasioned by the embezzlement of his principal is not governed by the period of limitation prescribed by s 33 of the Act but by the

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

prescribed by s. 30 namely one year from the date of the accruing of the cause of action BEELASMONEE v NUSSEEBOOLAH Marsh. 410 2 Hay 510

15 ———— *Act X of 1859 s 33—Admission of amount by agent—Cause of action* —The principal acquires no fresh cause of action against the agent from the date on which the agent admitted the amount which was due from him and executed an agreement to pay it MAHATAB CHAND v JUDOO MOHUN MITTER 5 W R. Act X 91

16 ———— *Act X of 1859 s 33—Fraud preventing knowledge of rights* —In a suit against an agent under s 33 Act X of 1859 where fraud is alleged before applying the limitation prescribed by that section the plaintiff should have an opportunity of proving that by the fraud of the defendant he was kept from a knowledge of his rights RAM KANT CHOWDHRY v BROJO MOHUN MOZOOMDAR [6 W R. Act X, 20

17 ———— *Act X of 1859 s 33—Cause of action—Suspension of agent* —In a suit for the recovery of money in the hands of an agent the limitation prescribed by s 33 Act X of 1859 counts from the date of the suspension of the agent RADHIKA PERSHAD CHATTERJEE v RAMDHUN POOROHEET [6 W R. Act X 27

18 ———— *Act X of 1859 ss 30 and 33—Claim against sureties of deceased agent for misappropriation of money* —S 30 and not s 33 Act X of 1859 is applicable to the case of sureties of a deceased agent against whom a claim is made for moneys appropriated by him and the cause of action accrues from the time when the plaintiff had means of knowing what was the amount due to him from the deceased agent —*i e* from the date on which his accounts were put in by his sureties and not from the date of his death. PUREE SOONDERY DEBIA v BHOLANATH ROODRO 8 W R. 159

19 ———— *Act X of 1859 s 33—Fraud—Cause of action* —In a suit against an agent for moneys received on plaintiff s account in which defendant set up a plea of limitation plaintiff sought to extend the period of limitation on the ground that fraudulent accounts were delivered *Held* that the Judge should have found specifically when the fraud was first known to the plaintiff; limitation in such a case running from the date of knowledge of the fraud not merely from that of suspicion of the fraud or of delivery of accounts DHUNPUT SINGH DOOGUR v RUHMAN MUNDUL 9 W R. 329 [2 B L R. A. C 270 note

HUREE MOHUN GOOHOO v ANUND CHUNDER MOOKERJEE 5 W R. Act X, 63

20 ———— *Act X of 1859 s 33—Suit against surety of deceased agent* —In a suit by the manager of a factory to recover from a surety certain sums collected as rent by a deceased patwari in which suit the defendant pleaded limitation —*Held* that plaintiff was not entitled to reckon the year which the law gave him to bring the suit from the date on which he acquired from the surety information of the state of his accounts. If a person s ignorance of the state of his accounts is owing to his own negligence he can claim no benefit under s 33 Act X of 1859 BIDDELL v CHUTTERDHAREE LALL [12 W R, 116

21 ———— *Suit against agent for accounts* —A suit under s 30 Bengal Act VIII of 1869 against a gomashta to obtain accounts after the agency has determined must be brought within a year from such determination The proviso in that section refers to suits for money and under that proviso where a fraudulent account has been given in by the agent concealing the fact of the receipt of certain moneys the zamindar has one year from the discovery of the fraud to bring his suit for such money JAN ALI CHOWDHRY v ISHAN CHUNDER SEIN 16 W R 149

22. ———— *Suit to contest an account against gomashta* —In a suit to contest an account brought against a gomashta under Bengal Act VIII of 1869 the only ground on which the plaintiff can claim an allowance of time beyond the period of limitation provided in s 30 is by showing that there was fraud in the case and that he came to the knowledge of it within a year before the date of his action RADHA KISHORE ROY v AMEER CHUNDER MOOKHOTY 20 W R. 386

23 ———— *Suit against agent—Delay after discovery of fraud of agent* —A suit against an agent for the recovery of money under Bengal Act VIII of 1869 s 30 though brought within three years after the termination of the agency was held to have been barred as not having been brought within a reasonable time from the date of the discovery of the fraud alleged against the agent JAN ALI CHOWDHRY v TARINI CHURN PUKHEET [21 W R 107

24 ———— *Suit against zamindari agent* —There is no limitation but that prescribed by s 30 Bengal Act VIII of 1869 to the bringing of a suit against an agent with regard to zamindari matters (*e g* tahsildar and collector of rents) for the recovery of money or the delivery of accounts and papers RAM BHUROSA CHOWDHRY v HUNOOMAN SINGH [21 W R. 240

25 ———— *Suit for account—Subsequent suit for amount falsely entered—Res judicata* —Plaintiff brought a suit for collection papers against the defendant his agent and got a decree Having received and inspected the papers he brought another suit for moneys which he alleged the defendant had falsely entered as expended. *Held* that the suit was barred *Quære*—Whether the Rent Act s 30 contemplates the bringing of two successive suits —one for an account and the other for the amount due on that account GOLOKE NATH SEN BISWAS v RAM KANT DEY SIRCAR 3 C L R 444

26 ———— *Act X of 1859 s 33—Suit against agent—Change of employment* —A suit against an agent under Act X of 1859 s 24 was resisted on the ground that the defendant s employment as tahsildar had terminated by the plaintiff

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

having employed him as a moonshee and the defendant relied for proof on the fact of his subsequent re-appointment as tahsildar The lower Appellate Court construed s 33 as applicable to the case *Held* that this was not a correct interpretation of the section and that so long as the defendant continued to be employed in the plaintiff's service his agency had not terminated NILMONI SINGH DEO v RAM GOLAM BUNDOPADHYA 21 W R. 154

27 ———— *Suit against agent* —The fact of an agent furnishing his principal with an account under his signature with a letter upon which a balance appeared due is a cause of action irrespective of Act X of 1859 s 33 and the principle is applicable to cases decided under the present law PEAREE MOHUN GHOSE v JARDINE SKINNER & Co [22 W R, 338

See CHOWDHRY CHATTEEPAUL SINGH v FOUJDAR ROY Marsh 405 2 Hay 509

28 ———— *Fraud of agent Evidence of—Not filing accounts in proper time* —In a suit by a zamindar against a gomashta where fraud is not alleged the Court cannot assume it merely on the ground that the accounts were not filed till the close of the year of the determination of the agency KOONJO LAL MUNDUL v DABEE PERSHAD TEWAREE [22 W R 398

29 ———— *Suit for an account against an agent—Limitation* —A suit for an account against an agent employed to collect rents is barred under Bengal Act VIII of 1869 s 30 after the expiration of one year from the time of his resigning or leaving his agency Notwithstanding the general provisions of s 19 of the Limitation Act of 1877 by which a new period of limitation according to the nature of the original liability is allowed provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit a suit cannot be brought upon an acknowledgment or account stated signed by a person who has been an agent to collect rents if his signature was not procured till more than a year after the determination of his agency PARBUTINATH ROY v TEJOMOY BANERJI I. L. R. 5 Calc. 303

GOLAP CHAND NOWLUCKA v KRISTO CHUNDER DASS BISWAS I. L. R. 5 Calc 314

30 ———— *Principal and agent—Account Suit for—Zamindar—Limitation* —A suit by a zamindar against his land agent for payment of sums not accounted for by the latter must under s 30 of Bengal Act VIII of 1869 be brought within three years from the termination of the defendant's agency The zamindar should never bring a suit of this kind for an account merely or for the delivery of accounts or account papers merely; but the suit should be framed for an account and for payment of what on the taking of the account may be found due from the defendant to the plaintiff SHOSHI BHOOSHUN PAL v GURU CHURN MOOKHOPADHYA [I L R 7 Calc 89 8 C L R 285

31. ———— *Suit against tahsildar—Special agreement—Limitation* —The defendant was tahsildar of one of the plaintiff's zamindaris and after his dismissal on the 24th of August 1876 he submitted an account which was found to be incorrect and time was given to him to make good certain items on his executing an ikrar promising to pay whatever balance should be found due from him to the plaintiff In a suit brought on the 28th of October 1878 to recover the balance found on enquiry to be due —*Held* that s 30 of Act VIII of 1869 had no application the special agreement taking the case out of the scope of that section and therefore the suit was not barred by reason of having been brought more than one year after the defendant's dismissal BEER CHUNDER MANICKYA v HURRO CHUNDER BURMAN I L R 9 Calc 211 [12 C L R 329

32 ———— *Suit against administrator of deceased agent for sums misappropriated* —In April 1875 *A* entered into an agreement in writing with *B* whereby he agreed to act as the manager of *B's* zamindaris and other landed properties for three years on certain terms therein mentioned The agreement was duly registered. On the 15th of June 1882 *B* sued the Administrator General of Bengal as administrator of *A's* estate to recover certain sums of money set forth in detail in the plaint as having been received by *A* and not accounted for stating that they had been misappropriated by *A* *Held* that in respect of such sums as were received by *A* in virtue of his position as manager under the registered agreement the limitation of six years applied but that in respect of the sums received by him in the course of transactions which did not come within the scope of the registered agreement the limitation of three years applied *Held* also that the suit was not such as is contemplated by Bengal Act VIII of 1869 s 30 HARENDER KISHORE SINGH v ADMINISTRATOR GENERAL OF BENGAL I L R. 12 Calc. 357

———— s 31 (Bengal Act VI of 1862 s 6)

See BENGAL RENT ACT 1869 s 47 [18 W R 126

See LIMITATION ACT 1877 s 5 [I L R 7 Calc 690

See PARTIES—PARTIES TO SUITS—RENT SUITS FOR AND INTERVENORS IN SUCH SUITS 21 W R., 277

1. ———— *Bengal Act VI of 1862 s 6—Suit for enhancement of rent* —The limitation of six months prescribed by s. 6 Bengal Act VI of 1862 applies to deposits made after rents have become due and does not interfere with the limitation for suits for enhanced rent as prescribed by s 32 Act X of 1859 TARAMONEE KOONWAREE v JEEBUN MUNDAR [6 W R., Act X, 98

2 ———— *Bengal Act VI of 1862 s 6—Applicability of Act—Deposit of rent* —Bengal Act VI of 1862 applies to cases where the amount which the raiyat thinks due is deposited by

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him and the landlord may either accept it or sue for whatever he himself may deem due to him for the same period for which the deposit is made but not to suits for rent for the year preceding that for which the deposit is made MAHOMED SHUHUROOLAH CHOWDHRY v ROOMYA BIBEE 7 W R., 487

3 ———— *Bengal Act VI of 1862 s 6—Suits for enhanced rent after notice*—Bengal Act VI of 1862 s 6 refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under s 5 may be brought and not to suits for rent at an enhanced rate after notice AHMED HOSSEIN v KERAMUT [8 W R. 353

4 ———— *Notice of payment or deposit in Court—Suit for arrears of rent—Limitation*—By a condition in the lease of a talukh additional rent became payable in respect of all lands which not being in a state of cultivation at the time of the lease should be subsequently brought into cultivation so soon as the lessee had enjoyed them rent free for the space of seven years. Rent having become due under this condition on certain lands which had not been in a state of cultivation at the time of the making of the lease the lessee deposited in Court as the entire rent payable in respect of the talukh the same amount as he had paid in previous years In a suit brought a year after the lessor had notice of such deposit to recover the entire rent payable in respect of the lands newly brought into cultivation—*Held* that such suit having been instituted more than six months after service of notice of such deposit on the lessee was barred under s 31 of Bengal Act VIII of 1869 RAM SUNKER SENAPUTTY v BIR CHUNDER MANIKYA [I. L. R. 4 Calc 714

5 ———— and ss 46 47—*Limitation—Deposit of rent—Suit for enhancement of rent*—To bring into operation the special limitation enacted in s 31 of Bengal Act VIII of 1869 where deposit had been made under s 46 the deposit could only have been effectively made of rent that had accrued due before the date of such deposit SURJA KANT ACHARJYA v HEMANTA KUMARI [I. L. R. 20 Calc 498 L. R. 20 I. A 25

———— s 32 (Act X of 1859, s 69)
See PARTIES—PARTIES TO SUITS—AGENTS [I. L. R. 9 Calc. 450 11 W R 43

———— ss 33 and 34
See BENGAL RENT ACT 1869 s 102. [23 W R. 171 I. L. R. 3 Calc 151

———— s 34.
See EXECUTION OF DECREE—DECREES UNDER RENT LAW [I. L. R. 7 Calc. 748

———— *Suits for rent—Act VIII of 1859 s 119*—S 119 of the Civil Procedure Code (Act VIII of 1859) was made applicable to rent suits under Bengal Act VIII of 1869 by the provisions of s 34 of the latter Act DRABAMAYI GUPTIA v TARACHARAN SEN [7 B L R. 207 16 W R., 17

———— s 37 (Bengal Act VI of 1862 s 9)
See APPEAL—MEASUREMENT OF LANDS [6 B L R 1
See EXECUTION OF DECREE—DECREES UNDER RENT LAW 7 C L R. 345
See CASES UNDER MEASUREMENT OF LANDS

———— s 38 (Bengal Act VI of 1862, s 10)
See APPEAL—MEASUREMENT OF LANDS [24 W R 171
See CASES UNDER MEASUREMENT OF LANDS
See RES JUDICATA—COMPETENT COURT—REVENUE COURTS [I L R 10 Calc 507

———— s 41 (Bengal Act VI of 1862 s 11)
See CASES UNDER MEASUREMENT OF LANDS

———— s 44 (Bengal Act VI of 1862 s 2)
See DAMAGES SUIT FOR—RENT SUITS [I. L. R. 8 Calc. 290 W R. 1864 Act X, 22 68 73 84 1 W R. 100 290 343 2 W R. Act X, 11

1. ———— s 46 (Bengal Act VI of 1862 s 4)—*Patni talukhdars—Under tenants*—Bengal Act VIII of 1869 s 46 applies to patni talukhdars the term under tenant being wide enough to include them THAKOOR DASS GOSSAIN v PEAREE MOHUN MOOKERJEE 22 W R. 431

2. ———— *Bengal Act VI of 1862 s 4—Deposit of arrears—Tender—Registration of transfer—Act X of 1859 s 27*—O S purchased from the former raiyat his jotedari right and entered into possession of the land *H M* the talukhdar had notice of this but while *O S* was in possession he sued the former tenant and obtained a decree against him for arrears of rent under which he sold the tenure in execution *O S* had deposited the amount of the arrears but by mistake as payable to *D* (the wife of *H M*'s brother) of Lodi Synd pore instead of to *H M* of Lodi Culpo *H M* was aware the amount had been deposited *Held* the deposit was a sufficient tender under s. 4 Bengal Act VI of 1862 and that registration of the transfer of the raiyati tenure was not necessary inasmuch as s 27 of Act X of 1859 did not apply the tenure not being one intermediate between the zamindar and the cultivator UMACHARAN SETT v HARI PROSAD MISRY 1 B L R S.N., 7

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

S C Wooma Churn Sett *v* Huree Pershad Misser 10 W R. 101

3 —— *Bengal Act VI of 1862 s 4—Tender of payment of rent*—A raiyat s tender of payment to be valid must be made at the proper place and to a person authorized to receive the same Eshan Chunder Roy *v* Khajah Assanoollah [16 W R. 79

4. —— *Bengal Act VI of 1862 s 4—Tender not followed by deposit or payment—Power to award interest*—Act VI of 1862 does not forbid the Court to advert or give effect to a tender not followed by a deposit or payment into Court of the money nor does it alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears Bissonath Dey *v* Hurro Pershad Chowdhry 2 W R. Act X 88

5 —— *Bengal Act VI of 1862 s 4—Transfer of tenure—Act X of 1859 s 27—Registration of transfer*—S 4 Bengal Act VI of 1862 applies only to under tenants and raiyats of whose possession there can be no doubt Dulli Chand *v* Meher Chand Sahoo 8 W R. 138

6 —— *Bengal Act VI of 1862 s 4—Set off—Deposit of arrears of rent*—In a suit for rent where defendant claimed credit for a sum which he had deposited under the provisions of s 4 Bengal Act VI of 1862 in the Deputy Collectorate of the subdivision within which plaintiff s mal kacheri was situated giving notice to plaintiff under s 5—*Held* that defendant was entitled to a set-off Grish Chunder Sen *v* Eastern Bengal Jute Manufacturing Company 10 W R. 492

7 —— *Bengal Act VI of 1862 s 4—Deposit of arrears of rent—Omission to tender*—A party is not entitled to benefit from a deposit under Act VI (Bengal) of 1862 if it was paid in without a tender to and refusal by the opposite party Kristo Protibar *v* Alladinee Dassee [15 W R 4

1. —— **s 47 (Beng Act VI of 1862 s 5) and s 31**—*Notice of deposit on account of rent—Form of notice*—The omission of the words "you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date otherwise your claim will be for ever barred" from the notice referred to in s 47 when a deposit is made under s 31 Act VIII of 1869 was held fatal to the defendant s claim to the benefit of his having paid his rent into the Collectorate Kanchun Malla Dossia *v* Rajendro Chunder Roy Chowdhry 18 W R. 126

2. —— *Bengal Act VI of 1862 s 5—Limitation—Suit for accrued rent*—S 5 Bengal Act VI of 1862 refers to deposits by tenants of the rent which they consider to be the full amount of rent due from them and s 6 refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under s 5 may be brought not to suits for rent at an enhanced rate after notice Ahmed Hossein *v* Keramut [8 W R. 353

—— **s 52 (Act X of 1859 s 78)**

See Landlord and Tenant—Ejectment—Generally I L R 14 Calc, 33

See Receiver I L R 11 Calc 496

1. —— *Reversed Meaning of*—The word "reversed" in Bengal Act VIII of 1869 ss 52 and 54 means reversed in respect of that part of the arrears which is contested in the Appellate Court Pattary Sircar *v* Surno Moyee [24 W R 185

2 —— *Act X of 1859 s 78—Suit for cancellation of lease—Condition for forfeiture*—S 78 Act X of 1859 applies to all cases of suits for the ejectment of a raiyat or the cancelment of a lease for non payment of rent whether such ejectment or cancelment be sought under the provision of ss 21 and 22 respectively or under an express stipulation in that behalf contained in the engagement between the parties Jan Ali Chowdhury *v* Nittyanund Bose

[B L R. Sup Vol, 972 10 W R F B 12

3 —— *Act X of 1859 s 78—Ejectment for non payment of rent*—S 78 of Act X of 1859 authorizes the joinder of a claim for rent in an ejectment for non payment of rent *Held* that the section does not empower a landlord to eject his tenant for non payment of rent due in the middle of the Bengali year but that an ejectment for such default is maintainable only for arrears due at the end of the year under s 21 Savi *v* Chand Sickdar [Marsh. 348 2 Hay 438

Shiram Biswas *v* Juggernath Doss

[1 Ind. Jur N S 187 5 W R Act X, 45

4 —— *Act X of 1859 s 78—Breach of condition for forfeiture*—Where in a perpetual lease there was a condition that on default being made in payment of a certain number of instalments of rent the lease should be void—*Held* that in a suit under cl 5 s 23 of Act X of 1859 for cancellation of the lease on account of a breach of the condition the lessee was entitled to the benefit of s 78 even though the defence set up was false in fact Duli Chand *v* Meher Chand Sahu [12 B L R P C 439

Affirming decision of High Court in Dulli Chand *v* Meher Chand Sahoo 8 W R. 138

See Ameer Koolee Khan *v* Pussick Lall Singh 8 W R., 495

5 —— *Act X of 1859 s 78—Suit for ejectment of raiyat for non payment of rent*—The provisions of the last clause of s 78 Act X of 1859 apply to every suit in which ejectment of a raiyat is sought on the ground that he has failed to pay rents Mahomed Hossein Khan *v* Khudiroo Fakeer 1 N W 44 Ed. 1873 41

6 —— *Act X of 1859 s 78 and s 22—Suit for ejectment after realising arrears*—

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

A landlord cannot sue for cancelment of lease and ejectment under s 22 Act X of 1859 after he has sued for and realized the arrears of rent due WOOMESH CHUNDER CHATTERJEE v KUMUROODEEN LUSKUR 7 W R 20

7 ——— *Act X of 1859 s 78—Receipt of rent after decree for ejectment* —A landlord can not execute his decree for ejectment obtained under s 78 Act X of 1859 if he has accepted the rent from the tenant NUBO KISHEN MOOKERJEE v HURISH CHUNDER BANERJEE 7 W R 142

8 ——— *Act X of 1859 s 78—Cancelment of lease—Ejectment* —S 78 Act X of 1859 applies equally whether the raiyat s liability to be ejected arises under s 21 of that Act or under special stipulation in the contract between him and his landlord MAHOMED HOSSEIN v BOODHUN SINGH *alias* ROOPNARAIN SINGH 7 W R 374

9 ——— *Act X of 1859 s 78—Forfeiture for default in payment of rent* —Plaintiff sued defendant under cl 5 s 23 Act X of 1859 for direct or khas possession of a farm (for which the latter had paid a bonus) stating that the contract between them was that on default in payment of the *farming rent* as per kistbundi a suit was to be instituted for the arrear and in execution of the decree the lease was to be forfeited and the plaintiff the lessor entitled to enter upon khas possession unless the amount was paid within 15 days It was further urged that defendants the lessees had defaulted that plaintiff had obtained decrees and that defendants having failed to pay within fifteen days had violated the *lease* and were liable to be ejected. *Held* that the terms of the contract were in strict accordance with the provisions of s 78 Act X of 1859 and the plaintiff ought to have brought his suit under that section and obtained a decree for ejectment From the date of such decree specifying the amount of arrear the lessees would have fifteen days for payment RUGHOO MOHINEE DOSSEE v KASHEENATH ROY CHOWDHRY KASHEENATH ROY CHOWDHRY v SABITREE SOONDEREE DOSSIA 10 W R 156

10 ——— *Act X of 1859 s 78 and s 22—Erroneous decree Effect of* —*Held* by NORMAN J that a Deputy Collector's decree for rent cancelling a mokurari tenure with *reference to* s 22 Act X of 1859 as not creating a permanent or transferable interest though erroneous cannot be treated as a nullity or as passed without jurisdiction The tenure however is not cancelled as long as the decree is not executed. LALLA SHAM SOONDUR v SOORAJ LALL 13 W R 441

11 ——— *Act X of 1859 s 78—Failure to rely on s 78* —Where a judgment debtor fails to invoke the protection of s 78 Act X of 1859 against a decree-holder he cannot afterwards in special appeal claim the fifteen days time allowed under that section CHOONEE MUNDUR v CHOONEE LALL DASS 14 W R 178

12 ——— *Act X of 1859 s 78—Decree for ejectment—Effect of on mortgagee—Suit to question its validity* —Where in a suit for arrears of rent of a transferable tenure to which a person claiming as mortgagee was no party a decree for ejectment under s 78 Act X of 1859 was made instead of a decree for sale —*Held* that the decree for ejectment could not confer upon the decree holder (the purchaser in execution of a decree against the mortgagor) the right to avoid the mortgage by the ejectment of the mortgagor and was no bar under s 2 Act VIII of 1859 to a suit by the mortgagee to question the validity of that decree, and to show that the Collector had no power under Act X of 1859 to make a decree for ejectment TIRBHOBUN SINGH v JHONO LAL 18 W R 206

13 ——— *Act X of 1859, s 78—Term of grace—Condition in lease* —The fifteen days grace allowed to a lessee prior to ejectment cannot be negatived by any condition in the lease MADHUB CHUNDER ADIT CHOWDHRY v RAM KALOO BAPAREE 16 W R., 151

14 ——— *Act X of 1859 s 78—Suit for ejectment of raiyat and for arrears of rent—Person paying rent in position of subordinate proprietor*—In a suit under s 78 Act X of 1859 to eject the defendant from certain land and to recover arrears of rent the defendant was in the habit of receiving the rents of his tenants and was bound only to pay a certain sum on account of Government revenue and village expenses He was also competent to sell or mortgage his rights *Held* that he was not a tenant but a subordinate proprietor and that therefore the suit could not be brought under the above section BATOOL BEBEE v JAGUT NARAIN (4 N W 172

15 ——— *Act X of 1859 s 78—Execution of decree for arrears of rent against purchaser at an execution sale* —A zamindar in execution of a decree sold the rights and interests of his tenant He subsequently ejected the purchaser at that sale under a decree (dating prior to the above sale) for arrears of rent and ejectment under s 78 Act X of 1859 which latter decree became complete on the expiry of fifteen days without deposit of the arrears due *Held* that until the purchaser adopted means to have his name registered in the zamindar's sherista, the latter was not bound to give him notice to pay the arrears due on the tenure which he purchased before proceeding to give effect to the decree BHUBO TARINEE DOSSIA v PROSONOMOYEE DOSSIA 10 W R., 304

Reversed on Review in PROSUNNOMOYEE DOSSIA v BHUBO TARINEE DOSSIA 10 W R., 494

16 ——— *Act X of 1859 s 78—Cancelment of lease for breach of stipulation in payment of rent* —The property in suit had been sub-let to defendant on the stipulation that if the rent was in arrear for three kists the lease would be liable to cancelment Plaintiff sued to eject the lessee on the allegation that the lease was forfeited. *Held* that as the only ground given for cancelment was non payment of arrears of rent the case fell under s 78 Act X of 1859 and as the amount due had been

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

paid into Court defendant was entitled to the protection afforded by the latter portion of that section KUMLA SAHOY v RAMBUTTUN NEOGY

[11 W R. 201

17 ———— *Act X of 1859 s 78—Ejectment for forfeiture of lease by breach of its conditions—Suit for cancelment of lease* —*M* granted a lease of certain lands to *P* for a term of thirteen years on the 20th of November 1870 One of the conditions of the lease was that rent was to be paid harvest by harvest otherwise the lessee would be liable to ejectment On the 12th of September 1873 *M* obtained a decree against *R* for arrears of rent which became due in May On the day following *M* instituted a suit under cl 5 s. 23 Act X of 1859 for the cancelment of the lease and the ejectment of *R* on account of the non payment of rent when due according to the terms of the lease *R* paid *into Court the amount of the arrear on the* 18th of September *i e* within fifteen days from the date of the decree and in the course of the suit under s. 23 cl 5 In special appeal the suit was dismissed it being held that the circumstances of the case brought it within the operation of the provisions of ss 51 and 78 of Act X of 1859 which were applicable in deciding it RAMDYAL v MUSHTAK AHMAD 6 N W 326

18 ———— *Act X of 1859 s 78—Modification of decree in review—Date from which time for payment runs* —A decree in a suit for ejectment of a raiyat for non payment of rent was modified upon review by reducing the amount of arrears awarded to the plaintiff *Held* that the amended decree was the final decree in the suit and that the raiyat was entitled under s 78 Act X of 1859 to fifteen days from its date for payment of the arrears with costs and interests RADHAMOHUN MUNDLE v BUCKSHEE BEGUM

[Marsh. 471 2 Hay 595

19 ———— *Act X of 1859 s 78—Suit for ejectment—Stay of execution* —The latter part of Act X of 1859 s 78 which enacts that in all cases of suits for the ejectment of a raiyat or cancelment of a lease the decree shall specify the amount of arrears and if such amount together with interest and cost of suit be paid into Court within fifteen days from the date of the decree execution shall be stayed, applies not only to suits for ejectment of the raiyat or cancelment of the lease on account of the non payment of arrears of rent but to all suits for ejectment brought by the lessor on account of a breach of the conditions of his lease by the defendant FITZPATRICK v GOWAN

[1 Ind. Jur N S 420 6 W R. Act X 64

20 ———— *Act X of 1859 s 78—Omission to specify previous unsatisfied decree*—Where in a suit for the rent of the current year and for ejectment under s 78 Act X of 1859 supported by a previous unsatisfied decree a decree was passed for the rent of the current year without including the amount claimed under the previous unsatisfied decree and the plaintiff neither applied to the lower Court to amend its decree nor appealed against that part of it —*Held* that the defendant having paid the amount of arrear specified in the decree had saved himself from ejectment SAVI v MOHESH CHUNDER BOSE W R 1864 Act X 29

21 ———— *Act X of 1859 s 78—Computation of time*—In calculating the fifteen days allowed for payment of arrears of rent by s 78 of Act X of 1859 the day on which the decree was passed should be excluded from the computation SHEOPALAUL SINGH v NABEE ASHRUF KHAN

[3 N W 342

22 ———— *Act X of 1859 s 78—Stay of execution* —It is not necessary to declare in a decree given under s 78 of Act X of 1859 that fifteen days time should be allowed to the tenant But the decree must specify the amount of the arrear and payment of this with costs and interest *as decree within fifteen days ipso facto stays* execution SEETUL SINGH v THAKOOR TEWARY

[1 N W Part 2 p 31 Ed. 1873 89

ALI HOSSEIN v NANDAH KHAN 2 N W 62

23 ———— *Act X of 1859 s 78—Interest on deposit* —When a tenant is sued for arrears of rent even though he should deposit the rent in Court during the pendency of the suit he is still liable to have the decree passed against him as the arrear was admittedly due when the suit was brought Interest to date of deposit in Court and costs of suit being paid within fifteen days execution would be avoided SHEO NATH SINGH v RAM THUL RAE 1 N W Part 2 p 39 Ed 1873 97

24 ———— *Act X of 1859 s 78—Stay of execution—Private agreements Suits to enforce* —S 78 of Act X of 1859 contains a positive direction of law by which the Revenue Courts are required in all suits for ejectment for non payment of rent clearly to specify in the decree the amount of rent default in payment of which has conferred a right of re-entry on the landlord and to stay execution of their decrees if the amount found due with interest and costs be paid into Court within the time therein specified. This overrides all private agreements to the contrary or rather renders their enforcement by suit in the Revenue Court impossible LULLOO SINGH v THAKOOR PERSHAD

[2 N W 249

25 ———— *Act X of 1859 s 78—Stay of execution of decree* —The Court has discretion to stay execution on other grounds than those on which it is bound to do so under s 52 of Bengal Act VIII of 1869 IAO BANSERAM v RAMNATH SHAH 10 B L.R. Ap 2 18 W R. 412

NUBOKISTO MOOKERJEE v PAMESSUR GOOPTO

[18 W R. 412 note

26 ———— *Act X of 1859 s 78—Stay of execution—Payment of arrears by purchaser* —Execution may be stayed on a decree for arrears of rent by payment of the amount under s. 78 Act X of 1859 by a purchaser from the tenant of his

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

2 ————— *Act X of 1859 s 92—Judgment—Value of stamps*—In considering whether a judgment under this section is under R500 or not the value of the stamps necessary in taking out execution is to be included in the judgment on the principle of ss 187 and 188 of Act VIII of 1859 CAMPBELL v ABDOOL HUQ 6 W R Act X 8

3 ————— *Calculation of amount of judgment—Interest*—In ascertaining the amount of a judgment with a view to the applicability or otherwise of Bengal Act VIII of 1869 s 58 the interest which accrues subsequently to the date of the decree is not to be included. BRINDABUN DUTT v BEHAREE MOHUN SEN 24 W R, 442

4 ————— *Division of joint decree to bring case within s 58*—A joint decree against two defendants for a sum exceeding R500 cannot be divided so as to fall within the scope of Bengal Act VIII of 1869 s 58 SYEFOOLLAH KHAN v FORBES [25 W R 55

5 ————— *Execution of decree—Attachment—Limitation*—A decree in a suit instituted under Bengal Act VIII of 1869 was passed on the 13th of March 1873 Application for execution was made on the 18th of February 1876 but no process of attachment or sale was issued until the 2nd of April 1876 *Held* that the attachment was valid and not void as barred by limitation under s 58 Bengal Act VIII of 1869 *Heera Lall Seal* v *Poran Matteah* 6 *W R Act X 84 Rhedoy Krishna Ghose* v *Koylash Chunder Bose 4 B L R F B 82 13 W R F B 3* and *Lala Ram Sahoy* v *Dodraj Mahto 20 W R 395* cited DEODHARY SINGH v DOWLUT RAM 3 C L R 189

6 ————— *Delay in executing decree—Limitation*—The holder of a rent decree having made application for attachment and sale within three years from the 3rd September 1868 the date of decree attachment was effected and an order passed fixing 21st November 1871 as the date for sale On consent of parties and part payment postponement of sale was allowed for three months After the lapse of this period the judgment debtor delayed two months longer and then applied for sale The application was refused. *Held* that the judgment of the lower Court was right proceedings having been barred by Bengal Act VIII of 1869 s 58 *Quære*—Had the Court any power on consent of parties or otherwise to extend the period of time prescribed by the statute of limitation? LALLA RAM SAHOY v DODRAJ MAHTO 20 W R 395

7 ————— *Release of property from attachment—Decree in suit to set aside order releasing it*—Where property has been released from attachment in execution of a decree and in a subsequent suit brought for the purpose a decree is obtained declaring it liable to be attached and sold in execution of the former decree the effect of the decree in the latter suit is to set aside the order which released the property from attachment thus leaving matters as they were before that order was passed, and therefore it being unnecessary to issue further process of execution the execution proceedings are not barred under s. 58 of Bengal Act VIII of 1869 WOOMA CHURN CHATTERJEE v KADAMBINI DABEE [3 C L. R., 146

8 ————— *Failure to carry out order for execution—Limitation*—On a decree for rent dated 18th July 1870 execution process was taken out on 21st April 1873 On 24th October following an order was passed for talabana to be deposited within seven days but before that time expired (*i e* on 27th October) the case was struck off by an order which was not appealed against The next execution process was taken out on the 6th December 1873 *Held* that as the last process being for a set-off was not of the same nature as the first which was for attachment of property it could not be considered to be a carrying out of the former and as the order of 27th October 1873 remained uncancelled the decree was barred under the Rent Law s 58 AKRAM SHEKH v LALJEE SINGH 24 W R. 16

9 ————— *Decree payable by instalments—Limitation*—*Per* GARTH *C J* and MORRIS *J* (PRINSEP *J* dissenting)—The words from the date of such judgment in s 58 of Bengal Act VIII of 1869 should be read as if they were from the date when the rent is adjudged to be payable *Per* PRINSEP *J*—The date of such judgment in s 58 of Bengal Act VIII of 1869 means the date on which the judgment was delivered GUREEBULLAH SIRKAR v MOHUN LALL SHAHA [I. L R 7 Calc, 127 8 C L R 409

10 ————— *Landlord and tenant—Rent decree—Execution of decree—Limitation*—Where an application for the transfer of a rent decree for execution has been made and granted by the Court which passed the decree within three years from the date of the decree but no application for execution is made to the Court to which the decree has been transferred within three years from the date of the decree the execution of the decree will be barred by limitation under the provisions of Bengal Act VIII of 1869 s. 58 BHOLANATH ROY v NURENDRO NATH ROY I. L R. 9 Calc 380 [12 C L R 58

11. ————— *Landlord and tenant—Execution of decree—Instalments—Limitation*—On the 10th of July 1878 a rent decree was passed in favour of certain parties for the sum of R108 payable in two equal instalments on the 4th of June 1879 and the 30th of October 1879 respectively On the 18th July 1881 the decree holders applied for execution of the decree *Held* by the majority of the Full Bench (GARTH *C J* and MITTER *J* dissenting) that the application was barred by limitation under the provisions of s 58 Bengal Act VIII of 1869 *Gureebullah Sircar* v *Mohun Lall Shaha, I L R 7 Calc 127 8 C L R 409* dissented from. MAMTAZUL HUQ v NIRBHAI SINGH [I L R. 9 Calc 711 12 C L. R. 318

12. ————— *Application for execution of decree for arrears of rent—Proper application—Civil Procedure Code (Act XIV of 1882) ss 235*

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

237 245—Limitation—Within the period of three years from the date of a decree for arrears of rent under R500 the judgment debtor applied for execution of his decree without giving a list of the properties which he sought to attach but stating that a list was filed with a previous application and praying that that application might be put up with the present one Subsequently upon an order made by the Court a fresh list was filed after the period of a year had elapsed. *Held* that though the application was not in strict accordance with the provisions of *s 237 of the Civil Procedure Code it was still an* application under s 235 and that execution of the decree was not barred, but that it must be limited to the property specified in the previous application *Mahomed v Abedoollah 12 C L R 279* followed HURRY CHURN BOSE v SUBAYDAR SHEIKH [I L R 12 Calc 161

13 ——— *Application for execution of decree for arrears of rent—Circular Order 10th July 1874—Limitation*—The words no process of execution of any description whatsoever shall be issued on a judgment in any suit after the lapse of three years in s. 58 of Bengal Act VIII of 1869 mean that execution shall not issue unless a proper application for execution is made within three years from the date of the judgment Therefore where on an application made on 5th July 1875 for execution of a decree for arrears of rent obtained on the 31st January 1873 a warrant for the arrest of the judgment debtors was issued but not executed a *subsequent application for execution of the same decree* made on 17th March 1876 was held not to be barred. The law as laid down in *Bhdoy Kristna Ghose v Kailas Chandra Bose 4 B L R F B 82 13 W R F B 3* is not affected by the Circular Order No 18 dated 10th July 1874. GOLOKEMONEY DABIA v MOHESH CHUNDER MOSA [I L R 3 Calc 547 1 C L R 149

14. ——— *Execution of decree—Delay and laches—Costs—Limitation*—In a suit for arrears of rent under Bengal Act VIII of 1869 a decree was obtained on the 30th June 1876 for a sum which with costs amounted to less than R500 Application for execution was made in December 1877 against property other than that for which the rent was due but was in the first Court opposed successfully by the judgment debtor on the ground that the under tenure should first be proceeded against though such under tenure had already been sold away in execution of another decree and the execution proceeding was struck on the 15th March 1878 and the property released from attachment The judgment creditor appealed and was successful both in the lower Appellate Court and the High Court the latter decision being dated 26th February 1879 The costs awarded him in these proceedings if added to the amount of the decree would amount to a sum of more than R500 The next application for execution was made on 19th August 1879 *Held* that the costs of the appeals in the execution proceedings should not be added to the decree and therefore the decree being for less than R500 the provisions of s 58 Bengal Act VIII of 1869 applied to it. *Held* also that the attachment having been removed in March 1878 the execution of the decree was barred under that section. KADUMBINI DABYA v KOYLASH CHUNDER PAL CHOWDHRY [I L R 6 Calc 554 8 C L R 19

15 ——— *Execution of decree—Suit for rent not brought under Bengal Act VIII of 1869—Decree of Court of Foreign State—Civil Procedure Code 1882 s 434—Limitation*—The law of limitation applicable to the execution of a decree of the Civil Court of Cooch Behar for rent for a sum under R 00 in a suit not brought under the Rent Act is by s 434 of the Civil Procedure Code which gives the Courts in British India power to execute decrees passed by the Courts of a Foreign State s 58 of Bengal Act VIII of 1869 That section is not confined to suits brought under that Act IN THE MATTER OF THE PETITION OF HUKUM CHAND ASWAL. HUKUM CHAND ASWAL v GYANENDER CHUNDER LAHIRI I L R 14 Calc 570

Reviewing S C I L R 13 Calc, 95

——— **ss 59 60 (Bengal Act VIII of 1865 ss 4 and 5)**

See SALE FOR ARREARS OF RENT—INCUMBRANCES

See SALE FOR ARREARS OF RENT—PORTION OF UNDER TENURE SALE OF

See SALE FOR ARREARS OF RENT—UNDER TENURE SALE OF

——— **ss 59 60 66**

See ONUS OF PROOF—SALE FOR ARREARS OF RENT I L R 13 Calc 1

——— **ss 59 61 (Act X of 1859 s 105)**

See EXECUTION OF DECREE—DECREES UNDER RENT LAW
[I L R 7 Calc. 748
I L R 8 Calc. 675
I L R 10 Calc 547

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

See CASES UNDER SALE FOR ARREARS OF RENT—UNDER TENURE SALE OF

——— **ss 59 61 65**

See EXECUTION OF DECREE—DECREES UNDER RENT LAW I L R 14 Calc. 14

——— **s 62 (Bengal Act VIII of 1865 s. 6)**

See SET OFF—GENERAL CASES [2 C L R, 414

——— **s 63 (Act X of 1859 s 106)**

See RIGHT OF SUIT—ORDERS SUITS TO SET ASIDE 3 C L R. 146

1. ——— *Act X of 1859 s 106—Sale of under-tenure—Suit to establish proprietary right*—Ss 106 and 107 Act X of 1859 apply only to cases in which the existence of the under tenure

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

and the decree holder's right as landlord are admitted not where they are denied and an adverse proprietary title is set up by the claimant as owner of the land The remedy open to the owner of the land in such a case is under s 77 before the decree is made but after he allows it to be made he cannot have it set aside in execution GOLAM CHUNDER DEY *v* NUDDIAR CHAND ADHEEKAREE 16 W R 1

2 ———— *Act X of 1859 s 106—Suit by purchaser for possession of under tenure*—A suit by an auction purchaser to obtain khas possession of an under tenure which had been sold under Bengal Act VIII of 1865 was dismissed on the ground that the suit in which the zamindar had obtained the decree was a fraudulent one and the purchaser knew that it had been against the wrong party In special appeal Act X of 1859 s 106 was pleaded in justification of the zamindar *Held* that the zamindar could not bring such a suit as he had brought against a person other than the one whom he knew to be the proprietor of the under tenure and from whom for a series of years he had been receiving rent NOBIN CHUNDER SEN CHOWDHRY *v* NOBIN CHUNDER CHUCKERBUTTY 22 W R 46

WOOMA CHURN CHATTERJEE *v* KADOMBINI DABEE 3 C L R 146

———— s 64 (Act X of 1859 s 108)

See SALE FOR ARREARS OF RENT—PORTION OF UNDER TENURE SALE OF

[15 W R 6 524
22 W R 67 414
24 W R 313
2 C L R 325
I L R 12 Calc, 464

———— s 66 (Bengal Act VIII of 1865, s 16)

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES

———— s 68 (Act X of 1859 s 112)

See DISTRESS 4 N W 76

———— ss 71 74 (Act X of 1859, ss 115, 118)

See DISTRESS

[1 N W Pt 3 p 53 Ed 1873 108

———— ss 72 74 76 (Act X of 1859 ss 116 118 120)

See CRIMINAL TRESPASS

[I L R 7 Calc 26

———— s 80 (Act X of 1859 s 124)

See DISTRESS 21 W R 37

———— s 98 (Act X of 1859 s 142)

See DISTRESS 0 W R 162
[W R, 1864 Act X 77

See WRONGFUL DISTRAINT

[3 B L R A C 261
10 W R 70
5 W R Act X, 68
8 W R 291

———— *Suit for value of crops—Distraint—Jurisdiction—Small Cause Court*—The plaintiff made a complaint to the Magistrate against the defendant his landlord for forcibly carrying away his crops whereupon the defendant was tried convicted of theft and punished The plaintiff then instituted a suit against the defendant in the Munsif's Court apparently under s 95 of Bengal Act VIII of 1869 and obtained a decree declaring the distraint to be illegal and directing the crops to be given up to him The defendant offered to give up a smaller quantity than was mentioned in the decree The plaintiff refused to take the same and brought a suit in the Small Cause Court to recover the value of the quantity he had claimed before the Munsif and something additional *Held* that the Small Cause Court had no jurisdiction and that the suit ought to have been brought under s 98 of Bengal Act VIII of 1869 HYDER ALI *v* JAFAR ALI

[I L R, 1 Calc 183 24 W R, 222

———— s 99 (Act X of 1859 s 143)

See WRONGFUL DISTRAINT

[3 B L R, A C 261
5 W R Act X, 67 68
9 W R 162
15 W R, 543

———— s 100 (Act X of 1859, s 144)—*Cause of action—Suit for wrongful distraint—Limitation*—The time limited by Act X of 1859 s 144 for suing in respect of distraints for rent namely three months from the date of the occurrence of the cause of action was to be reckoned in the case of a suit for a wrongful distress afterwards abandoned from the abandonment of the distress and not merely from the date of the original seizure THUKREE ROY *v* HEERAMUN SINGH

[Marsh. 470 2 Hay 597

TARINEE CHURN BOSE *v* SHUMBHOONATH PANDAY 3 W R Act X, 139

———— s 101 (Act X of 1859 s 145).

See PENAL CODE s 206

[2 B L R S N 4 10 W R, Cr 46

See WRONGFUL DISTRAINT

[20 W R 445

———— *Act X of 1859 ss 145 and 160—Complaint—Suit*—A complaint under s 145 of Act X of 1859 is not a suit and did not fall within the description of the suits in which, under s 160 an appeal was given to the Zilla Judge IN THE MATTER OF THE PETITION OF AMANATULLA

[6 B L R 569 15 W R, 136

1 ———— s 102—*Suit—Appeal in execution proceedings*—The word suit in Bengal Act VIII of 1869 s 10 is intended to cover all proceedings prior to decree and subsequent ones in execution KRISHTO COOMAR CHUCKERBUTTY *v* ANUND COOMAR DUTT 19 W R 307

KEDARNATH BISWAS *v* HURO PERSHAD ROY CHOWDHRY 23 W R 207

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

2 ———— *Intention of section—Effect of decree under*—S 102 of Bengal Act VIII of 1869 was enacted in order to protect parties in the position of raiyat-defendants and to prevent their being dragged up to the High Court in cases where the decree or demand is under R100 In such cases the decree is intended to have the same effect as that of a Small Cause Court DOORGA NARAIN SEN v RAM LALL CHHUTAR

[I. L. R. 7 Calc 330

S C DURGA NARAIN MISSER v GOBURDHUN GHOSE 9 C L R 86

3 ———— *Special appeal—Power of Bengal Legislature*—Bengal Act VIII of 1869 (ss 33 34) gives jurisdiction to Civil Courts to try suits brought for any cause of action arising under that Act but it is a jurisdiction to try them according to the Code of Civil Procedure except where it is otherwise provided by the Act and s 102 modifies the effect of s 34 and provides that there shall be no special appeal in rent suits for an amount under R100 except in certain circumstances *Quære*—Has the Bengal Legislative Council power to give to the High Court any appellate jurisdiction not conferred by the Charter? POORNO CHUNDER ROY v KRISTO CHUNDER SINGH 23 W R. 171

4. ———— *Special appeal—Practice*—In a suit for arrears of rent and ejectment the right of appeal is taken away by s 102 Bengal Act VIII of 1869 only when it is shown that the amount sued for and the value of the property claimed is less than R100 Unless that fact appears either from the finding of the District Judge or elsewhere upon the proceedings the High Court has no right to draw any inference to that effect TULSI PANDAY v BUCHU LAL

[I L R 9 Calc 596 12 C L R 223

5 ———— *Special appeal—Sale in execution of decree for rent*—No appeal lies under s 102 Bengal Act VIII of 1869 from the order of a District Judge on an application connected with the sale of a tenure in execution of a decree for arrears of rent below R100 DEO COOMAREE DASSEE v GUNGADHUR DUTT 17 W R. 189

6 ———— *Special appeal*—In suits for recovery of rent below R100 a special appeal lies to the High Court from the decision in appeal by a Subordinate Judge MAHOMED MUNOOR MEA v JYBUNEE

[10 B L R Ap 29 19 W R. 200

7 ———— *Special appeal*—In a suit for arrears of rent below R100 an appeal lies to the High Court from a decree passed in appeal by an Additional Judge NOBOKISTO KOONDOO v MAHOMED SHEIKH

[10 B L R Ap 30 19 W R. 202

8 ———— *Special appeal—Suit for rent under R100—Civil Procedure Code 1859 s 372—Held* by the Court (JACKSON J dissenting) that no appeal lies to the High Court from the decision of a District Judge in a suit for rent under R100 when no question of right to enhance or vary the rent of a raiyat or tenant nor any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto has been determined by the judgment LUNGE SUR KOOER v SOOKHA OJHA RADHAY KISHAN v KALI MISSER I L R. 3 Calc, 151

LAKHESSUR KOER v SOOKHA OJHA

[1 C L R 39

9 ———— *Special appeal — Suit for ejectment and rent under R100*—An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than R100 Nor can an application made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by s 52 of Bengal Act VIII of 1869 confer such right of appeal PARBUTTY CHURN SEN v MONDARI

[I. L R 5 Calc 594 5 C L R 513

10 ———— *Special appeal — District Judge—Subordinate Judge—Act XVI of 1868—Bengal Civil Courts Act (VI of 1871)*—The words District Judge in s 102 of Bengal Act VIII of 1869 do not include a Subordinate Judge to whom under Act XVI of 1868 or Act VI of 1871 the District Judge may make over appeals filed in his Court DOYAL CHAND SAHOY v NABIN CHANDRA ADHIKARI 8 B L. R. 180 16 W R. 235

11 ———— *Special appeal — Additional Judge—District Judge—Bengal Civil Courts Act (VI of 1871)—Appeal—Held* (JACKSON J dissenting) that an Additional Judge invested with the powers given to him by Act VI of 1871 is a District Judge within the meaning of s 102 of Bengal Act VIII of 1869 and no appeal lies from his decision in suits of the nature described in that section BROJO MISSER v AHLADI MISRAN

[13 B L R. F B 376 21 W R. 320

ISHAN CHUNDER GHOSE v NOBIN PAL

[13 B L. R. 377 note

12 ———— *Special appeal—Right to enhance or vary the rent*—The question in a suit for arrears of rent as to a right to convert the money rent into a rent payable in kind is a question which if determined renders the suit appealable ELAHEE BUKSH v JAFFUR ALY

[1 N W 109 Ed. 1873 157

13 ———— *Special appeal—Right to enhance or vary rent*—A special appeal was held to lie to the High Court under s 102 Bengal Act VIII of 1869 in a suit for rent below R100 in which the question of right to enhance had been determined WATSON & Co v RAM DHUN GHOSE

[17 W R. 495

14 ———— *Special appeal—Question of title*—In this case the Judge dismissed plaintiff's suit on the ground that no notice had been served on defendant the nature of the suit being not one for enhancement but to recover rent at rates previously

BENGAL RENT ACT, VIII OF 1869 (X OF 1859)—*continued*

settled and no notice being therefore required. The value of the suit was under R100 and the High Court held that the Judge had not decided any right to vary or enhance the rent and therefore they could not interfere there being no appeal under Bengal Act VIII of 1869 s 102 GOLUCK CHUNDER DUTT *v* MEAH RAJA MIJEE 17 W R. 119

15 ———— *Special appeal—Question between parties having conflicting claims* —In a suit for rent less than R100 the decision turned upon whether in a former suit against the plaintiff by a third party a decree h d been recovered for possession of a portion f the land now in dispute *Held* that as neither the land nor the re t of such portion was claimed by the defendant the question as to title was not decided between parties having conflicting claims thereto consequently there was no right of appeal REEDOYNATH DOORIPA *v* PUDDO LOCHUN CHUCKERBUTTY 22 W R. 205

16 ———— *Special appeal—Question of title* —The issue whether or not there has been a binding enhancement of rent and whether or not the tenant has paid at the enhanced rate involves no question of title or of right to enhance or vary the rent and the appeal in such a suit properly lies to the Collector BAHADUR SINGH *v* HURA 3 N W 73

AGER SINGH *v* BOOJHAWUN 4 N W , 61

17 ———— *Special appeal—Decision as to varying rent* —In a suit for arrears of rent on the basis of a shironamah where the raiyat denied that he had executed that document and produced evidence to show that the rates mentioned in it were not correct —*Held* that there was no question of right to vary the rent and that the case therefore did not come under Bengal Act VIII of 1869 s 102 NITRESSUR SINGH *v* JHOTEE TELY 23 W R 343

18 ———— *Special appeal—Decision as to varying rent* —Where the amount of jumma is not disputed but there is a question as to whether it is payable by instalments or in a lump sum the decision cannot be said to involve a question of right to enhance or vary the rent PEARI MOHUN MOOKHOPADHYA *v* MADHUB CHUNDER BABOO [23 W R. 385

19 ———— *Special appeal—Question of fact—Question of nature of rent* —In a suit for arrears of rent where the question was whether the defendants were holding on payment of nugdi rents or as bhouli tenants —*Held* that the decision was a finding of fact *Held* further that as the suit was for an am unt under R100 and as no question to vary the rate was determined nor any question of title as between parties having c nflicting claims thereto there was n special appeal SHUMBUL SINGH *v* TOONDUN SINGH 24 W R 469

20 ———— *Special appeal—"Right to vary r nt"* —A suit f r rent under R100 is not taken it f the purview of Bengal Act VIII of 1869 s 102 by the fact of the rate of rent having been varied by the decision of the Court unless the Judge d termined the right to vary the rent WATSON & Co *v* MOHENDRO NATH PAUL 23 W R. 430

SREENATH ROY *v* AINOODDEEN SHAHA [25 W R. 103

21. ———— *Special appeal—Question as to whether rent has varied* —Bengal Act VIII of 1869 s 102 does not apply where the point decided is simply whether the rent fixed by a previous decision has been subsequently altered and a new arrangement come to NURUBDESSUR PERSHAD ROY *v* JUNGOLE [24 W R. 49

22 ———— *Special appeal—Question as to variation of rent* —In a suit for arrears of rent under R100 in which the question was whether the landlord had the right to raise and had raised the rent and the Judge decided that there had been no alteration in the rent —*Held* no appeal lay to the High Court ROY JUNG BAHADOOR *v* JUGDEO ROY [25 W R. 247

23 ———— *Special appeal—Question of title* —Where the Judge practically came to no determination at all on the erroneous supposition that a review had been wrongly admitted by the Munsif a special appeal was held to be not barred GOOR DYAL ROY *v* DEKA NOONYA 23 W R. 446

24 ———— *Special appeal—Co sharer—Suit for rent* —The plaintiff one of several co-sharers of a talukh sued to recover her share of rent making her co sharers who resisted her claim defendants The first Court raised and tried questions of title between the plaintiff her co-sharers and the raiyat and decided in favour of the plaintiff The lower Appellate Court without expressing any opinion on the rights of the parties dismissed the suit on the ground that it was not maintainable On special appeal it was contended that no appeal would lie as the amount of the claim was less than R100 and no question of title was determined by the judgment; but this objection was overruled on the ground that the decree of the lower Appellate Court dismissing the suit had the effect of deciding the question of title against the plaintiff On appeal under cl 15 of the Letters Patent —*Held* that the judgment rather than the decree is to be looked at in applying s. 10 Bengal Act VIII of 1869 No appeal lay from the judgment of the lower Appellate Court inasmuch as that judgment showed not only that no questi n of title was determined but that the Judge did n t even consider it KARIM SHEIKH *v* MUKHODA SOONDERY DASSEE 15 B L R 111 23 W R. 268

Reversing decision in MOKHODA SOONDEREE DOSSEE *v* KUREEM SHEIKH 23 W R. 11

25 ———— *Special appeal—Question of title* —Where in a suit under Bengal Act VIII of 1869 s 82 to contest the demand of the distrainer a question as to area was raised merely as subordinate to the issue as to the amount of rent due with ut any dispute as to the relationship of landlord and tenant the case was held n t to come within the provisi ns of s 102 HURO PERSHAD CHUCKERBUTTY *v* SREEDAM CHUNDER CHOWDHRY 20 W R. 15

HURISH CHUNDER CHUCKERBUTTY *v* HUREEE BEWAH 20 W R. 16

BENGAL RENT ACT VIII OF 1869 (X OF 1859) —*continued*

26 ——— *Special appeal—Question of title* —Where in a suit for rent the Judge simply upholds as against an intervenor the possession of the party found to have succeeded on the death of the last owner to the quiet possession of his estate under a show of title and gives him a decree for rent he does not determine a question of title so as to admit an appeal under s. 102 Bengal Act VIII of 1869 KALLY CHURN BANNERJEE *v* GOPAL CHUNDER BANERJEE [26 W R. 100

27 ——— *Special appeal—Question of title*—In a suit for rent under R50 in which no question to enhance or vary the rate was decided and in which although the first Court went into the question of title the lower Appellate Court came to no decision on the point —*Held* that the case fell within the purview of Bengal Act VIII of 1869 s 102 and no special appeal lay BHUGWAN DUTT MISSER *v* NOWNEEDH LALL 25 W R. 153

28 ——— *Special appeal—Decision on genuineness of document in order to decide as to amount of rent* —Where a suit for rent of certain years not exceeding R100 based upon a kabuliat and jummabundi was dismissed in appeal on the ground that those documents were forged and the lower Appellate Court in order to arrive at a decision as to the amount of rent due enquired into and decided upon the genuineness of the mokurari pottah set up by the defendant —*Held* that Bengal Act VIII of 1869 s 102 precluded any special appeal in the case MAHOMED TOQUE *v* FOUZDAR ROY [25 W R. 14

29 ——— *Special appeal—Question of title* —In a suit for rent in which the sum claimed was less than R100 the defendant pleaded that the plaintiff had ceased to have any interest in the land and the suit was dismissed There was no finding as between the plaintiff and any other person claiming title to the land *Held* that a special appeal to the High Court was barred by s 102 Bengal Act VIII of 1869 *Kashee Ram Doss* v *Maharanee Sham Mohinee 23 W R 227* and *Dilbur* v *Issur Chunder Roy 21 W R 36* cited and followed. DONZELLI *v* TEKAN NODAP 2 C L. R. 558

30 ——— *Special appeal—Question of title* —In a suit for ejectment valued under R100 the defendants who were sued as yearly tenants replied that their tenure was a maurasi gujasta tenure and in proof of their allegation adduced evidence which was not displaced by the plaintiffs The lower Court considered that the defendants allegation was well founded. *Held* that although the value of the suit was under R100 an appeal was not barred by the provisions of s 102 of Bengal Act VIII of 1869 as the lower Court had determined a question of law as to whether the tenure was gujasta BIJJO NATH SAHOO *v* RAMDOUR ROY 7 C L. R., 369

31. ——— *Special appeal—Question of title*—Separate suits for rent by *A* and *B* having been instituted against the tenants of certain land to which both laid claim a suit was filed by *A* to establish his title against *B* and pending that suit the rent suits which were each for a sum under R100 and which had been appealed to the District Judge were stayed The suit between *A* and *B* having been decided against *A* the District Judge dismissed his suits against the tenants *Held* on appeal that no question of title could be said to have been decided in such suits and that consequently no second appeal lay DURGA NARAIN MISSER *v* GOBURDHUN GHOSE [9 C L. R., 86

32 ——— *Special appeal—Parties having conflicting claims* —Where there was a question of title raised between the plaintiff and an intervenor and the Judge dismissed the suit for want of proof of relationship of landlord and tenant between them —*Held* that the suit being for less than R100 no special appeal lay to the High Court HURRY MOHUN MOZOOMDAR *v* DWARKANATH SEIN [18 W R 42

DILBUR *v* ISSUR CHUNDER ROY 21 W R., 36

NANKOO KOEREE *v* NUND COOMAR PAUREY [22 W R , 326

KASHEE RAM DOSS *v* SHAM MOHINEE [23 W R 227

KRIPAMOYEE DEBIA *v* DROPUDEE CHOWDHRAIN [24 W R 213

33 ——— *Special appeal—Suit for arrears of rent* —*D C S* the zamindar brought a suit against *B* a raiyat for recovery of arrears of rent valued below R100 to which *N C A* who claimed under a mokurari title was made a party under s 73 Act VIII of 1869 The Munsif passed a decree in favour of the plaintiff On appeal by *N C A* which was heard and decided by the Subordinate Judge on reference by the District Judge the decree of the first Court was reversed and the suit dismissed *Held* a special appeal lay to the High Court DAYAL CHAND SAHOY *v* NABIN CHANDRA ADHIKARI 8 B L R 180 16 W R. 235

ISWAR CHUNDRA SEN *v* BEPIN BEHARI ROY [8 B L R. 188 note 16 W R. 132

34 ——— *Special appeal—Decision of varying rent* —Where a Judge found in a rent suit that although R30-6 6 had for a great number of years been paid by the tenant R.9 15 only was paid as rent the remainder being a kind of cess or fee for testing the coin paid —*Held* that he did not determine any question which amounted to a varying of the rent of the tenant DWARKANATH SINGH ROY *v* NUBO COOMAR BOSE 20 W R. 270

35 ——— *Special appeal—Claims by plaintiff as zamindar and defendant as mortgagee to rent* —In a suit in which plaintiff claims rent as zamindar and defendant admitting his own tenancy claims it as mortgagee there cannot be said to be conflicting claims to a title to or some interest in land within the meaning of Bengal Act VIII of 1869 s 102 RAJKISHEN MOOKERJEE *v* PEAREE MOHUN MOOKERJEE 24 W R., 114

36 ——— *Special appeal—Question against intervenor* —The circumstance that a question has been determined at the hearing of the

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

settled and no notice being therefore required. The value of the suit was under R100 and the High Court held that the Judge had not decided any right to vary or enhance the rent and therefore they could not interfere there being no appeal under Bengal Act VIII of 1869 s 102 GOLUCK CHUNDER DUTT v MEAH RAJA MIJEE 17 W R., 119

15 ———— *Special appeal—Question between parties having conflicting claims* —In a suit for rent less than R100 the decision turned upon whether in a former suit against the plaintiff by a third party a decree had been recovered for possession of a portion of the land now in dispute *Held* that as neither the land nor the rent of such portion was claimed by the defendant the question as to title was not decided between parties having conflicting claims thereto consequently there was no right of appeal REEDOYNATH DOOBIPA v PUDDO LOCHUN CHUCKERBUTTY 22 W R., 205

16 ———— *Special appeal—Question of title* —The issue whether or not there has been a binding enhancement of rent and whether or not the tenant has paid at the enhanced rate involves no question of title or of right to enhance or vary the rent and the appeal in such a suit properly lies to the Collector BAHADUR SINGH v HURA 3 N W 73

AGER SINGH v BOOJHAWUN 4 N W, 61

17 ———— *Special appeal—Decision as to varying rent* —In a suit for arrears of rent on the basis of a shironamah where the raiyat denied that he had executed that document and produced evidence to show that the rates mentioned in it were not correct —*Held* that there was no question of right to vary the rent and that the case therefore did not come under Bengal Act VIII of 1869 s 102 NITRESSUR SINGH v JHOTEE TELY 23 W R. 343

18 ———— *Special appeal—Decision as to varying rent* —Where the amount of jumma is not disputed but there is a question as to whether it is payable by instalments or in a lump sum the decision cannot be said to involve a question of right to enhance or vary the rent PEARI MOHUN MOOKHOPADHYA v MADHUB CHUNDER BABOO [23 W R. 385

19 ———— *Special appeal—Question of fact—Question of nature of rent* —In a suit for arrears of rent where the question was whether the defendants were holding on payment of nugdi rents or as bhouli tenants —*Held* that the decision was a finding of fact *Held* further that as the suit was for an amount under R100 and as no question to vary the rate was determined nor any question of title as between parties having conflicting claims thereto there was no special appeal SHUMBUL SINGH v TOONDUN SINGH 24 W R 469

20 ———— *Special appeal— Right to vary rent* —A suit for rent under R100 is not taken out of the purview of Bengal Act VIII of 1869 s 102 by the fact of the rate of rent having been varied by the decision of the Court unless the Judge determined the right to vary the rent WATSON & Co v MOHENDRO NAUTH PAUL 23 W R. 436

BENGAL RENT ACT VIII OF 1869 (X OF 1859)—*continued*

SREENATH ROY v AINOODDEEN SHAHA [25 W R. 103

21 ———— *Special appeal—Question as to whether rent has varied* —Bengal Act VIII of 1869 s 102 does not apply where the point decided is simply whether the rent fixed by a previous decision has been subsequently altered and a new arrangement come to NURUBDESSUR PERSHAD ROY v JUNGOLE [24 W R 49

22 ———— *Special appeal—Question as to variation of rent* —In a suit for arrears of rent under R100 in which the question was whether the landlord had the right to raise and had raised the rent and the Judge decided that there had been no alteration in the rent —*Held* no appeal lay to the High Court LOY JUNG BAHADOOR v JUGDEO LOY [25 W R., 247

23 ———— *Special appeal—Question of title* —Where the Judge practically came to no determination at all on the erroneous supposition that a review had been wrongly admitted by the Munsif a special appeal was held to be not barred. GOOR DYAL ROY v DEKA KOONYA 22 W R. 446

24 ———— *Special appeal—Co-sharer—Suit for rent* —The plaintiff one of several co sharers of a talukh sued to recover her share of rent making her co-sharers who resisted her claim defendants The first Court raised and tried questions of title between the plaintiff her co sharers and the raiyat and decided in favour of the plaintiff The lower Appellate Court without expressing any opinion on the rights of the parties dismissed the suit on the ground that it was not maintainable On special appeal it was contended that no appeal would lie as the amount of the claim was less than R100 and no question of title was determined by the judgment but this objection was overruled on the ground that the decree of the lower Appellate Court dismissing the suit had the effect of deciding the question of title against the plaintiff On appeal under cl 15 of the Letters Patent —*Held* that the judgment rather than the decree is to be looked at in applying s 102 Bengal Act VIII of 1869 No appeal lay from the judgment of the lower Appellate Court inasmuch as that judgment showed not only that no question of title was determined but that the Judge did not even consider it KARIM SHEIKH v MUKHODA SOONDERY DASSEE 15 B L R 111 23 W R. 268

Reversing decision in MOKHODA SOONDEREE DOSSEE v KUREEM SHEIKH 23 W R. 11

25 ———— *Special appeal—Question of title* —Where in a suit under Bengal Act VIII of 1869 s 82 to contest the demand of the distrainer a question as to area was raised merely as subordinate to the issue as to the amount of rent due without any dispute as to the relationship of landlord and tenant the case was held not to come within the provisions of s 102 HURO PERSHAD CHUCKERBUTTY v SREEDAM CHUNDER CHOWDHRY 20 W R. 15

HURISH CHUNDER CHUCKERBUTTY v HURREE BEWAH 20 W R., 16

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

ejectment except for the reasons and on the conditions specified in that Act and no such reasons or conditions existed in this case Liability to pay for the use and occupation of land by a person between whom and the proprietor of such land there exists no relationship of landlord and tenant is a liability to pay rent within the meaning of s 3 cl (5) of the Bengal Tenancy Act Cl (3) s. 5 of that Act is intended merely to define the position of a raiyat in respect to a proprietor or tenure holder and to distinguish him from what is afterwards described as an under raiyat MOHIMA CHUNDER SHAH v HAZARI PRAMANIK I L R. 17 Calc 45

——— s 3 cl (5)

See CESS I. L. R 17 Calc. 726
[I. L. R. 22 Calc 680

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TAX
[I L. R. 22 Cal 680

——— s 3 cl (9) and s 65— *Parcel Holding Meaning of*—The term parcel or parcels in s 3 cl 9 of the Bengal Tenancy Act means entire parcel or entire parcels and is not intended to include an undivided fractional share in a parcel or parcels of land. Undivided shares in parcels of land cannot constitute distinct holdings within the meaning of the Bengal Tenancy Act *Punchanan Banerjee v Raj Kumar Guha I L R 19 Calc 610 Jardine Skinner & Co v Sarat Soondari Debi 3 C L R 140* and *Gour Buksh Roy v Jeo Lal Roy I L R 16 Calc 127* distinguished HURRY CHURN BOSE v RUNJIT SINGH 1 C W N 521

HARI CHARAN BOSE v RUNJIT SINGH
[I. L. R. 25 Calc. 917 note

——— s 5

See GENERAL CLAUSES CONSOLIDATION ACT 1868 s 6
[I. L. R. 13 Calc 86

See LANDLORD AND TENANT—LIABILITY FOR RENT I. L. R. 19 Calc, 790

1. ——— s 5 cl. (1)—*Suit for rent against a person holding land within a municipality and the land not proved to have been let out for agricultural or horticultural purposes*—The mere fact that a person has acquired from a proprietor or from another tenure holder a right to hold land for the purpose of collecting rent is not sufficient to prove that he is a tenure-holder within the meaning of the Bengal Tenancy Act It must be proved that the land was let out as a holding for agricultural or horticultural purposes UMRAO BIBI v MAHOMED RAJABI
[I L. R 27 Calc 205
4 C W N 76

2. ——— cl (2)—*Raiyat Definition of—Person taking land for horticultural purposes—Semble*—The definition of raiyat in the Bengal Tenancy Act (Act VIII of 1885) is not exhaustive and there is nothing in that definition which would exclude a person who had taken land for horticultural purposes. HURRY RAM v NURSINGH LAL
[I L. R. 21 Calc. 129

3 ——— *Non occupancy raiyat—Ejectment—Trespasser*—A person having previously to the passing of the Bengal Tenancy Act been settled on certain land as a raiyat and tenant by a trespasser and having acquired no right of occupancy at the time of suit brought was in 1888 sued in ejectment by the true owner who had obtained possession of the land from such trespasser through the Court on the 27th January 1886 *Held* that such person was a non occupancy raiyat within the meaning of s 5 sub-s (2) of the Bengal Tenancy Act and was protected from ejectment by that Act *Mohima Chunder Shah v Hazari Pramanik I L R 17 Calc 45* approved BINAD LAL PAKRASHI v KALU PRAMANIK
[I. L R 20 Calc, 708

——— cl (5)

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION
[I. L R. 24 Calc 272
L. R 23 I. A 158

1 ——— s 12—*Transfer of a permanent tenure—Permanent tenure Registration of*—The transfer of a permanent tenure under s 12 of the Bengal Tenancy Act is complete as soon as the document is registered KRISTO BULLUB GHOSE v KRISTO LAL SINGH I. L. R. 16 Calc 642

2 ——— *Transfer of tenure—Registration—Notice of transfer—Landlord and tenant—Liability for rent*—After a recorded tenant has transferred his tenure to another person and that transfer has been duly registered under the provisions of the Bengal Tenancy Act he is no longer liable for the rent of the tenure although the landlord may not have received actual notice of such transfer *Kristo Bullub Ghose v Kristo Lal Singh I L R 16 Calc 642* relied on CHINTAMONI DUTT v RASH BEHARI MONDUL
[I L. R. 19 Calc 17

3 ——— *Transfer of tenure—Contract regarding transfer of tenure—Conditional transfer—Condition not performed*—A transfer of a tenure made in terms of the provisions of the Bengal Tenancy Act of 1885 is not binding on the landlord if there be a contract between the landlord and the tenant that the transfer shall not be valid and binding until security to the satisfaction of the landlord has been furnished by the transferee and such security has not been furnished. The tenant is still liable for the rent DINOBUNDHU ROY v BONERJEE I. L. R. 19 Calc 774

4. ——— *Transfer of Property Act (IV of 1882) s 59—Permanent tenure—Mortgage—Registration*—The provisions of s. 59 of the Transfer of Property Act must having regard to s 6 be taken to be subject to the provisions of s 12 of the Bengal Tenancy Act Accordingly a mortgage of a permanent tenure can only be effected by a registered instrument whether the amount secured

BENGAL TENANCY ACT (VIII OF 1885) —*continued*

be greater or less than R100 SOSHI BHUSAN BOSE v SHAHADEB SHAHA 3 C W N 499

5 ———— and s 13—*Sale of a tenure in execution of a decree not for arrears of rent —Effect of non payment of landlord's fee or the fee for service of notice of the sale on the landlord before the confirmation of sale* —Under s. 13 of the Bengal Tenancy Act when a permanent tenure is sold in execution of a decree other than a decree for arrears of landlord's rent due in respect thereof and the fee prescribed by s 12 of the said Act is not paid before the confirmation of the sale the sale is invalid. BABAR ALI v KRISHNAMANINI DASSI [I L R 26 Calc, 603 3 C W N, 531

———— s 13

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS I L R 20 Calc. 247

———— and s 195 (e)—*Sale in execution of decree for arrears of rent—Dar patni tenures* —S 13 of the Bengal Tenancy Act applies to sales of dar patni tenures in execution of decrees MAHOMED ABBAS MONDUL v BROJO SUNDARI DEBIA [I L R, 18 Calc, 360

1. ———— s. 15—*Bengal Rent Act (VIII of 1869) s 26—Act X of 1859 s 27—Suit by landlords against a tenure holder in occupation of a share of the tenure without joining other co-sharers of the defendants for recovery of rents and cesses whether and when maintainable*—It is the duty of the persons succeeding by inheritance to a permanent tenure to notify the succession and it is not the duty of the superior landlord to find out who all the heirs of a deceased tenure holder are There is no law which compels a landlord in order that he might succeed in a suit for rent to sue all the heirs of a deceased tenure holder when he has no notice who the heirs are Where as in this case the defendant was admittedly one of the heirs and in possession as such he is liable for the rent and he cannot defeat the plaintiff's suit by showing that there were other heirs equally liable unless he also shows that their names were notified to the landlord as successors of the original holders or that they have been paying rent and getting receipts as successors KHETTER MOHAN PAL v PRAN KRISTO KABIRAJ 3 C W N 371

2. ———— and ss 16 and 195—*Patni tenure—Bengal Regulation VIII of 1819 s 5*—Ss 15 and 16 of the Bengal Tenancy Act of 1885 apply to patni tenures DURGA PROSAD BUNDOPADHYA v BRINDABUN ROY [I L R 19 Calc 504

3 ———— and s 16—*Operation of those sections in a suit for rent of land to which the plaintiff succeeded before the Bengal Tenancy Act came into force—Construction of statute* —Ss 15 and 16 of the Bengal Tenancy Act are not retrospective PROFULLAH CHUNDER BOSE v SAMIRUDDIN MONDUL I L R 22 Calc 337

BENGAL TENANCY ACT (VIII OF 1885) —*continued*

4. ———— and ss 16 and 26—*Whether an heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant* —An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant. ANANDA KUMAR NASKAR v HARI DASS HALDAR I L R 27 Calc. 545 [4 C W N 608

5 ———— and s 16—*Arrears of rent suit for—Suit by a patnidar on the death of the last owner against the dar-patnidar without complying with the provisions of s 15 of the Bengal Tenancy Act whether maintainable—Holder of a tenure* —In a suit for arrears of rent for the years 1299 B S to Falgoon 1302 B S brought by patnidars on the death of the last owner on the 14th Aghran 1302 B.S the defence of the dar patnidar mainly was that the plaintiffs not having complied with the provisions of s. 15 of the Bengal Tenancy Act the suit was not maintainable *Held* that as the plaintiffs did not claim the rent which fell due during the lifetime of the last owner as the holder of the tenure but claimed it either as the representative of the holder of the tenure for the time being or as representative of their father the rent became an increment to the estate of the father and therefore the suit was maintainable *Nogendra Nath Bose v Satadul Bashini Bose I L R 26 Calc, 526* referred to SHERIFF v JOGEMAYA DASI [I L R, 27 Calc, 535

———— s 16—*Right of suit—Succession to permanent tenure—Omission to give notice of succession to Collector Effect of—Non payment of fees Effect of on right to decree* —S 16 of the Bengal Tenancy Act does not preclude a party from instituting a suit for rent notwithstanding that the Collector has not received the notice and the fees referred to therein. But that section is a bar to the plaintiffs obtaining a decree before the notice and the fees are received by the Collector KALIHUR GHOSE v UMAR PATWARI [I L R 24 Calc. 241 1 C W N 98

———— ss 17 and 18

See LANDLORD AND TENANT—TRANSFER BY TENANT I L R 21 Calc 433 [I L R 24 Calc 152

———— s 19

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT [I L R 21 Calc 129

1 ———— s 20 cl (3)—*Right of non occupancy raiyat—Death of raiyat having right of non occupancy—Heirs—Re entry by landlord* —The right of a non occupancy raiyat (who does not hold under any express engagement) in his holding is not heritable KARIM CHOWKIDAR v SUNDAR BEWA [I L R 24 Calc 207 1 C W N 88

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

2. ———— ss 20 21—*Suits pending at time Act came into force—Suit for ejectment—Acquisition of right of occupancy—General Clauses Act (I of 1868) s 6*—S 21 of the Bengal Tenancy Act applies to suits pending at the time the Act came into force *ie* 1st November 1885 which had not then resulted in a decree In a suit instituted on 8th October 1885 to eject the defendants after notice to quit it was held that although the defendant had held the land from which it was sought to eject him for less than 12 years and therefore would not if the Bengal Rent Act (VIII of 1869) had been applicable have acquired a right of occupancy yet the effect of ss 20 and 21 of the Bengal Tenancy Act was to give him a right of occupancy and therefore he could not be ejected JOGESSUR DAS *v* AISANI KOYBURTO

[I. L. R. 14 Calc 553

3 ———— *General Clauses Act (I of 1868) s 6—Retrospective enactment when applicable to pending suit—Pending suit—Landlord and tenant—Right of occupancy*—S 21 sub s. (2) of Act VIII of 1885 is expressly retrospective and applies to suits pending at the date of the commencement of that Act *Jogessur Das* v *Aisani Koyburto I L R 14 Cal 553* followed. TEPSEE SING *v* RAMSARUN KOERI

[I. L R 15 Calc 376

———— s 22

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT

[I. L. R. 18 Calc 121

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I. L R. 21 Calc 869
[I. L R. 24 Calc 143 521
I L R. 27 Calc 473
3 C W N 62
4 C W N 569

———— s 23

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOODS ON LAND

[I L. R 22 Calc 742 744 note 746 note
748 note 751 note
I L R 23 Calc 854

———— s 25

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION

[I L R. 24 Calc 272
L R 23 I A 158

———— s 25 cl (a)

See LIMITATION ACT ART 32

[I. L. R. 24 Calc 160

———— s 26

See LANDLORD AND TENANT—LIABILITY FOR RENT I. L. R. 19 Calc 790

———— s 29

See CONTRACT ACT s 74

[I L. R. 22 Calc 658

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

1. ———— *Suit for enhancement of rent—Enhancement of rent by contract by more than two annas in the rupee—Void agreement—Contract Act (IX of 1872) ss 23 and 24*—A contract under s 29 of the Bengal Tenancy Act to pay an enhanced rent by more than two annas in the rupee is void KRISTODHONE GHOSE *v* BROJO GOBINDO ROY

[I L R. 24 Calc 895
1 C W N 442

2 ———— *Landlord and Tenant—Suit for rent—Enhancement of rent—Enhancement of rent by a registered kabuliat within fifteen years from a previous oral agreement to pay enhancement of rent Effect of*—By an oral agreement in the year 1885 the tenant defendant agreed to pay an enhancement of rent and he paid rent at that rate until subsequently he executed in the year 1893 a registered kabuliat by which he agreed to pay a further enhancement of rent which was more than two annas in the rupee Upon a suit for rent by the landlord based on the registered kabuliat —*Held* that inasmuch as the enhancement of rent in s 29 of the Bengal Tenancy Act refers to enhancement after the promulgation of the Act if in this case the enhancement which was made in the year 1885 was before the Act came into force it would not bar an enhancement during the period of fifteen years from the date thereof as contemplated by cl (3) of s 29 But if the said enhancement was made after the Act came into force it would also not bar a subsequent enhancement within fifteen years from the date thereof as the previous contract was only an oral one and was not effectual and binding upon the defendant *Held* also that having regard to cl (b) of s 29 as the enhancement was more than two annas in the rupee the registered kabuliat was bad in law if the rent then agreed to be paid was an enhanced rent The kabuliat would also be bad in law if the rent agreed to be paid is partly enhanced and partly increased rent *Held* further that having regard to prov (1) of s 29 as also the provisions of s 27 the plaintiff would at any rate (*i e* failing the kabuliat) be entitled to recover rent at the rate paid by the defendant for more than three years MOTHURA MOHUN LAHIRI *v* MATI SARKAR I L R. 25 Calc 781

3 ———— *Enhancement of rent by registered contract—Increase in the amount of rent by reason of increase of area—Applicability of s 29 in such cases*—S 29 of the Bengal Tenancy Act applies only to an increase in the rate of rent and not to an increase in the amount of rent by reason of an increase of the area SATISH CHUNDRA GIRI *v* KABIRUDDIN MALLICK I L R 26 Calc., 233

4 ———— *Enhancement of rent by contract—Agreement not within the section*—An agreement embodied in a kabuliat to pay a certain amount of rent agreed upon by the parties in settlement of differences between them as to what had been the amount and character of the rent and to avoid further litigation is not an agreement to enhance within the meaning of s. 21 cl (b) of the Bengal Tenancy Act SHEO SAHOY PANDAY *v* RAM RACHIA ROY

[I L R. 18 Calc 333

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

——— s 30

See ENHANCEMENT OF RENT—GROUNDS OF ENHANCEMENT—RATE OF RENT LOWER THAN IN ADJACENT PLACES
[1 C W N 310

1. ——— *Holding Meaning of*— The term holding as used in s 30 of the Bengal Tenancy Act means an entire holding BAIDYA NATH DE v ILIM I L R 25 Calc 917
[2 C W N, 44

2 ——— *Holding Definition of*— *Enhancement of rent*—An undivided share of lands comprising a holding does not fall within the definition of a holding given in the Bengal Tenancy Act and s 30 of the Act does not apply to an enhancement of rent of such a share HARIBOLE BROHMO v TASIM UDDIN MONDUL 2 C W N 680

3 ——— *Suit for enhancement of rent—Prevailing rate Meaning of—Average rate*— The words prevailing rate in s 30 cl (*a*) of the Bengal Tenancy Act mean not the average rate of rent but the rate actually paid and current in the village for land of a similar description with similar advantages they should be construed therefore in the same sense as was given to the same words in the earlier cases decided under Act X of 1859 SHITAL MONDAL v PROSSONNAMOYI DEBYA
[I L R 21 Calc 986

——— s 38—*Settlement of rent—Grounds for abatement of rent—Permanent and temporary deterioration*—A liberal interpretation should be put upon the word permanently in s 38 sub s (*1*) cl (*a*) and the word construed with reference to existing conditions It cannot be said that a deterioration is not permanent only because by the application of capital and skill it might be removed In determining the liability to additional rent the Settlement Officer is by s 52 sub s (2) cl (*c*) bound to consider the length of time during which the tenancy has lasted without dispute as to rent or area Although only an occupancy raiyat can bring a suit under s 38 the principles laid down in that section ought to be taken into consideration in all proceedings for settlement of rent whatever be the status of the raiyat GOURI PATTRA v REILY I. L. R. 20 Calc 579

1 ——— s 40—*Commutation of rent—Jurisdiction of Civil Court*—An order passed in appeal by a Revenue Court under s 40 of the Bengal Tenancy Act is final and no suit lies in the Civil Courts by which its propriety can be questioned LALLA SALIGRAM SINGH v RAMGIR
[3 C W N 311

2 ——— *Order commuting bhowli rent to nagdi rent—Omission to state time when order is to take effect*—The provisions of cl 5 s 40 of the Bengal Tenancy Act are imperative and should be strictly complied with Where therefore, an order under that clause omitted to state the time from which it was to take effect it was held to be inoperative CHOWDHRY RAGHU NATH SARUN SINGH v BHODHA ROY I. L. R., 18 Calc. 467

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

——— s 44

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE 1 C W N 156

——— s. 46 sub ss (6) and (9)—*Non occupancy raiyat—Enhancement of rent—Fair and equitable rent*—Sub-s (*9*) of s. 46 of the Bengal Tenancy Act is not exhaustive It was not intended that if there was no land of a similar description and with like advantage in the same village as the land in suit it should be impossible to enhance the rent of a non occupancy raiyat upon any other ground. HOSAIN ALI KHAN v HATI CHARAN SHAW
[I. L. R. 27 Calc 476
4 C W N 321

——— s 48—*Operation of s 48 on suit instituted before Act came into force*—S 48 cl. (*a*) of the Bengal Tenancy Act is retrospective *Ram Kumar Jugi v Jafar Ali Patwari I L R 26 Calc 199 note* approved of GURU DAS SHUT v NAND KISHORE PAL I. L. R. 26 Calc 199

RAM KUMAR JUGI v JAFAR ALI PATWARI
[I. L. R. 26 Calc, 199 note

——— s 49

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT 1 C W N 133
[2 C W N 125
I L R. 23 Calc., 200
2 C W N 238

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE
[I L. R. 20 Calc. 101

——— s. 50

See EVIDENCE—CIVIL CASES—RENT RECEIPTS I. L. R. 24 Calc. 251

1. ——— *Record of rights—Presumption from twenty years uniform payment of rent—Raiyats holding at fixed rates*—In a proceeding for record of rights under Ch. X of the Bengal Tenancy Act (VIII of 1885) it having been found that certain raiyats were holding their lands at rates which had not been changed during twenty years before the institution of the proceeding the Settlement Officer recorded them as raiyats holding at fixed rates In second appeal *held* that under s. 50 of the Bengal Tenancy Act the Settlement Officer was right in giving effect to the presumption that the raiyats were holding at fixed rate of rent and in recording them as raiyats holding at fixed rates *Bansi Das v Jagdip Narain Chowdhry I L R 24 Calc 152* dissented from. DULHIN GOLAB KOER v BALLA KURMI I. L. R. 25 Calc 744
[2 C W N 580

Dissenting from BANSI DAS v JAGDIP NARAIN CHOWDHRY I. L. R. 24 Calc. 152

2 ——— and ss 115 104 (sub-ss 2 and 3) 113—*Record of rights—Presumption as to fixity of rent—Settlement of fair and equitable rent—Enhancement for excess land—Enhancement for rise in price of crops*—The provision contained in s 115 of the Bengal Tenancy Act

BENGAL TENANCY ACT (VIII OF 1885)
—continued

against the presumption as to fixed rent under s 50 (2) of the Act arising in certain cases has no application in a suit brought by a tenant for the purpose of contesting the correctness of the decision of a Revenue Officer in regard to the entry as to the status of a raiyat in a record of rights prepared under Ch. X of the Act In such a suit the tenant is entitled to the benefit of the presumption Given the circumstance of an increase or decrease in the area of the land for which a tenant is paying rent it is competent to the Revenue Officer under s 104 (2) of the Bengal Tenancy Act to settle a fair and equitable rent in respect of the whole of the land of the tenant including the excess area and the Revenue Officer can in such a case enhance the rent under the provisions of the Tenancy Act *e g* on the ground of the rise in the prices of the food crops and so forth. SECRETARY OF STATE FOR INDIA IN COUNCIL *v* KAJIMUDDI
[I L R 26 Calc 617

3 ———— and s 191—*Permanent Settlement—Presumption—Uniform rent* —When a question arises as to whether a tenant is entitled to the presumption under s 50 cl (2) of the Bengal Tenancy Act the fact that the estate within which the tenure in question is situated was not permanently settled in the year 1793 does not make any difference S 191 of the Bengal Tenancy Act has no application to the present case inasmuch as the estate though not permanently settled in 1793 was subsequently permanently settled in the year 1811 TAMASHA BIBI *v* ASHUTOSH DHUR
[4 C W N 513

———— s 52 cl (6) and s 188—*Abatement of rent—Suit for rent by several joint landlords against one of the joint tenants whether in such a suit the tenant can claim abatement of rent—Tenant Meaning of*—The expression tenant in s. 52 of the Bengal Tenancy Act does not include the case of a mere co-sharer tenant who has only a fractional share in the tenure it means the tenant of the tenure and not one of many tenants In a suit for rent brought by some of several joint landlords against one of several joint tenants for recovery of the plaintiff s share of the rent payable on account of the defendant tenant s share of the tenure under a previous arrangement such tenant defendant cannot claim abatement under the provisions of s. 52 of the Bengal Tenancy Act BHOOPENDRO NARAIN DUTT *v* ROMON KRISHNA DUTT
[I L R 27 Calc 417
4 C W N 107

———— s 53

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS
[I L R 21 Calc 383

1 ———— *Established usage of locality* —The established usage of the locality and not the usage between the parties is that contemplated by s 53 of the Bengal Tenancy Act *Hira Lal Dass* v *Mothura Mohun Roy I L R 15 Calc 714* followed WATSON AND COMPANY *v* SREEKRISTO BHUMICK I L R 21 Calc., 132

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2 ———— *Established usage Meaning of*—The words established usage in s 53 of the Bengal Tenancy Act 1885 do not refer to a practice previously prevailing between the landlord and his tenant but to the established usage of the pergunnah in which the holding is situate HERA LAL DAS *v* MOTHURA MOHUN ROY CHOWDHRY
[I L R 15 Calc 714

———— s 54.

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY 4 C W N 324

———— ss 56 cl (4) 187 cl (3) and s 188—*Joint landlords—Authorized agent—Receipt given by agent—Presumption* —In a case where there are several joint landlords it is necessary for the Court before giving effect to a presumption under s 56 cl 4 of the Bengal Tenancy Act to find affirmatively that the agent was authorized by them all either verbally or in writing GOPINATH CHAKRAVARTI *v* UMAKANTA DAS ROY
[I L R 24 Calc 169

———— s 60

See LAND REGISTRATION ACT s. 78
[I L R 26 Calc 712
3 C W N 381

———— *Registered proprietor Suit for rent by—Whether the plea that rent is payable to third party allowable—Land Registration Act (VII of 1876) s 78* —Plaintiffs as registered proprietors brought a suit for recovery of rent It was found that defendant in good faith and under the reasonable belief that the land held by him was included in the estate of a third person attorned to him some four years prior to the suit and it was held by the lower Appellate Court that under the circumstances the defendant ceased to be plaintiff s tenant and they could not recover rent *Held* that upon the above facts s 60 of the Bengal Tenancy Act did not estop the defendant from pleading that rent was due to a third person notwithstanding plaintiffs were registered proprietors DURGA DAS HAZRA *v* SAMASH AKON 4 C W N 606

———— s 61.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGEMENT OF TENANCY BY RECEIPT OF RENT ETC I L R 25 Calc 1
[L R 24 I A 164

1 ———— *Deposit of rent in Court—Bona fide doubt of tenant as to who is entitled to rent—Costs where conduct of defendant did not make litigation necessary* —The deposit of rent in Court under s 61 of the Bengal Tenancy Act (where the tenant entertains *bona fide* doubt as to who was entitled to receive it) operates as an acquittance and where such deposit is proved as a defence to a suit for rent the suit should be dismissed. Where in such a suit the defendant is found to have been not to blame for the litigation he is entitled to his costs. STALKARTT *v* GURU DAS KUNDU CHOWDHRY I L R 21 Calc., 680

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2. ——————— *Suit for rent—Deposit of rent by a tenant through the transferee of the holding from him whether valid*—A deposit of rent though not made by a tenant himself but made on his behalf by a transferee of the holding from him is a valid deposit within the meaning of s 61 of the Bengal Tenancy Act BEHARY LAL MOOKERJEE *v* BASARAT MANDAL **I. L. R. 25 Calc. 289**

3 ——————— and s 62—*Deposit of rent—Review of order receiving deposit of rent*—When under ss 61 and 62 of the Tenancy Act a deposit of rent is made by a tenant and the Court grants him a receipt the zamindar has no right to come in and be heard in the matter there being no machinery whatsoever provided by the Act for the Court to enter into a judicial enquiry in connection with the matter of the deposit As far as the tenant is concerned after such deposit is made and receipt granted, the Court is *functus officio* and is not authorized to return the money to the tenant upon an application made by the zamindar The words the full amount of the money then due in s 61 and the words the amount of rent payable by the tenant in s. 62 mean nothing more than the words what he shall consider the full amount of rent due from him at the date of the tender to the zamindar as used in Bengal Act VIII of 1869 and have no relation whatever to the amount of rent justly due or justly payable by the tenant IN THE MATTER OF SIRDHAR ROY *v* RAMESWAR SING **I. L. R., 15 Calc., 166**

——— s 65

See EXECUTION OF DECREE—DECREES UNDER RENT LAW
[I. L. R. 17 Calc 301

See LANDLORD AND TENANT—LIABILITY FOR RENT **I. L. R. 26 Calc 103**

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT **I. L. R. 24 Calc 355**
[1 C W N 396
I. L. R. 26 Calc 727
3 C W N 586
I. L. R. 26 Calc 937
3 C W N 742 747

See SALE FOR ARREARS OF RENT—INCUMBRANCES **I. L. R. 22 Calc 364**

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS **I. L. R. 21 Calc 169**

1. ——————— *Charge Meaning of—Transfer of Property Act (IV of 1882) s 100—Semble*—The charge referred to in s 65 of the Bengal Tenancy Act is not such a charge as that defined by s 100 of the Transfer of Property Act FOTICK CHUNDER DEY SIRKAR *v* FOLEY
[I. L. R. 15 Calc. 492

2 ——— and s 3 cl (5) and s 161—*Sale of tenure for arrears of road cess under decree—Rent—Road cess—Cesses—Incumbrance by defaulting tenant Effect of sale in execution of decree for road cess on*—The word rent' in s 65 of the Bengal Tenancy Act 1885 includes road cess payable by the landlord. A tenure holder granted a usufructuary mortgage of certain lands within his tenure to *A* and directed the tenants to pay their rents to him Subsequently the superior landlord brought a suit for road cess against the tenure holder and in execution of his decree sold the tenure under s 65 of the Bengal Tenancy Act *A* then brought a suit against one of the tenants for arrears of rent and contended that all that passed under the auction sale was the right title and interest of the tenure holder and that his rights under the mortgage were unaffected by the sale and that he was still entitled to the rent *Held* that Ch XIV of the Bengal Tenancy Act must be read with s 65 of the Act and that having regard to the definition in cl 5 of s 3 rent as used in that section includes road cess payable by the tenant and that the sale was a sale of the tenure the purchaser acquiring the property free from the incumbrance created by the tenure-holder in favour of *A* it not being a registered and notified incumbrance within the meaning of s 161 of the Act NOBIN CHAND NUSKAR *v* BANSE NATH PARAMANICK **I. L. R. 21 Calc 722**

3 ——————— and s 66—*Sale of defaulting tenure at the instance of landlord who has lost his interest in the estate—Rent decree*—S 66 of the Bengal Tenancy Act does not apply to a case in which the person seeking to execute the decree is not a landlord at the time of the execution and s 65 is limited in the same manner as s 66 So where a landlord after obtaining a decree for arrears of rent loses his interest in the estate he cannot bring the defaulting tenure itself to sale in execution of his decree HEM CHUNDER BHUNJO *v* MON MOHINI DASSI **3 C W N 604**

1. ——— s 66—*Suit for arrears of rent brought before expiry of Bengali year—Right to eject tenant*—Where a suit is brought before the expiry of the Bengali year in respect of the arrears of rent for that year the landlord is not entitled to eject the tenant under s 66 of the Bengal Tenancy Act GURU DASS SHUT *v* NAND KISHORE PAL
[I. L. R. 26 Calc 199

2 ——————— *Landlord and tenant—Suit for arrears of rent—Execution of decree for ejectment for arrears of rent—Extension of time for payment*—*Per* PRINSEP and BANERJEE JJ—The extension of time authorized by s 66 cl 3 of the Bengal Tenancy Act can be granted by the Court after the decree and not only when framing the decree under cl (2) of that section *Per* RAMPINI J—*contra* *Per* PRINSEP and BANERJEE JJ—The decree for ejectment passed under s 66 cl 2 of the Bengal Tenancy Act need not incorporate the terms as to the ejectment being avoided by payment within fifteen days from the date of the decree These terms are rather in the nature of a direction to the Court of execution *Per* PRINSEP J—The application for such extension of time may therefore be made by the judgment debtor on a mere petition,

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and not in the form of an applicati n for review of judgment BODH NARAIN v MAHOMED MOOSA
[I. L R. 26 Calc 639
3 C W N, 628

——— s 67

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE I. L R 22 Calc 214
[L. R. 21 I A 131

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
[I L R 24 Calc 37
I L R 26 Calc 130 315
3 C W N 36 194
4 C W N 324

——— s 69

See PENAL CODE s 186
[I L R 18 Calc 518

——— ss 69 and 70

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I L R 17 Calc 872

1. ——— *Deposit of crops by order of Collector—Suit against depositaries—Right of su t—Privity—Jurisd ction of Civil Court*—In the course of proceedings held under ss 69 and 70 of the Bengal Tenancy Act (VIII of 1885) the landlord s (ticcadar's) share of the produce was deposited by the Amin by order of the Collector with two persons The depositaries executed and delivered a receipt to the Amin Some time after the ticcadar made an application to the Collector in order to obtain his share of the produce but on a representation being made by one of the deposi taries that the crops (with the exception of a small portion) had been destroyed by rain the Collector declined to grant any relief to the ticcadar The ticcadar then brou ht this suit against the depo sitaries for recovery of the value of the crops deposited *Held* that the receipt executed and delivered to the Amin established privity between the plaintiff and the defendant so as to enable the former to maintain the suit *Held* also that the suit was maintainable in the Civil Court Ss 69 and 70 of the Bengal Tenancy Act refer to and contem plate proceedings between the landl rd and the tenant When a plaintiff seeks relief not against his tenant but against a third party a depositary or bailee the suit is not barred by anything contained in those sections JAGA SINGH v CHOOA SINGH
[I L R 22 Calc 480

2. ——— and s 188—*Rent bhaoli or nugdi—Jurisdiction of Deputy Collector*—When there is a *bonâ fide* dispute as to the nature of the rent *i e* whether it is bhaoli and nugdi the Deputy Collector has no jurisdiction to proceed under the provisions of ss 69 and 70 of the Bengal Tenancy Act An application under s 69 of Bengal Tenancy Act cannot be made by some only of a body of land lords such an application being authorized by the provisions of the Bengal Tenancy Act and not by those of the Civil Procedure Code NUKHEDA SINGH v RIPU MARDAN SINGH 4 C W N 239

——— s 72

See LANDLORD AND TENANT—TRANSFER BY LANDLORD I L. R. 25 Calc 445
[2 C W N 108

——— s 73

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT
[I L R 24 Calc 355 642

——— s 74

See CESS I L R 15 Calc 828
[I L. R. 22 Calc 680
I L. R 26 Calc 611
3 C W N 608

——— s 84

See APPEAL—ACTS—BENGAL TENANCY ACT I L R. 18 Calc 271
[I L R. 19 Calc 485

——— *Acquisition of land by landlord—Reasonable and sufficient purpose—Certificate of Collector—Jurisdiction and functions of the Civil Court*—The proprietors of a talukh who had con structed an indigo factory and employed a Euro pean manager applied to the Civil Court under s 84 of the Tenancy Act to acquire by compul sory sale a small piece of land made up of several raiyati holdings within the estate The applica tion was opposed by the proprietors of another indigo factory who had taken under leases from the raiyats the greater part of the lands of the village including the holdings within which the plot in questi n was comprised The Collector of the district had certified under s 84 that the purpose for which the land was required was reasonable and sufficient The Munsif tried the matter as a disputed question of fact and held that the purpose alleged was not reasonable or sufficient and declined to authorize the purchase The District Judge on appeal reversed the Mun sif s finding and authorized the compulsory acqui sition of the land. *Held* that there is no appeal against an order passed by a Civil Court under s 84 of the Bengal Tenancy Act and that the order of the District Judge was without jurisdic tion and must be set aside *Held* by PRINSEP and AMEER ALI JJ (PETHERAM C J dissent ing)—That the Collector s certificate under s 84 is not conclusive as to the reasonableness and sufficiency of the purpose for which the land is sought to be acquired that the jurisdiction of the Civil Court is not confined to giving effect to the Collector s certificate but the Court is to hold a judicial enquiry to determine the reasonableness and sufficiency of the purpose and all matters coming within the section and is competent to con sider the grounds upon which the certificate was granted that the appointment of a European manager and the necessity for erecting buildings for his comfort and convenience are insufficient

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grounds for authorizing the compulsory acquisition of land under s 84 The purpose for which the land is sought to be acquired must have a direct relation to the good of the holding and objects which might have a remote or speculative bearing upon the good of the holding are foreign to the scope of the Act *Held* by PETHERAM C J —The section gives to the Collector jurisdiction to decide whether the alleged purpose is reasonable and sufficient leaving to the Civil Court to settle the amount to be paid for the land and the decision of the question whether the land is *boná fide* required for the alleged purpose The words satisfied on the certificate mean that the Civil Court is to be satisfied on the certificate alone and has no jurisdiction to take other evidence on that question but is to accept the decision of the Collector as final GOGHUN MOLLAH v RAMESHUR NARAIN MAHTA RAMESHUR NARAIN MAHTA v GOGHUN MOLLAH I L R 18 Calc 271

——— s 85

See LANDLORD AND TENANT—TRANSFER BY TENANT I L R. 26 Calc 46

——— s 86

See LANDLORD AND TENANT—LIABILITY FOR RENT I. L R, 19 Calc 790

——— s 87

See LANDLORD AND TENANT—ABANDONMENT—RELINQUISHMENT OR SURRENDER OF TENURE 1 C W N., 198 [3 C W N, 46 4 C W N 493

——— *Construction of s 87* —The provisions of s 87 of the Transfer of Property Act are not exhaustive SAMUJAN ROY v MAHATON [4 C W N 493

——— s 88

See LANDLORD AND TENANT—TRANSFER BY TENANT [I L R 21 Calc 433

1 ——— *Suit for rent—Question as to amount of rent—Sub division of tenancy—Rent receipts signed by one of several co sharers* —Several plaintiffs co sharers sued two defendants to recover the sum of R78 odd for arrears of rent in respect of a tenure the annual amount of rent payable being alleged to be R15 One of the defendants appeared and pleaded that the tenure had been some time previously divided by the principal plaintiff (who was the kurta of the family and collected the rent) and that after the division he had paid R7 8 per annum being the rent in respect of his half of the tenure to the kurta in support of such payments he produced dakhilas or rent receipts signed by the kurta The suit was dismissed by the Munsif but on appeal the Additional Judge gave the plaintiffs a decree for the amount of rent claimed less the amount proved to have been paid by the defendant who contested the suit as shown by the dakhilas He held that the division had not been proved and that the dakhilas did not amount to the written consent required by s 88 of the Bengal Tenancy Act *Held* on appeal to the High Court that the dakhilas or rent receipts did not amount to a written consent as required by s. 88 of the Bengal Tenancy Act and that the decree of the lower Court must be upheld AUBHOY CHURN MAJI v SHOSHI BHUSAN BOSE I L R 16 Calc 155

2. ——— *Suit for rent—Sub division of tenancy—Evidence of consent of landlord to—Rent receipt signed by the agent* —A receipt for rent granted by a landlord or his agent containing a recital that a tenant s name is registered in the landlord s sherishta as a tenant of a portion of the original holding at a rent which is a portion of the original rent does amount to a consent in writing by the landlord to a sub division of the holding and a distribution of the rent payable in respect thereof within the meaning of s 88 of the Bengal Tenancy Act PYARI MOHUN MUKHOPADHYA v GOPAL PAIK [I L R, 25 Calc 531 2 C W N 375

JAGADISHUR BHUTTACHARJI v JOYMONI DEVI [I. L R. 25 Calc 533 note 2 C W N 378 note

3 ——— *Transfer of a portion of occupancy holding—Custom—Ejectment—Possession* —The transfer of a portion of an occupancy holding is contrary to the spirit if not the letter of s. 88 of the Bengal Tenancy Act VIII of 1885 and the existence of a custom in a particular place by which such a holding is transferable is immaterial and gives no right to the transferee as against the landlord. KULDIP SINGH v GILLANDERS ARBUTHNOT & Co I L R 26 Calc, 615 [4 C W N 738

——— s 89—*Service tenure—Suit for eject ment* —Service tenures are excepted from the operation of s 89 of the Bengal Tenancy Act MOKBUL HOSSAIN v AMBER SHEIKH [I. L. R, 25 Calc., 131

——— ss 90 91—*Measurement proceeding Form of order on* —In a proceeding under s 90 the order should be limited to one directing in the words of s 91 that the tenants do attend and point out the land and a declaration made in such order that the petitioner is entitled to make the measurement with a pole of a certain measure is bad in law and without jurisdiction DYA GAZI v RAM LAL SUKUL [2 C W N 351

——— s 93

See APPEAL—ACTS—BENGAL TENANCY ACT I. L R 14 Calc. 312

1. ——— *Manager—Co sharers—Practice in making applications under s 93 of Act VIII of 1885 where the co sharers hold various and complicated shares in the property —Notice* —Where a property consisted of 243 estates or tenures 60 of which were entered under separate numbers in the Land Register of the

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Collector other portions of the property being talukhs dependent tenures and raiyati holdings and a single applicati n is made by 12 of the co sharers in such property (many of whom held shares in several of the tenures and estates) calling up n the remaining four sharers in the property to show cause why a common manager should not be appointed under s 93 of the Bengal Tenancy Act the Court should before granting the application call upon the appli cants to state whether all of them are entitled in common to the various estates and tenures, and if not so entitled should call upon them to divide them selves into as many groups as there are properties held by them in common and in the latter case each group of shareh lders should put in separate applications on which separate Court fees should be levied The n tice in the case of tenures should be as provided by s 93 of the Act and should be of the same character and to the same effect as in the case of estates IN THE MATTER OF THE PETITION OF FAZEL ALI CHOWDHRY FAZEL ALI CHOWDHRY v ABDUL MOZID CHOWDHRY I. L. R. 14 Calc 659

2 ——— and ss 95 and 99—*Common manager—Minor co sharers—Court of Wards—District Judge jurisdiction of*—On the 8th June 1891 one of the co sharers in an estate applied for the appointment of a common manager but on objection taken by the other co-sharers this application was withdrawn On the 4th March 1891 the same co-sharer applied to the Court to the effect that proceedings might be taken under s 93 of the Bengal Tenancy Act and that the management of the estate might be taken over by the Court of Wards The other co-sharers and the representative of certain minor co-sharers objected to the appointment of a common manager but consented to the estate being made over to the Court of Wards On the 30th March 1892 the District Judge without satisfying himself as to the necessity of the appointment of a common manager ordered that the estate should be made over to the Court of Wards The Court of Wards took over the estate but subsequently refused to act and the Board of Revenue directed that the estate should be released. On the 13th August 1892 the District Judge issued notices on the co sharers under s. 93 calling on them to show cause why a common manager should not be appointed. All the co sharers appeared and objected to the appointment of a common manager but one of them and the representative of the minor co sharers stated that they had agreed to appoint a private person manager of their shares The District Judge therefore appointed such person temporarily as a common manager of the entire estate until the co owners should take steps under s 99 to satisfy the Court that they were in a position to manage the estate and on the 24th March 1893 passed two orders on separate applications made by two of the co-sharers for the release of the estate refusing to release it as he was not satisfied that the management of the estate could be conducted without injury to the rights of the minor *Held* that these orders of the 24th March 1893 were *ultra vires* GANODA KANTA ROY v PROBHABATI DASI [I. L. R, 20 Calc., 881

BENGAL TENANCY ACT (VIII OF 1885) —*continued*

——— s 95

See FALSE EVIDENCE—GENERAL CASES [I. L. R. 20 Calc 724

1. ——— *Manager of estate—Obligation of manager to have his name registered before he can collect rent of estate—Land Registration Act (Bengal Act VII of 1876) s 78*—A person who has been appointed manager of an estate under the provision of s 95 of the Bengal Tenancy Act must have his name registered under the provisions of s 78 of the Land Registration Act before he can recover rent from the tenants of the estate of which he has been appointed manager MAQBUL AHMED CHOWDHRY v GIRISH CHUNDER KUNDU [I L R 22 Calc 634

2 ——— *Appointment of common manager—Consent of parties—Rights of holder of subsequent patni lease of lands formerly under ijara*—A common manager of lands was appointed under s 95 of the Bengal Tenancy Act with the consent of the co owners The owner of a 3 anna share of the lands had let out in ijara his share to the other co owners After the expiry of the ijara and during the continuance of the management by the common manager the owner of the 3 anna share granted a patni thereof to *A* who attempted to collect the rents payable to him as patnidar *Held* that *A* was bound by the order appointing the common manager and could not himself collect such rents as he was in no better position than the shareholder from whom he obtained his patni *Ganoda Kanta Roy* v *Probhabati Dasi I L R 20 Calc 881* distinguished JUGGUT CHUNDER CHOWDHRY v GOLACK CHUNDER GHOSE [I L R 23 Calc 522

3 ——— and ss 98 cl (3) and 100—*Rules made by the High Court under s 100—Power of common manager to mortgage—Power of co owner during existence of common management*—A common manager appointed under the provisions of the Bengal Tenancy Act has power to mortgage property with the permission of the District Judge While the common management exists the powers of the co owners must be regarded as in abeyance and therefore a mortgage created by a co-owner during the existence of the common management cannot in any way interfere with or derogate from the rights created under any transaction made by the common manager with regard to the joint property AMAR CHANDRA KUNDU v I OY GOLOKE CHANDRA CHOWDHURI 4 C W N 769

1 ——— ss 101 115 (Ch X)—*Power of Settlement Officer to resume and assess lakhiraj land*—In proceedings under Ch X of the Bengal Tenancy Act (VIII of 1885) the Settlement Officer has no power to resume and assess with rent land which has been held as lakhiraj PADMANAND SINGH v BAJO I L R. 20 Calc 577

2 ——— *Record of-rights—Settlement Officer's decision—Subsequent civil suit—Res judicata*—A decision by a Settlement Officer under Ch. X of the Bengal Tenancy Act as to which of

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two persons claiming to be tenant ought to be recorded as such does not operate as *res judicata* in a subsequent civil suit between the same parties concerning the title to the land PANDIT SARDAR v MEAJAN MIRDHA I L R. 21 Calc, 378

3 ———— *Conditions or incident of tenancy—Dispute as to right of way between two neighbouring tenants—Jurisdiction of Settlement Officer*—A Settlement Officer has no jurisdiction to decide civil disputes between tenant and tenant A dispute as to a right of way between two neighbouring tenants is of a civil nature and the existence of a right of way cannot be regarded as a condition or incident of a tenancy *Pandit Sardar v Miajan Mirdha I L R 21 Calc 378* followed HARO MOHUN ROY CHURAMONI v PRAN NATH MITTER [I L R 27 Calc, 364 4 C W N 127

1 ———— ss 102 and 101—*Power of Settlement Officer—Proceedings in preparation of record of right—Decision as to validity of lakhiraj titles—Power of Revenue Officer to declare land claimed as lakhiraj liable to rent*—*Held* by the Full Bench (PETHERAM C J and PRINSEP PIGOT O KINEALY and GHOSE JJ)—In preparing a record of rights under s 102 of the Bengal Tenancy Act a Revenue Officer is not competent to determine the validity of rent free titles set up by persons occupying lands with the area under inquiry so as to resume such lands and to declare them liable to settlement of rent *Gokhul Sahu v Jodu Nundun Roy I L R 17 Calc 721* referred to SECRETARY OF STATE FOR INDIA v NITYE SINGH SECRETARY OF STATE FOR INDIA v BAIKUNT NATH PRODHAN SECRETARY OF STATE FOR INDIA v RAM TARUCK DAS [I. L R. 21 Calc 38

2 ———— *Power of Settlement Officer—Decision of Special Judge—Res judicata—Question whether land is mal or lakhiraj*—The plaintiff had been proprietor of an estate which was sold for arrears of Government revenue and repurchased from the then purchaser by the plaintiff in 1886 He applied under Ch X of the Bengal Tenancy Act for the measurement of the estate and the preparation of a record-of rights and the Revenue Officer deputed for these purposes found that a portion of the estate held by the defendant was mal land though it was held as lakhiraj under certain sanads and as he also found that no rent had ever been paid for it it was entered on the record of rights as mal land held under those sanads as lakhiraj The Special Judge on appeal by the plaintiff held that the land having been found to be mal should have been entered as mal land unassessed with rent In a suit to have the land assessed with rent it was found that the sanads under which the defendant claimed to hold were granted not by any predecessor in title of the plaintiff and were of a date anterior to the Permanent Settlement *Held* (reversing the decision of the lower Appellate Court) that the Special Judge had no jurisdiction to determine whether the land was mal or lakhiraj and that his judgment as to its being mal did not therefore operate

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as *res judicata* *Secretary of State for India v Nitye Singh I L R 21 Calc 38* referred to *Gokhul Sahu v Jodu Nundun Roy I L R 17 Calc 721* distinguished. The case was remanded for a finding whether the land was mal or lakhiraj KARMI KHAN v BROJO NATH DAS [I. L R., 22 Calc., 24

1. ———— s 103—*Record of rights—Dispute as to boundaries—Powers of an executive officer*—An executive officer acting under the provisions of s. 103 of the Bengal Tenancy Act has no power to determine the boundaries between conterminous estates as to which a *bonâ fide* controversy exists between the owners of such estates *Norendro Nath Roy Chowdhry v Srinath Sandel I L R 19 Calc 645* relied on. BIDHU MUKHI DABI v BHUGWAN CHUNDER ROY CHOWDHRY I. L. R. 19 Calc, 64

2 ———— and ss 102 106, 108—*Powers of Settlement Officers—Record of rights—Dispute as to boundaries*—A Settlement Officer has no power under the provisions of the Bengal Tenancy Act to entertain any dispute between the persons interested in neighbouring estates as to the title of any land NORENDRO NATH ROY CHOWDHRY v SRINATH SANDEL I. L. R. 19 Calc. 645

———— s 104

See APPEAL—ACTS—BENGAL TENANCY ACT I. L. R. 17 Calc, 326

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL [I L R. 21 Calc. 776

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622 [I. L R., 23 Calc., 723

See VALUATION OF SUIT—APPEALS [I. L. R. 23 Calc. 723

1.———— and ss 38 52 sub s 2 cl (c) Ch X s 101 sub s 2 cl (a)—*Ancient holdings—Additional rent for excess lands—Onus of proving lands in excess of area originally let—Permanent deterioration—Liability to additional rent—Duty of Settlement Officer*—S 104 sub s (2) of the Bengal Tenancy Act is subject to the provisions of s 52 of the Act The mere fact that on a measurement made by a zamindar under the authority of Government given under Ch X of the Bengal Tenancy Act it is found that the tenants generally are in possession of lands in excess of the areas entered in his zamindari papers and their rent receipts does not necessarily prove that he is entitled to additional rent for the excess areas. Where settlements or holdings are of very old date and lands are let out by areas ascertained without any accurate survey but as contained within certain recognized boundaries for instance by reference to other holdings it is incumbent upon the zamindar seeking enhancement of rent very many years after the original settlement to show that the lands held by the raiyats are in excess of the lands originally let to them in consequence of some encroachment or some alluvial increment or that the settlement was made on the basis of measurement

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and the rates of rent as applied to the area then determined, while on a fresh measurement mad by the same length of measure it has been found that he is entitled to receive additional rent which by carelessness or neglect or s me other cause he had hitherto lost A liberal interpretation should be put upon the word permanently in s 38 sub s (1) cl (a) and the word construed with reference to existing conditions. It cannot be said that a deterioration is not permanent only because by the application of capital and skill it might be removed. In determining the liability to additional rent the Settlement Officer is by s 52 sub s. (2) cl (c) bound to consider the length of time during which the tenancy has lasted without dispute as to rent or area. Although only an occupancy raiyat can bring a suit under s 38 the principles laid down in that section ought to be taken into consideration in all proceedings for settlement of rent whatever be the status of the raiyat GOURI PATTRA v REILY I L R 20 Calc 579

2 ———— *Order of Settlement Officer as to rate of rent—Res judicata—Bengal Tenancy Act ss 105 106 and 107—Civil Procedure Code (1882) s 13—Objection—Dispute* —Where a Settlement Officer of his own motion settled what appeared to him to be a fair and equitable rent in respect of the lands held by the plaintiffs and other tenants under s. 104 cls 2 and 3 of the Bengal Tenancy Act and the plaintiffs preferred an objection under s 105 cl. 1 to certain entries in the record enhancing their rents on the ground that their rents were not liable to be enhanced which objection was disallowed and the record finally published under s 105 (2) —*Held* the proceedings of the Settlement Officer were of an executive rather than of a judicial character and did not operate either as a *res judicata* under s 13 of the Code of Civil Procedure or as a final decree under s. 107 estopping the plaintiffs from having the same matters tried by the regular Civil Court The words objection and dispute in ss 105 and 106 are not synonymous terms SECRETARY OF STATE FOR INDIA v KAJIMUDDY I L R 23 Calc 257

———— s 105

See RES JUDICATA - COMPETENT COURT—REVENUE COURTS
[I. L. R. 23 Calc 257

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L R. 16 Calc 596
I. L. R 24 Calc 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE s 622
[I. L R. 16 Calc 596

———— s 106

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
[I. L. R., 17 Calc. 721
I L. R. 23 Calc. 257
I. L. R. 27 Calc. 167
2 C W N 491

BENGAL TENANCY ACT (VIII OF 1885) —*continued*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
[I L. R. 21 Calc 776 935
I. L. R 22 Calc 477
I. L R. 24 Calc 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE s 622
[I. L. R. 21 Calc 935

———— s 107

See RES JUDICATA—COMPETENT COURT —REVENUE COURTS
[I. L. R. 23 Calc 257
I. L. R. 27 Calc. 167

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
[I. L. R. 21 Calc 776

———— s 108

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
[I. L R. 21 Calc 776 935
I. L. R. 22 Calc 477
I L R. 24 Calc 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE s 622
[I. L. R. 21 Calc 935
I. L. R. 23 Calc. 723

See VALUATION OF SUIT—APPEALS
[I. L. R. 18 Calc, 667
I L. R. 23 Calc. 723

———— *Special Judge Jurisdiction of —Publication of record of rights—Bengal Tenancy Act ss 55 105 106* —There is nothing in s 108 of the Bengal Tenancy Act which limits the jurisdiction of a Special Judge to deal only with matters of objection taken after publication of the record of rights DURGA CHARAN LASKAR v HARI CHURN DASS I L. R. 21 Calc 521

———— s 111—*Suit for arrears of rent—Agreement to pay additional rent for excess land* —When a tenant agrees to pay additional rent for excess land found on measurement to be in his possession and a suit is brought for the recovery of rent for such excess land,—*Held* that such a suit is a suit for arrears of rent and is not barred under s. 111 of the Bengal Tenancy Act as being a suit for alteration of rent within the meaning of cl (a) of that section merely because subsequent to the accrual of the rent there have been settlement proceedings under the Act and the land has been measured in connection therewith RAMJAN ALI v AMJAD ALI
[I. L. R. 20 Calc. 903

———— s 116

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—PERSON BY WHOM RIGHT MAY BE ACQUIRED
[I. L R. 26 Calc 546
3 C W N, 336

BENGAL TENANCY ACT (VIII OF 1885) —*continued*

——— s 120 sub s 2—*Record of proprietor's land as private land—Grounds for determining land to be private—Evidence* —In enacting sub s (2) of s 120 of the Bengal Tenancy Act the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature as asserted in the draft Bill laid before the Council for consideration to extend the occupancy rights of tenants before the measures then declared to be in contemplation became law and therefore the particular date the 2nd day of March 1883 the date on which the draft Bill was published in the *Gazette* and leave was obtained to introduce the Bill into the Council was declared to be the latest date on which there should be free action on the part of zamindars to assert their private rights so as to prevent the accrual of special tenant rights From the wording of that sub-section it was intended that, in determining whether land is the private land of the proprietor regard should be had to any declaration made before the 2nd March 1883 by the landlord and communicated to the tenants in respect to the reservation of the proprietor's right over the land as his private land the words any other evidence that may be produced in that sub section mean therefore any other evidence tending in the same direction that may be produced to show the assertion of any title on the part of the proprietor and communicated to the tenant before that date NILMONI CHUCKERBUTTI *v* BYKANT NATH BERA I. L. R., 17 Calc 466

1 ——— ss 121 and 140—*Suit for compensation for illegal distraint* —A suit for compensation for illegal distraint under s 121 of the Bengal Tenancy Act (VIII of 1885) was brought by one of two persons jointly entitled to the crops distrained. *Held* that s 140 of the Bengal Tenancy Act did not exclude a suit of this kind. JAGDEO SINGH *v* PADARATH AHIR I. L. R., 25 Calc. 285

2 ——— *Distraint by a registered proprietor—Suit for damages—Land Registration Act (Bengal Act VII of 1876) s 78* —A suit for compensation for illegal distraint under s 140 of the Bengal Tenancy Act is maintainable only on the ground that the distraint was made in violation of the provisions of s 121 of that Act A tenant cannot deny the right of a registered proprietor to distrain and plead payment of rent to a third person whose name is not registered HANUMAN AHIR *v* GOBINDA KOER 1 C W N 318

——— s 143

See APPEAL—ACTS—BENGAL TENANCY ACT I. L. R. 14 Calc 312

——— *Rules framed under s 189 of the Bengal Tenancy Act—Whether proceedings under s 103 of the Bengal Tenancy Act are suits between landlord and tenant—Code of Civil Procedure (Act XIV of 1882)—Review of judgment* —Proceedings under s 103 of the Bengal Tenancy Act are suits between landlord and tenant within the meaning of s. 143 by virtue of the rules framed under s 189 of that Act; therefore the provisions of the Code of Civil Procedure relating to review of judgment are applicable to such proceedings ACHHA MIAN CHOWDHRY *v* DURGA CHURN LAW I. L. R., 25 Calc. 146 [2 C W N, 137

——— s 144.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT CASES—RENT [I. L. R, 26 Calc. 842 4 C W N, 95

——— s. 148

See SALE FOR ARREARS OF RENT—INCUMBRANCES [I L R, 22 Calc, 364

1. ——— *Issue in suit for arrears of rent* —In a suit for arrears of rent where the plaintiff claims a certain rent as payable in respect of certain lands mentioned in the plaint and the defendent denies the occupation of the lands at the rents alleged by the plaintiff but admits that he holds other lands at different rents the proper issue to be tried is whether the defendant holds the lands set forth in the plaint at the rent specified Having regard to the provisions of s 148 *cl* (*b*) of the Bengal Tenancy Act a simple issue as to whether the defendant holds the jamas set forth in the plaint under the plaintiff is not sufficient BHAI CHAL NASYA *v* SHAM NUYASI MAHOMED BALU NASYA *v* SHAM NUYASI MAHOMED [1 C W N 153

2. ——— *Assignee of decree—Trustees applying for execution for benefit of assignor's heir* —The word assignee as used in s 148 cl (*h*) of the Bengal Tenancy Act does not include trustees who execute decrees under an assignment which is not for their own benefit but for the benefit of the heir of the assignor CHHATRAPAT SINGH *v* GOPI CHAND BOTHRA I. L R. 26 Calc 750 [4 C W N 446

3 ——— *Decree for arrears of rent Assignment of—Execution of decree by assignee* —The fact that an assignment of a decree for arrears of rent was made before the Tenancy Act will not protect from the provisions of s 148 (*h*) an assignee who proceeds to execution afterwards but execution cannot be refused where before that Act came into operation the assignment had been recognized by a Court of execution under s 232 of the Civil Procedure Code KOILASH CHUNDER ROY *v* JODU NATH POY [I L R 14 Calc 380

4 ——— *Bengal Tenancy Act (VIII of 1885) s 148 cl (h)—Rent decree Assignment of recoverable as a civil demand—Landlord's interest vesting in the assignee* —Unless the assignee of a rent decree has the landlord's interest in the land he cannot execute it and the rent decree so assigned to a person in whom the landlord's interest is vested ceases to be a rent decree and becomes only an ordinary civil demand recoverable under the Code of Civil Procedure DENO NATH DEY *v* GOLAP MOHINI DASI [1 C W N 183

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

5 ——————— *Rent decree—Decree for arrears of rent—Application for execution by the assignee of such a decree—Code of Civil Procedure (Act XIV of 1882) s 316*—An application for execution by the assignee of a decree which was obtained by a landlord against a defaulting tenant for arrears of rent which accrued due between the date of the sale of the tenure in execution of a previous decree for arrears of rent and the date of the confirmation of such sale is barred by cl (*h*) of s 148 of the Bengal Tenancy Act as being one for the execution of a decree for arrears of rent KARUNA MOTI BANERJEE *v* SURENDRA NATH MOOKERJEE
[I L R 26 Calc 176

6 ——————— *Execution Application for by assignee of decree for arrears of rent—Civil Procedure Code (Act XIV of 1882) s 232*—When after the expiration of an ijara lease an ijaradar assigns to the superior landlord a decree he had obtained for rent the transferee cannot apply for the execution of the decree as s 148 cl (*h*) of the Bengal Tenancy Act is a bar to such an application DWARKA NATH SEN *v* PEARI MOHUN SEN
[1 C W N 694

1 ——————— s 149—*Suit by third party claiming rent paid into Court in rent suit Nature of—Title suit—Institution stamp*—A suit by a third person under cl (3) of s 149 of the Bengal Tenancy Act is not a title suit and need not be stamped as such *Per* TOTTENHAM J—Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit JAGADAMBA DEVI *v* PROTAP GHOSE
[I L R 14 Calc 537

2 ——————— *Suit by third party claiming rent paid into Court in rent suit nature of—Title suit*—The object of s 149 of the Bengal Tenancy Act is to prevent tenants being harassed when disputes arise between rival claimants to the land in respect of which the rent is due In a suit therefore under cl (3) of s 149 the plaintiff is entitled to have the *question of title as well as that of possession* tried and to obtain the injunction therein mentioned *Jagadamba Devi v Protap Ghose I L R 14 Calc 537* referred to and explained PURIUNNESSA *v* GOOLJAN BIBEE I L R 17 Calc 829

——————— s 150—*Admission of rent due to landlord*—S 150 of the Bengal Tenancy Act is highly penal in its character and cannot be put in force against a defendant unless he has intentionally admitted money to be due and has not paid it and such admission must be in the action. Under the circumstances of this case it was held that the defendant had made no such admission ALI AHAMMAD SIRDAR *v* BEPIN BEHARI BOSE I L R 20 Calc 595

——————— s 153

See CASES UNDER APPEAL—ACTS—BENGAL TENANCY ACT S 153

See RIGHT OF APPEAL.
[I L R, 15 Calc 107

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
[I L R 15 Calc 107, 231
I L R 16 Calc 638
I L R 25 Calc 571 571 note
1 C W N 687 711
2 C W N 297
I L R 27 Calc 484
4 C W N 269

——————— *Revisional power of District Judge in rent suits—Judicial Officer*—The words Judicial Officer as aforesaid as used in the proviso to s 153 of the Bengal Tenancy Act have reference to the Judicial Officer spoken of in cl (*b*) of that section and to such officer only and the District Judge has no power to revise decrees or orders passed by a District Judge Additional Judge or Subordinate Judge referred to in cl (*a*) of the section SANKAR MANI DEBYA *v* MATHURA DHUPINI
[I L R 15 Calc, 327

——————— s 155

See LIMITATION ACT ART 32
[I L R 24 Calc 160

——————— *Suit for ejectment—Notice Sufficiency of—Omission from notice of requisition on tenant to pay compensation—Alternative relief*—The words of s 155 of the Bengal Tenancy Act and in *any* case to pay reasonable compensation etc mean in *every* case and a notice not containing a requisition to the tenant to pay such compensation is insufficient to support a suit for ejectment brought under that section Where the suit was for ejectment from certain land but the plaint contained other prayers namely for a declaration that the defendant had no right to build houses on the land and for an injunction on him to remove houses he had built thereon and the suit for ejectment failed from the insufficiency of the notice under s 155 the Court *held* that the plaintiff was not entitled to a declaration or injunction as asked for PERSHAD SINGH *v* RAM PERTAB ROY I L R 22 Calc 77

——————— s 157

See LANDLORD AND TENANT—CONSTITUTION OF RELATIONSHIP—ACKNOWLEDGMENT OF TENANCY
[I. L. R. 25 Calc. 324
I. L. R. 26 Calc 428
3 C W N 268

——————— s 158

See RES JUDICATA—MATTERS IN ISSUE.
[I. L R 20 Calc 249

1. ——————— *Incidents of tenancy Application to determine—Validity of lease*—In a proceeding under s. 158 of the Bengal Tenancy Act (*Act VIII of 1885*) it is open to a petitioner if he acknowledges the opposite party to be a tenant to dispute the validity of the lease under which he alleges his holding and the Court is bound to go into and decide that question if raised. BHUPENDRO NARAYAN DUTT *v* NEMYE CHAND MUNDAL
[I. L. R. 15 Calc. 627

BENGAL TENANCY ACT (VIII OF 1885)
—*continued*

2. ——— *Question as to boundaries —Standard measure of the district—Evidence taken by an Ameen under s 158 of the Bengal Tenancy Act*—Under a proceeding under s 158 of the Bengal Tenancy Act in which an enquiry was directed amongst other things as to the boundaries of certain plots held by certain raiyats the Ameen took evidence as to the standard measure of the district and the Court decided the case on their evidence *Held* that in determining the boundaries the question as to what was the standard measure of the district arose and that the evidence was rightly received and acted upon. DEOKI SINGH v SEOGOBIND SAHOO
[I. L. R. 17 Calc. 277

3 ——— *Application to determine incidents of tenancy and to set aside a lease —Admission of tenancy—Landlord and tenant*—An application made nominally for the determination of the incidents of a tenancy but substantially for the purpose of setting aside the lease under which the tenant came into possession does not come within the scope of s 158 of the Bengal Tenancy Act *Per* PETHERAM C J PRINSEP PIGOT and GHOSE JJ —An admission of a tenancy in order to give juris diction under s 158 does not bring the case within the meaning of the section the object of the section being to enable the Court to ascertain what are the incidents of the existing arrangement between a landlord and his tenant and not to enable the Court in effect to make a new contract for parties between whom no contract was in existence at and before the date of the application *Per* NORRIS J — The true construction of the application was a ques tion for the determination of the Division Bench DEBENDRO KUMAR BUNDOPADHYA v BHUPENDRO NARAIN DUTT I L R. 19 Calc 182

4. ——— *Application to determine incidents of tenure—Applications against separate tenants—Form of petition—Procedure*—S 158 of the Bengal Tenancy Act does not authorize one application being made against a number of tenure holders having separate and distinct tenures The proper procedure is by separate applications against each GOLAP CHAND NOWLAKHA v ASHUTOSH CHATTERJEE I. L R 21 Calc 602

5 ——— *Application for enhance ment of rent when no settlement proceedings are in operation*—The Court in dealing with an applica tion under s. 158 of the Bengal Tenancy Act cannot pass a decree for enhancement of the rent Where therefore a landlord seeks to enhance the rent of his tenant when no settlement proceedings are going on he must institute a suit for the purpose and cannot do so by means of an application under s 158 RAJESHWAR PERSHAD SINGH v BURTA KOER
[I L. R. 21 Calc 807

6 ——— *Tenure Incidents of—Ap plication against some tenant holding two or more tenancies—Form of petition*—*Held* by PETHERAM C.J and BANERJEE J (RAMPINI J dissenting) that under s 158 of the Bengal Tenancy Act the landlord is authorized to include in one application two or more tenancies held by the same tenant. *Golap Chand Nowlakha v Ashutosh Chatterjee I L R 21 Calc 602* referred to *Held* further by BANERJEE J that by virtue of s 647 of the Civil Procedure Code the provisions of that Code may be applied to all proceedings under the Bengal Tenancy Act so far as they can be made applicable and therefore the inconvenience resulting from the proceedings becoming complicated by the inclusion of more tenancies than one in an application under s. 158 may be obviated by following the course prescribed by s. 45 Civil Procedure Code *Thakur Prasad v Fakirullah I L R 17 All 106 L R 22 I A. 44* referred to DIJENDRANATH ROY CHOWDHRY v SOYLENDRA NATH ROY CHOW DHRY I. L. R 24 Calc., 197
[1 C W N., 236

7 ——— *Transferability of hold ing question as to—Rents paid by raiyats as hold ing adjacent lands—Inquiry under s 158 subject matter of*—The question whether the holding of the defendants is transferable cannot be gone into under *s 158 of the Bengal Tenancy Act* Where in a pro ceeding under s 158 of the Bengal Tenancy Act the Court sent the case to the Collector for the purpose of a local inquiry with a view to determine the matters referred to in that section and it was directed among other matters that the Revenue Officer should find out what may be the rents payable by raiyats holding lands in the vicinity of a similar description —*Held* that the Revenue Officer ought not to have directed his inquiry to the question mentioned above but the inquiry should have been directed to find out what was the rent that was being paid by the particular defendants or had previously been paid by them PURNA RAI v BUNSHIDHUR SINGH
[3 C W N 15

——— s 161.

See SALE FOR ARREARS OF RENT—INCUMBRANCES
[I L R 22 Calc 364
I L R 23 Calc 254
I. L. R, 24 Calc, 537, 746

——— ss 162 163

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[3 C W N 333

——— s 167

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R. 22 Calc. 364
[I L R 24 Calc 746
I. L. R 25 Calc., 551
4 C W N 268 735

——— s. 169

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS I. L. R. 21 Calc 169

1. ——— s 170—*Decree for rent under Bengal Act VIII of 1869—Attachment under decree obtained under Rent Law of 1869 subsequently to the passing of Act VIII of 1885—General Clauses Consolidation Act (I of 1868) s 6*—

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

Bef re the Bengal Tenancy Act of 1885 came into operation a decree for rent was obtained under Bengal Act VIII of 1869 After the Bengal Tenancy Act of 1885 had become law the tenancy in respect of which the rent had become due was attached in execution of such decree A claim was subsequently put in to the attached property by a third person which claim was disallowed as being forbidden by s 170 of the Bengal Tenancy Act of 1885 *Held* that the provisions of the Bengal Tenancy Act of 1885 were applicable to the proceedings in execution the term proceedings in s 6 of Act I of 1868 not including proceedings in execution after decree DEB NARAIN DUTT v NARENDRA KRISHNA I. L. R 16 Calc 267

2. ———— *Attachment of tenure in execution of decree for arrears of rent by a fractional co-sharer—Arrears of rent of separate share*—An attachment of a tenure or h lding in execution of a decree obtained by a fractional co sharer for arrears f the rent of his separate share is not such an attachment as is c ntemplated by s 170 of the Bengal Tenancy Act BENI MADHUB ROY v JAOD ALI SIRCAR I L R. 17 Calc 390

See SADAGAR SIRCAR v KRISHNA CHUNDER NATH [I. L R 26 Calc 937

3 ———— and s 188—*Decree for rent obtained by one of several co sharers Effect of—Execution—Claim—Attachment—Civil Procedure Code (Act XIV of 1882) s 278*—Where a decree for the entire rent of a tenure is obtained by one of several co sharers by making the others party defendants and is executed by him alone and the defaulting tenure is attached, no claim by a third person under s. 278 Civil Procedure Code to the attached property is maintainable by virtue of s 170 of the Bengal Tenancy Act The decree has in this case the same effect as if the decree has been obtained by all the c sharers and s 188 of the Bengal Tenancy Act has no applicati n to a case like the present CHUNDRA SEKHAR PATRA MANJHEE [3 C W N 386

4. ———— *Civil Procedure Code (Act XIV of 1882) s 278—Claim Maintainability of*—S 170 of the Bengal Tenancy Act is confined to claims to the tenure and not to claims adverse to the tenure and in which the nature of the question to be tried is whether the property claimed is part of the tenure or not JAGABUNDHU CHATTOPADHYA v DEENU PAL 4 C W N 734

5 ———— *Civil Procedure Code (Act XIV of 1882) s 278—Claim Maintainability of—Attachment of defaulting tenure*—Where in execution of a decree f r arrears of rent the defaulting tenure is attached no claim under s. 278 Civil Pr cedure Code is maintainable whether the claim is to the tenure or adverse to the tenure MAKBUL AHMED v RAKHAL DAS HAZRA [4 C W N 732

———— s 171.

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R. 24 Calc, 537

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

———— s 173

See APPEAL—ORDERS [I. L. R. 21 Calc 825

See LIMITATION ACT ART 178 [I. L R 24 Calc 707

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL [I. L R. 24 Calc 707

———— *Sale for arrears of rent—Purchase by benamidar for judgment debtor—Sale void or voidable—Suit to set aside sale—Proper Court to decide whether sale should stand or not*—Where a sale takes place under the Bengal Tenancy Act in execution of a decree for arrears of rent and the purchaser is found to be a mere benamidar for the judgment debtor —*Held* in a suit to set aside the sale on that ground that on the wording of s 173 the sale was only voidable and not absolutely void that section leaves it in the discreti n of the Court to set aside the sale or n t as it thinks fit Under that section the proper Court to determine whether the sale should stand or not is the Court that held the sale GOPAL CHUNDER MITRA v RAM LAL GOSHAIN I. L. R. 21 Calc 554

———— s 174.

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY [I. L. R. 22 Calc 800

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION [I. L R. 22 Calc 767

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES [I. L. R. 23 Calc 393 396 note

1. ———— *Act creating new rights Effect of—Application f r execution*—The provision of an Act which creates a new right cannot in the absence of express legislation or direct implication have a retr spective effect *Held* acc rdingly that a judgment debtor s right under s 174 of the Bengal Tenancy Act to set aside a sale did not avail where the sale was held in pursuance of a decree the execution whereof had been applied for before that Act came into operation LAL MOHUN MUKERJEE v JOGENDRA CHUNDER ROY BONOMALI CHUNDER GHOSAL v RAMKALI DUTT I L R 14 Calc 636

2. ———— *Execution applied for after passing of Act VIII of 1885—Decree being previous to the Act—Bengal Act VIII of 1869—Construction of statute*—A sale in execution of a decree passed under Bengal Act VIII of 1869 executi n having been applied for after Act VIII of 1885 had c me into force cann t be set aside under s 174 of the latter Act Principle of *Lal Mohun Mukerjee v Jogendra Chunder Roy I L R 14 Calc 636* applied UZIR ALI v RAM KOMAL SHAHA I. L. R. 15 Calc 383

3 ———— *Judgment debtor Meaning of*—The word judgment-debtor as used in

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

s 174 of Act VIII of 1885 does not include a transferee or assignee from a judgment debtor but must be construed strictly as referring to a judgment debtor alone RAJENDRO NARAIN ROY v PHUDY MONDUL **I L R 15 Calc 482**

4 — — *Tenure sold in execution of a decree for cesses—Rent Definition of Bengal Tenancy Act s 3 cl 5—Bengal Cess Act (Bengal Act IX of 1880) s 47*—S 174 of the Bengal Tenancy Act is applicable to the case of a tenure or holding sold by the landlord in execution of a decree for arrears of cesses due thereon although s 174 is not specifically mentioned in s 3 cl 5 as one of the sections to which the extended definitions of rent is applicable KISHORI MOHUN ROY v SARODAMANI DASI **1 C W N 30**

5 ———— and s 162—*Setting aside sale— Decree Meaning of*—The word decree in s 174 of the Bengal Tenancy Act no doubt primarily refers to the decree of which execution is sought for but if in the meantime that is to say before the sale is actually held the decree of the first Court of which execution was applied for is modified in appeal in favour of the judgment debtor then necessarily the decree must be the decree of the Appellate Court So where a decree for rent was passed by the first Court on the 11th January and in execution of the decree the defaulting tenure was sold on the 5th June but in the meantime the decree had been modified by the Appellate Court on the 18th May —*Held* that the judgment debtor could set aside the sale by depositing within 30 days from the date of sale the amount covered by the decree of the Appellate Court together with a sum equal to five per centum of the purchase money BHIKI SINGH v BHANU MAHTON **3 C W N 231**

6 ———— *Proceeding in execution of decree—Application for execution—Civil Procedure Code 1882 s 647*—A proceeding under s 174 of the Bengal Tenancy Act is not a proceeding for the execution of a decree it may be a proceeding relating to the execution of a decree but it does not come within the Explanation to s 647 of the Civil Procedure Code as being an application for the execution of a decree SUBH NARAIN LALL v GOBOKE PROSAD **[3 C W N 344**

7 ———— *Deposit Nature of—Power to set aside sale*—The deposit under s 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties and a Court has no power to set aside a sale under that section unless the judgment debtor has complied strictly with its provisions RAHIM BUX v NUNDO LAL GOSSAMI **[I L R 14 Calc., 321**

8 ———— *Nature of deposit required*—A deposit under s 174 of the Bengal Tenancy Act must be such as the decree holder may draw out at once a deposit not made payable to the decree-holder until a certain event had happened is not a good deposit within the meaning of that section. SHAKOTE v JOTINDRA MOHUN TAGORE **[1 C W N, 132**

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

9 ———— *Sale for arrears of rent—Deposit Extension of time for when Court is closed*—Where a tenure is sold for arrears of rent under the Bengal Tenancy Act of 1885 the judgment debtor under s 174 of the Act may apply to have the sale set aside on his depositing in Court for payment to the decree-holder the amount recoverable under the decree with costs and for payment to the purchaser a sum equal to 5 per cent of the purchase money and if the Court be closed on or before the last day of the period limited the judgment debtor may pay the said sum into Court on the first day the Court re opens notwithstanding the absence of express provision to that effect SHOOSHEE BHUSAN RUDRO v GOBIND CHUNDER ROY **I L R 18 Calc 231**

See PEARY MOHUN AICH v ANUNDA CHARAN BISWAS **I L R 18 Calc, 631**

10 ———— *Amount of deposit payable incorrectly calculated by an officer of the Court—Sale for arrears of rent*—The judgment debtor within 30 days from the date of sale deposited in Court under s 174 of the Bengal Tenancy Act the amount which had been calculated in the office of the Munsif as the amount payable under the section Subsequently on its being discovered that the amount was short by a small sum the calculation being incorrect the Munsif held that the provisions of the section had not been complied with and passed an order confirming the sale *Held* that when the amount payable by the judgment debtor under s 174 has been calculated and settled by an officer of the Court and when that amount has been paid into Court an order setting aside the sale must be made by the Court as a matter of right The order of the Munsif confirming the sale was therefore without jurisdiction and must be set aside UGRAH LALL v RADHA PERSHAD SINGH **[I L R 18 Calc 255**

See MAKBOOL AHMED CHOWDHRY v BAGIR SABHAN CHOWDHRY **I L R 25 Calc 609**

11 ———— *Application to set aside sale for arrears of rent—Deposit of decretal amount incorrectly calculated by ministerial officers of Court—Effect of deposit without a prayer in express terms to set aside the sale—Challans—Practice*—The judgment debtor within thirty days from the date of sale of his holding for arrears of rent deposited in Court under s 174 of the Bengal Tenancy Act the decretal amount by a challan endorsed by the chief ministerial officer of the Court executing the decree Subsequently it was discovered that the amount was short by 9 pies which the judgment debtor forthwith paid in making up the deficiency and presented a petition praying that the execution case may be declared as finally closed but without applying in express terms to have the sale set aside *Held* that under s 174 of the Bengal Tenancy Act the Court was bound to set aside the sale notwithstanding that the applicant did not in express terms ask for that relief *Ugrah Lall v Radha Pershad Singh I L R 18 Calc 255* referred to *Per* AMEER ALI

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

J—The fact of his depositing the amount was a sufficient indication of his intention to seek the relief *Per* MACPHERSON *J*—The challan which sets out the purpose of the deposit may be regarded as a sufficient application ABDUL LATIF MOONSHI *v* JADUB CHANDRA MITTER I. L. R., 25 Calc 213

12 ———— *Jurisdiction of Civil Court—Civil Procedure Code (Act XIV of 1882) s 11—Right of suit to set aside sale for arrears of rent—Deposit in Court*—No suit is maintainable to set aside a sale under the provisions of s 174 of the Bengal Tenancy Act The right under the section to have a sale set aside is not an abstract right which can be enforced by suit against any particular person but is a right to call upon a Judge to set aside a sale and on his refusal to proceed in revision KABILASO KOER *v* RAGHU NATH SARAN SINGH I. L. R. 18 Calc 481

13 ———— *Civil Procedure Code 1882 s 295—Deposit made by judgment debtor*—S 295 of the Code of Civil Procedure does not apply to a deposit made by the judgment debtor under s 174 of the Bengal Tenancy Act BIHARI LAL PAL *v* GOPAL LAL SEAL 1 C W N 695

———— s 176

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R 22 Calc 364

———— s 178

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
[I. L. R 24 Calc 37
I L R 26 Calc 130
I L R 26 Calc 315
3 C W N 37
3 C W N 194

See CASES UNDER LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION
[I L. R 24 Calc 272
L. R 23 I A 158

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I. L. R. 23 Calc. 427
[I L R 26 Calc 184

———— *Right of occupancy—Agreement restricting right of occupancy—Suits pending when Act came into force*—S 178 of the Bengal Tenancy Act (Act VIII of 1885) has no application to suits instituted before the date on which that Act came into force So where a landlord sued to eject a tenant who had executed a solenamah agreeing to hold the land in suit for a specified period at a specified rent and providing that the landlord was to be at liberty to enter on the lands at the expiry of the period and the suit was instituted on 6th October 1885 and where it was found that at the date of the solenamah the tenant had acquired a right of occupancy with respect to some of the lands in suit —*Held* that the tenant was not entitled to the benefits conferred by s 178 cl 1 sub cl (*b*) of the Bengal Tenancy Act but was liable to be ejected MOHESHWAR PERSHAD NARAIN SINGH *v* SHEOBARAN MAHTO MOHESHWAR PERSHAD NARAIN SINGH *v* DURSUN PAUT
[I. L. R., 14 Calc, 621

———— s 179

See CESS I. L R 15 Calc 828
[I. L R 23 Calc 611
3 C W N 603

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
[I L. R 26 Calc 130
3 C W N 37

———— s 180

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION
[I. L. R. 17 Calc 393

———— s 181

See SERVICE TENURE
[I. L R 25 Calc 131

———— s 183

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I L R 23 Calc 179 437
[I L R 26 Calc 184

———— s 184 and sch III part I art 3—*Occupancy raiyat—Suit—Limitation*—The suit mentioned in s 184 and sch III part I art 3 of the Bengal Tenancy Act 1885 means a suit by an occupancy raiyat as such that is an occupancy raiyat claiming a right of occupancy as against his landlord CHUNDER KISHORE DAY *alias* MUKHORI DEY *v* RAJ KISHORE MOZUMDAR
[I. L R 15 Calc, 450

———— s 188

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622
[I. L R 15 Calc 47

1 ———— *Co sharers Suit by—Parties*—S 188 of the Bengal Tenancy Act applies only to such matters as a landlord is under the Act authorized or required to do there is nothing in that Act which requires or authorizes a landlord to sue thereunder for arrears of rent One of several joint landlords is competent to sue for the entire rent due from a tenant making his co sharers parties to the suit. PREM CHAND NUSKUR *v* MOKSHODA DEBI
[I. L R 14 Calc 201

UMESH CHUNDER ROY *v* NASIR MULLICK
[I L R 14 Calc 203 note

2 ———— *Suit for rent—Co sharers Suit by—Joint undivided estate—Jurisdiction—Civil Procedure Code (Act XIV of 1882) s 622*—A District Judge in deciding a rent suit held that s 188 of the Bengal Tenancy Act prohibited the Court from entertaining the suit in the form in which it had been framed and therefore dismissed the suit *Held* on an application under s 622 of the Civil Procedure Code to have the judgment of the

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

District Judge set aside that the District Judge had acted in the exercise of his jurisdiction illegally inasmuch as s 188 had no application to the case and that his decision must be set aside *Prem Chand Naskur* v *Mokshoda Debi I L R 14 Calc 201* and *Umesh Chunder Roy* v *Nasir Mullick I L R 14 Calc 203 note* followed. *Amir Hassan Khan* v *Sheo Baksh Singh I L R 1 Calc 6 L R 11 I A 237* distinguished. JUGOBUNDHU PATTUCK v JADU GHOSE ALKUSHI

[I. L. R 15 Calc 47

3 ——————— and s 158—*Co sharers—Joint landlords—Application under s 158 by one of several joint landlords—Refusal by joint landlords to join in such application Effect of*—An application under s 158 of the Bengal Tenancy Act 1885 cannot be made by one of several joint landlords S 188 of the Act requires that such an application should be made by all the landlords acting together and it is not a sufficient compliance with its provisions to make the landlords who refuse to join parties to the proceedings under s 158 *Chuni Singh* v *Hera Mahto I L R 7 Calc 633, Kali Chandra Singh* v *Rajkishore Bhuddro I L R 11 Calc 615 Rashbehari Mukerji* v *Sakhi Sundari Dasi I L R 11 Calc 644 Abdul Hossein* v *Lall Chand Mohtan I L R 10 Calc 36 Prem Chand Naskur* v *Mokshoda Debi I L R 14 Calc 201* and *Jogobundhu Pattuck* v *Jadu Ghose Alkushi I L R 15 Calc 47* referred to MOHEEB ALI *alias* DUMMER v AMEER RAI I. L. R 17 Calc 538

4. ——————— *Co sharers—Suit for enhancement of rent or for additional rent—Joint landlords*—Having regard to the provisions of s 188 of the Bengal Tenancy Act 1885 where two or more persons are joint proprietors they must all join in bringing a suit for enhancement of rent or for additional rent *Guni Mahomed* v *Moran I L R 4 Calc 96* referred to GOPAL CHUNDER DAS v UMESH NARAIN CHOWDHRY

[I L R 17 Calc 695

5 ——————— *Ejectment suit for—Co sharers—Joint landlords*—S 188 of the Bengal Tenancy Act of 1885 is no bar to a suit for ejectment by one or two joint owners when the suit is brought under the contract law on a breach of the conditions of a lease by the tenant HARIPRIA DEBI v RAM CHURN MYTI I. L. R 19 Calc 541

6 ——————— *Lands formed by drying up of bhil or marsh—Suit for share of new lands and for assessment—Suit for possession of whole of land and for assessment*—The principal defendants held a holding under the plaintiffs and their co sharers. Subsequent to the creation of the original holding defendants took possession of certain lands by gradual encroachment Plaintiffs brought a suit for recovery of their share of the encroached lands or for assessment may the and made their co sharers parties *Held* the decree as altogether a new holding and the rent that

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

of the Bengal Tenancy Act and s 52 w[illegible] able *Prem Chand Naskur* v *Moksho[illegible] P 14 Calc 201 Umesh Chunder R[illegible] Mullick I L R 14 Calc 203 not[illegible] bundhu Pattuck* v *Jadu Ghose Alkush[illegible] Calc 47* referred to But where a c[illegible] lord claims for khas possession with [illegible] claim for rent not merely of the addition[illegible] in possession of the tenants over and abo[illegible] their own holding but in respect of the e[illegible] of land found in possession of the tena[illegible] the lands of their old holding —*Held* [illegible] Bengal Tenancy Act applied and s. 188 [illegible] maintainability of such a suit at the ins[illegible] sharer landlord. *Gopal Chunder Da[illegible] Narain Chowdhry I L R 17 Calc 6*[illegible] KHANDAKAR ABDUL HAMID v MOHINI [illegible]

[4 C [illegible]

7 ——————— *Decree for ren[illegible] only some of co-sharer landlords—Sale of such decree of occupancy holding [illegible] able by custom*—A decree for rent o[illegible] of certain co-sharer landlords [illegible] body of them is not a [illegible] 2[illegible] Tenancy Act *Prem C*[illegible] *Debi I L R 14* *Pattuck* v *Jad*[illegible] 47 referred t[illegible] transfers judgm[illegible] in *Shikdar* 355 referred to [illegible] PRASANNA SARKAR [illegible]

8 ——————— *Joint landlo[illegible] Enhancement of rent of—Fractional [illegible] Suit for enhancement of rent of a ten[illegible] only of several joint landlords*—The [illegible] s 188 of the Bengal Tenancy Act apply[illegible] some only of several joint landlords to enh[illegible] of a tenure whether such tenure was in ex[illegible] date of the permanent settlement or not [illegible] such a suit being brought The plaintiff[illegible] some only of the co-sharers in a zamindar[illegible] a suit to enhance the rent of a tenure [illegible] zamindari and to recover their share of th[illegible] enhanced rate for a specified period. Of[illegible] holders some were co sharers of the plai[illegible] zamindari and the remainder were n[illegible] therein. It was admitted that the plaint[illegible] their share of the rent of the tenure sep[illegible] their co sharers who were sharers in the t[illegible] plaintiffs alleged that they had requeste[illegible] to join them in instituting the suit but th[illegible] declined to do so and they accordingly [illegible] defendants in the suit *Held* that the pla[illegible] not maintain the suit having regard to th[illegible] of s 188 of the Act The term joint la[illegible] that section must be taken as including al[illegible]

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

I L R 14 Calc 201 Gopal Chunder Das v *Umesh Narain Chowdhry I L R 17 Calc 695* and *Beni Madhub Roy* v *Jaod Ali Sircar I L R 17 Calc 390* referred to HALADHAR SAHA v PHIDHOY SUNDRI I L R 19 Calc 593

9 ———— *Joint landlords—Arrangement with fractional co sharers Effect of—Separate tenancy Creation of* —Where a tenant has agreed to all w one of several co sharer landlords to deal with him as if he were his own tenant without any regard to the interests of the other co sharers the effect is to create a separate tenancy under such fractional co-sharer and s 188 of the Bengal Tenancy Act is licable to such a case *Gopal Chunder Das* v *sh Narain Chowdhry, I L R 17 Calc 695* nguished. PANCHANAN BANERJI v RAJ KUMAR A I L R 19 Calc 610

0 ———— *Co sharers—Suit by one sharer entitled to collect rent separately for ditional rent for land brought under cultivation ayable in terms of lease—Joint landlords—Suit or rent—Collection of rent separately* —A tenant held 19½ bighas of land under a kabul at granted by three joint landlords which provided *inter alia* that rent was to be paid at the rate of R1 8 per bigha in respect of 8 bighas only and that the remaining 11½ bighas which were then unculturable should when they became fit f r cultivation be assessed with rent at the same rate One of the co sharers who was admittedly entitled under arrangement to collect his share of the rent separately instituted a suit against the tenant j ining his co sharers as defendants to recover arrears of his share of the rent for a specific period and claimed to be entitled to recover rent in respect of the whole 19½ bighas on the allegation that the 11½ bighas had then become fit for cultiva ti n and were theref re liable to be assessed with rent at the rate mentioned in the kabuliat The tenant objected that having regard to the provisions of s 188 of the Bengal Tenancy Act the suit would not lie at the instance of the plaintiff alone *Held* that the suit did lie It was clearly n t one for enhancement of rent in the sense in which that term is used in the B ngal Tenancy Act n r was it one f r additi nal rent for excess land within the meaning of s 52 of that Act and as the plaintiff was entitl d to collect his share of the rent separately there was no reas n why he should not be entitled to claim separately the rent payable not up n any fresh adjustment of the rent inconsistent with the continuance of the old tenancy but upon an ascertainment of the rent payable in accordance with the terms of the original letting *Guni Mohamed* v *Moran I L R 4 Calc 96* and *Gopal Chunder Das* v *Umesh Narain Chowdhry I L R 17 Calc 695* distinguished RAM CHUNDER CHUCKRABUTTY v GIRIDHUR DUTT I L R 19 Calc , 755

11 ———— *Suit by co sharer for rent payable under terms of lease—Suit by one of several joint landlords* – Plaintiff the co plaintiff defendant No 1 and other pers ns who also were defendants held a tenure under which defendant No 1 held an under tenure Plaintiff brought this suit for the whole of the rent claiming only his own share of it making th se co sharers defendants who did not join as plaintiffs The terms of the defendant s pottah were that the whole of the lands being brought under cultivation the landlords would be at liberty to measure the lands of the ganti and if the land be found greater in quantity than 1 0 bighas the tenant would pay rent at the rate of 10 annas per bigha The lands being found greater than the said quantity the plaintiff prayed f r a decree for rent at that rate f r the wh le area The defendant pleaded *inter alia* that the plaintiff as a fractional sharer in the land l rd s interest c uld n t sue him al ne *Held* that the suit was maintainable at the instance of the plaintiff al ne and that it was not a suit to alter the rent under the provisions of s 52 of the Bengal Tenancy Act *Ram Chunder Chukrabutty* v *Giridhur Dutt I L R 19 Calc 755* relied upon *Gopal Chunder Das* v *Umesh Narain Chowdhry I L R 17 Calc 695* distinguished. DINTARINI DASI v BROUGHTON 3 C W N 225

12 ———— *Right of fractional co sharer to maintain a su t for enhancement of rent—Agreement with fractional co sharer to pay rent separately Effect of—Joint landlords* —A fractional shareh lder cannot bring a suit for enhancement of rent Under the provisions of s 188 of the Bengal Tenancy Act where there are several joint landlords they must all join in bringing a suit for enhancement of rent an agreement in a kabuliyat by one tenant to pay an enhanced rent to some of the landlords if on measurement the jama of his jote is increased does not create a right to maintain such a suit by those landlords Such a suit cannot be brought otherwise than under the terms of the Bengal Tenancy Act An agreement by a tenant with some of several joint landl rds to pay his share of the rent separately d es n t create a separate tenancy *Gopal Chunder Das* v *Umesh Narain Chowdhry I L R 17 Calc 695* and *Hari Charan Bose* v *Ru jit Singh I L R 25 Cal 917 note 1 C W N 521* approved of *Panchanan Banerjee* v *Raj Kumar Guha I L R 19 Calc 160* and *Tejendro Narain Singh* v *Bakai Singh I L R 22 Calc 658* distinguished. BAIDA NATH DE SARKAR v ILIM [I. L. R. 25 Calc. 917 2 C W N 44

HARI CHARAN BOSE v RANJIT SINGH [I L. R. 25 Calc 917 note 1 C W N 521

See SADAGAR SIRCAR v KRISHNA CHANDRA NATH [I L. R. 26 Calc., 937

13 ———— *Part t on of estates—Joi t landlords* —A tenure was held under a zamin dari which originally formed ne entire estate The estate was subsequently partitioned by the revenue authorities into f ur several estates. The rent of the tenure was thereupon all tted propo rti n ately to each of the four estates thus f rmed although the land forming the tenure remained undivided. In a suit for enhancement of the rent of the tenure brought by the proprietor of some of

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

the estates —*Held* that the effect of the partition of the parent estate was to create separate and distinct tenures out of the original single tenure under the proprietors of each of the estates that the proprietors of the several estates were not joint landlords of the tenure within the meaning of s 188 of the Bengal Tenancy Act and that therefore a suit for enhancement of rent would lie by a proprietor of one of the estates in respect of the rent allotted to his estate *Sarat Soonduree Debia* v *Someeroodeen Talookdar* 22 W R 530 and *Sarat Soondary Dabea* v *Anund Mohun Surma Ghuttack* I L R 5 Calc 273 followed HEM CHANDRA CHOWDHRY v KALI PRASANNA BHADURI

[I L R, 26 Calc 832

14. ———— *Joint landlords—Suit for apportionment of rent and for splitting a jama—Frame of suit—Parties—Arrears of rent* —S 188 of the Bengal Tenancy Act does not prohibit joint landlords from ceasing to be joint or preclude them from suing for their shares of the rent separately when they have ceased or wish to cease to be joint landlords provided that the suits are so framed as to free the tenant from all further liability to any one of them When therefore the plaintiffs who are joint landlords have in suits separately instituted by them against the defendant tenant asked for apportionment of rent and for recovery of rents due on such apportionment and all the parties interested have been made parties to the suits there is no reason why the plaintiffs should not have the rent apportioned and the apportionment may take place in respect both of the arrears alleged to be due and the future rent RAJNARAIN MITTER v EKADASI BAG I L R 27 Calc, 479

[4 C W N 449

15 ———— and ss 65 and 52—*Abatement of rent—Authority of a co sharer to grant abatement* —A fractional shareholder of a tenure has no right to grant abatement of rent in respect of a holding within the tenure independently of his co sharers SYAMA CHARAN MANDAL v SAIM MOLLAH 1 C W N 415

16 ———— *Suit for damages for cutting down trees* —A suit for recovery of damages for value of trees cut down by a tenant is maintainable at the instance of one of several joint landlords HARI KRES SINGHA v SADHU CHARAN LOHAR

[2 C W N, 80

———— s 189 Rules made under—

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO SUIT

[I L R 27 Calc 774
3 C W N 125

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 6 2

[I L R 23 Calc., 723

See VALUATION OF SUIT—APPEALS

[I L R, 23 Calc., 723

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

———— s 195

See BENGAL REGULATION VIII OF 1819

[I L R 17 Calc, 162

1. ———— sch. III, art. 2—*Limitation—Suit for arrears of rent at excess rate* —In 1865 the plaintiff sued and obtained a decree for payment of additional rent for excess land held by the defendant and on the 29th March 1877 instituted another suit against the defendant for khas possession of newly accreted lands or in the alternative for an assessment of rent thereon according to the terms of the defendant s kabuliat This suit was dismissed on the 29th June 1831 but on appeal to the High Court this decision was reversed on the 11th May 1883 and khas possession was given to the plaintiff On appeal the Privy Council on the 24th July 1886 reversed the decree for khas possession and declared the plaintiff entitled to a decree fixing the extent of the excess lands and assessing rent therefor in terms of the kabuliat such rent to be payable from and after the 28th March 1878 and remitting the case for a finding as to the extent of the excess lands The Subordinate Judge to whom the case was remitted gave the plaintiff a decree on the 21st March 1887 for increased rent in respect of kanis 7 gundahs 2 cowries of excess land On the 14th July 1887 the plaintiff instituted a suit to recover excess rent for the years 1878 to 1886 and for rent at the old rate plus the excess rent for a portion of the year 1887 *Held* that the suit so far as the rent for 1878 to 1883 was concerned was barred by limitation. HURRO KUMAR GHOSE v KALI KRISHNA THAKUR I L R., 17 Calc, 251

2 ———— *Limitation for rent suit—Rent payable under a lease—Registered lease* —The Bengal Tenancy Act (VIII of 1885) prescribes one period of limitation for all suits for rent brought under its provisions Art 2 of the third schedule of that Act includes a suit to recover arrears of rent payable under a lease and there is no distinction as to the form of the lease or as to whether it is registered or not *Umesh Chunder Mundul* v *Adormoni Dasi* I L R 15 Calc 221 and *Vythilinga Pillai* v *Thetchanamurti Pillai* I L R 3 Mad 76 distinguished. ISWARI PERSHAD NARAIN SAHI v CROWDY I L R., 17 Calc 466

3 ———— and s 184—*Limitation—Suit for rent on registered contracts* —Suits for rent founded on registered contracts in respect of lands subject to the provisions of the Bengal Tenancy Act are governed by the limitation provided in that Act MACKENZIE v MAHOMED ALI KHAN

[I L R 19 Calc, 1

4. ———— *Lease not for agricultural or horticultural purposes—Building lease* —The special limitation provided by art 2 sch III of the Bengal Tenancy Act is not applicable to a registered lease granted for building purposes and for establishing a coal depôt such lease not being one for agricultural or horticultural purposes within the meaning of that Act. RANIGANJ COAL ASSOCIATION v JUDOONATH GHOSE I L R 19 Calc 489

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

5 ———— *Limitation—Bengal Tenancy Act (VIII of 1885) s 184—Suit for arrears of rent—Bengal Regulation VIII of 1819*—A landlord, to recover arrears of rent for the year 1297 B S from the patnidar filed a petition on the 1st Bysack 1295 (13th April 1891) in the Court of the Collector under the provisions of Regulation VIII of 1819 praying for the sale of the patni talukh The talukh was sold and was purchased by the landlord on the 1st Jeyt 1298 (14th May 1891) The whole of the arrears not being realized by the sale proceeds the landlord brought an action on the 14th May 1894 for the balance of the patni rent to the end of 1297 B S (1 th April 1 91) The defence was that the suit was barred by limitation *Held* that the suit was governed by the provisions of the Bengal Tenancy Act s 184 and sch III art 2 (*b*) the *period of limitation in a suit for rent provided by that* article is three years from the last day of the Bengali year in which the arrear falls due and as in this case the arrear fell due in the Bengali year 1297 which ended on the 12th April 1891 and the suit was not commenced until 14th May 1894 more than three years from the last day of the Bengali year in which the arrear fell due it was barred by limitation BURMA MOYI DASEE *v* BURMA MOYI CHOWDHURANI

[I L R, 23 Calc 191

6 ———— *Limitation Act (XV of 1877) sch II art 116—Tenure holder—Transfer of Property Act (IV of 1882) s 117*—In a suit for rent for a period of six years by an ijaradar upon the basis of a kabuliat alleged to have been executed by the predecessor of the defendant it was contended for the first time before the Appellate Court that the suit was barred by limitation being one for rent for a period of more than three years It was found that the land was not let out for agricultural or horticultural purposes *Held* that inasmuch as the land was not let out for agricultural or horticultural purposes the Bengal Tenancy Act did not apply and therefore the suit was not barred by limitation UMRAO BIBI *v* MAHOMED ROJABI

[I L R 27 Calc 205
4 C W N 76

7 ———— *Suit for arrears of rent brought by assignee of landlord*—Art 2 of pt I of sch III of the Bengal Tenancy Act does not apply to a suit brought by the assignee of the arrears from the landlord but art 110 of the second schedule of the Limitation Act applies to such a suit MOHENDRO NATH KALAMAREE *v* KOILASH CHANDRA DOGRA 4 C W N 605

1. ———— sch. III art 3—*Limitation—Suit by occupancy raiyat to recover possession from trespasser Limitation for*—Art 3 sch III of the Bengal Tenancy Act (Act VIII of 1885) relates to suits brought by an occupancy raiyat against his landlord and not to a suit brought against a third party who is a trespasser RAMJANEE BIBEE *v* AMOO BEPAREE I L R. 15 Calc. 317

2. ———— *Suit by occupancy raiyat to recover possession after dispossession by landlord Question of title—Possessory suits—Bengal Act VIII of 1869 s 27—Limitation*—A suit by an occupancy raiyat to recover possession of land of which he has been dispossessed by his landlord in which the title of the tenant is denied and put in issue is governed by the special period of limitation prescribed by the Bengal Tenancy Act sch III art 3 namely two years from the date of dispossession It was intended by that enactment to provide for all suits to recover possession of land brought by an occupancy raiyat and to limit the period previously allowed by the Courts for suits to recover possession by reason of a title set up and provided by the plaintiff and not to provide only for suits of a possessory nature such as were previously dealt with by s 27 of Bengal Act VIII of 1869 SARASWATI DASI *v* HORITARUN CHUCKERBUTTI I L R 16 Calc, 741

3 ———— *Limitation—Bengal Tenancy Act s 184—Suit for possession by an occupancy raiyat*—Having regard to the provisions of s 184 of the Bengal Tenancy Act 1885 the period of limitation for a suit for the recovery of land by an occupancy raiyat is two years as prescribed by art 3 sch III of the Act *Saraswati Dasi v Horitarun Chuckerbutti I L R 16 Calc 741* followed PURAN BHADRA *v* RAM KUMAR DEY

[I L R 17 Calc 926

4 ———— *Limitation—Suit by occupancy raiyat for possession brought against a tenant settled by landlord*—Art 3 of sch III of the Bengal Tenancy Act (VIII of 1885) prescribing a limitation of two years is not restricted to suits against the landlord alone it applies to a suit brought against a tenant with whom the land was settled by the landlord. *Ramjanee Bibee v Amoo Beparee I L R 15 Calc 317* and *Chunder Kishore Dey v Rajkishore Mozumdar I L R 15 Calc 450* distinguished BHEKA SINGH *v* NAKCHHED SINGH

[I L R. 24 Calc 40

5 ———— [*Limitation—Dispossession by landlord—Possession recovery of suit for—Occupancy raiyat suit for recovery of possession by against a landlord*—The special limitation of two years as laid down in the Bengal Tenancy Act does not apply to a case where an occupancy raiyat is dispossessed from his holding by his landlord not as a landlord but as a representative of the persons whose right title and interest he has purchased ABHOY CHURN MOOKERJEE *v* TITU

[2 C W N 175

6 ———— *Limitation—Dispossession by a landlord from occupancy holding*—Where the plaintiff purchased an occupancy holding at an auction sale in execution of a mortgage decree against an occupancy raiyat and sued the landlord to recover possession of the same although plaintiff had never been in actual possession at all and his predecessors or had been ejected from possession by the landlord of the occupancy holding more than two years before suit and the latter claimed to maintain his possession by virtue of a decree which he obtained for possession as against the occupancy raiyat the

BENGAL TENANCY ACT (VIII OF 1885)—*continued*

mortgagor—*Held* that the case was not governed by the special limitation of two years *Abhoy Churn Mookerjee* v *Titu 2 C W N 175* referred to DINOBUNDHU SAHA v LOLIT MOHUN MOITRA
[2 C W N 595

7 ——————— *Limitation—Occupancy holding Suit to recover possession of*—In a suit by a purchaser from former holder for recovery of possession of an occupancy holding where the defendants were in occupation they having been inducted into the land by the agents of the landlord —*Held* that the period of limitation is two years inasmuch as it is under the authority of the landlord that the ouster took place *Bheka Singh* v *Nakchhed Singh I L R 24 Calc 40* relied on *Eradut* v *Daloo Sheikh 1 C W N 513 Abhoy Churn Mookerjee* v *Titu 2 C W N 175* and *Dinobundhu Saha* v *Lolit Mohun Moitra 2 C W N 595* distinguished CHINTAMONI SAHU v UPENDRA NATH SARNOKAR 4 C W N 326

8 ——————— *Occupancy raiyat Ouster of—Limitation*—Where the plaintiff an occupancy raiyat was ousted by the defendant and after the ouster the defendant took a *settlement* from the landlord —*Held* that two years limitation would apply to a suit for the recovery of possession HARA KUMAR NATH v NASARUDDIN 4 C W N, 665

9 ——————— *Suit for recovery of possession by an occupancy raiyat—Limitations—Dispossession by landlords sole fractional or entire body of*—The period within which an occupancy raiyat can sue to recover possession of land from which he has been dispossessed by his landlord is two years as laid down in art 3 sch. III of the Bengal Tenancy Act whether such dispossession be by a fractional landlord the sole landlord or the entire body of landlords *Joolmutty Bewa* v *Kali Prasanna Roy I L R 28 Calc 127 note* referred to PARAMESWAR NOMOSUDRA v KALI MOHAN NOMOSUDRA I. L. R. 28 Calc, 127
[4 C W N 301

JOOLMUTTY BEWA v KALI PRASANNA ROY
[I L R 28 Calc 127 note
4 C W N 303 note

1 ——— sch. III art 6—*Limitation—Ex parte decree in suit for rent—Civil Procedure Code s 108—Execution of decree Application for—Final decree—Execution proceedings struck off—Bengal Tenancy Act (VIII of 1885) ss 143 144 148*—Having regard to ss 143 144 and 148 of the Bengal Tenancy Act there is a special procedure laid down for rent suits and therefore decrees in rent suit are decrees under art 6 of sch III of that Act The words final decree in art 6 sch III of the Bengal Tenancy Act refer to the final decree in the suit and cannot be held to include an order of an Appellate Court made in an application to set aside that decree under s. 108 of the Code of Civil Procedure An *ex parte* rent decree having been obtained on the 30th May 1888 for a sum under R 00 the decree-holder on the 27th May 1889 applied for execution thereof and attached certain properties of the

BENGAL TENANCY ACT (VIII OF 1885)—*concluded*

judgment-debtor the date fixed for the sale being the 31st August 1889 The judgment debtor applied under s 108 of the Civil Procedure Code, for a re hearing of the rent suit and on the day fixed for the sale applied for stay of execution the sale was stayed and the Court of its own motion and for its own convenience directed the execution case to be struck off the file for the present On the 28th December 1889 the Court passed an order refusing a re hearing of the suit which order was upheld on appeal on the 10th May 1890 On the 21st January 1892 the decree-holder again applied for execution at the same time praying that his application might be taken to be in continuation of his former application of the 27th May 1889 *Held* that the application was one in continuation of the former proceedings in execution so far at least as regarded the property mentioned in the former application but as regards other properties it must be held to be barred as not having been made within three years from the decree of the 30th May 1888 BAIKANTA NATH MITTRA v AUGHORE NATH BOSE
[I L R 21 Calc. 387

2 ——————— *Limitation Act (XV of 1877) art 179—Execution of decree—Period from which limitation runs—Date of decree—Date of payment*—On the 26th May 1890 a rent decree was passed for the sum of R400 payable on the 15th August 1890 On the 9th August 1893 the decree holders applied for execution of the decree *Held* the period of limitation ran from the date of the decree and not from the date fixed for payment and that the application was barred by art 6 of sch III Act VIII of 1885 RAM SADAY MUKERJEE v DWARKA NATH MUKERJEE
[I L R. 22 Calc 644

BEQUEST

——— for charitable purposes

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR CHARITABLE PURPOSES

See CASES UNDER WILL—CONSTRUCTION

——— for masses

See WILL—CONSTRUCTION
[2 B L R. O C 148
2 Hyde 65
I L R. 15 Mad. 424

——— for religious purposes

See HINDU LAW—WILL—POWER OF DISPOSITION I. L. R. 18 Mad., 353

See WILL—CONSTRUCTION
[I. L. R. 25 Calc. 112

——— to a class

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES TRUSTS AND BEQUESTS TO A CLASS

BEQUEST—*concluded*

——— to Idol.

See CASES UNDER HINDU LAW—ENDOWMENT

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST TO IDOL [2 B L R A C 137 note

——— void for uncertainty

See HINDU LAW—WILL—CONSTRUCTION OF WILLS I L R 18 Bom 136 [I L R 21 Bom. 646

See WILL—CONSTRUCTION [I L R 4 Calc 443 I L R 22 Bom 774

BETROTHAL.

See CONTRACT—BREACH OF CONTRACT [I. L. R. 11 Bom 412

See HINDU LAW—MARRIAGE—BETROTHAL I L R 11 Bom. 412 [I. L. R. 21 Bom. 23

See SPECIFIC PERFORMANCE [I. L R 1 Calc 74

BETTING ON RAINFALL

See GAMBLING I. L. R 13 Bom 681 [I. L. R. 17 Bom. 184

BHAGDARI ACT (BOMBAY)

See BOMBAY ACT V OF 1862

BHAGDARI TENURES.

See CASES UNDER BOMBAY ACT V OF 1862
See CUSTOM 5 Bom. A C 123 [I L R. 5 Bom. 482

See SETTLEMENT MODE OF SETTLEMENT [2 Bom 244 2nd Ed. 231

BHOOTAN DUARS ACT (XVI OF 1869)

——— *Schedule and rules under Act—Bhutan Duars Repealing Act (Bengal Act VII of 1895) s 3—Civil Procedure Code (Act XIV of 1882) application of to Bhutan Duars—Minors Fraud against—Suit to obtain relief against fraudulent transfers effected and entries made in the record of rights under Act XVI of 1869 during one's minority* The plaintiff's father died possessed of a 4 annas share in a jote in Bhutan Duars During their minority their elder brothers sold that jote to the first three defendants in fraud of the rights of the plaintiffs and the purchasers took possession of the jote accordingly and had entries made in their own names in the record of rights The plaintiffs brought this suit under Act XVI of 1869 against the defendants to recover their share in the jote The lower Appellate Court without going into the merits dismissed the case as not cognizable

BHOOTAN DUARS ACT (XVI OF 1869) —*concluded*

in view of the provisions of Act XVI of 1869 and the Repealing Act VII of 1895 On appeal therefrom —*Held* that the notification extending the Civil Procedure Code to Jalpaiguri had not the effect of introducing the Civil Procedure Code to the Bhutan Duars although the latter are a part of Jalpaiguri inasmuch as Act XVI of 1869 which was then in force in the Bhutan Duars excluded that jurisdiction in express terms But the effect of the repeal of Act XVI (without any qualification) by Bengal Act VII of 1895 has left the Civil Procedure to be administered in the Bhutan Duars That the plaintiffs are not precluded by the entry in the record of rights from obtaining relief against the defendants An entry in a record under Act XVI of 1869 in order to be conclusive evidence of any right interest or other matter must be one which has been honestly and fairly obtained BROJO KANTO DAS *v* IUFAUN DAS 4 C W N 287

BHOULI RENT

See RENT IN KIND

BHOULI TENURE

See BENGAL RENT ACT 1869 s 52 [I L R. 2 Calc 374

BHUINHARI REGISTER.

See EVIDENCE—CIVIL CASE—MISCELLANEOUS DOCUMENTS—REGISTERS [I L R. 19 Calc 91

BICYCLE

See MADRAS MUNICIPAL ACT SCH B [I L R. 19 Mad. 83

BIDDERS AT COURT SALE

See SALE IN EXECUTION OF DECREE—BIDDERS I L R. 14 Mad. 235

BIGAMY

See ABETMENT I L R. 4 Calc 10 [I L R. 6 Bom. 126 W R. 1864 Cr 13

1. ——— Authority of caste to declare marriage void—*Penal Code s 494*—Courts of law will not recognize the authority of a caste to declare a marriage void or to give permission to a woman to remarry *Bonâ fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge under s 494 of the Penal Code of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with s. 109 REG *v* SAMBHU RAGHU [I. L. R. 1 Bom. 347

2 ——— Publication of banns of marriage—*Penal Code s 494*—The act of causing the

BIGAMY—continued

publication of banns of marriage is an act done in the preparation to marry, but does not am unt to an attempt to marry Where therefore a man having a wife living caused the banns f marriage between himself and a woman to be published he could not be punished for an attempt to marry again during the lifetime of his wife QUEEN v PETERSON [I L R, 1 All 316

3 ———— **Divorce among Rajput Gujaratis in Khandesh**—*Penal Code ss 494 and 109—Marrying again during the lifetime of husband—Deed of divorce by husband—Validity of divorce*—A member of the caste of Ajanya Rajput Guzars residing in Khandesh executed a deed of divorce to his wife The Court held on the evidence that the deed was pro ed and that in this caste a husband was for a sufficient reason such as incontinence allowed to divorce his wife that the deed in the present case had not been executed for a sufficient reason and that consequently the parties entering int a second marriage were guilty of an offence under s 494 of the Penal Code (XLV of 1860) and that the priest who officiated at that marriage was an abett r under ss 494 and 109 Mere consent of persons to be present at an illegal marriage or their presence in pursuance of such consent or the grant of accommodation in a house for the marriage does not necessarily constitute abetment of such marriage EMPRESS v UMI I L R. 6 Bom. 126

4. ———— **Nika marriage**—*Penal Code ss 494 495*—A nika marriage falls within the purview f ss 494 and 495 of the Penal Code QUEEN v JUDOO 6 W R Cr, 60

5 ———— **Dissolution of marriage at will**—*Re marriage (natra) in lifetime of first husband—Invalid marriage—Custom—Held* that a custom of the Talapada Holi caste that a woman sh uld be permitted to leave the husband to whom she has been first married and to contract a second marriage (natra) with another man in his lifetime and without his consent was invalid as being entirely opposed to the spirit of the Hindu law and such marriage was void by reason of its taking place during the life of such husband and theref re punishable as regards the woman under s 494 of the Penal Code REG v KARSAN GOJA REG v BAI RUPA 2 Bom. 124 2nd Ed. 117

6 ———— **Hindu Christian convert relapsing into Hinduism**—A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian ANONYMOUS [3 Mad Ap 7

7 ———————— *Penal Code ss 103 and 494—Native Christian—Marriage by relapsed convert*—*A* was baptized in infancy into the Roman Catholic Church but subsequently relapsed with the rest of her family into Hinduism and was married to a Hindu Her Hindu husband afterwards discarded her and alleged that he would not have married her if he had known that she had been baptized *A* was subsequently re admitted into the Roman Catholic Church and married by *B* a priest to a Roman Catholic during the lifetime of her Hindu husband *Held* that *A's* marriage with the Hindu was subsisting and valid at the time of her Christian marriage that she was guilty of the offence f bigamy and that *B* was guilty of abetting that offence *Lopez v Lopez* I L R, 12 Calc 706 discussed. IN RE MILLARD I L R, 10 Mad 11

8 ———— **Custom as to marriages**—*Penal Code s 494*—A conviction under s 494 of the Penal Code for marrying again during the lifetime of a husband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused and it is not proved that such marriages are void. IN THE MATTER OF CHAMIA 7 C L. R., 354

9 ———— **Conversion of a Hindu wife to Mahomedanism**—*Marriage with a Mahomedan—Penal Code s 494*—The conversion of a Hindu wife to Mahomedanism does not *ipso facto* dissolve her marriage with her husband. She cannot therefore during his lifetime enter into any other valid marriage contract Her going through the ceremony of nika with a Mahomedan is consequently an offence under s 494 of the Indian Penal Code GOVERNMENT OF BOMBAY v GANGA [I L R. 4 Bom 330

10 ———————— *Marriage with Mahomedan—Mahomedan Law—Marriage—Penal Code s 494*—The petitioner originally a Hindu woman and the illegitimate offspring of Chattri parents was duly married according to Hindu rites to *D* who was also by caste a Chattri Subsequent to the marriage the petitioner b came a convert to Mahomedanism and married a Mahomedan She was charged with and convicted of an offence under s 494 of the Penal Code It was contended on her behalf that (1) the marriage between her and *D* was invalid under Hindu law by reason of her illegitimacy and the consequent difference of caste between the contracting parties (2) the marriage between her and *D* became dissolved under the Hindu law on her conversion to Mahomedanism and (3) the second marriage was not void under the Mahomedan law by reason of its taking place in the lifetime of *D* and that the conviction was therefore erroneous There was no evidence of any notice having been given to *D* previous to the second marriage calling on him to become a Mahomedan *Held* that illegitimacy under Hindu law is no absolute disqualification for marriage and that when one or both contracting parties to a marriage are illegitimate the marriage must be regarded as valid if they are recognized by their caste people as belonging to the same caste *Held* also that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations and that so far as the matrimonial bond is concerned such a view would be contrary to the spirit of that law which regards it as indissoluble, and that accordingly the marriage between the petitioner and *D* was not under the Hindu law dissolved by her conversion to Mahomedanism. *Rahmed Beebee v Rokeya Beebee 1 Norton's Leading Cases on Hindu Law p 12* dissented from. *Held* further

BIGAMY—*continued*

that as the validity of the second marriage depended on the Mahomedan law and as that law does not allow a plurality of husbands it would be void or valid according as the first marriage was or was not subsisting at the time it took place that no notice having been given to *D* as required by Mahomedan law previous to the second marriage and no recourse having been had to the Courts for the purpose of obtaining a declaration that the former marriage was dissolved and as British India cannot be held to be a foreign country for the purpose of rendering such notice unnecessary the previous marriage was not dissolved under Mahomedan law and the subsequent marriage was therefore void. *Held* accordingly that the conviction was right IN THE MATTER OF THE PETITION OF RAM KUMARI I. L. R., 18 Calc., 264

11 ——— Mahomedan law—Marriage—*Child marriage—Option of minor of repudiating marriage on attaining puberty—Want of ratification after puberty—Penal Code s 494*— *B* a Mahomedan girl whose father was dead was alleged to have been given in marriage by her mother to *J* some years before she attained puberty Prior to her attaining puberty *J* was sentenced to a term of imprisonment for theft While he was in jail *B* after she had attained puberty contracted a marriage with *P* The marriage with *J* was never consummated. On *J* being released from jail he proceeded to prosecute *B* and *P* for bigamy and abetment of bigamy and also charged *P* with adultery It appeared that before taking proceedings *J* requested *B* to return to him but she refused to do so The marriage between *B* and *J* was sought to be proved by the evidence of *J* *B*'s mother and two witnesses who were said to have been present *B* and *P* were both convicted *Held* on appeal that the evidence of the marriage between *B* and *J* was insufficient to justify a conviction in the absence of proof that a Molla was present at the ceremony or that the sigha required to be recited at the marriage of minors was recited or the akd performed. *Held* further that assuming *B* to have been given in marriage to *J* when a mere child by her mother she had the option of either ratifying or repudiating such marriage on attaining puberty Under the Shia law such a marriage is of no effect until it has been ratified by the minor and under the Suni law it is effective till cancelled by the minor Under both schools of law the minor has the absolute power on attaining puberty to ratify or cancel an unauthorized marriage though under the Suni law ratification is presumed if the girl remains silent after attaining puberty and allows the marriage to be consummated. *Held* on the facts of the case that the circumstances afforded sufficient indication even assuming the girl to be governed by the Suni law that she never ratified the marriage *Held* also that a judicial order was not necessary to effect the cancellation of the marriage BADAL AURAT *v* QUEEN EMPRESS I. L. R. 19 Calc 79

12 ——— *Sagai or nika marriage—Relinquishment of wife—Penal Code s 494*—A conviction under s. 494 of the Penal Code cannot be supported where there is evidence to show that by the custom of the caste sagai or nika marriage was admissible and that the husband had relinquished his wife *In re Chama 7 C L R 354* followed. JUKNI *v* QUEEN EMPRESS

[I L R 19 Calc 627

BIGAMY—*concluded*

13 ——— Complaint by the husband — *Person aggrieved —Criminal Procedure Code (Act V of 1898) s 198—Penal Code (Act XLV of 1860) s 494*—The husband is a 'person aggrieved' within the meaning of s 198 of the Criminal Procedure Code upon whose complaint the Court should take cognizance of an offence under s 494 of the Penal Code *Queen Empress v Rukshmoni I L R 10 Bom 340* and *In the matter of Ujjala Bewa 1 C L R 523* referred to DEPUTY LEGAL REMEMBRANCER *v* SARNA KAHMI

[I. L. R 26 Calc., 336

QUEEN EMPRESS *v* BAI RAKSHMONI

[I L R. 10 Bom., 340

CHELLAM NAIDU *v* RAMASAMI

[I. L. R. 14 Mad., 379

BILL IN LEGISLATIVE COUNCIL DEBATE ON

See COMPOUNDING OFFENCE

[I L R 3 All 283

See STATUTES CONSTRUCTION OF

[I L R 8 Bom 241
I L. R. 18 Bom. 133

BILL OF COSTS

See ATTORNEY AND CLIENT

[3 B L. R. O C 96
I L R. 3 Calc 473

See COSTS—TAXATION OF COSTS

[7 B L. R Ap 50
2 Hyde 69

See LIMITATION ACT 1877 ART 84 (1871 ART 85)

[I. L. R 1 Bom. 253 505
I L. R. 7 Mad. 1
I. L. R. 22 Calc 943 952 note

BILL OF EXCHANGE

See DECREE—FORM OF DECREE—BILL OF EXCHANGE

[I. L. R. 16 Calc 804

See CASES UNDER HINDU LAW—CONTRACT —BILL OF EXCHANGE.

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE

[2 C L. R., 349

See LIMITATION ACT 1877 ART 69

[14 W R. O C 5

See MAHOMEDAN LAW—BILL OF EXCHANGE 7 B L. R. 434 note

See PARTIES—PARTIES TO SUITS—NEGOTIABLE INSTRUMENTS

[I L. R. 3 Calc. 541
I. L. R. 3 Bom. 182

BILL OF EXCHANGE—*continued*

See PROMISSORY NOTE
[I L R., 19 Calc 242

See STAMP ACT 1879 SCH I ART 11
[I. L R., 16 Calc, 432

1 ———— Evidence of dishonour and of presentment—*Noting on bill* – The mere noting on the bill even if it disclose the name of the notary in full is not evidence of the presentment or of the dishonouring of the bill BOMBAY CITY BANK v MOONJEE HURRIDOSS Bourke O C 274

2 ———— Notice of dishonour—*Reasonable notice* —In an action brought in the district of Patna against the indorser and acceptors of bills of exchange after a part payment by the acceptors no objection having been taken as to the misjoinder of defendants and the Judge having omitted to find whether the indorser had received notice of dishonour or not —*Held* the case must be remanded to ascertain first whether notice had been given within reasonable time and if not whether thereby the indorser had been injured or exposed to material risk of injury and secondly whether (English law not being applicable to the case) by the usage of merchants at Patna a part payment by the acceptors and receipt by the plaintiff discharged the indorser from liability GOPAL DAS v ALI 3 B L R A C 198

S C after remand. ALI v GOPAL DOSS
[13 W R. 420

3 ———— *Reasonable notice* – Even when English law regarding bills of exchange does not apply the holder of the bill is bound to give the maker notice of dishonour in reasonable time If the maker for want of notice has sustained injury or risk of injury he is no longer liable PIGUE v GOLAB RAM 1 W R 75

JEETUN LALL v SHEO CHURN 2 W R 214

4 ———— *Reasonable notice* —Ordinarily notice of the dishonour of a bill of exchange drawn in India and payable in England should be posted by the first mail which leaves England after the dishonour of the bill UNCOVENANTED SERVICE BANK v DUFFIN 3 N W 99

5 ———— *Dishonour of cheque taken in payment of bill of exchange when due* —The defendant endorsed to the plaintiff a bill of exchange drawn by *N S & Co* and accepted by *C N & Co* The bill at the time it was endorsed to the plaintiff by the defendant bore the previous endorsement of *N S & Co* to the defendant The bill fell due on December 3rd, 1870 which was a Saturday and on that day the plaintiff sent his jemadar to *C N & Co* the acceptors to present the bill for payment The bill was taken by *A* one of the members of the firm of *C N & Co* who gave a cheque for the amount and took a receipt from the plaintiff's jemadar striking out the signature of *C N & Co* as acceptors but without the plaintiff's consent The plaintiff's jemadar took the cheque immediately to the bank but the bank was closed Thereupon he went back to *C N & Co* and informed them that he was closed and demanded cash The plaintiff alleged that it was then stated that the cheque would be honoured on Monday The plaintiff's jemadar then went and informed the gomashta of the plaintiff of what had been done The plaintiff's gomashta sent him to the defendant's firm to give him notice of what had taken place It was alleged that at this interview the defendant's liability was admitted in case the cheque was not honoured and the plaintiff's jemadar was advised to wait until Monday the defendant stating that he also had a cheque for R7 000 from *C N & Co* This was denied by the defendant On Monday 5th December the cheque was presented to the bank for payment and was dishonoured. The plaintiff's gomashta went to the defendant's koti and gave notice of the dishonour of the bill and cheque and asked him to pay the amount of the bill The defendant asked for the bill and the plaintiff's gomashta went to *C N & Co* and brought back the bill with the name of *C N & Co* which had been struck out replaced. The defendant seeing the bill was overdue refused to pay the amount The cheque was thereupon returned to *C N & Co* and the bill retained by the plaintiff who on 6th December caused written notice of dishonour to be given to the defendant *Held* that the cheque must be taken to have been merely a conditional payment and when it was dishonoured the liability of the original bill revived *Held* also that reasonable notice of dishonour was given whether the bill be taken to have been dishonoured on the Saturday or on the Monday SOMARIMULL v BHAIRO DAS JOHURRY 7 B L R 431

GAPINATH v ABBAS HOSSEIN
[7 B L R. 434 note

6 ———— Accommodation acceptor—*Principal and surety—Discharge for surety—Equitable mortgage—Trust deed for benefit of creditors—Contract Act (IX of 1872) ss 13, 139—Evidence Act (I of 1872) s 92*—In the years 1870 and 1873 *A* drew certain bills of exchange upon *B* which were accepted by *B* for the accommodation of *A*, and endorsed by *A* to the Bank of Bengal. In May 1876 *A* by letter agreed to execute a mortgage of a certain portion of his property consisting of a share in a Privy Council decree to *B* and in the meantime to hold such property at the disposal of *B* his successors and assigns In the month of June 1876 *A* became unable to meet his liabilities and in the month of August following executed a conveyance of all his property to the Official Trustee upon trust for the benefit of *A*'s creditors The bank assented to and executed this deed after it had been assented to and executed by some of the other creditors The deed did not contain any composition with or release by the creditors nor any covenant on their part not to sue *A* In a suit by the bank against *B* as acceptor of the bills – *Held* that *B* was not precluded by the provisions of s 13, of the Contract Act and s 92 of the Evidence Act from pleading that he was an accommodation acceptor only but *held* that the letter of May 1876 constituted a good equitable mortgage and that *B* was not thereafter entitled as against the bank to the equitable rights of an accommodation acceptor *Held* further that the trust did not impair the eventual remedy of *B* and that therefore he

BILL OF EXCHANGE—*continued*

was not discharged from his suretyship under the provisions of s 139 of the Contract Act POGOSE v BANK OF BENGAL I L R 3 Calc 174

7 ———— Failure of payment at sight —*Liability of parties to draft—Effect of acceptance* —Immediately on failure of payment of a draft at sight whatever may be the real state of the account between the drawer and drawee the former becomes liable to the payee for the amount which would place him at the stipulated time and place in the same position as if the money had been duly paid Where there is no acceptance no cause of action can arise to the payee against the drawee Nor is the legal relation between the drawer and the payee altered by a partial acceptance the contract being in its nature indivisible much less can any mere promise to pay part at a future time in any way satisfy the payee's claim or postpone his right to reimbursement of his loss from the drawer SHETH KAHANDAS NARANDAS v DAHIABHAI I L R 3 Bom 182

8 ———— Suit on bill by indorsee for value against acceptor—*Sale by indorsee of goods against which bill drawn—Acceptor entitled to credit for amount of proceeds of sale*—J consigned goods to defendant and for the price drew on the defendant two bills of exchange each for the sum of R1 406-4 0 payable thirty days after sight which were duly accepted by defendant J indorsed the bills for value to the plaintiffs who in default of payment by defendant sold the goods and credited him with the amount realized After giving him credit for the amount there remained due by the defendant to the plaintiffs in respect of the said bills a sum of R1 017 The plaintiffs abandoned R17 of this amount and sued the defendant for R1 000 in the Small Cause Court at Bombay In that suit the defendant pleaded that the goods in respect of which the bills were drawn were damaged and that he had therefore refused to accept them as he was entitled to do The Judge thereupon dismissed the suit on the authority of *Shortt v Abdul Rahiman 6 Bom O C 53* holding that the plaintiffs could not under the circumstances give the defendant credit for the goods and that the claim was not therefore within the jurisdiction of the Small Cause Court The plaintiffs then brought the present suit in the High Court upon the bills of exchange alleging that they held the proceeds of the goods for the consignor The defendant contended that in no case could the plaintiffs recover from him more than the amount of the bills less the proceeds of the goods *Held* that the defendant was entitled to credit for the net proceeds of the sale of the goods. The plaintiffs had by the sale already realized part of the amount due to them and to all with the now to recover from the defendant the whole amount due on the bills would be to permit them to realize this part of their claim a second time in that case they would be bound to hand over the amount so realized to the drawers But the drawers when they negotiated the bills with the plaintiffs got all they were entitled to and would have to account in equity to the defendant for anything further obtained by them *Held* therefore that the defendant was exonerated to the amount of the proceeds of the goods but was liable for the remainder of the sum claimed by the plaintiffs AGRA BANK v ABDUL RAHIMAN I L R 6 Bom 1

9 ———— Remission of for sale for specific purpose—*Property in bill of exchange—Suit for value of on misappropriation*—Where bills of exchange are remitted for sale and the proceeds directed to be applied to a specific purpose the property in the bills remains in the remitter until the purpose for which they were remitted is satisfied. And where the money realized by the sale was wrongfully applied by the agent it was held by the Judicial Committee (affirming the judgment of the Court at Calcutta) that the remitter was entitled to recover the value of the bills in assumpsit upon an indebitatus count from the purchaser of them who had notice of the purpose for which they were remitted and the misapplication of the proceeds by the agent MUTTY LAL SEAL v DENT [5 Moore's I A 328

10 ———— Agency —The drawer of a bill of exchange cannot plead agency unless it is shown on the face of the bill that he drew it as an agent PIGOU v RAM KISHEN 2 W R 301

11 ———— Endorser Liability of—*Held* that an endorser of a bill is in the nature of a new drawer and is liable to the holder in default of acceptance or payment by the drawer and that an endorser cannot be absolved from liability because the drawer was exonerated or not impleaded JUMNA DAS v MEHUR SINGH 1 Agra 162

12 ———— Liability of Drawer *Dishonour of bill*—There is no debt due by a drawer of a bill of exchange until dishonour MILLER v NATIONAL BANK OF INDIA I L R 19 Calc 146

13 ———— *Negotiable Instruments Act (XXVI of 1881) s 17—Drawer and drawee the same person—Forged endorsement of payee—Payment by drawee on forged endorsement—Liability of drawer—Ambiguous instrument—Election to treat it as a promissory note*—On the 29th April 1889 the plaintiff's brother in law E purchased from the defendant's branch at Mauritius a bill of exchange drawn on their Bank at Bombay payable on demand to the plaintiff's order in Bombay The bill was on the following terms — The New Oriental Bank Corporation Limited Mauritius 29th April 1889 On demand pay this first of exchange (second of same tenor and date being unpaid) to the order of Sulleman Hussein six hundred and forty rupees for value received For the New Oriental Bank Corporation Limited To the New Oriental Bank Corporation Limited Bombay E sent the bill by registered post to Bombay addressed to the plaintiff During its transmission it was stolen On the 18th May it was presented by some person to the defendant's Bank in Bombay bearing a forged endorsement in blank of the plaintiff and it was paid by the Bank The plaintiff as soon as he heard of the loss of the bill made inquiry at the Bank and was told

BILL OF EXCHANGE—*concluded*

that the bill had been paid. On being shown the en dorsement the plaintiff pronounced it to be a forgery and demanded payment of the bill which the Bank refused He thereupon filed this suit against the Bank as drawers of the bill *Held* (1) that the document was an ambiguous instrument within the meaning of s 17 of the Negotiable Instruments Act (XXVI of 1881) and that the plaintiff had elected to treat it as a bill of exchange (2) That treating the document as a bill of exchange the defendants as drawers were discharged by the pay ment to the *de facto* holder who presented it for pay ment SULLEMAN HOSSEIN v NEW ORIENTAL BANK CORPORATION I L R 15 Bom, 267

BILL OF LADING

See CHARTER PARTY

1 ——— **Varying bill of lading**—*Shipping order—Custom*—In a suit instituted by a shipper to obtain bills of lading from the captain in acc rdance with the terms of the order granted by the ship's charterers—*Held* that the captain was entitled to vary the bills of lading in respect of any excess of measurement over the dimensions specified in the order and that an alleged cust m precluding such variation after the goods have been received on boardship was contrary to law It is the duty of the shipper to comply strictly with the terms of the shipping order GENTLE v THOMSON

[1 Ind. Jur O S, 69

2 ——— **Ship in port only on Sunday**—*Non delivery of goods—Lord's Day Act 29 Chas II c 7*—The owners of a steamer by their bill of lading stipulated that they would not land specie but would deliver it on presentation of bills of lading or carry it on at the consignee's risk if deli very were not taken during the steamer's stay in port The steamer arrived in port late on Saturday and sailed at daybreak on Monday without delivering the specie shipped by the plaintiff who sued for dama ges *Held* that the Lord's Day Act 29 Chas II ch 7 did not apply to Moulmein and that even if it had done so it could not prevent the shipowners from availing themselves of the stipulation they had made and that no action for damages was maintainable against them GRASEMANN v GARDNER

[3 W R Rec Ref 3

3 ——— **Liability of shipmaster**—When a shipmaster undertakes that goods shipped by him shall be delivered subject to the exceptions and conditions mentioned in a bill of lading in good order and condition he tak s upon hi self the consequences and contingencies other than the exceptions expressed in the bill of lading or which are implied by law SHETLIFF v SCOTT 22 W R 39

4 ——— **Construction**—*River Navigation in India—Difficulties or casualties of navigation*—Plaintiff sued to recover the value of certain hides which were lost in defendant's flat. The bill of lading contained among ther exceptions the words difficulties or casualties of navigation and all and every danger and accident of the river and navigation whatsoever In evidence it was proved that the flat was destroyed by some projection embedded in the river *Held* that the casualty was comprised among the exceptions in the bill of lading and further that having regard to the dangerous navigation of Indian rivers parties entering into contracts of a similar nature should protect themselves by insurance DHAUNSEE v INDIA GENERAL STEAM NAVIGATION Co I Ind Jur, O S 125 1 Hyde 283

5 ——— *Insufficiency of package—Negligence*—The defendants by a condi tion annexed to their bill of lading stipulated that they should not be responsible for leakage or break age or other consequences arising from the insufficiency of the address or package The plaintiff shipped for conveyance from Hong Kong to Bombay certain goods on board a steamer of the defendants in packages which were proved to be insufficient. These goods in accordance with a condition to that effect contained in the bill of lading were tran shipped at Galle On their being landed in Bombay it was found that all the packages were broken and in a much more damaged condition than is usual in the case of such goods carried from Hong Kong to Bombay in similar packages. The contents had to a large extent escaped from the packages but were otherwise uninjured. *Held* that under a bill of lading in the above form the *onus* of proving that the packages were insufficient and that the injury which they had sustained was the consequence of such insufficiency lay upon the defendants but that when the result of the evidence on both sides was to leave it in doubt whether the injury was caused by negligence or was the consequence of the insufficiency of the packages the plaintiff was not entitled to recover P & O STEAM NAVIGATION Co v SOMAJI VISHRAM 5 Bom O C 113

6 ——— *Insufficiency of package—Negligence—Mercantile usage Evidence of*—The defendants carry between Hong Kong and Bombay By a condition annexed to their bill of lad ing they stipulated that they should not be respon sible for damage to goods arising from insufficiency of package The plaintiff shipped certain goods in the defendants' steam r in packages which though in fact insufficient were packages of the kind ordinarily used for the conveyance of such goods from Hong Kong to Bombay On their being landed in Bombay it was found that the packages were more or less broken and the contents were in some instances in jured and had to a small extent escaped from the pack ages In an action brought to recover damages in re spect of such injury it was held that evidence of mer cantile usage or of custom would be admissible to show that the words insufficiency of package should not be taken in their ordinary sense but as meaning insufficient according to a special custom of the China trade *Held* also that the evidence of these packages being ordinary China packages, and of such packages having always been carried by the defendants without objection was not sufficient, in the absence of proof of negligence to fix the defendants with liability for damage done to them there being no proof that it had been the practice either of the de fendants or any other ship-owners protected by a

BILL OF LADING—*continued*

similar clause in their bill of lading to make compensation for injury to goods contained in such packages P & O STEAM NAVIGATION Co v MANICKJEE NASERVANJEE PADSHA 4 Bom O C 169

7 ——— *Carriers by sea—Liability for damage to goods—Negligence*—A steam navigation company was employed by plaintiff to carry cargo from Calcutta to Rangoon and to deliver it into the receiving ship or to land it at the consignee's expense their liability ceasing as soon as the goods were free from the ship's tackle When the ship arrived at port the consignee not having had his own boats alongside the goods were put into other boats one of which through the negligence of the boatmen was swamped and the contents damaged Plaintiff sued for damages *Held* that as defendants were not shown to have neglected the duty of taking reasonable and proper care in the selection of boats they were not liable for the loss incurred. BULLOCH BROTHERS & Co v TOAY AUNG 24 W R 74

8 ——— *Exemption from damage occasioned by neglect of Company's servants—Suit to recover goods destroyed—Contract Act s 151*—The plaintiff shipped two plate glass show-cases from Calcutta to Rangoon by a steamer of the defendant company and signed a bill of lading which contained the following clause — Carried and delivered subject to the conditions after mentioned loss or damage for any act neglect or default whatsoever of the pilot master or mariners or other servants of the company etc excepted In landing the two cases one of them was entirely destroyed owing to the carelessness of the company's servants The plaintiff sued the company setting out that the damage was occasioned by the negligence of the company's servants The defendant company (who were not subject to the Carriers Act) relied on the abovementioned clause in their bill of lading *Held* that the defendant company were protected by their bill of lading the terms of which had been accepted by the plaintiff JELLICOE v BRITISH INDIA STEAM NAVIGATION CO

I L R 10 Calc 489

9 ——— *Liability of master—Negligence—Onus probandi—Estoppel*—The defendant master of the steamer *Scindia* signed a bill of lading by which he agreed with *C & Co* of London to deliver at Calcutta to them or their order four casks of brass wire which were shipped on board the *Scindia* The casks were described in the bill of lading as bearing a certain mark beneath which was the word Calcutta as being the port of destination and they were stated as being carried subject to the following exceptions — The ship is not liable for obliteration or absence of marks numbers address or description of goods shipped and expenses and losses by detention of ship or cargo caused by incorrect marking or by incomplete or incorrect description of contents shall be borne by the owners of the goods. In case any part of the within goods cannot be found during the ship's stay at the port of destination they are when found to be sent back by first steamer at the ship's risk and expense and subject to any proved claim for loss of market. The ship shall not be liable for incorrect delivery unless each package shall have been distinctly marked by the shippers before shipment with the port of destination The bill of lading was endorsed by *C & Co* to the plaintiff a trader in Calcutta who on the arrival of the *Scindia* at that port applied for delivery of the four casks and it then appeared that they had been landed at Colombo In a suit to recover the price of the goods —*Held* the defendant was estopped from alleging that the casks were not marked as stated in the bill of lading It was open however to the defendant to prove that the casks did not on their arrival at Colombo bear the word Calcutta and thus to bring himself within the clause in the bill of lading exempting the ship from liability for obliteration or absence of marks but on proof of this in order to disentitle the plaintiff to succeed the defendant must show that the absence or obliteration caused the landing at Colombo It was found on the evidence that he had failed to do this and a decree was given for the plaintiff MADHUB CHUNDER DEY v LAW 13 B L R 394

10 ——— *Stowage—Negligence of the crew or other servants of the ship—Period of loading covered by the contract of carriage—Fitness or unfitness of the ship*—The plaintiffs shipped certain bags of sugar on the 11th and 12th November 1887 on board the defendants ship the *Byculla* for conveyance to Bombay There being a dispute as to the number of bags shipped no mate's receipts were given and no bill of lading was signed until the 28th November The *Byculla* started on her voyage on the 16th November and duly delivered the sugar in Bombay The sugar however was found to be damaged by water which was due to its having been stowed in immediate proximity to a quantity of wet timber The plaintiffs sued the defendants in the Small Cause Court for the damage so caused. The defendants sheltered themselves under the terms of the exemptive clause in their bill of lading of the 28th November which clause ran as follows — The act of God the Queen's enemies and all the perils dangers accidents of the sea and accidents loss or damage from any act neglect or default whatsoever of the pilot master or mariners or other servants of the Company or from any deviation excepted The plaintiffs contended that a bill of lading did not relate to or cover the period of loading and that even if it did the exception relied upon in this bill of lading related only to negligence subsequent to the commencement of the voyage They also contended that the ship was not a ship reasonably fit for the voyage within the meaning of the rule laid down in *Steel v The State Line Steamship Company* L R 3 Ap Ca 72 In the Small Cause Court judgment was given in plaintiff's favour On appeal to the High Court on the case stated this judgment was reversed. *Held* that this was not a case to which the rule laid down in *Steel v The State Line Steamship Company* L R 3 Ap Ca 72 applied as there was no question here of any defect inherent in the ship It was simply a case of negligent and improper stowage *Held* further following *Hongkong and Shanghai Banking Co v Baker* 7 Bom O C 196

BILL OF LADING—*continued*

that the reasonable mode of construing the contract evidenced by a bill of lading was to hold the exceptions to be co-extensive with the liability, and that there was no evidence to be found in this bill of lading of any other intention *Held* further that the goods were covered by the bill of lading from the time they were put on board to be loaded, consequently the defendants were protected from liability under the exemptive clause *The Duero* L R 2 *A and E* 393 and *Hayes v Cattiford* L R 4 C P D 182 commented on and followed HASSANBHOY VISRAM v BRITISH INDIA STEAM NAVIGATION COMPANY I L R 13 Bom 571

11 ———— *Shipping Company Liability of* —A Shipping Company is *primâ facie* bound to deliver goods in good order and condition, but this obligation is subject expressly to the conditions inserted in the bill of lading Where a cask of brandy was shipped at Madras in good order and condition, but on arrival at Calcutta was found to be empty —*Held* that the company were protected by the special words inserted in the bill of lading "Hogshead brandy covered with gunny not responsible for condition and contents" CUTLER PALMER & Co v BRITISH INDIA STEAM NAVIGATION Co [I L R 25 Calc 654 2 C W N 423

12 ———— *Liability for loss—Absence of negligence* —*A & Co* at Madras shipped by the B I S N steamer *Mahratta* a box of coral to be delivered to their Agent *M* at Bimlipatam At the time of shipment they declared the value and paid enhanced freight on account of such value By the bill of lading the company undertook to deliver the case in good order at Bimlipatam to the consignee *M* subject to certain conditions annexed By one of these conditions if the consignee did not take delivery when the ship was ready to discharge the goods might be warehoused at the merchant's risk and the company's liability was to cease when the goods left the ship's side The consignee did not take delivery at the ship's side and the company's agent at Bimlipatam took the case to the Custom House as he was bound to do by the regulations of the port If the Superintendent of the Custom House had known that the case contained corals it would have been placed in an inner room but the company's agent did not know the contents of the case and therefore was unable to give any such information to the Superintendent While the case was lying at the Custom House application was made on plaintiff's behalf to the company's agent for delivery of the case upon the usual guarantee The agent refused to deliver the case without the production of the bill of lading Afterwards the bill of lading was received from Madras and the case was delivered up At some time between its leaving the ship's side and delivery to the consignee the case was opened and a portion of the contents stolen *Held* that the defendants were not liable MACKINNON MACKENZIE v MINCHIN 6 Mad. 353

13 ———— *Declaration of value and nature of contents* —*A* was the consignee and holder of a bill of lading signed by *B* at Bombay as master of the steam vessel *John Bright* for the safe carriage and delivery of a box addressed to *A* which in fact contained diamonds of the value of R11,640 three rubies and three emeralds in all of the value of R15,940 On the face of the bill of lading was printed "This bill of lading is issued subject to the following conditions" One condition was that a written declaration of the contents and value of the goods is required by the owner and must be delivered by the shipper to the owner's agents with the bills of lading A wrong description of contents or false declaration of value shall release the owner from all responsibility in case of loss etc and the goods shall be charged double freight on the real value which freight shall be paid previous to delivery The declaration in this case was contained in the following letter from the shipper to the agent of the shipowner — "Dear Sir —Be good enough to give me an order for a small box containing diamonds to the value of about R14,000 to be shipped on board the steamer *John Bright* for Calcutta Yours etc" The box was lost by the negligence of *B* or his servants In a suit by *A* to recover the value of the goods viz R14,000 —*Held* that all the shipowner was entitled to was that the shipper should make a declaration of what *bonâ fide* he believed to be the value The declaration as to contents was not vitiated by the omission to enumerate all the different species of articles contained in the box Upon the evidence the declaration as to the *bonâ fide* value and nature of the contents was *bonâ fide* therefore *A* was entitled to recover the value of the diamonds lost DHUNJEEBHOY BYRAMJEE METHA v BETHAM 2 Ind. Jur N S 305

14 ———— *Leakage—Breakage—Damage caused by leakage from other goods* —Piece goods were carried from London to Bombay under a bill of lading the exceptions in which protected the master from "leakage breakage rust decay loss or damage from machinery boilers steam misfeasance error in judgment negligence or default of persons in the service of the ship and the ship not being liable for any consequences of causes therein excepted however originating" The piece goods on their arrival in Bombay were found to be damaged by oil and by chafing —*i e* by rubbing against other goods in the hold —but there was no evidence to show how such damage was occasioned *Held* that the term "leakage" did not include leakage from other goods on to the piece-goods nor did "breakage" include damage caused by chafing and that as no negligence was proved the master was not protected by the exception "damage from negligence" GRAHAM v HILLE 10 Bom 60

15 ———— *Leakage Damage done by—Provision for place of claim Effect of on jurisdiction of Court* —Plaintiff shipped some bales of cloth from Calcutta to Rangoon under a bill of lading by which the defendants were bound to deliver —"accidents loss or damages from fire machinery boilers steam and all the accidents of the sea rivers, land carriage and steam navigation etc excepted" On the voyage one of the boilers burst and steam and

BILL OF LADING—*continued*

water escaping some of the bales were damaged *Held* that the damage was within the exceptions of the bill of lading and therefore that the defendants were not liable to make good the loss *Quære*—Whether notwithstanding the exceptions in the bill of lading the defendants might not have been made liable in a suit on the implied warranty if it had been proved as a fact that the boiler was not reasonably fit for the voyage BRITISH INDIA STEAM NAVIGATION CO *v* IBRAHIM MOOSUM 8 W R, 35

16 ———— *Exception in bill of lading—Seaworthiness—Suit for damage to goods by leakage while ship in dock* —The plaintiffs goods were loaded in the defendants steamer then lying in dock to be carried from Bombay to certain ports in East Africa At the time of loading the ship was apparently in a sound and seaworthy condition. Two days after the goods had been put on board and when the ship was still in dock it sprung a leak and the water came into the hold and damaged the plaintiffs goods. The ship was taken to the dry dock the cargo was shifted and the leak repaired. It appeared that the leak had arisen from the fact that one of the plates of the ship had been worn thin in one particular spot so that when the cargo was put on board and the ship lay deeper in the water the pressure became so great that a hole was made and the water rushed in The plaintiffs sued the defendants for damages The defendants pleaded (1) that the ship was in a seaworthy condition when the goods were put on board (2) that they were protected by the bill of lading which contained the following exception :—*viz* Accident loss and damage from vermin barratry jettison collision fire machinery boilers steam and all the perils dangers and accidents of the sea rivers land carriage and steam navigation of whatever nature and kind and accident loss or damage from any act neglect or default whatsoever of the pilot master or mariners or other servants of the Company or from any deviation excepted *Held* that the defendants were liable While the ship was in dock it was not seaworthy and the exception in the bill of lading did not limit the implied warranty of seaworthiness VITHULDAS GODER *v* BOMBAY AND PERSIA STEAM NAVIGATION CO I L R 19 Bom 639

17 ———— *Loss by fire—Carriers—Wharfingers* —Under the terms of a bill of lading goods were to be delivered from the ships tackles as fast as the steamer could discharge failing which the agents were to be at liberty to land the goods at their godowns the bill of lading further among other exceptions provided that the ship owners should not be liable for loss by fire The steamer on arriving at the port of discharge came alongside the wharf and commenced unloading at the custom house godowns without giving the consignees the option of landing the goods from the ships tackle The consignees however did not object to the goods being landed at the godowns and they paid also without objection a sum for the wharfage of a part of the goods in their godowns *Held* that the ship-owners if the goods placed in the godowns were in their possession as carriers were protected under the clause of the bill of lading providing against fire as much as if the fire had occurred on boardship and on the other hand if the goods were in the possession of the ship-owners as wharfingers they were not liable for the loss inasmuch as the goods were destroyed by fire without any default on their part CHIN HONG & CO *v* SENG MOH & CO I L R 4 Calc 736 3 C L R 585

18 ———— *Charges for landing and wharfage—Liability of consignees* —A bill of lading given by the defendants to the plaintiff for certain goods contained a stipulation that the goods were to be taken from the steamer's tackles by the consignees as fast as the steamer could discharge failing which the steamer's agents were to be at liberty to land the same into godowns the cost of lighterage godown rents etc thereby incurred to be borne by the respective consignees *Held* that under this bill of lading the ship-owners were entitled to charge for landing and wharfage only in default of the consignees failing to take the goods from the steamers tackles within reasonable time *Held* (*per* PONTIFEX *J*) that for the speedy discharge of their vessel the ship owners were entitled to land and wharf the goods though not to charge for landing and wharfage unless the plaintiff had had an opportunity of landing the goods himself COSSIM HOSSEIN SOORTU *v* LEE PHEE CHUAN [I. L R. 5 Calc 477 5 C L R 157

19 ———— *Loss by fire before delivery—Exemption from liability* —The defendant received goods on board his steamer under a bill of lading which exempted him from liability for loss occasioned by the act of God the Queen s enemies fire and all and every other dangers and accidents of the seas rivers and navigation of whatsoever kind or nature and lawfully landed them on the Custom house Bunder at Bombay where they were accidentally burned before they were delivered to the consignee *Held* that he was protected by the above exception in the bill of lading HONG KONG AND SHANGHAI BANKING CORPORATION *v* BAKER 6 Bom O C 71

Held on appeal that so long as the goods remained in his custody after being so landed he was protected from liability under the above exemption in the bill of lading

[7 Bom O C 186

20 ———— *Delivery in dock— Landing or cranage charges —Practice of dock to recover from consignee—Liability of ship owner* —Certain boilers consigned to the plaintiff in Bombay were shipped at Liverpool in two steamers belonging to the same owners under two bills of lading in these terms Shipped in good order and condition etc to be delivered subject to the exceptions and conditions hereinafter mentioned in the like good order and condition from the ship s tackles (where the ship s responsibility shall cease) at the aforesaid port of Bombay etc One of the exceptions and conditions above referred to was as follows —

The ship-owner shall have the option of discharging in dock and of making delivery of the goods

BILL OF LADING—*continued*

under the bills of lading either over the ship's side or from lighters or a store ship or custom house or warehouse at merchant's risk. Freight was prepaid in Liverpool. On their arrival at Bombay the two steamers went into the Prince's Dock belonging to the Port Trust and discharged the boilers by means of the Port Trust cranes on to the dock wharves. The plaintiff subsequently sent to remove the boilers but was not allowed by the dock authorities to do so until he had paid to them various sums amounting in the aggregate to R930 on account as stated in the bill furnished him by the Port Trust of "landing charges" for the said boilers. The bills also contained certain additional charges for "wharfage". These the plaintiff was ready to pay but the "landing charges" he paid only under protest and in order to get possession of his goods, and now sought to recover the same from the defendants who represented the ship-owners. It was the practice of the Port Trust to recover these charges in all cases from the consignees of goods discharged in their dock, and the charge was said to be levied on all goods landed on the wharves of the dock whether by the dock's cranes or by the ship's own tackles. The charge was incurred the moment the goods touched the wharf. In their rates sanctioned by Government which by their Act the Port Trust were entitled to charge this charge was called not a "landing charge" but a "dock and cranage" charge. Had the plaintiff been given delivery of these goods in the stream and afterwards himself landed them at any wharf belonging to the Port Trust in the Port of Bombay the Port Trust would have sought to have made the same charge for allowing the goods to be landed whether that was done by their appliances or not. *Held* that the ship-owner and not the consignee was bound to pay these charges, they being in reality charges for work and labour done in and about the landing of the goods—an operation which under the bills of lading was within the duty of the ship-owner. *Per* LATHAM J.—The ship having elected to discharge in the dock, it was her duty to land the goods on the wharf. Every charge which had to be incurred before that could be done was a charge antecedent to delivery and one therefore which must be paid by the ship-owner. SCOTT v. FINLAY I. L. R. 7 Bom. 386

21. ——— *Weight contents and value unknown*—*Act IX of 1856, s. 3*—*Assignee of bill of lading for value*.—A bill of lading purporting to be for 50 tons of coals and containing a printed clause "weight contents and value unknown" and similar words written above the signature of the master does not amount to an admission by the master that he has received 50 tons of coal on board. Upon the true construction of the Bills of Lading Act (IX of 1856), s. 3, a bill of lading in the above form is not in the hands of a consignee for value conclusive evidence against the master of the shipment of 50 tons. NICOL & Co. v. CASTLE 9 Bom. 321

22. ——— *Freight Payment of*—*Incorporation in bill of lading of terms of charter-party*—*Cargo*—*Freight payable on intake measurement*—*Measurement at port of delivery*—*Discrepancy in measurements*—*Evidence*—*Burden of proof*—*Suit by consignee for excess freight*.—A. V. at Moulmein consigned to the plaintiff at Bombay 135 logs of teak timber shipped on board the defendant's ship. The bill of lading which was signed by the defendant described the logs as marked "A. T." and measuring tons 115 12 10, and it provided for the payment of freight thereon at Bombay at the rate of R17 per ton of 50 cubic feet on right delivery. The last clause of the bill of lading was in the handwriting of the defendant and was as follows:—"Marks number quantity and measurement unknown, all other conditions as per charter party." The charter-party was expressed to be between the owners of the ship and Messrs. *B.* of Rangoon as charterers of the whole ship, and provided for the payment of freight "at the rate of R18 per ton of 50 cubic feet for all timber one rate throughout except 100 tons broken stowage at half freight by intake measurement." On arrival of the ship at Bombay the plaintiff as consignee of the timber and holder of the bill of lading paid the defendant (the captain of the ship) R1,500 on account of freight and took delivery of the 135 logs. On measuring them he found that, according to his method of measurement, the total measurement of the 135 logs came only to tons 58 27 11 6, and not tons 115-12 10 as mentioned in the bill of lading. He claimed therefore to be chargeable with freight only on the smaller quantity (*viz.* R995 8) and to recover from the defendant the difference (*viz.* R504 8) between that sum and R1,500 paid on account as for an overpayment of freight. It was proved that all the timber on board had been measured at Moulmein by an employé of the charterers acting apparently as agent of all the different shippers, and that the measurements in the bills of lading were supplied by this person to the defendant as the measurements of the different consignments. It was also proved that the 135 logs received and measured by the plaintiff in Bombay were the same logs that were shipped under the bill of lading, and that the plaintiff's measurement of them was correct according to the mode of measurement which he adopted. There was no evidence as to what was the mode of measurement followed at Moulmein, nor, except the statements in the bill of lading, as to what was the actual intake measurement of the timber there. *Held* that the effect of the last clause in the bill of lading was to incorporate into that document the clause of the charter party which provided that freight should be payable on the intake measurement; that the burden of proving what the intake measurement actually was lay upon the plaintiff who sought to recover back money which he alleged he had paid in excess of what was due; and that, in the absence of such evidence on behalf of the plaintiff, the statement of quantity contained in the bill of lading was *primâ facie* evidence of the intake measurement of the timber. CURSETJI RUSTOMJI SETNA v. WILLIAMS I. L. R. 5 Bom. 313

23. ——— *Freight Payment of*—*Lien of ship owner*.—Where a bill of lading

BILL OF LADING—*continued*

dated at the port of shipment contains the words freight for the said goods being paid here it operates as a receipt for the freight The ship-owner is not bound to deliver the same to the shipper until payment of the sum to be charged for the carriage of the goods but such sum is not freight and the ship-owner has no lien for the amount upon the goods nor the bill of lading which represents them SOOMAR JAFFER *v* ABDOOL KURREEM

[1 Ind. Jur N S 230

24. ——————— *Freight Lien for on cargo—Advances on account of freight—Master's lien for freight—Charter-party* —By a charter party made in London the ship *H* was chartered to carry a cargo from Liverpool to Calcutta where she was to load from the factors of the charterer a full homeward cargo to be carried by her to Europe Freight for the whole round out and home was made payable on safe delivery of the homeward cargo but at so much per ton of the outward cargo delivered in Calcutta The master was to have a lien on the cargo for freight etc cash not exceeding £800 was to be advanced to the ship in Calcutta on account of freight but subject to insurance and £600 was to be advanced by the charterer s acceptance at three months or in cash under discount at charterer's option on the sailing of the vessel from Liverpool less five per cent for insurance The charterer himself loaded the ship and the master signed a bill of lading which declared the cargo to be shipped by the charterer to be delivered at Calcutta as the agents of the charterer might direct unto order or to his assigns freight to be paid as per charter party In the margin of the bill was written Received in advance of the within freight £600 as per charter party The £600 had been paid n t in cash but by the charterer s bill at three months The charterer became bankrupt and the bill was dishonoured and the fact of the bankruptcy and dishonour was known in Calcutta when the ship arrived there On the ship s arrival in Calcutta *J O & Co* who were the holders for value of the bill of lading demanded delivery of the cargo The master claimed a right of lien and refused to deliver unless *J O & Co* would pay the £600 bill which had been dishonoured and would further advance £800 for the ship s use and load a homeward cargo according to the terms of the charter party *Held* that *J O & Co* took the bill of lading with notice of the charter party but that under the circumstances the master had no lien and was bound to deliver the cargo to *J O & Co* OGLE *v* NASHHOLM

[Bourke O C 171

25 ——————— *Freight Lien for on cargo—Advances on account of freight—Lien of owners* —Goods were shipped deliverable to the order of the shippers or their assigns The bill of lading stated that freight for said goods was to be paid as per charter party with average accustomed reserving lien in full on cargo for full amount as stipulated therein The charter party showed that *H & Co* undertook to supply a full cargo for the ship and that *R H* agent for the ship agreed with *H & Co* that the said ship should proceed to London dock or any other suitable dock for loading salt at party's option or so near thereto as she can safely get to be at all times afloat and in safety and then load for the charterer s agent a full and complete cargo of salt not exceeding what the master considers sufficient cargo which the charterers engage to ship not exceeding what she can reasonably carry with her stores provisions and furniture and being so loaded shall therewith proceed to Calcutta or so near thereto as she may safely get and there deliver as per bills of lading and on being paid freight at the rate of twenty three shillings per ton The freight to be paid thus £ 00 by charterer's acceptance at two months on sailing less 2- per cent insurance; or cash on sailing less 5 per cent interest and insurance at charterer s option and the balance in cash on delivery as master requires at current rate of exchange 2 per cent commission to charterers in lieu of consignment *Held* that a sum of money payable before the arrival of the ship at her port of discharge and payable by the shippers of the goods at the port of shipment is not freight in the strict legal acceptation of the term with all the incidents of freight in giving the ship owner the right of lien unless it is stipulated for Here the owners had a lien upon the goods for freight notwithstanding that the bill of exchange for £ 00 had been given THOMAS *v* OGLE

Bourke A O C 100

26 ——————— *Freight Lien for on cargo—Advances on account of freight—Dishonour of bills* —The captain of a ship has no lien on the cargo in respect of a portion of the freight stipulated to be advanced and advanced by bills afterwards dishonoured nor in respect of a portion of the freight stipulated to be advanced at the port of discharge A lien cannot arise in any case when the master has not a right to retain the goods till the freight is paid Such advances are not freight but advances to be made under discount and upon the security of the captain s bill on the freighter The master has no lien at law or in equity in respect of breaches of covenants in the charter party other than those relating to the payment of freight for goods actually carried PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY *v* SMALL

[Bourke O C 309

27 ——————— *Claim for short delivery—Place for preferring claim—Condition precedent* —Where a bill of lading contained a clause to the following effect — Any claim for short delivery or damage done to goods and all other claims whatsoever to be made at the port of Calcutta and at no other port and the goods are shipped and this bill of lading granted subject to this express condition it was held by the Recorder of Rangoon to operate so as to make the preferring of a claim in Calcutta—a condition precedent to a suit in this Court *Held* by the High Court that this opinion was correct and that a suit for short delivery under the bill of lading could not be maintained without a claim being made in Calcutta MAHOMED ISHMAILJEE NADA *v* BRITISH INDIA STEAM NAVIGATION COMPANY

[9 W R, 398

28 ——————— *Short delivery of goods—No evidence as to how goods were lost—*

BILL OF LADING—*continued*

Burden of proof— Or otherwise meaning of—The plaintiff was the consignee of a large consignment of goods shipped from Bombay in bags on board the defendants steamship *Java* for carriage to Zanzibar On arrival of the *Java* at Zanzibar the goods were landed by the defendant company and placed in the customs godown where the plaintiff in due course demanded delivery *Some of the bags* were not forthcoming but the evidence did not show how the loss had occurred The bill of lading contained the following condition — The Company s liability shall cease as soon as the packages are free of the ship s tackle after which *they shall not* be responsible for any loss or damage however caused If stored in receiving ship godown or upon any wharf all risks of fire dacoity vermin *or otherwise* shall be with the merchant and the usual charges shall be paid before delivery of the goods Fire insurance *will be* covered by the company's agents on application In a suit brought by the plaintiff for short delivery of goods —*Held* that the defendants were liable They did not show how the loss occurred and as it might have occurred from causes not covered by the exception (*e g* from misdelivery) they did not bring themselves within the protection afforded by the exemption The general words or otherwise contained in the tenth clause of the bill of lading could not be read so as to cover all possible losses for that would make them include wilful misconduct on the part of the defendant s servants and general words are not read with such an extended meaning Nor would they include misdelivery for that was provided for in the eighth clause BRITISH INDIA STEAM NAVIGATION CO *v* RATANSI RAMJI [I L R. 22 Bom. 184

29 ——— *Claim for short delivery—Place for preferring claim* —A bill of lading contained a provision that any claim for short delivery or for damage done to goods should be made at the port of Calcutta and not elsewhere *Held* that this clause did not affect the plaintiff's *right of suit* in the Court at Rangoon and that if the defendants meant to object that no claim had been made in Calcutta before the commencement of the suit they should have done so in proper time *viz* in their written statement An objection on that ground taken for the first time at the hearing of the appeal was disallowed BRITISH INDIA STEAM NAVIGATION CO *v* IBRAHIM MOOSUM 8 W R 35

30 ——— *Claim for short delivery to be made at a certain place within a certain time—Reasonable condition—Common carrier Liability of—Carriers Act III of 1865* —A stipulation by persons carrying on extensive business as carriers that they should be apprised of claims made on them for default on the part of their servants at a specified place and no other and within a time which will render enquiry likely to be attended with some result is not unreasonable The defendants were owners of a fleet of steam ships plying periodically along the coast of British India by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports They stipulated in their bills of lading that claims for short delivery should be made at the port

BILL OF LADING—*concluded*

of Calcutta only within one month after delivery, of any portion of the goods entered in the bill of lading *Held* in a suit against defendants for compensation for value of goods short delivered that this was not an unreasonable stipulation and that a claim made on the agents of the defendants who were authorized only to retain the goods receive freight and give delivery was not a sufficient compliance with the condition *Held* also that defendants were common carriers though not for the purposes of the Indian Carriers Act and that their character of carriers continued so long as the goods remained in their hands and undelivered. BRITISH INDIA STEAM NAVIGATION COMPANY *v* HAJEE MAHOMED ESACK & CO I. L R. 3 Mad. 107

31 ——— *Delivery of goods to consignee—Cargo unclaimed on arrival of ship—Rights of ship owner to land goods—Damages by rain—Madras Harbour Trust Act (Madras Act II of 1886)* —The defendant s steamship arrived at Madras on 4th December 1891 bringing bags of gram consigned to the plaintiffs under a bill of lading by which the defendants were to have the option of delivering the goods into a receiving ship or landing them at consignee s risk and expense and their liability was to cease when the goods were free of the ship's tackle The plaintiffs on the date of the arrival of the goods were not authorized to receive them. The plaintiffs set up a custom that cargo of this description ought to be landed on the beach but as this could not be done in the absence of the consignees the defendants landed it the same day on the pier and delivered it into the custody of the Madras Harbour Trust for storage pending delivery to the consignees On the 8th of December 1891 heavy rain fell and on the same date plaintiffs learnt that the cargo had been delivered on the pier When the plaintiffs came to take delivery on that day a considerable portion had been damaged by rain for which they now sued the defendants *Held* (1) that where the consignees were unable to take delivery in the ordinary way on the beach the master of a ship has the option of landing and warehousing the goods and that delivery to the Harbour Trust for custody was not wrongful (2) that in the absence of proof that the defendants were negligent or that they failed to deliver the goods the suit must be dismissed BRITISH INDIA STEAM NAVIGATION COMPANY *v* IBRAHIM SULAIMAN I. L R., 19 Mad , 169

BILL OF SALE

See CASES UNDER EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS

See VENDOR AND PURCHASER—BILLS OF SALE

BILLS OF EXCHANGE

——— Power to issue—

See COMPANY—POWERS DUTIES AND LIABILITIES OF DIRECTORS

[7 B L R. 58
I. L R. 5 Bom 93
I. L. R. 3 Bom 439
I. L. R. 4 Bom., 275

BILLS OF EXCHANGE—*concluded*

———— **Presumption of payment**

See SHIPMENTS 5 B L R, 619

BILLS OF EXCHANGE ACT (V OF 1866)

See NEGOTIABLE INSTRUMENTS SUMMARY PROCEDURE ON

BLANK STAMPED PAPERS

———— **Signature on—**

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS
[I L. R. 5 Calc 39

BLANK TRANSFER

———— **Registration of—**

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES
[I. L. R 8 Calc 317

BLINDNESS

See HINDU LAW—INHERITANCE—DIVESTING OF EXCLUSION FROM AND FORFEITURE OF INHERITANCE—BLINDNESS
[2 B L R F B 103
2 Bom 5
14 B L R 273
I L R 1 Bom. 177 557

See MALABAR LAW—JOINT FAMILY
[I. L. R 12 Mad 307
I L R 15 Mad 483

BOARD OF EXAMINERS

———— **Pleadership examination**—*Board of Examiners raising standard of marks required for pass certificate without notice to candidates—Petition to High Court by unsuccessful candidates*—The Board of Examiners having without giving any notice to the candidates at the annual examination for pleaderships of the upper subordinate grade raised the minimum number of marks qualifying for a pass certificate some of the unsuccessful candidates petitioned the High Court that the result of the examination might be reconsidered and the former standard reverted to *Held* that the Court having delegated its powers in connection with the examination to the Board of Examiners and the Board having exercised its powers legally properly and for the benefit of the public there was no cause for interference IN THE PETITION OF DWARKA PRASAD I L R. 9 All 611

BOARD OF REVENUE

———— **Appeal to—**

See POTTAH I. L. R. 19 Mad. 324

———— **Orders of—**

See ACT IX OF 1847
[I L. R 17 Calc. 590

———— **Powers of—**

See SETTLEMENT—MISCELLANEOUS CASES
[3 B L. R, Ap 82

BOARD OF REVENUE—*concluded*

———— **Rules of—**

See PRE EMPTION—CONSTRUCTION OF WAJIB UL-ARZ.
[I L. R 17 All. 447

See PRE EMPTION—RIGHT OF PRE EMPTION I L R 16 All. 40
[I L. R. 17 All. 226

———— **Sanction of—**

See PARTITION—MISCELLANEOUS CASES
[5 B L R 135

BOARDING HOUSE KEEPER

See HOTEL KEEPER AND GUEST
[3 Bom O C 137

BOMBAY LIMITS OF TOWN OF—

———— **Land situate in District of Mahim**—*Jurisdiction—Transfer of Property Act (IV of 1882) s 69*—Land situate in the district of Mahim within the island of Bombay and within the local limits of the original jurisdiction of the High Court is situate within the town of Bombay in the sense in which that expression is used in s 69 of the Transfer of Property Act TRIMBAK GANGADHAR RANADE *v* BHAGWANDES MULCHAND
[I L R 23 Bom 348

BOMBAY ABKARI ACT (V OF 1878)

———— **s 3 cl. (11) and s 43 cl. (f)**—*Drawing toddy—Manufacture of liquor*—Drawing toddy is not manufacturing liquor as defined in cl 11 of s 3 of the Bombay Abkari Act (V of 1878) The mere possession of implements for the purpose of drawing toddy is not an offence punishable under cl (*f*) of s 43 of the Act QUEEN EMPRESS *v* PIRIO KALIO I. L. R. 18 Bom 423

———— **ss 3 and 56**

See AUTREFOIS ACQUIT
[I L R 10 Bom 181

———— **ss 14 20 64 65 66 and 67**—*Tree—Toddy producing tree*—The words any tree in s 14 and every toddy producing tree in s 20 of the Bombay Abkari Act V of 1878 mean all trees in the Bombay Presidency to which the Act applies from which toddy is drawn or produced, and not merely those in regard to which no special rights of drawing toddy previously existed. ARDESIR JEHANGIR *v* SECRETARY OF STATE FOR INDIA
[I. L. R. 6 Bom. 398

———— **s 24.**

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) I. L. R. 9 Bom. 462

———— *Juice of toddy producing tree—Land revenue*—*Per* BIRDWOOD J—The expression land revenue" as used in Act X of 1876 does not include either the duties leviable under Regulation XXI of 1827 on the manufacture of spirits or the taxes on the tapping of toddy trees the levy of

BOMBAY ABKARI ACT (V OF 1878) *—continued*

which in certain districts was legalized by s 24 of the Bombay Abkari Act No V of 1878 A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees either under Regulation XXI of 1827 or Act X of 1876 or Bombay Act V of 1878 Juice in toddy producing trees is not spirit which includes toddy in a fermented state only NARAYAN VENKU KALGUTKAR v SAKHARAM NAGU KOREGAUMKAR

[I L R 9 Bom 462

——— ss 29 67—*Parties—Suit for money illegally levied by a farmer of abkari revenue—Collector not a necessary party to such a suit* —The Collector is not a necessary party to a suit brought against a farmer of abkari revenue for a refund of money illegally levied at his instance by the Collector under s 29 of the Bombay Abkari Act (V of 1878) S 67 of the Act expressly exempts the Collector from responsibility Though a person subjected to an undue demand may under s 29 of the Act take steps by which the Collector's proceedings may be stayed still his abstention from such a course will not deprive him of his ordinary right to recover money wrongfully taken from him for the benefit of a third person NARAYAN VENKU v SAKHARAM NAGU

[I L R, 11 Bom 519

1 ——— s 43 and s 47—*Illegal importation of liquor—Illegal possession of liquor —When separate offences* —A man who illegally imports liquor may keep it in his possession for some time after he imports it The importation and possession in such a case would be distinct offences under ss 43 and 47 respectively of the Bombay Abkari Act (V of 1878) But where the importation involves possession of liquor the accused can only be convicted of the offence under s 43 of the Act QUEEN EMPRESS v CHAND VALAD KITAB

[I L R 14 Bom 583

2. ——— and s 53—*Possession of liquor not satisfactorily accounted for—Presumption arising from such possession* —The accused had in his possession a quantity of toddy in excess of that permitted by law He was unable to account satisfactorily for the possession of the excess quantity He was therefore prosecuted under ss 43 and 47 of the Bombay Abkari Act (V of 1878) and convicted under both sections *Held* that the conviction under s. 43 was bad. In the absence of any evidence to show that the accused had manufactured the toddy or been in possession of a still or had transported toddy from one place to another no presumption could be drawn under s. 53 of any offence described in s. 43 The only presumption arising from possession not properly accounted for was that the possession was illegal and the accused could only be convicted under s. 47 of the Act QUEEN EMPRESS v BYRAMJI KHARSEDJI I. L. R 14 Bom 93

3 ——— *Abkari—Possession of distilling materials* —Mere possession without a license of utensils for distilling liquor is not an offence punishable under s. 43 of the Abkari Act (Bombay) V of 1878 It is only in cases where such possession is not satisfactorily accounted for that under s 53 it is to be presumed until the contrary is proved that a person in possession of such utensils has committed an offence under s. 43 QUEEN EMPRESS v PESTANJI BARJORJI

[I. L. R, 9 Bom., 456

4 ——— *Mowa flowers Possession of—Liability of seller of the flowers where purchaser makes illicit use by distilling liquor therefrom—Burden of proof* —Mere possession of mowa flowers does not constitute an offence under s 43 of the Abkari Act V of 1878 unless such possession is made out by the prosecution to have been for the purposes of distilling liquor therefrom Nor is a seller of these flowers criminally responsible for any illicit use of them after they have passed from his control IN RE THE PETITION OF LIMDA KOYA

[I L R 9 Bom 556

——— s 45

See CONTRACT ACT s 23—ILLEGAL CONTRACT—GENERALLY

[I. L. R 12 Bom, 422

1. ——— and s 53—*Servants of a holder of a license Liability of* —Under s 45 (c) of the Bombay Abkari Act (V of 1878) the servants of the holder of a license granted under the Act cannot be made liable for a breach of the conditions of the license Though under s 53 of the Act the holder of a license under the Act is responsible as well as the person there described as the actual offender for any offence committed by any person in his employ or acting on his behalf under ss 43 44 45 or 46 as if he had himself committed the offence unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence yet s 45 does not make the actual offender if he be the servant of a licensee punishable unless he is himself the holder of a license granted under the Act. QUEEN EMPRESS v RAMCHANDRA MATADIN I L R. 15 Bom. 45

2. ——— *Omission to keep the minimum quantity of liquor according to the terms of license not an offence under the Act* —Where the accused who was a licensed liquor contractor omitted to keep in his shop the minimum quantity of liquor required by the terms of his license —*Held* that the omission of the accused did not come within the meaning of s. 45 cl (c) of the Bombay Abkari Act (V of 1878) QUEEN EMPRESS v GOBIND

[I. L. R. 16 Bom 669

——— s 55—*Construction of Statutes—Or read "nor —Order of confiscation* —S 55 of the Bombay Abkari Act (V of 1878) provides that no order of confiscation shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing any person who claims a right thereto and the evidence if any which he produces in support of his claim Certain casks of vinegar belonging to the plaintiffs were seized by the Collector of Bombay on the 5th November 1891 and an order of confiscation was made on the 17th November 1891 The order

BOMBAY ABKARI ACT (V OF 1878)—*concluded*

was made after hearing the plaintiffs *Held* that under the provisions of the Abkari Act s 5. the Collector could not make a valid order of confiscation before the expiration of one month from the date of seizure FRAMJI MANEKJI PUNJAJI v SECRETARY OF STATE FOR INDIA I. L. R., 17 Bom 154

BOMBAY ACT—1862—V

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDINGS AND HOUSE MATERIALS I L R 12 Bom 363
[I L R 21 Bom. 588

1 ——— Bhagdari tenure—*Partition among narvadars bhagdars*—There is nothing in Bombay Act V of 1862 which debars a Civil Court from making a decree for the partition of narvadar land among the bhagdars even though such partition may cause a further division of recognized sub-divisions of bhags. VERIBHAI v RAGABHAI
[I L R 1 Bom 225

2 ——— *Dismemberment of bhag—Narva—Bhag—Alienation previous to Bombay Act V of 1862*—The principal object of Bombay Act V of 1862 is to prevent the further dismemberment of bhags or shares in bhagdari villages it renders null and void any future alienation of any portion of a bhag other than a recognized subdivision but it does not invalidate previous alienations A sale of a portion of a bhag previously to the passing of Bombay Act V of 186 amounts to a dismemberment of the bhag and what remains in the bhagdar's hands continues to be a complete bhag while the portion separated from it becomes a new bhag. BHAI SHANKER v COLLECTOR OF KAIRA
[I L R 5 Bom., 77

3 ——— *Purchase by stranger of building erected on gabhan*—In a suit brought by a bhagdari or shareholder in a bhagdar village to recover possession of a gabhan or building site and a vada or homestead appurtenant to his bhag from a stranger who had purchased at an auction sale a building erected on the gabhan by a third person with the bhagdar's consent —*Held* (reversing the decision of the District Court) that the purchaser of the building had only acquired a right to remove the building materials and that he had no right by reason of his having purchased the building to continue without the bhagdar's consent in possession of the gabhan and vada which by the Bhagdari Act could not be alienated apart or separately from the bhag or some recognized subdivision thereof PRANJIVAN GAVAN v JAISHANKAR BHAGVAN
[4 Bom A. C 46

4 ——— *Alienation of less than the whole of a bhag—Power of Collector to declare such alienation void—Suit to have the declaration set aside*—In 1860 prior to the coming into force of the Bombay Bhagdari Act V of 1862 H a recognized holder of a bhag in the Broach district divided it equally among his four sons *A B C* and *D* who immediately entered into possession of their respective shares In 1876 *A* and *C* sold their shares to the plaintiff *B* and *D* protested against the sale as being a dismemberment of a bhag and the plaintiff was called upon by the Collector under s 3 of the Act to deliver the deed to be cancelled but declined to do so and applied that the sale should be recognized. By an order the Collector refused to grant his prayer The plaintiff therefore brought a suit to set aside the order Both the lower Courts rejected his claim On appeal to the High Court—*Held* confirming the decree of the lower Appellate Court that the sale to the plaintiff having been effected after the Bombay Bhagdari Act (V of 1862) had come into force was void A bhag as contemplated by the Act would seem to mean an aliquot share of a village subject to an aliquot portion of the total land tax imposed on it and not any sub division by partition or otherwise *Bhai Shankar v Collector of Kaira I L R 5 Bom 77* distinguished. GOLAM NAROTAM v SECRETARY OF STATE FOR INDIA IN COUNCIL I. L. R 8 Bom 596

1 ——— ss 1 and 2—*Sale of unrecognized portion of a bhag—Application by Collector to set it aside*—*N* held an unrecognized fourth share in a certain bhag *R* obtained a decree against *N* and in execution of it sold his right title and interest in the bhag on the 28th February 1876 It was purchased by *B* The sale was subsequently confirmed and *B* was put in possession of a portion of the land On the 30th September 1880 the Collector applied to the Court to set aside the sale on the ground that it was illegal under Bombay Act V of 1862 It appeared that the Collector did not know till November 1877 that the land sold was an unrecognized portion of the bhag and not the whole of it *Held* that the sale might be set aside under the provisions of s 2 of Act V of 1862 notwithstanding its confirmation and the subsequent delivery of possession. *Quære*—Whether any provision of limitation applied to such applications under the Bhagdari Act COLLECTOR OF BROACH v RAJARAM LALDAS
[I L R. 7 Bom 542

2 ——— *Sale of unascertained shares in an undivided bhag—Dismemberment—Physical dismemberment—Right to sue to set aside illegal sales*—S 1 of the Bombay Bhagdari Act (V of 1862) does not prohibit the sale of an unascertained share of an undivided bhag The object and intention of the Act is to prevent a *physical* dismemberment of a bhag or recognized sub-divisions thereof and not a mere increase in the number of persons who may from time to time be owners of the bhag S 2 of the Act does not bar the right of any person prejudicially affected by any illegal sale from suing to set aside the sale Four brothers owned a bhag in common. In 1871 the right title and interest of three of the brothers in the bhag was sold in execution of decrees against them. The defendants were the auction purchasers. They were put in joint possession of the whole bhag In 1878 the plaintiff purchased the whole bhag from the four brothers and

BOMBAY ABKARI ACT (V OF 1878) *—continued*

which in certain districts was legalized by s 24 of the Bombay Abkari Act No V of 1878 A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees either under Regulation XXI of 1827 or Act X of 1876 or Bombay Act V of 1878 Juice in toddy producing trees is not spirit which includes toddy in a fermented state only NARAYAN VENKU KALGUTKAR *v* SAKHARAM NAGU KOREGAUMKAR

[I L R 9 Bom 462

——— ss 29 67—*Parties—Suit for money illegally levied by a farmer of abkari revenue—Collector not a necessary party to such a suit* —The Collector is not a necessary party to a suit brought against a farmer of abkari revenue for a refund of money illegally levied at his instance by the Collector under s 29 of the Bombay Abkari Act (V of 1878) S 67 of the Act expressly exempts the Collector from responsibility Though a person subjected to an undue demand may under s 29 of the Act take steps by which the Collector's proceedings may be stayed still his abstention from such a course will not deprive him of his ordinary right to recover money wrongfully taken from him for the benefit of a third person NARAYAN VENKU *v* SAKHARAM NAGU

[I L R 11 Bom 519

1 ——— s 43 and s 47—*Illegal importation of liquor—Illegal possession of liquor—When separate offences* —A man who illegally imports liquor may keep it in his possession for some time after he imports it The importation and possession in such a case would be distinct offences under ss 43 and 47 respectively of the Bombay Abkari Act (V of 1878) But where the importation involves possession of liquor the accused can only be convicted of the offence under s 43 of the Act QUEEN EMPRESS *v* CHAND VALAD KITAB

[I L R 14 Bom 583

2. ——— and s 53—*Possession of liquor not satisfactorily accounted for—Presumption arising from such possession* —The accused had in his possession a quantity of toddy in excess of that permitted by law He was unable to account satisfactorily for the possession of the excess quantity He was therefore prosecuted under ss 43 and 47 of the Bombay Abkari Act (V of 1878) and convicted under both sections *Held* that the conviction under s. 43 was bad. In the absence of any evidence to show that the accused had manufactured the toddy or been in possession of a still or had transported toddy fr m one place to another no presumption could be drawn under s. 53 of any offence described in s. 43 The only presumpti n arising from possession n n t pr perly accounted for was that the possession was illegal and the accused could only be convicted under s 47 of the Act QUEEN EMPRESS *v* BYRAMJI KHARSEDJI I L. R 14 Bom 93

3 ——— *Abkari—Possession of distilling material* —Mere possession without a license of utensils f r distilling liquor is not an offence punishabl und r s. 43 of the Abkari Act (Bombay) V of 18 8 It is only in cases where such possession is not satisfactorily accounted for that under s 53 it is to be presumed until the contrary is proved that a person in possession of such utensils has committed an offence under s 43. QUEEN EMPRESS *v* PESTANJI BARJORJI

[I. L R , 9 Bom., 456

4 ——— *Mowa flowers Possession of—Liability of seller of the flowers where purchaser makes illicit use by distilling liquor therefrom—Burden of proof* —Mere possession of mowa flowers does not constitute an offence under s 43 of the Abkari Act V of 1878 unless such possession is made out by the prosecution to have been for the purposes of distilling liquor therefrom Nor is a seller of these flowers criminally responsible for any illicit use of them after they have passed from his control IN RE THE PETITION OF LIMDA KOYA

[I L. R 9 Bom., 558

——— s 45

See CONTRACT ACT s. 23—ILLEGAL CONTRACT—GENERALLY

[I. L. R 12 Bom. 422

1. ——— and s 53—*Servants of a holder of a license Liability of*—Under s 45 (c) of the Bombay Abkari Act (V of 1878) the servants of the holder of a license granted under the Act cannot be made liable for a breach of the conditions of the license Though under s 53 of the Act the holder of a license under the Act is responsible as well as the person there described as the actual offender for any offence committed by any person in his employ or acting on his behalf under ss 43 44 45 or 46 as if he had himself committed the offence unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence yet s 45 does not make the actual offender if he be the servant of a licensee punishable unless he is himself the holder of a license granted under the Act. QUEEN EMPRESS *v* RAMCHANDRA MATADIN I L R 15 Bom. 45

2 ——— *Omission to keep the minimum quantity of liquor according to the terms of license not an offence under the Act* —Where the accused who was a licensed liquor contractor omitted to keep in his shop the minimum quantity of liquor required by the t rms of his license —*Held* that the omission of the accused did not come within the meaning of s 45 cl (c) of the Bombay Abkari Act (V of 1878) QUEEN EMPRESS *v* GOBIND

[I. L R. 16 Bom 669

——— s 55—*Construction of Statutes—Ordinarily read nor —Order of confiscation* —S 55 of the Bombay Abkari Act (V of 1878) provides that no order of confiscation shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing any person who claims a right thereto and the evidence if any which he produces in support of his claim Certain casks of vinegar belonging to the plaintiffs were seized by the Collector of Bombay on the 5th November 1891 and an order of confiscation was made on the 17th November 1891 The order

BOMBAY ABKARI ACT (V OF 1878)—*concluded*

was made after hearing the plaintiffs *Held* that under the provisions of the Abkari Act s 50 the Collector could not make a valid order of confiscation before the expiration of one month from the date of seizure FRAMJI MANEKJI PUNJAJI v SECRETARY OF STATE FOR INDIA I. L R., 17 Bom 154

BOMBAY ACT—1862—V

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDINGS AND HOUSE MATERIALS I L R 12 Bom 363 [I. L R 21 Bom. 588

1 ———— Bhagdari tenure—*Partition among narvadars bhagdars* —There is nothing in Bombay Act V of 1862 which debars a Civil Court from making a decree for the partition of narvadar land among the bhagdars even though such partition may cause a further division of recognized sub divisions of bhags VEHRIBHAI v RAGABHAI [I L R 1 Bom 225

2 ———— *Dismemberment of bhag—Narva—Bhag—Alienation previous to Bombay Act V of 1862* —The principal object of Bombay Act V of 1862 is to prevent the further dismemberment of bhags or shares in bhagdari villages it renders null and void any future alienation of any portion of a bhag other than a recognized subdivision but it does not invalidate previous alienations A sale of a portion of a bhag previously to the passing of Bombay Act V of 1862 amounts to a dismemberment of the bhag and what remains in the bhagdar's hands continues to be a complete bhag while the portion separated from it becomes a new bhag BHAI SHANKER v COLLECTOR OF KAIRA [I L R., 5 Bom., 77

3 ———— *Purchase by stranger of building erected on gabhan* —In a suit brought by a bhagdari or shareholder in a bhagdar village to recover possession of a gabhan or building site and a vada or homestead appurtenant to his bhag from a stranger who had purchased at an auction sale a building erected on the gabhan by a third person with the bhagdar's consent —*Held* (reversing the decision of the District Court) that the purchaser of the building had only acquired a right to remove the building materials and that he had no right, by reason of his having purchased the building to continue without the bhagdar's consent in possession of the gabhan and vada which by the Bhagdari Act could not be alienated apart or separately from the bhag or some recognized subdivision thereof. PRANJIVAN GAVAN v JAISHANKAR BHAGVAN [4 Bom A. C 46

4 ———— *Alienation of less than the whole of a bhag—Power of Collector to declare such alienation void—Suit to have the declaration set aside* —In 1860 prior to the coming into force of the Bombay Bhagdari Act V of 1862 *H* a recognized holder of a bhag in the Broach

BOMBAY ACT—1862—V—*continued*

district divided it equally among his four sons *A B C* and *D* who immediately entered into possession of their respective shares In 1876 *A* and *C* sold their shares to the plaintiff *B* and *D* protested against the sale as being a dismemberment of a bhag and the plaintiff was called upon by the Collector under s 3 of the Act to deliver the deed to be cancelled but declined to do so and applied that the sale should be recognized. By an order the Collector refused to grant his prayer The plaintiff therefore brought a suit to set aside the order Both the lower Courts rejected his claim On appeal to the High Court—*Held* confirming the decree of the lower Appellate Court that the sale to the plaintiff having been effected after the Bombay Bhagdari Act (V of 1862) had come into force was void A bhag as contemplated by the Act would seem to mean an aliquot share of a village subject to an aliquot portion of the total land tax imposed on it and not any sub division by partition or otherwise *Bhai Shankar v Collector of Kaira I L R 5 Bom 77* distinguished. GOLAM NAROTAM v SECRETARY OF STATE FOR INDIA IN COUNCIL I. L R 8 Bom 596

1 ———— ss 1 and 2—*Sale of unrecognised portion of a bhag—Application by Collector to set it as de* —*N* held an unrecognized fourth share in a certain bhag *R* obtained a decree against *N* and in execution of it sold his right title and interest in the bhag on the 28th February 1876 It was purchased by *B* The sale was subsequently confirmed and *B* was put in possession of a portion of the land On the 20th September 1880 the Collector applied to the Court to set aside the sale on the ground that it was illegal under Bombay Act V of 1862 It appeared that the Collector did not know till November 1877 that the land sold was an unrecognized portion of the bhag and not the whole of it *Held* that the sale might be set aside under the provisions of s 2 of Act V of 186 notwithstanding its confirmation and the subsequent delivery of possession. *Quære*—Whether any provision of limitation applied to such applications under the Bhagdari Act COLLECTOR OF BROACH v RAJARAM LALDAS [I L R. 7 Bom 542

2 ———— *Sale of unascertained shares in an undivided bhag—Dismemberment—Physical dismemberment—Right to sue to set aside illegal sales* —S 1 of the Bombay Bhagdari Act (V of 1862) does not prohibit the sale of an unascertained share of an undivided bhag The object and intention of the Act is to prevent a *physical* dismemberment of a bhag or recognized sub-divisions thereof and not a mere increase in the number of persons who may from time to time be owners of the bhag S 2 of the Act does not bar the right of any person prejudicially affected by any illegal sale from suing to set aside the sale Four brothers owned a bhag in common In 1871 the right title and interest of three of the brothers in the bhag was sold in execution of decrees against them. The defendants were the auction purchasers They were put in joint possession of the whol bhag In 18 8 the plaintiff purchased the whole bhag from the four brothers and

BOMBAY ACT—1862—V—*continued*

field ainsuit in 1883 to oust the defendants and to obtain possession alleging that the defendants purchase of a portion of the bhag was illegal and invalid under s 1 of the Bombay Bhagdari Act (V of 1862) The suit was dismissed on the ground that though the defendants purchase was illegal under the Act the plaintiff had no right to oust the defendants until the Collector had taken action under s 2 of the Act to set aside the defendants' purchase *Held* reversing the decision of the lower Court that the suit was not barred by s 2 of the Bombay Bhagdari Act (V of 1862) *Held* also that the defendants purchase of unascertained shares in the undivided bhag was not opposed to s 1 of the Act BAI KUVARBAI v BHAGVAN ICHHARAM I L R, 13 Bom, 203

1 ———— ss 1 and 3—*San mortgage—Bhagdari and narvadari tenures—Mortgage before passing of the Act—Execution of decree—Operation of Act*—The plaintiff in 1874 sued on a san mortgage dated 15th November 1861—i e five months before the passing of Bombay Act V of 1862—to recover a sum of money by sale of the mortgaged property which formed part of a bhag in a bhagdari village which bhag the defendant had purchased at a Court s sale subsequent to the date of the mortgage *Held* (assuming s 1 of the Act to apply) that it does not bar the right of action that therefore a Civil Court would be bound to make a decree even though it might anticipate that s 1 of the Act would stand in the way of the execution of that decree *Semble*—That after a decree has been passed against a portion of a bhag the Collector might recognize such portion as a division of the bhag if assured that justice required that the decree should be executed. *Held* further that no retrospective operation can be given to s. 1 of the Act so as prejudicially to affect existing rights The words attachment or sale by the process of any Civil Court used therein were intended to prevent attachment and sale under simple money decrees and not to prevent the sale of mortgaged property in satisfaction of a valid mortgage RANCHODDAS DOYALDAS v RANCHODDAS NANABHAI I. L R, 1 Bom 581

2 ———— *Sale of unrecognized portion of bhag—Application by Collector to set it aside—Limitation Acts IX of 1871 and XV of 1877 sch II art 178*—No law of limitation applies to proceedings taken by a Collector under Bombay Act V of 1862 The words in the first section of that Act no portion of a bhag etc shall be liable to seizure sequestration attachment or sale by the process of any Civil Court mean that no portion of a bhag shall be seized sequestered attached or sold by the process of any Civil Court and any such seizure sequestration attachment or sale is thereby rendered absolutely illegal and void. S 3 of the Act has no bearing on sales by order of a Civil Court but is intended to apply to unlawful sales and alienations of portions of bhags made out of Court or by private individuals. It is under s. 2 that the Collector is authorized and bound to move in order to get the process of a Civil Court set aside or quashed. COLLECTOR OF BROACH v DESAI RAGHUNATH [I L R. 7 Bom 546

BOMBAY ACT—1862—V—*concluded*

———— s 2—*Sale of a portion of a bhag in execution of a decree—Process for sale—Collector's right to get the process quashed*—The appellant was the mortgagee of a portion of a bhag under a mortgage dated 1880 and in a suit brought upon the mortgage obtained a decree for sale of the mortgaged property An attachment was issued and an order for sale was made Thereupon the Collector applied under s 2 of Bombay Act V of 1862 to set aside the attachment and order for sale *Held* that the mortgage of a portion of a bhag was unlawful under s 3 of the Act and a process having been issued for the sale of such portion the Collector was entitled to have it quashed *Ranchoddas Doyaldas* v *Ranchoddas Nanabhai* I L R 1 Bom 581 distinguished. NARBHERAM v COLLECTOR OF BROACH I L R, 22 Bom 737

———— s 3

See MORTGAGE—CONSTRUCTION OF MORTGAGES I L R 18 Bom 283

See POSSESSION—ADVERSE POSSESSION [I. L. R., 23 Bom, 710

1 ———— *Bhagdari and narvadari tenures Sale of unrecognized portion of—Civil Procedure Code 1859 s 213—Undivided share Sale of—Partition*—The sale of a portion of a bhag or share in a bhagdari or narvadari village other than a recognized subdivision of such bhag or share or of a building site appurtenant to it is illegal under s 3 of Bombay Act V of 1862 and a judgment creditor cannot in execution of his decree evade the law by describing his debtor's separate portion in a bhag as his 'right title and interest in the whole bhag' for under s 213 of the Code of Civil Procedure the creditor is bound to specify the debtor's share or interest to the best of his belief or so far as he has been able to ascertain the same *Quære*—If the sale of an undivided share in a bhag be lawful but even if it be the purchaser cannot insist upon the possession of any particular portion of the bhag as representing the share of his debtor All he can do is to sue for partition But *quære* if such partition could be made. ARDESIR NASARVANJI v MUSA NATHA AMIJI I L R., 1 Bom., 601

2 ———— *Bhagdari tenure—Undivided share of a bhag Alienation of*—The alienation of an undivided portion of a bhag or share in the bhag to a person who is not a bhagdar is void under s 3 of Bombay Act V of 1862 BIRDWOOD, J dissented. PARSHOTAM BHAISHANKAR v HIRA PARAG I. L. R., 15 Bom., 172

BOMBAY ACT—1862—VI (Talukhdari Act)

See LAND REVENUE 12 Bom, Ap, 276

See SERVICE TENURE. [I. L. R., 1 Bom 586

———— Operation of Act—*Right of alienation in Ahmedabad Zillah*—The Bombay Talukhdari Act (Bombay Act VI of 1862) did not affect talukhdari villages the right title and interest of

BOMBAY ACT—1862—VI (Talukhdari Act)—*continued*

the talukhdar in which had been sold before that Act came into operation though possession of such villages had not then been obtained by the purchaser *Quære* —As to the right of talukhdars in the Ahmedabad Zillah to alienate their talukhari villages COLLECTOR OF AHMEDABAD *v* SAMALDAS BECHARDAS [9 Bom , 205

1. ——— s 12—*Inability of guardian to contract on behalf of infant ward so as to bind him personally—Effect of Act VI of 1862 (Bombay) s 12 in regard to a charge upon a talukhdari estate in the Ahmedabad District during the period of management* —A guardian cannot contract in the name of a ward so as to impose on him a personal liability Act VI of 1862 (Bombay) for the amelioration of the condition of talukhdars in the Ahmedabad Collectorate and for their relief from debt was intended to deal with all debts and liabilities which could possibly impose a charge upon the talukhdari estate at the end of the period of management when the estate was to be restored to the talukhdar free of incumbrance excepting the Government revenue If debts amounted to more than the surplus of rents during the management of which the maximum period was twenty years they were not to be paid A widow as guardian of her infant son the heir of talukhdari estate in the above district validly transferred villages part thereof and in the deed of transfer to which her ward was, by her as his guardian nominally a party contracted to indemnify the purchaser in case the Government should claim and enforce a right to revenue upon the villages which she transferred as being rent free The deed purported to make both guardian and ward personally liable in this respect and also charged the liability upon other parts of the talukhdari estate The infant attained majority and the estate was then placed under management within Act VI of 1862 During the period of management the Government claimed and enforced payment of revenue upon the villages *Held* that there was no personal liability on the part of the talukhdar created by the above ; also that if the charge on the estate had been validly made it fell at all events within the terms of s 12 of Act VI of 1862 absolving estates from liability for debts incurred not only before but during the period of management WAGHELA RAJSANJI *v* MASLUDIN [I L R 11 Bom 551 L R. 14 I A 89

2 ——— and s 20—*Talukhdar's power of disposal over his landed estates after the expiration of the management by the Talukhdari Settlement Officer* —Under s 12 of the Ahmedabad Talukhdars Act (VI of 1862) debts or liabilities incurred by a talukhdar during the management of the Talukhdari Settlement Officer are not enforceable against landed estates His personal liability for the same remains unaffected by the Act This personal liability furnishes a sufficient consideration for a subsequent obligation so as to bind the landed estates by a contract made *after* the period of the management by the Talukhdari Officer had expired From and after the expiration of that period the talukhdar becomes under s. 20 the absolute proprietor

BOMBAY ACT—1862—VI (Talukhdari Act)—*concluded*

of his estate and he is *then* at liberty to create a valid charge upon his estate for debts contracted *during* the period of the management Accordingly where a talukhdar had after the withdrawal of the management by the Talukhdari Settlement Officer encumbered his landed estate under several mortgage bonds passed partly in renewal of old bonds and partly in consideration of old debts contracted during the period of the management —*Held* that the mortgage bonds created valid and binding encumbrances upon the estate BOO JINATBOO *v* SHA NAGAR VALAB KANJI I L R 11 Bom. 78

———1863—II.

See SERVICE TENURE [I L R , 15 Bom , 13

See SETTLEMENT—EFFECT OF SETTLEMENT [1 Bom , 171

——— s 6 cl (2)—*Non recognition of adoption—Provision for benefit of Government only* —The provision in Bombay Act II of 1863 s 6 cl 2 as to the non recognition of adoption by any Civil Court relates only to the question of the assessability of lands when raised between Government and a claimant of exemption It is not open to a party to rely upon a provision of which Government only is entitled to take advantage VASUDEV ANANT *v* RAMKRISHNA AND SHIVRAM NARAYAN [I. L R 2 Bom 529

——— s 8 cl (3)

See ENDOWMENT I L R 5 Bom , 393

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY [I L R. 10 Bom 34

——— III

See DISTRICT JUDGE JURISDICTION OF [5 Bom A C 26

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY [11 Bom 39

——— VI.

See MASTER AND SERVANT [I. L. R. 7 Bom. 119

———VII

See BOMBAY SUMMARY SETTLEMENT ACT

——— IX.

See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT [3 Bom Cr 12

See CASES UNDER COTTON FRAUDS ACT

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT IX OF 1863 [3 Bom Cr 13

——— 1864—IV

See MAHOMEDAN LAW—ENDOWMENT [I. L. R. 18 Bom. 401

BOMBAY ACT—1862—V—*continued*

field against in 1883 to oust the defendants, and to obtain possession alleging that the defendants purchase of a portion of the bhag was illegal and invalid under s 1 of the Bombay Bhagdari Act (V of 1862) The suit was dismissed on the ground that though the defendants purchase was illegal under the Act the plaintiff had no right to oust the defendants until the Collector had taken action under s 2 of the Act to set aside the defendants' purchase *Held* reversing the decision of the lower Court that the suit was not barred by s 2 of the Bombay Bhagdari Act (V of 1862) *Held* also that the defendants purchase of unascertained shares in the undivided bhag was not opposed to s 1 of the Act BAI KUVARBAI v BHAGVAN ICHHARAM I L R, 13 Bom, 203

1 ———— ss 1 and 3—*San mortgage—Bhagdari and narvadari tenures—Mortgage before passing of the Act—Execution of decree—Operation of Act*—The plaintiff in 1874 sued on a san mortgage dated 15th November 1861—*i e* five months before the passing of Bombay Act V of 1862—to recover a sum of money by sale of the mortgaged property which formed part of a bhag in a bhagdari village which bhag the defendant had purchased at a Court s sale subsequent to the date of the mortgage *Held* (assuming s 1 of the Act to apply) that it does not bar the right of action that therefore a Civil Court would be bound to make a decree even though it might anticipate that s 1 of the Act would stand in the way of the execution of that decree *Semble*—That after a decree has been passed against a portion of a bhag the Collector might recognize such portion as a division of the bhag if assured that justice required that the decree should be executed. *Held* further that no retrospective operation can be given to s 1 of the Act so as prejudicially to affect existing rights The words attachment or sale by the process of any Civil Court used therein were intended to prevent attachment and sale under simple money decrees and not to prevent the sale of mortgaged property in satisfaction of a valid mortgage RANCHODDAS DOYALDAS v. PANCHODDAS NANABHAI I. L. R 1 Bom 581

2 ———— *Sale of unrecognized portion of bhag—Application by Collector to set it aside—Limitation Acts IX of 1871 and XV of 1877 sch II art 178*—No law of limitation applies to proceedings taken by a Collector under Bombay Act V of 1862 The words in the first section of that Act no portion of a bhag etc shall be liable to seizure sequestration attachment or sale by the process of any Civil Court, mean that no portion of a bhag shall be seized sequestered attached or sold by the process of any Civil Court and any such seizure sequestration attachment or sale is thereby rendered absolutely illegal and void S 3 of the Act has no bearing on sales by order of a Civil Court but is intended to apply to unlawful sales and alienations of portions of bhags made out of Court or by private individuals It is under s 2 that the Collector is authorized and bound to move in order to get the process of a Civil Court set aside or quashed. COLLECTOR OF BROACH v DESAI RAGHUNATH [I L R 7 Bom 546

BOMBAY ACT—1862—V—*concluded*

———— s 2—*Sale of a portion of a bhag in execution of a decree—Process for sale—Collector's right to get the process quashed*—The appellant was the mortgagee of a portion of a bhag under a mortgage dated 1880 and in a suit brought upon the mortgage obtained a decree for sale of the mortgaged property An attachment was issued and an order for sale was made Thereupon the Collector applied under s 2 of Bombay Act V of 1862 to set aside the attachment and order for sale *Held* that the mortgage of a portion of a bhag was unlawful under s 3 of the Act and a process having been issued for the sale of such portion the Collector was entitled to have it quashed *Ranchoddas Doyaldas* v *Ranchoddas Nanabhai* I L R 1 Bom 581 distinguished. NARBHERAM v COLLECTOR OF BROACH I L R 22 Bom., 737

———— s 3

See MORTGAGE—CONSTRUCTION OF MORTGAGES I L R 18 Bom 283

See POSSESSION—ADVERSE POSSESSION [I. L. R., 23 Bom, 710

1 ———— *Bhagdari and narvadari tenures Sale of unrecognized portion of—Civil Procedure Code 1859 s 213—Undivided share Sale of—Partition*—The sale of a portion of a bhag or share in a bhagdari or narvadari village other than a recognized subdivision of such bhag or share or of a building site appurtenant to it is illegal under s 3 of Bombay Act V of 1862 and a judgment creditor cannot in execution of his decree evade the law by describing his debtor's separate portion in a bhag as his right title and interest in the whole bhag for under s 213 of the Code of Civil Procedure the creditor is bound to specify the debtor's share or interest to the best of his belief or so far as he has been able to ascertain the same *Quære*—If the sale of an undivided share in a bhag be lawful but even if it be the purchaser cannot insist upon the possession of any particular portion of the bhag as representing the share of his debtor All he can do is to sue for partition But *quære* if such partition could be made ARDESIR NASARVANJI v MUSE NATHA AMIJI I L R 1 Bom. 601

2 ———— *Bhagdari tenure—Undivided share of a bhag Alienation of*—The alienation of an undivided portion of a bhag or share in the bhag to a person who is not a bhagdar is void under s 3 of Bombay Act V of 1862 BIRDWOOD J dissented PARSHOTAM BHAISHANKAR v HIRA PARAG I L R, 15 Bom. 172

BOMBAY ACT—1862—VI (Talukhdari Act)

See LAND REVENUE 12 Bom, Ap 276

See SERVICE TENURE [I. L. R. 1 Bom 586

———— Operation of Act—*Right of alienation in Ahmedabad Zillah*—The Bombay Talukhdari Act (Bombay Act VI of 1862) did not affect talukhdari villages the right title and interest of

BOMBAY ACT—*concluded*

———1878—IV

See BOMBAY MUNICIPAL ACT

——— — V

See BOMBAY ABKARI ACT

———1879—V (Land Revenue)

See BOMBAY LAND REVENUE ACT

——— VI

See BOMBAY PORT TRUST ACT

——— VII

See BOMBAY IRRIGATION ACT

———1880—I

See KHOTI SETTLEMENT ACT

———1881—V

See BOMBAY TOLLS ACT AMENDMENT ACT

———1884—II

See BOMBAY DISTRICT MUNICIPAL ACT 1884

———1886—III

See BOMBAY GENERAL CLAUSES ACT

——— V

See HEREDITARY OFFICES ACT AMENDMENT ACT

———1887—IV

See GAMBLING (BOMBAY ACT IV OF 1887)

———1888—III

See BOMBAY MUNICIPAL ACT 1888

——— VI

See GUJARAT TALUKHDARS ACT

———1890—I

See GAMBLING I L R 16 Bom 283
[I. L R 17 Bom. 184

——— II

See BOMBAY SALT ACT

——— IV

See BOMBAY DISTRICT POLICE ACT

BOMBAY CIVIL COURTS ACT (XIV OF 1869)

See CASES UNDER APPEAL—BOMBAY ACTS —BOMBAY CIVIL COURTS ACT
[I. L R 12 Bom 675

See DISTRICT JUDGE JURISDICTION OF
[I L R. 5 Bom 65
6 Bom A C., 166
I. L. R 14 Bom 627
I L R 15 Bom., 107

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION ETC
[9 Bom. 113

BOMBAY CIVIL COURTS ACT (XIV OF 1869)—*continued*

See CASES UNDER SUBORDINATE JUDGE JURISDICTION OF

See VALUATION OF SUIT—SUITS
[I. L. R , 12 Bom., 675

——— ss 9 and 10

See HIGH COURT JURISDICTION OF— BOMBAY—CIVIL
[I. L R 20 Bom 480

——— s 16—*Cases referred by District Judge to Assistant Judge for trial— Miscellaneous applications —Land Acquisition Act (X of 1870)—References to District Court by the Collector—Succession Certificate Act (VII of 1869)—Guardians and Wards Act (VIII of 1890)—Applications under special Acts* —Although the expression miscellaneous applications in s 16 of the Bombay Civil Courts Act (XIV of 1869) may be large enough to include references by the Collector under the Land Acquisition Act (X of 1870) the latter part of s 16 as it stood before that section was amended by Acts VII of 1889 and VIII of 1890 indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under special Acts for disposal ASSISTANT COLLECTOR OF PRANT BASSEIN *v* ARDESIR FRAMJI
[I L R., 16 Bom 277

——— s 24

See VALUATION OF SUIT—SUITS
[I L. R. 1 Bom 528 543

s 25

See JURISDICTION—QUESTION OF JURISDICTION—WRONG EXERCISE OF JURISDICTION I. L R 8 Bom 31

See VALUATION OF SUIT—SUITS
[I. L R. 8 Bom 31

——— s 26

See VALUATION OF SUIT—APPEALS
[I. L R 20 Bom 265
I L R. 22 Bom 963

——— s 27—*Power to hear appeals —Power to hear question of limitation—Practice* — Where a District Judge admits an appeal filed beyond time and the appeal is referred for disposal to a Subordinate Judge with appellate powers the Subordinate Judge has the power to consider whether the delay in presenting the appeal is sufficiently accounted for The power to hear an appeal conferred by s 27 of the Bombay Civil Courts Act (XIV of 1869) includes also the power to hear any question as to limitation relating thereto MULNA AMAD *v* KRISHNAJI GANESH GODBOLE
[I. L R 14 Bom., 594

——— s 32.

See CIVIL PROCEDURE CODE s 424
[I. L. R. 20 Bom. 697

See COLLECTOR
[I L. R. 1 Bom. 318 628

BOMBAY CIVIL COURTS ACT (XIV OF 1869)—*concluded*

See MAMLATDAR JURISDICTION OF [I. L. R., 23 Bom 761

——— *Bombay Revenue Jurisdiction Act (X of 1876) s 15—Guardian under Minor s Act XX of 1864—Officer of Government*—The Nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864 is not an officer of Government within the meaning of s 32 of Act XIV of 1869 as amended by s 15 of Act X of 1876 An officer of Government in order to come within those enactments must be a party to a suit in his official capacity MOHAN ISWAR v HARU RUPA I L R 4 Bom, 638

BOMBAY DISTRICT MUNICIPAL ACT (XXVI OF 1850)

See CONTEMPT OF COURT—PENAL CODE s 174 5 Bom Cr 33

See CONVICTION 5 Bom Cr, 103

See FINE 7 Bom Cr, 55

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—ACT XXVI OF 1850 [3 Bom. Cr, 36 5 Bom, Cr, 10 8 Bom Cr 12 39

See NUISANCE—MISCELLANEOUS CASES [1 Agra, Cr, 34

See PENAL CODE s 188 [5 Bom Cr 33

See PUBLIC SERVANT 4 Bom A C, 93 [5 Bom Cr 33

See RIGHT OF SUIT—MUNICIPAL OFFICER SUITS AGAINST 7 Bom A C 33 [I L R. 22 Bom 384

See RULES MADE UNDER ACTS [8 Bom., Cr, 39

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)

See COLLECTOR I. L R. 1 Bom 628

1 ——— s 3—*Place Definition of—Ota of a house*—The word place as defined in s 3 of Bombay Act VI of 1873 does not include a house or ota of a house IN RE THE PETITION OF PABA KHOJI I L R. 9 Bom 272

2 ——— and s 17—*Street—Court—Public right of way—Removal of erection*—The plaintiff was the owner of two houses and mortgagee of a third house out of a set of six which surrounded an open court in the town of Dhandhuka and which including the court originally belonged to a single individual The plaintiff built an ota or verandah and put up a wooden bench in front of his house which the municipality of the town ordered to be removed. In a suit by the plaintiff to have this order set aside the District Court found that the occupant of each house had the right of way across the court

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—*continued*

which was used as the means of access to the houses which surrounded it by persons having business with the house holders *Held* that such limited access by the public was not sufficient to show that the court ceased to be private property and was converted into a street vesting in the municipality within the meaning of ss 3 and 17 of Bombay District Municipal Act VI of 1873 and that the municipality had not any right to interfere with the plaintiff s erection whatever liability he might have incurred to an action by any of the other house holders who occupied the court KALIDAS v MUNICIPALITY OF DHANDHUKA [I L. R., 6 Bom, 686

1 ——— s 11, cl. (1)—*Notice of meeting Omission to give—Validity of resolution passed*—The provisions of s 11 cl (1) as to notice of meeting are not directory but obligatory and notice to all the commissioners of the meeting being a material part of the machinery provided by the Act for imposing a legal tax was a condition precedent to the validity of that tax Consequently where a resolution was come to without conforming to those provisions it was held to be not legal and whether sanctioned or not by the Government it always retained its inherent defect JOSHI KALIDAS SEVAKRAM v DAKOR TOWN MUNICIPALITY I. L. R. 7 Bom, 399

2 ——— *Bombay Municipal Act (Bombay Act II of 1884) s 57—Liability to pay taxes—Halalkhore tax—Water tax—Notice by municipality—Burden of proof—Presumption—Evidence Act I of 1842 s 117 ill (c)*—A defendant who in answer to a claim for arrears of taxes by a Bombay district municipality alleges that the taxes were illegal (1) because no notice had been given him under s 57 of Bombay Act II of 1884 (2) because no notice had been issued by the municipality to the commissioners under s 11 of Bombay Act VI of 1873 must prove the defence and in the absence of such proof the Court will presume that the municipality has used the regular procedure and that the common course of business has been followed in the particular cases The liability to pay the halalkhore tax does not arise until after notice has been given under s 57 of the Act (Bombay Act II of 1884) MUNICIPALITY OF SHOLAPUR v SHOLAPUR SPINNING AND WEAVING COMPANY I L R. 20 Bom. 732

——— s 14

See RIGHT OF SUIT—MUNICIPAL OFFICERS SUITS AGAINST [I L R 22 Bom 384

1. ——— s 17—*Public street—Bombay Municipal Act (Bombay Act III of 1889) s 3*—In a suit brought by the plaintiff against the municipality of Ahmedabad the question was whether a certain street was a public street within the contemplation of the Bombay District Municipal Act (Bombay Act VI of 1873) The District Judge on the evidence and having regard especially to the fact that the street in question was protected by a gate closed at night by a polia or watchman who lived over the gate and was under the control of and paid by the owners of the houses in the street—*Held* that there

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—*continued*

had been no dedication of the land to the public and that the public had not acquired such a right of going over it as to make it a public street vested in the municipality On second appeal by the defendant the High Court refused to interfere with the decision of the lower Court In the absence of a definition of a public street in the Bombay District Municipal Act the High Court refused to apply the definition contained in the City of Bombay Municipal Act (Bombay Act III of 1888) AHMEDABAD MUNICIPALITY *v* MANILAL UDEYATH

[I. L. R. 20 Bom 146

2. ———— and s 33—*Street—Authority of the municipality under s 33—Civil Court's interference with the discretion given to public bodies*—The word street in s 17 of the Bombay District Municipal Act (VI of 1873) means and includes not merely the surface of the ground but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes The plaintiff proposed to make a balcony projecting over a public road The municipality objected to the work as an encroachment on a public street He therefore sued the municipality to establish his right to build the proposed balcony *Held* that so far as the column of space standing over the street was vested in the municipality the plaintiff had no right to occupy it with a balcony which by intercepting light and air would greatly impair the use of the area as a street S 33 of the Bombay District Municipal Act 1873 gives the municipality a discretion to issue such orders as it thinks proper with reference to a proposed building Civil Courts cannot interfere with that discretion unless it is exercised in a capricious wanton and oppressive manner The plaintiff was the owner of two houses on each side of the passage of a khidki or open square containing three or four other houses He proposed to connect the two houses by building a story across the passage at such a height as not to interfere with the passage of those who were entitled to go to and fro He applied to the local municipality for permission to build in the manner he proposed. The municipality forbade the work on the ground that it was likely to interfere with the access of light and air to the neighbouring houses The plaintiff thereupon sued the municipality to establish his right to build the proposed structure It was contended for the plaintiff that the municipality ought not to have refused permission in the interests of the neighbouring house-holders who were able to protect their own rights in case of injury *Held* that the suit would not lie as the order of the municipality refusing permission was not an unreasonable one under the circumstances of the case *Held* further that the authority of the municipality was not in any way affected by the circumstance that the proposed erection might be an encroachment on private rights subjecting the plaintiff to an action by the persons injured. NAGAR VALAB NARSI *v* MUNICIPALITY OF DHANDHUKA

[I. L. R. 12 Bom 490

1. ———— s. 21—*Disposal by Government of objections to tax—Jurisdiction of Civil Court*—S 21 which enables the Government to dispose of objections made to a tax by the inhabitants of a town is quite consistent with the well established jurisdiction of the Civil Court to decide as to the validity of any fresh tax or impost and affords no sufficient ground for the conclusion that the intention of the Legislature was to take away that jurisdiction JOSHI KALIDAS SEVAKRAM *v* DAKOR TOWN MUNICIPALITY I L R 7 Bom 399

2 ———— *Octroi duties—Imposition of tax—Inhabitants objections—Consideration by municipality and opinion*—The requirements of cl 2 s 21 of Bombay District Municipal Act VI of 1873 which enacts that any inhabitant of the municipal district objecting to such tax toll or impost may within a fortnight from the date of the said notice send his objection in writing to the municipality and the municipality shall take such objection into consideration and report their opinion thereon to the Governor in Council is not satisfied by the Chairman of the Managing Committee considering the objections of the inhabitants and reporting his opinion to the Governor in Council or his representative the Commissioner of a Division The provision for forwarding the opinion of the municipality on the objections is an essential part of the machinery provided by that section for the legal imposition of a tax MUNICIPALITY OF POONA *v* MOHANLAL

[I. L. R., 9 Bom 51

3 ———— s 21 cls (1) and (2)—*Bombay District Municipal Act Amendment Act (Bombay Act II of 1884) s 27 cl (7) and s 32—Tax imposed by municipality*—In 1891 the municipality of Surat appointed a committee to revise the taxation of the city proposing to reduce some of the existing taxes and impose others with a view (*inter alia*) of obtaining a better water supply for the city A scheme of taxation drafted by the committee was subsequently adopted by the municipality and it included a new house and property tax The municipality then issued a notice with regard to this last-mentioned tax under the provisions of s. 21 of Bombay Act VI of 1873 setting forth the particulars of the proposed tax and requiring objections to be lodged within a fortnight from the date of the notice A number of objections were received which were laid on the table for twenty-one days for perusal and consideration by the municipal commissioners At the end of that time a special meeting of the Commissioners was held, at which it was resolved that the objections were invalid and the scheme and the rules with regard to the levying of the tax were forwarded to Government and were sanctioned The plaintiffs sued for an injunction restraining the municipality from levying the tax contending that it was illegal, on the ground (1) that there was no municipality desirous of imposing the tax for any of the purposes allowed by the Act inasmuch as the commissioners who passed the resolution to impose the tax did not know for what purpose the tax was to be imposed; (2) that the resolution imposing the tax was illegal

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—*continued.*

because the notice calling the meeting of the commissioners which passed the resolution did not specify this tax as the object of the meeting (3) that the notice given under s 21 of Bombay Act VI of 1873 was bad as it did not state the purpose of the proposed tax (4) that the nature and the amount of the tax were not sufficiently stated in the notice (5) that the notice ought to have stated the mode in which the valuation of property for the purpose of the tax was to be made (6) that the objections of the rate-payers were not sufficiently considered (7) that it did not appear whether the tax was to be paid in advance or not and (8) that the assessment of the tax was made on a wrong basis. *Held* that the purpose of the tax was sufficiently known to the commissioners (2) that the resolution imposing the tax was not invalid although the notice convening the meeting did not specify the object of the meeting (3) that the notice need not specify the purpose of the tax (4) that as to the nature and the amount of the tax the notice was sufficient as it stated that the amount would depend on the valuation of the property (5) that the notice need not define the mode of valuation (6) that the objections were sufficiently considered (7) that the tax was to be paid partly in advance (8) that the assessment would not affect the validity of the tax but would give a right of appeal to have the valuation set right *Held* therefore that the tax was legally imposed. SURAT CITY MUNICIPALITY v OCHHAVARAM JAMNADAS I L R 21 Bom 630

———— s 24

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L R 24 Bom 600

1. ———— s 33—*Sanad under the Bombay City Survey Act (Bombay Act IV of 1868)—The right of the municipality to call for the production of the sanad*—Under s 33 of the Bombay District Municipal Act (Bombay Act VI of 1873) the municipality has no right to insist on the production of a sanad issued under s 10 of the City Survey Act (Bombay Act IV of 1868) before granting permission to build. IN RE JAMNADAS DULABDAS

I. L. R 15 Bom 516

2 ———— *Demolition of building—Suit for damages*—Plaintiff having built a new wall on the site of an old wall including the old foundations the municipality pulled the wall down. Plaintiff thereupon sued the municipality for damages The Judge rejected the claim for damages *Held* that the building of a new wall on the site of the old wall including the old foundations was not an addition to the existing building within the meaning of s 33 of the District Municipal Act (Bombay Act VI of 1873) The municipality was therefore liable in damages for any expenses which the plaintiff was put to by their pulling down the wall KRISHNAJI NARAYAN POKSHE v MUNICIPALITY OF TASGAON

I. L R 18 Bom. 547

3 ———— *Notice of proposed building—Right of municipality to demolish building erected without permission to build*—On the 18th August 1890 plaintiffs sent a notice to the town municipality of Umreth intimating their intention to erect a building on their land, and giving a rough sketch plan of the land intended to be built upon In this notice plaintiffs did not expressly state their intention to build the wall in dispute On the 28th August 1890 the municipality wrote to the plaintiffs requiring them to furnish a plan showing the design of the proposed building with its measurements On the 30th September 1890 the plaintiffs without furnishing the plan as required built a wall on their land Thereupon the municipality gave a notice to the plaintiffs requiring them to pull it down as it has been built without their permission. The plaintiffs having failed to comply with this notice the wall was demolished and its materials were carried away by the municipal servants Thereupon the plaintiffs sued the municipality to recover damages for the wrongful demolition of the wall *Held* that the plaintiffs had contravened the provisions of cl 1 of s 33 of Bombay Act VI of 1873 inasmuch as they had built the wall without giving any notice or (if they did) gave notice without affording the information required by the municipality The municipality were therefore justified in ordering the wall to be demolished DAVE HARISHANKAR v TOWN MUNICIPALITY OF UMRETH

I. L. R. 19 Bom., 27

4 ———— *Building beyond area for which permission is granted—Omission to give notice of building—Power of municipality to order alteration or demolition of a building erected without notice or in excess of the permission*—Under the Bombay District Municipal Act, where an owner having obtained permission under s 33 to build on one portion of his land, builds on another portion without having obtained fresh permission if such part of his building as is outside the limits for which permission has been granted is built without notice the municipality can in their discretion order it to be demolished BHAWANISHANKAR v SURAT CITY MUNICIPALITY I. L. R. 21 Bom 187

5 ———— and s 42—*Discretion of municipality to take action under s 33 cl (3)—Court's power to interfere with such discretion*—A suit for an injunction to restrain a municipality from removing a certain building or construction is not an action for anything done or purporting to have been done in pursuance of the Act within the meaning of s 48 of Bombay Act II of 1884 Such a suit can therefore be brought without giving previous notice to the municipality Apart from the provisions of s 33 of Bombay Act VI of 1873 it is only if the site of a building is vested in a municipality under s. 17 that this body is empowered whether by s 42 or by any other section to take steps for the removal of the building The discretion of taking action or otherwise under the 3rd clause of s 33 is vested in the municipality which alone can determine whether or not the removal of a building erected contrary to the provisions of s 33 is or is not a measure likely to promote the public convenience If the municipality adopt the proper procedure no Court can review its

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—*continued*

decision on the ground that in the opinion of the Court the removal of the building is not likely to promote public convenience The Legislature has confided to the municipality and the municipality alone the duty of deciding what measures within its legal powers are for the public convenience and its discretion is not subject to control by the Courts PATEL PANA CHAND GIRDHAR v AHMEDABAD MUNICIPALITY

I. L. R. 22 Bom 230

——— s 36—*Privy power of municipality to order to be built by owner of a house—Such order not imperative but permissive—Discretion of Court*—The terms of s 36 of Bombay Act VI of 1873 are not imperative in requiring a municipality to call on the owner of a house to build a privy but are permissive leaving it to the discretion of the municipality to determine when the power conferred on them shall be exercised. Accordingly where the plaintiff complained that the defendants had erected a privy so close to his house as to be a nuisance and the lower Appellate Court found it to be a nuisance but rejected the plaintiff s claim on the ground that the defendants had erected the same under the orders of the municipality issued under s 31 of the Act —*Held* reversing the decree of the lower Appellate Court that the municipality had no authority to order the defendants to erect the privy regardless of the plaintiff's right and that the defendants therefore could not plead that they acted under the orders of the municipality The High Court directed an injunction to remove the privy within three months from the date of its decision JAFIR SAHEB v KADIR RAHIMAN I L R 12 Bom 634

——— s 42 cl (1) and ss 48 and 75—*Removal of obstruction in public street—Notice of removal—Corporate bodies—Practice—Suit for injunction*—Under the District Municipal Act (Bombay Act VI of 1873) a municipality has power to have all obstructions in a public street removed whether the obstructions were placed there lawfully or not The only distinction which the Act draws is between obstructions erected or placed before the Act came into operation and those which have been erected or placed since it came into operation As to the former s 42 cl (1) of the Act provides that notice should be given and if legally placed on the street compensation should be awarded for their removal As to the latter the municipality can remove them under s 48 even without giving any notice The public have a right of passing over the whole of a street if it is a public street It is not the practice of the Court to interfere with corporate bodies unless they are manifestly abusing their power AHMEDABAD MUNICIPALITY v MANILAL UDEVATH

I. L. R. 19 Bom 212

——— s 48—*Re erection of a structure formerly existing not within the section*—S 48 of the Bombay District Municipal Act 1873 refers to the erection of a thing for the first time and not to the re-erection of an old structure which had been taken down for a temporary purpose only The accused was the owner of a shop in a public street at Thana The shop had planks attached to it in front overhanging a public gutter These planks had been in existence before the District Municipal Act came into operation at Thana. In April 1897 the planks were temporarily removed under the orders of the plague authorities The plague having ceased the accused replaced the planks in October 1897 without the permission of the municipality For this he was prosecuted and fined under s 48 of Bombay Act VI of 1873 *Held* reversing the conviction and sentence that the refixing of the planks was not an erection within the meaning of s 48 of the Act KALA GOVIND v MUNICIPALITY OF THANA

I L R 23 Bom, 248

See ESHAN CHANDER MITTER v BANKU BEHARI PAL I. L R 25 Calc, 160

and MUNICIPAL COUNCIL TANJORE v VISVANATHA RAU I. L R 21 Mad 4

——— s 54—*Offensive liquid —Allowing waste or dirty water to run on to public street*—A person does not render himself liable to a penalty under s 54 of Bombay Act VI of 1873 for allowing *mere waste or dirty water to run from his premises* on to a public street unless the water is offensive IN RE GULABDAS BHAIDAS

I L R 20 Bom 83

1 ——— s 66—*Selling vegetables in verandah of house*—Selling vegetables on the ota of a house is not using the ota as a market within the meaning of s 66 Accordingly a person who sold vegetables on the ota of his house was held not thereby to have committed any offence under s 66 of the Municipal Act (Bombay) VI of 1873 IN RE THE PETITION OF PABA KHOJI I L R. 9 Bom 272

2 ——— *Sale of fruit in a private shop—Power of the municipality to prevent such a sale—Market Definition of*—The municipality of Ahmedabad issued a notification to the effect that no one should within six hundred yards of the municipal market open or establish a shop for the purpose of selling vegetables or fruits without a license and that if any one acted in contravention of this notification he would be dealt with according to law The accused hired a house and opened a shop for selling fruit within six hundred yards of the municipal market without obtaining a license from the municipality The second class Magistrate convicted and sentenced each of the accused to pay a fine of R5 The District Magistrate, relying on the case of *In re Paba Khoji I L R 9 Bom 272* reversed the conviction and sentence *Held* that what the municipality had authority to direct under s 66 of (Bombay) Act VI of 1873 was that no place other than the municipal market or other places licensed as markets should be used by any body as a market but they had no authority to issue a notification affecting other places which might be used for selling vegetables etc otherwise than as a market that inasmuch as the using of the shop by the accused was confined simply to the selling of fruit and not of "vegetables in the popular sense it could not be affected by the prohibition contemplated by s. 66 of the Act that if the prohibition of the municipality

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—*continued*

was meant to affect the private rights of persons to use their shops for selling their own commodities that would amount to an excess of the authority conferred by the District Municipal Act (Bombay) VI of 1873 that the shop used by the accused for the sale of their own commodities was not a market within the meaning of s 66 of Bombay Act VI of 1873 *Mayor of London v Law 49 L J Q B 144* and *Mayor of Manchester v Lyons L R 2 Ch D 287* followed The case of *In re Paba Khoji I L R 9 Bom 272* explained QUEEN EMPRESS v MAGAN HARJIVAN *I L R 11 Bom 106*

——— s 73—*Power of the municipality to suppress caste feasts on the outbreak of cholera—Meaning of the words take such measures as may be deemed necessary'—Penal Code s 188—Construction of statutes*—The City of Ahmedabad being threatened with an outbreak of cholera the president of the local municipality acting under s. 73 of Bombay Act VI of 1873 issued an order in the form of a proclamation prohibiting the holding of caste-feasts when over thirty persons were to assemble After the promulgation of this order the accused gave a feast in a private house to upwards of thirty people of his caste He was thereupon convicted under s. 188 of the Penal Code for disobedience of an order duly promulgated by a public servant and sentenced to pay a fine of R35 *Held* (reversing the conviction and sentence) that s 73 of the Bombay District Municipal Act (VI of 1873) did not empower the municipality to place an interdict on people meeting together to eat and drink in their own houses The words in the section take such measures as may be deemed necessary to prevent meet or suppress the outbreak imply in themselves something actively to be done by the municipality rather than any limitation to be imposed on the private rights of the citizens in their relations of daily life Special measures for the health of the town—such as sulphur fumigation daily flushing of sewers insistance on good house sanitation isolation of infected districts and other similar steps to be taken by the authorities themselves—fall naturally within the meaning of the terms of the section The Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language QUEEN EMPRESS v HARILAL [I. L R 14 Bom 180

1 ——— s 74 and ss 36 39—*Notice by municipality—Offence under Act*—Non compliance with notices issued by the municipality under s. 36 or cl 1 of s 39 of the Bombay District Municipal Act VI of 1873 is not an offence punishable under the Act as cl. 1 of s 74 of that Act does not apply to either of those provisions The latter clause applies only to the 2nd clause of s 39 IN RE TUKARAM VITHAL [I L R. 2 Bom 527

2 ——— and s 33—'*External alteration—Opening of a new doorway in a building without notice to municipality*—Opening a new external door is an external alteration of the building in which the door is opened and such act done without the notice to the municipality contemplated by s 33 of Bombay Act VI of 1873 is an offence punishable under s. 74 of the same Act *Semble*—Where such act does not cause any inconvenience to any person a slight nominal fine is an adequate punishment QUEEN EMPRESS v GUJRIA I. L R. 9 Bom., 568

——— s 84

See BOMBAY DISTRICT MUNICIPAL ACT 1884 s 49 I L R., 18 Bom, 400

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION [I L R. 18 Bom, 442

1 ——— *Nature of proceedings taken under s 84 for the recovery of municipal taxes—Magistrate's duty under the section*—A proceeding before a Magistrate for the recovery of municipal cesses and taxes instituted under s 84 of Bombay Act VI of 1873 is a criminal prosecution and must be conducted in the manner prescribed for summary trials under Ch. XXII of the Code of Criminal Procedure (Act X of 1882) In such a proceeding a Magistrate is not bound to order payment of the full amount claimed by the municipality but must satisfy himself as to the extent of the defaulter's legal liability before passing any order against him MUNICIPALITY OF AHMEDABAD v JUMNA PUNJA I. L R., 17 Bom., 731

2. ——— *Contract to collect a tax levied by a municipality—Suit for money due under such contract*—A person who had obtained a contract to collect a certain tax imposed by a district municipality having failed to pay over the money due under the contract at the stipulated time was convicted by a Magistrate under s 84 of the Bombay District Municipal Act (Bombay Act VI of 1873) and ordered to pay it to the municipality with interest and also to pay a fine and Court fee charges *Held* reversing the order that the section did not apply IN RE JAGU SANTRAM I. L R 22 Bom. 709

3 ——— as amended by Bombay Act II of 1884—*Arrears of rent—Penalty in addition to arrears of rent*—S 84 of the Bombay District Municipal Act (Bombay Act VI of 1873) allows penalties to be imposed in addition to arrears of cesses or taxes but it does not provide for the imposition of a penalty in addition to the arrears of rent IN RE RANGU I. L. R 22 Bom., 708

4 ——— *Taxation—Duty on goods imported within municipal limits—Imported—Meaning of the word*—A rule of the Thana Municipality provided for the levy of octroi duty on certain articles when imported within the Thana Municipal District *Held* that goods merely passing through the municipal district in the course of transit to Bombay were imported" within the meaning of the rule and were therefore liable to duty IN RE RAHIMU BHANJI [I. L R 23 Bom 843

5 ——— *House valuation for purposes of taxation—Valuation made by municipality*

BOMBAY DISTRICT MUNICIPAL ACT (VI OF 1873)—*continued*

—*Magistrate's power to revise the valuation*—Under the rules passed under the Bombay District Municipal Act (Bombay Act VI of 1873) as amended by Bombay Act II of 1884 the Municipality of Wai estimated the annual letting value of a house belonging to the accused at R50 and levied a house tax of R2 8-0 *A* a tax payer applied to the managing committee for a reduction of the tax but his application was dismissed. Default having been made in payment of the tax A was prosecuted under s. 84 of the Act before a second class Magistrate He contended that the estimate made by the municipality was too high and that his house would not let for more than 10 or 12 rupees a year The Magistrate took evidence on the point and found that the annual rental of the house would not exceed R12 and he ordered payment of 12 annas only on account of the tax *Held* that the Magistrate had no power to go behind the estimate of value framed by the managing committee under the powers given to it by the rules He ought to have accepted as conclusive the amount found by the managing committee to be the letting value of the house and held the legal liability of the accused to pay the tax based on this amount to be proved. The remedy of the accused if he considered his house assessed too highly was to apply to the managing committee and no other mode of redress was open to him *Municipality of Ahmedabad* v *Jumna Punja I L R 17 Bom 731* distinguished MUNICIPALITY OF WAI *v* KRISHNAJI GANGADHAR I. L R 23 Bom 446

See MORAR *v* BORSAD TOWN MUNICIPALITY [I L. R., 24 Bom 607

———s 86

See BOMBAY DISTRICT MUNICIPAL ACT 1884 s 48 I. L R 18 Bom 19

See LIMITATION ACT 1877 s 14 [I L R 8 Bom 529

1 ——— *Suit against Municipality for damages*—S 96 of Bombay Act VI of 1873 is not applicable to suits in the nature of actions of ejectment but only to suits for damages JOHARMAL *v* MUNICIPALITY OF AHMEDNAGAR [I. L R 6 Bom 580

2 ——— *Illegal tax—Notice of action for refund—Time within which to bring suit—Limitation*—On the 18th March 1880 the Dakor Town Municipality acting under the powers conferred upon them by the Bombay Act VI of 1873 convened a meeting at which it was resolved to impose a house-tax on the town; and also another meeting on the 2nd of April 1880 at which a classification of the houses was made and the rates fixed. The Revenue Commissioner N D., on behalf of the Government sanctioned the resolutions on the 2nd of June 1880 Notice of the meeting of the 18th of March 1880 was not served on three of the commissioners they being absent at the time from Dakor and no notice specifying the business to be transacted therein was posted up at the kutcherry as required by s 11 cl (1) of the Act. *K* a householder sent a notice to the municipality on the 25th of January 1881 impeaching the legality of the tax On the 3rd of June 1881 he paid the tax—namely R2—for which he had been rated and on the 6th of January 1882 he sued for a refund of the said sum from the municipality *Held* that the suit was not brought too late to satisfy the requirements of s 86 of the Act When the notice of the 25th of January 1881 was sent by *K* he had no cause of action against the municipality for anything done no notice therefore such as is contemplated by s 86 was ever sent by *K* and consequently there could be no final order on such notice from which the three months prescribed by that section would run *Quære*—Whether s 86 of the Bombay Act VI of 1873 applies to an action for money had and received. JOSHI KALIDAS SEVAKRAM *v* DAKOR TOWN MUNICIPALITY I L R 7 Bom 399

3 ——— *Notice—Municipality—Nature of action*—A person suing a municipality constituted by Bombay Act VI of 1873 for the refund of money illegally levied from him as house tax is bound to serve a previous notice on the said municipality as required by s. 86 of the Act The object of that provision would appear to be to give municipal bodies or officers who in the *bonâ fide* discharge of their public duties may have committed illegal acts not justified by their powers an opportunity of tendering sufficient amends for such acts before being harassed with an action S 86 of the Act is not confined to an action of damages but is applicable to every claim of a pecuniary character arising out of the acts of municipal bodies or officers who in the *bonâ fide* discharge of their public duties may have committed illegalities not justified by their powers RANCHOD VARAJBHAI *v* MUNICIPALITY OF DAKOR I. L R. 8 Bom 142

BOMBAY DISTRICT MUNICIPAL ACT (II OF 1884)

——— s 23

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622 [I L R 21 Bom 279

——— s 27

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 21 [I L R. 21 Bom 630

1 ——— s 48—*Bombay District Municipal Act (Bombay Act VI of 1873) s 86—Suit against municipality for ejectment*—The words "in the case of any such action for damages" in s 48 of the Bombay District Municipal Act Amendment Act (Bombay Act II of 1884) clearly show that it was contemplated that there might be actions of another description to which the provisions in the former paragraph would be applicable The section does not contemplate only "suits to recover monetary compensation for a wrongful act" A suit in ejectment—not being a suit brought to recover damages for an act done or intended to be done —was excluded under s 86 of the Bombay District

BOMBAY DISTRICT MUNICIPAL ACT (II OF 1884)—*continued*

Municipal Act (Bombay Act VI of 1873) but being an action for an act done that act being the dispossession by the municipality with a view to being restored to possession falls under the provisions of the first paragraph of s 48 of Bombay Act II of 1884 NAGUSHA v MUNICIPALITY OF SHOLAPUR I L R. 18 Bom 19

2 ———— *Suit against municipality for injunction—Notice of action.*—A suit for an injunction to restrain a municipality from removing a certain building or construction is not an action for anything done or purporting to have been done in pursuance of the Act within the meaning of s 48 of Bombay Act II of 1884 Such a suit can therefore be brought without giving previous notice to the municipality PATEL PANACHAND GIRDHAR v AHMEDABAD MUNICIPALITY I. L. R. 22 Bom 230

3 ———— *Bombay Act VI of 1873 s 86—Purchase from mortgagee by municipality—Suit by mortgagor to recover possession—Ejectment—Limitation—Notice* —A mortgagee (defendant No 1) refused to give up part of the mortgaged land when the mortgage was paid off in 1881 He remained in possession and in 1888 he sold this land to the Municipality of Mahad (defendant No 2) The mortgagor subsequently sued the municipality and its vendor to recover possession. The municipality contended that the suit was barred by limitation under s 48 of the District Municipal Act 1884 *Held* that the suit was not barred by s 48 That section does not apply to actions of ejectment brought against a municipality Such an action brought to try the title to land is not an action for anything done or purporting to be done in pursuance of the Act *Nagusha* v *Municipality of Sholapur I L R 18 Bom 19* distinguished KASHINATH KESHAV JOSHI v GANGABAI I L R 22 Bom 283

4 ———— *Ejectment suit against municipality—Notice*—The plaintiff was the mamlatdar of the village of Dakor He filed an ejectment suit against the municipality of Dakor alleging that the municipality had illegally and wrongfully encroached upon a portion of the Gomti lake at Dakor by laying the foundations of a building which they intended to erect for the purpose of a dharmshala The municipality pleaded (*inter alia*) that the suit was bad for want of notice of action under s 48 of the Bombay District Municipal Act 1884 *Held* (by a majority of the Full Bench) that the provisions of s 48 of Bombay Act II of 1884 do not apply to actions for the possession of land brought against a municipality *Per* PARSONS J —The provisions of s 48 apply only to actions for the possession of land whereof the plaintiff has been dispossessed by the municipality acting or purporting to act under some section of the Municipal Act which empowers them to take possession of or oust any one from that land *Per* RANADE J—S 48 does not generally apply to suits for the possession of land except in those cases where the claim arises on account of some act or omission of the municipality when it acts in pursuance of its statutory powers and

BOMBAY DISTRICT MUNICIPAL ACT (II OF 1884)—*concluded*

encroaches upon private rights *Nagusha* v *Municipality of Sholapur I L R 18 Bom 19* overruled MANOHAR GANESH TAMBEKAR v DAKOR MUNICIPALITY I L. R., 22 Bom 289

5 ———— *Suit for damages possession and injunction—Notice of action* —In a suit brought against a municipality to recover possession of a piece of land taken by it for damages for pulling down a wall on the land and for an injunction —*Held* that as regards damages the suit came under s 48 of the District Municipal Act 1884 but as regards possession and injunction notice of action was not necessary under the section SHIDMALLAPPA NARANDAPPA v GOKAK MUNICIPALITY I L R, 22 Bom 605

6 ———— *Suit for specific performance of a contract or for damages for breach thereof*—S 48 of the Bombay District Municipal Act 1884 does not apply to a suit for the specific performance of a contract or for damages for breach thereof MUNICIPALITY OF FAIZPUR v MANAK DULAB SHET I. L. R 22 Bom., 637

7 ———— *Suit for an injunction to restrain municipality* —A suit was brought by the plaintiff against a municipality for an injunction to restrain them from laying water pipes on his land. The lower Courts dismissed the suit for want of notice under s 48 of the District Municipal Act 1884 *Held* reversing the decree that the suit was not a suit for anything done in pursuance of the Act but to prevent the municipality from doing what the plaintiff alleged to be an illegal act and that s 48 did not apply HARILAL RANCHODLAL v HIMAT MANEKCHAND I L. R 22 Bom. 639

———— s 49—*Bombay District Municipal Act (Bombay Act VI of 1873) s 84—Non payment of taxes—Penal Code (XLV of 1860) s 40—Penalty— Fine —Imprisonment in default of payment of penalty*—There is no distinction between the word penalty as used in Bombay District Municipal Act (Bombay Act VI of 1873) and the word fine as used in s 64 of the Penal Code (XLV of 1860) Imprisonment can therefore be awarded in default of any penalty inflicted under s 84 of the Municipal Act IN RE LAKMIA I. L. R., 18 Bom. 400

———— s 57

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 11 I L R 20 Bom 732

BOMBAY DISTRICT POLICE ACT (VII OF 1867)

See JURISDICTION OF CRIMINAL COURTS—EUROPEAN BRITISH SUBJECTS 7 Bom Cr., 6

———— s 16

See BOMBAY LAND REVENUE ACT ss. 1 3 139 I L. R. 16 Bom., 455

See BOMBAY REVENUE JURISDICTION ACT s 4 I L R 16 Bom 455

BOMBAY DISTRICT POLICE ACT (VII OF 1867)—*continued*

——— s 23—*Police officer below the rank of Inspector Power of to prosecute—Criminal Procedure Code 1882 s 495*—The provisions of s. 23 of Bombay Act VII of 1867 have not been superseded by s. 495 of the Criminal Procedure Code (Act X of 1882) but are still in force QUEEN EMPRESS v HONKERAPA I. L. R. 8 Bom. 534

——— s. 27—*Prohibition of music in private house*—S 27 of Bombay Act VII of 1867 does not empower the police to prohibit the use of music in private houses REG v LUKHMA CHANGO [9 Bom 153

———ss. 28 29—*Order under s 28—Powers of Police under the Act s 28*—An order issued under s 28 of the Bombay District Police Act (VII of 1867) need not be in writing disobedience of a verbal order given under that section is punishable under s. 29 The words of s 28 of the District Police Act which authorize the police to keep order in the neighbourhood of places of worship during the time of public worship confer upon the police a power of regulating traffic and putting a stop to noises in the neighbourhood of places of worship during the time of worship but do not limit their general powers of keeping order at and within all places of public resort temples jatras or the like when necessary REG v BASSUJI GUNGARAIN [7 Bom Cr 2

——— s 31.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE [5 Bom., Cr, 43

——— *Operation of section—Notification by Government—Magistrate*—Bombay Act VII of 1867 s 31 became at once operative in all places where a Magistrate was resident without having been specifically extended thereto by Government notification REG v KERUBIN RAMSHET [5 Bom, Cr, 100

——— s 33—*Meaning of the word 'Booth'—Structure contemplated by the section Nature of—Structure not on public road and causing no nuisance to the public*—The accused had a house on each side of a public road. On the occasion of a wedding he put bamboos across the street from the top windows of one house into the top windows of the other house and laid a covering of cloth over the bamboos thus making a canopy or awning over the street. It was at such a height that no obstruction or inconvenience whatever was caused to persons or animals passing along the street The accused erected the structure without the permission of a Magistrate or Municipal Commission For this act the accused was convicted by a Magistrate under s. 33 of the Bombay District Police Act 1867 and sentenced to pay a fine of R5 *Held* reversing the conviction and sentence that the structure erected by the accused was not a booth within the meaning of s. 33 of Bombay Act VII of 1867 The structure contemplated by the section must be on the road itself and cause some nuisance to the public As no part of the structure in question touched the road it could not be said to have been constructed on the road. IN RE NAHALCHAND [I L R. 22 Bom 742

——— s 42

See LIMITATION ACT 1877 s 14 (1859 s 14) [10 Bom. 204

BOMBAY DISTRICT POLICE ACT (VII OF 1867)—*concluded*

BOMBAY DISTRICT POLICE ACT (IV OF 1890)

——— s 47—*Right of the police to have free access to a place of public amusement or resort—Race course enclosure*—Races were held in a certain enclosed ground at Poona which belonged to the Military authorities and was lent for the purpose to the Western India Turf Club The part of the ground to which the public were admitted was *fenced in by ropes and soldiers were stationed at* intervals to prevent any persons entering or leaving the enclosure otherwise than through the passages provided for the purpose The Inspector of Police who was present on duty in that capacity contrary to the regulations prescribed by the stewards of the races crossed over the fencing ropes into the enclosure instead of going in by the regular entrance This was reported to the honorary secretary of the club who had general charge of the arrangements. He sent for the inspector and after an interview with him ordered two soldiers who were in attendance to keep order to put him out of the enclosure They accordingly did so laying hands on him in the first instance but immediately at his request letting him go and merely escorting him outside He thereupon under s. 353 of the Penal Code charged the secretary of the club with using criminal force to a public servant in the exercise of his duty *Held* that the offence had been committed Under s 47 of the Bombay Police Act 1890 the police had a right of free access to the race-course QUEEN EMPRESS v ROSS [I. L R. 22 Bom, 746

1. ——— s 48 cl (a)—*Order as to conduct of procession*—A District Superintendent of Police issued a notification to the following effect – No member of any sect can be permitted to proceed naked to the tirth to bathe nor while there to bathe naked nor to pass the streets naked on any account If any one does this he will be dealt with according to law *Held* that this notification was not illegal or *ultra vires* It was not any order or command as to costume but merely a warning to the people that an indecent exposure of the person was an offence under the law and would be dealt with as such IN RE HUKUMPURIBAVA GOSAVI I. L R 22 Bom., 715

2 ——— s 48 cl. (b)—*Nuisance—Noise—"Near a street" Meaning of the words—Power of the police to regulate the playing of music in private houses*—S 48 cl. (b) of Bombay Act IV of 1890 does not empower the District Superintendent or Assistant Superintendent of Police to stop music in private houses The words in the clause "near a street" are intended to mean open spaces by the sides or at the ends of streets IN RE JAMNADAS BHUKHANDAS I L R 19 Bom. 737

BOMBAY DISTRICT POLICE ACT (IV OF 1890)—*concluded*

——— ss 51 and 52

See ABETMENT

[I L R 20 Bom, 394

——— s 53 cl. (2) and s 65—*Refusal to attend in order to make a panchnama*—The accused refused to attend to make a panchnáma regarding an obstruction to a public road caused by a grain dealer by keeping his grain bags on the road. He was thereupon convicted under s 53, cl (2) and s 65 of the Bombay District Police Act 1890 *Held* that the conviction was illegal Non attendance to make the panchnáma in question was not an offence punishable under the Police Act IN RE BHOLASHANKAR I L R 22 Bom, 970

BOMBAY GENERAL CLAUSES ACT (III OF 1886)

See REGISTRATION ACT s 17

[I L R 21 Bom., 387

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—IMMOVEABLE PROPERTY

[I L R 21 Bom, 387

BOMBAY GOVERNMENT RESOLUTION

——— No 512 of 1882

See HEREDITARY OFFICES ACT s 4

[I L R, 21 Bom 733

BOMBAY IRRIGATION ACT (VII OF 1879)

1 ——— s 48—*Bombay Revenue Jurisdiction Act (X of 1876) s 4 (b)—Water rate—Land revenue—Percolation of canal water—Opinion of the canal officer—Jurisdiction of Civil Court*—Where water rate is levied under s 48 of the Irrigation Act (Bombay Act VII of 1879) the question as to the jurisdiction of Civil Courts in a suit for the determination of the legality or otherwise of such levy depends upon whether the incidence of the rate is authorized by the provisions of the section. Under it the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal but the opinion of the canal officer that it has so percolated he and not the Civil Court being made the Judge of such percolation for the purposes of the Act Such water rate falls within the denomination of land revenue BALVANT GANESH OZE *v* SECRETARY OF STATE FOR INDIA I L R., 22 Bom 377

2 ——— *Leakage water—Rights of riparian proprietors—Water-course*—The Irrigation Department has no power under Bombay Act VII of 1879 to dam a stream or a water course on the ground that it derives its supply of water by leakage from an irrigation canal S 48 of the Act only gives the Department the special right of charging a water rate on land which derives benefit

BOMBAY IRRIGATION ACT (VII OF 1879)—*concluded*

from the leakage Water which has leaked from a canal into the land of another person does not belong to the Irrigation Department so as to give the latter the right to follow it up and claim it as their own. If the leakage flow was such that it itself had become in the eye of the law a canal or water-course then the rights of the persons through whose lands it flowed would be governed by the law applicable to canals or water-courses BALVANTRAO *v* SPROTT

[I. L. R., 23 Bom, 761

BOMBAY LAND REVENUE ACT (V OF 1879)

See BOMBAY LOCAL FUNDS ACT 1869

[I. L. R 17 Bom 423

——— ss 3 and 203—*Forest Officer Revenue Officer*—A Forest Officer is not a Revenue Officer within the definition in s 2 of the Land Revenue Code (Bombay Act V of 1879) and does not become one merely by being placed under a Revenue Officer for purposes of control NARAYAN BALLAL *v* SECRETARY OF STATE FOR INDIA

[I. L. R. 20 Bom 803

——— s 15

See MAMLATDARS COURTS ACT 1876 s 3

[I L R 21 Bom., 585

——— s 37

See s 135 I L R 15 Bom 434

See DECLARATORY DECREE SUIT FOR—ORDERS OF CRIMINAL COURTS

[I L R 17 Bom., 293

——— ss 38 and 39

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS BOMBAY

[I L R. 21 Bom., 684

——— s 56

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION

[I L R, 16 Bom 134
I. L. R. 21 Bom, 396

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY

[I. L. R., 21 Bom. 381

1 ——— and ss 57, 81 214 (e) and (i)—*Failure to pay Government assessment—Forfeiture—Payment of the arrears by tenant actually in possession—Forfeiture not followed by sale of occupancy—Lease not destroyed by the forfeiture—Tenant's liability for rent subsequent to the forfeiture*—A registered occupant of land having failed to pay the arrears of Government revenue his occupancy was forfeited under s. 56 of the Land Revenue Code (Bombay Act V of 1879) but the forfeiture was not followed by sale of the occupancy the Collector having allowed the registered occupant's tenant under a lease to be registered as occupant on his paying up all arrears of Government revenue due on the land Afterwards a question having arisen as to the

BOMBAY LAND REVENUE ACT (V OF 1879)—*continued*

tenant s liability for rent under the lease subsequent to the forfeiture —*Held* that the tenant was liable When a registered occupant s tenancy is forfeited under s. 56 of the Land Revenue Code and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land) the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture and the lessee is still under liability to his landlord. GANPARSHIBAI *v* TIMMAYA SHIVAPPA HALLPAIK I L. R., 24 Bom. 34

2 ———————and ss 122 153 155 and 187—*Charges incurred in connection with boundary marks—Effect of revenue sale—Mode of recovering such charges—Sale for recovery of such charges—Rights of incumbrancers* —The effect of s 187 of the Bombay Land Revenue Code (Bombay Act V of 1879) is to make the provisions of ss. 153 and 56 and also those of s. 155 applicable to sales for the recovery of charges assessed under s 122 in connection with boundary marks Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due or by sale of the defaulter s immoveable property other than the land on which the arrear is due In the former case the land is freed from all incumbrances created by the occupant In the latter case the rights of incumbrancers are not touched. VENKATESH RAMKRISHNA *v* MHAL PAI BIN NARU PAI I. L. R. 15 Bom. 67

———— s 57

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I L. R., 16 Bom., 134

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY [I L R. 21 Bom. 381

———— s 61 and ss 37 38—*Omission to number lands at a survey—Effect of such omission on owner's rights—Summary settlement—Exclusion of land from summary settlement—Effect of such exclusion—Bombay Act VII of 1863—Sanad under the Act* —The plaintiffs who were the inamdars of certain land sued for a declaration of their ownership in and of their right to cultivate (a) two plots of land which (they alleged) formed part of their inam and (b) the bed of a stream which flowed through their land It was contended for the defendants as to these two plots of land that the plaintiffs had no right to cultivate them as they had been made a part of a village site and on that understanding they had not been numbered at the survey in 1863 and had been exempted from assessment for twenty years As to the bed of the stream it was contended that the stream was a public stream and that the bed of the stream as it dried up belonged to Government and not to the plaintiffs It was held by the lower Appellate Court that s 61 of the Bombay Land Revenue Code applied; that Government were competent to set apart a portion of the lands comprised in the sanad of the plaintiffs for a village site and that as these lands had not been numbered at the survey of 1863 and had been exempt from assessment for more than twenty years the plaintiffs had lost their right to cultivate them On appeal to the High Court —*Held* (reversing the decree of the lower Court) that the plaintiffs were entitled to the declaration prayed for *Held* also (1) that s 61 of the Bombay Land Revenue Code did not apply That section relates back to s 38 and both refer only to lands the property of Government in unalienated villages or unalienated portions of villages They do not empower the Government to confiscate any land belonging to an inamdar and to confer it on the persons living in his village (2) That the mere omission to number the plots of land could not have the effect of turning them into a part of the village site or take away the right of the plaintiffs Nor did the omission of Government to assess these lands deprive the plaintiffs of them or make them the property of Government (3) That the bed of the stream was the property of the plaintiffs who owned the land upon its banks VINAYAKRAO KESHAVRAO *v* SECRETARY OF STATE FOR INDIA [I L R 23 Bom 39

———— ss 65 and 66—*Fine leviable for appropriation of land to a non agricultural purpose—Collector's omission to acknowledge receipt of application—Defence to the imposition of fine* —*Per* PARSONS and CANDY JJ —Under ss 65 and 66 of the Bombay Land Revenue Code where a person appropriates land to a non agricultural purpose he must in order to escape liability to the fine imposed by s 66 be able to show either (*a*) that he first obtained the permission of the Collector or (*b*) that he waited for three months from the date of the Collector s acknowledgment of his application for permission to appropriate it But the three months time does not begin to run until such acknowledgment has been received so that where a person is charged with thus appropriating his land, it is no defence to plead that the Collector though he received the application neglected to furnish the applicant with a written acknowledgment of the receipt of the application *Per* RANADE J —Where the Collector has received the application and omitted to send an acknowledgment the occupant need only wait for three months from the time of his sending in the application After the expiration of this time if the occupant appropriates his land to a non agricultural purpose the Collector cannot levy the fine provided by s 66 NAYAK PURSHOTUM GHELJI *v* SECRETARY OF STATE FOR INDIA [I. L. R. 24 Bom 240

———— s 71

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES [I L R 19 Bom. 43

——————and ss 79 85 86 and 87—*Deshmukhi vatan—Alienated land—Registered occupant—Superior holder—Payment of rent to co landholder* —In 1892 V a deshmukhi vatandar died, leaving five sons—four by one wife of whom *K* was the eldest and one son *B* by another wife *K* and *B* each claimed to be the eldest son of *V* On the

BOMBAY LAND REVENUE ACT (V OF 1879)—*continued*

16th June 1893, the Collector of Satara in proceedings under s 71 of the Land Revenue Code (Bombay Act V of 1879) ordered K's name to be registered in the revenue books in place of V s Prior to this however the plaintiff and other tenants paid B rents for 1892—94 K then applied for and obtained from the Collector an order under s 86 of the Code rendering him assistance in recovering these rents. The plaintiff in August 1894 brought this suit to restrain K from recovering the rents and to avoid the order for assistance The Subordinate Judge granted the injunction but the District Judge reversed that decision and dismissed the suit on the ground that K was the registered occupant of the land and that the order for assistance was valid and that payment of rent to B did not discharge the tenants On appeal to the High Court —*Held* reversing the decree of the District Judge and restoring that of the Subordinate Judge that the lands in question being alienated land s 71 of the Land Revenue Code did not apply and K was not a registered occupant under the Code The lands passed on V's death to his five undivided sons unless a custom of primogeniture existed in the family and payment by the plaintiff to B a co landlord was a valid discharge SAMBHU *v* KAMALRAO VITHALRAO I L R. 22 Bom 794

——— s 74

See LANDLORD AND TENANT—ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENURE

[I L R 13 Bom 294
I L R 22 Bom 348

——— s 81

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT

[I. L. R. 20 Bom 747

——— s 83

See LANDLORD AND TENANT—NATURE OF TENANCY I L R 14 Bom 392
[I L. R 16 Bom, 646
I L R 18 Bom 221, 443

——— s 84

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT

[I L R 15 Bom 407
I L R. 19 Bom, 150
I L R 21 Bom 311

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE

[I. L. R. 20 Bom, 354

——— ss. 85 86—*Inamdar Assignee of—Suit to recover enhanced rent—Assistance of the Collector* — Ss 86 and 87 of the Land Revenue Code (Bombay Act V of 1879) do not make it compulsory on the inamdar or his assignee to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the inamdar or his assignee had made a demand on the tenants for the enhanced rent through the hereditary patil or village accountant as required by s 85 of the Code and they had refused he would have become at once entitled to his ordinary civil remedy GOVINDRAV KRISHNA PAIBAGKAR *v* BALU BIN MONAPA

[I L R., 16 Bom 586

——— s 86

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT

[I L R, 17 Bom, 677

——— s 87

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) I. L R 9 Bom 462

——— *Mamlatdar's order* —A mamlatdar's order under s 87 of Bombay Act V of 1879 does not preclude the parties from having recourse to the Civil Courts if dissatisfied with it. GANESH HATHI *v* MEHTA VYANKATRAM HARJIVAN

[I. L R. 8 Bom, 188

——— s 108

See KHOTI SETTLEMENT ACT s 16
[I L R., 20 Bom., 729

See KHOTI SETTLEMENT ACT s 17
[I L R 20 Bom 475
I L R, 21 Bom, 467, 480

——— s 113

See COLLECTOR I L R., 12 Bom., 371

——— ss 119 and 121—*Fixing boundaries—Boundaries Effect of decision of revenue authorities as to—Meaning of the term determinative* —In 1877 a dispute arose between plaintiffs and defendant as to the boundaries of certain land being survey Nos 88 and 87 of which the plaintiffs and the defendant were respectively occupants under Government In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector and the piece of land in dispute was found to belong to the plaintiffs as occupants of survey No 88 Subsequently the defendant having encroached upon it and dispossessed the plaintiffs the present suit was filed The Court of first instance awarded the plaintiffs' claim holding that the decision by the revenue officer was conclusive as to the boundary The defendant appealed and the lower Appellate Court reversed the lower Court s decree On appeal by the plaintiffs to the High Court —*Held* restoring the decree of the Court of first instance that under the provisions of s 121 of Act V of 1879 the decision of the Collector as to the boundaries was conclusive and that the plaintiffs were entitled to possession BAI UJAM *v* VALIJI PASULBHAI

[I. L R. 10 Bom, 456

——— s 125

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879
[I L R. 13 Bom 291

——— s 135 and s 37—*Limitation Act (XV of 1877) sch II art 14—Grant of land by Collector—Suit to recover possession as against*

BOMBAY LAND REVENUE ACT (V OF 1879)—*continued*

grantee.—On the 1st September 1882 the Collector of Ahmednagar by an order under s 37 of the Land Revenue Code (Bombay Act V of 1879) granted a piece of open ground to N for building purposes On the 31st March 1888 S brought a suit against N and the Secretary of State for India in Council to recover possession of the ground, and to set aside the Collector's order *Held* that the suit not being brought within one year from the date of the Collector's order as provided for in s. 135 of the Land Revenue Code was time-barred. NAGU *v* SALU I. L R. 15 Bom. 424

——— s 150

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY [I. L. R. 21 Bom 381

——— s 153

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT [I L R. 17 Bom 677 I L R 20 Bom 747

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY [I L R 21 Bom., 381

1. ——— and s 57—*Landlord and tenant—Mulgeni lease—Forfeiture not followed by sale*.—A declaration of forfeiture under s 153 of the Land Revenue Code of the interests of a lessee holding under a permanent lease not followed by a sale but by an order transferring possession of the holding to the lessor under s 57 has not the effect of defeating prior incumbrances created by the lessee in favour of third persons. NARAYAN SHESHGIRI PAI *v* PARSHOTAM SHESHGIRI [I. L. R 22 Bom. 309

2 ——— and ss 159 and 162—*Attachment for arrears of land revenue—Forfeiture—Applicability of the Land Revenue Code to talukdari villages—Bombay District Police Act (Bombay Act VII of 1867) s 16—Cost of punitive police post*.—The Bombay Land Revenue Code (Bombay Act V of 1879) applies to talukhdari villages in the Ahmedabad district Such villages fall within the description of alienated holdings as defined by the Code. When a talukhdari village is attached under s. 159 of the Code for arrears of land revenue so long as the attachment subsists an order of forfeiture under s. 153 is illegal The plaintiff was the talukhdar of the village of A At the end of the revenue year 1878 79 that is on 31st July 1879 the plaintiff was a defaulter in respect of the assessment payable to Government for that year In November 1879 a punitive police post was established in the village under s 16 of Bombay Act VII of 1867 on account of the turbulent conduct of the inhabitants Between April and January 1880 the Collector sold certain property of the talukhdari for arrears of revenue and realized by the sale a sum of R1 608 a sum more than sufficient to cover the arrears due for 1878 79 as well as the assessment payable for 1879 but the Collector after deducting the arrears due for 1878 79 applied the rest of the sale-proceeds towards the payment of the cost of the punitive post The assessment for 1879 80 having remained unpaid the village was attached on the 1st July 1880 under s 159 of the Bombay Land Revenue Code (Act V of 1879) The attachment was followed on the 6th January 1881 by an order declaring the village to be forfeited under s 153 of the Code In 1886 the plaintiff sued Government to recover possession of the village and for a declaration that the order of forfeiture was illegal and *ultra vires* The defendant contended that it was valid and legal *Held* that the village having been attached for arrears of land revenue under s. 159 of Bombay Act V of 1879 on the 1st July 1880 the plaintiff had twelve years time from the date of the attachment within which he could apply for the restoration of the village under s 162 of the Act The order of forfeiture of the 6th January 1881 was therefore null and void *Held* (*per* BIRDWOOD *J*) that the Collector had no power under s 16 of Bombay Act VII of 1867 to recover the cost of the punitive post from the talukhdar (1) as he was not an inhabitant of the village and (2) because the cost could only be defrayed by a local rate imposed on the inhabitants of the district in which the punitive post was established SAMALDAS BECHAR DESAI *v* SECRETARY OF STATE FOR INDIA [I L. R., 16 Bom 455

——— s 162

See KHOTI TENURE [I. L. R 8 Bom. 525

——— s 182—*Civil Procedure Code (Act XIV of 1882) s 244—Mortgage with possession—Default by mortgagee in payment of assessment—Sale for arrears of revenue—Certified purchasers—Purchase for mortgagee—Purchasers or mortgagee trustees for mortgagor—Suit by mortgagor for redemption*.—In 1872 the plaintiffs father mortgaged three plots of land (Nos 303 304, and 305) to the first defendant with possession. In 1880 and 1881 the first defendant having made default in paying the assessment plots Nos 303 and 305 were sold by the revenue authorities and were bought *respectively* by defendants Nos. 2 and 3 In the latter year (1881) plot No 304 was sold in execution of a money decree obtained by the mortgagee (defendant No 1) against the mortgagor and was purchased by his (the first defendant's) undivided brother without leave of the Court In 1892 the plaintiffs (heirs of the mortgagor) brought this suit against defendants Nos 1 2 and 3 to redeem the said three plots of land from the mortgage of 187 Defendant No 1 pleaded that he had inherited plot No. 304 from his brother who had become the owner of plot No 304 by his purchase at the execution sale in 1881 He disclaimed all interest in plots Nos 303 and 305. Defendants Nos 2 and 3 answered that they had become absolute owners by the purchase at the revenue sales As to these latter it was alleged that defendants Nos 2 and 3 were in possession of the said two plots for the first defendant. Defendants Nos. 2 and 3 contended that by

BOMBAY LAND REVENUE ACT (V OF 1879)—*continued*

s 182 of the Land Revenue Code the plaintiffs were precluded from raising this point *Held* that though s. 182 forbade the Court to entertain a suit against defendants Nos 2 and 3 on the ground that they had bought the land for defendant No 1 it did not debar it from entertaining a suit against them on the ground that subsequently to the sale they were holding on behalf of defendant No 1 or against defendant No 1 on the ground that he was himself really in possession through defendants Nos 2 and 3 as his agents or tenants The same principle of equity which would make defendant No 1 a trustee for the mortgagors if he had bought in his own name would make defendants Nos 2 and 3 trustees for them if subsequently to the sale they held the land on behalf of defendant No 1 and would also make defendant No 1 himself a trustee if subsequently to the sale the property came into his possession as beneficially entitled thereto owing to an agreement between him and the certified purchasers GENU *v* SAKHARAM

[I L R., 22 Bom 271

———— s 196

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES

[I L R. 19 Bom 43

———— s 211.

See KHOTI SETTLEMENT ACT s 17

[I L R. 21 Bom 244

———— s 214

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879

[I L R. 8 Bom 591

See RULES MADE UNDER ACTS

[I. L. R 13 Bom, 291

1 ———— s 216—*Suit by an inamdar against a khot to recover balance of land revenue—Survey made by the British Government—Change in rate of assessment—Jurisdiction of Civil Court—Village partially alienated*—In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment) the defendant (khot) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government which was at a lower rate than he had previously paid and that the Civil Court had no jurisdiction to entertain the suit under the Land Revenue Code 1879 s 216 sub cl (*b*) *Held* that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by Government but *held* also that the plaintiffs were entitled to the old assessment as claimed by them It was plain that in cases falling within sub cls (*a*) and (*e*) of s 216 of the Land Revenue Code the inamdar's interest in the assessment would not be affected by the application of Chs VIII to X of that Act He would still get the old assessment in the alienated lands in the village in the former case and the same amount of assessment in the latter and the same must have been the intention in cases contemplated by sub cl. (*b*)

BOMBAY LAND REVENUE ACT (V OF 1879)—*concluded*

The holder of the village in the concluding paragraph of s 216 must be read as meaning the holder of the assessment or any part thereof of an alienated village GANGADHAR HARI KARKARE *v* MORBHAT PUROHIT I. L. R. 18 Bom. 525

2 ———— *Holder of an alienated village—Application for introduction of survey by a co sharer of an inam village*—Under s 216 of the Land Revenue Code it is competent to one out of several co sharers of an alienated village to apply on behalf of and with the consent of all the other co-sharers for the introduction of survey into the village and it is not open to the cultivators of lands in the village to question the action of Government in introducing the survey on such application The section does not require that the application should be made or signed by all the sharers GOPIKABAI *v* LUKSHMAN I. L. R. 24 Bom. 539

BOMBAY LEGISLATIVE COUNCIL.

See GOVERNOR OF BOMBAY IN COUNCIL

[I. L R., 8 Bom. 264
8 Bom., A C 195

BOMBAY LOCAL FUNDS ACT (III OF 1869)

1 ———— s 8—*Local cess—Landlord and tenant—Fraudulent collection of cess*—The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain wanta lands belonging to the plaintiffs, the defendant claiming to be the superior holder of the village in which the lands were situated The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869 s 8 The defendant contended that in consequence of a demand from Government he had paid local cess on the whole of his talukh, including the village in which the plaintiffs' lands were situated and was therefore entitled under ss 69 and 70 of the Contract Act (IX of 1872) to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands It was found that the defendant was not the proprietor of the lands held by the plaintiffs and that the relation of landlord and tenant did not exist between them; also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands knowing that he had no lawful or just claim to them *Held* that the defendant was not the superior holder of the lands within s 8 of Bombay Act III of 1869 and was therefore not entitled to the assistance of the revenue officers of Government to recover the cess provided by that section for superior holders as against tenants and occupants although he might have paid the local cess due on the land in the plaintiffs possession; and that consequently the aid of the mamlatdar was illegally and improperly given to the defendant for the recovery of the amount from the plaintiffs *Held* also that the defendant was not a person

BOMBAY LOCAL FUNDS ACT (III OF 1869)—*concluded*

"interested in the payment of the money made by him to Government within the meaning of s 69 of the Contract Act assuming that a portion of that sum was demanded by Government in respect of the plaintiffs wanta lands and that they were bound by law to pay it to Government *Held* further that the defendant did not lawfully make the payment within the meaning of s. 70 of the Act inasmuch as he did so fraudulently and dishonestly DESAI HIMATSINGJI v BHOVABHAI KAYABHAI

[I L R. 4 Bom 643

2. ———————— *Local fund cess—Tenant's liability to pay the cess imposed by an Act subsequent to the lease—Landlord and tenant*—Under s 8 of Bombay Act III of 1869 a lessor who is in the position of a superior holder may recover the local fund cess from his lessee *Ranga* v *Suba Hegde I L R 4 Bom 473* followed. RAM TUKOJI v GOPAL DHONDI I L R. 17 Bom 54

3 ———————— *Local fund cess—Inamdar—Superior holder—Liability of inamdar to pay the cess*—An inamdar is a superior holder within the definitions of Regulation XVII of 1827 and Bombay Acts I of 1865 and V of 1879 He is therefore the person primarily liable to pay the local fund cess under s 8 of Bombay Act III of 1869 There is no provision of law entitling an inamdar to charge for his expenses in collecting the cess. SECRETARY OF STATE FOR INDIA v BALVANT RAMCHANDRA NATU

[I L R 17 Bom 422

BOMBAY MINORS (ACT XX OF 1864)

See MINOR—BOMBAY MINORS ACT XX OF 1864

BOMBAY MUNICIPAL ACT (II OF 1865)

See SERVICE TENURE

[I L R 9 Bom 198

———— s 2—*Bombay Act IV of 1867—Liability of Railway Company for rates and taxes*—The Great Indian Peninsula Railway Company which under an agreement with Government hold the land upon which their railway is constructed free of rent for ninety nine years are occupiers only and not owners of such land within the meaning of s 2 of Bombay Act II of 1865 and are therefore not liable to be rated as owners of the ground used by them for the purposes of the railway within the city of Bombay Principles upon which railway companies are liable to be rated considered and laid down JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY v GREAT INDIAN PENINSULA RAILWAY COMPANY

[9 Bom 217

———— ss 4 and 11

See RIGHT OF SUIT—MUNICIPAL OFFICERS SUITS AGAINST 5 Bom O C 145

BOMBAY MUNICIPAL ACT (II OF 1865)—*concluded*

———— ss 131 and 160

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS

[8 Bom 10 C 85

———— s 240—*Ejectment Suits for—Suit for mesne profits of land for which plaintiff sues in ejectment*—Bombay Act II of 1865 s 240 does not apply to suits in the nature of an action of ejectment *Quære*—Whether a claim to recover the mesne profits of land for which the plaintiff sues in ejectment comes within the provisions of Bombay Act II of 1865 s 240 *Price* v *Khilat Chandra Ghose 5 B L R Ap 50* and the judgment of PHEAR J in *Poorno Chandra Roy* v *Balfour 9 W R 535* approved SARABJI NASSARVANJI DANDAS v JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY 12 Bom 250

BOMBAY MUNICIPAL ACTS (III OF 1872 AND IV OF 1878)

———— s 163—*Compensation—Frontage land—Fifteen per cent addition to compensation not allowed*—A certain mosque in Bombay was abutted on the north west and east by public streets In December 1886 the Municipal Commissioner pursuant to s 166 of the Bombay Municipal Acts III of 1872 and IV of 1878 required the trustees of the mosque to set back the building on the said three sides for the purpose of improving the public streets It was contended that the amount of compensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on the land in question *Held* that the words of s 163 of the Municipal Acts III of 1872 and IV of 1878 were intended to ensure compensation to the owner for every sort of damage and not to restrict it to compensation for such damage as he might by his own arrangement reduce it to Compensation becomes due under the section as soon as the Corporation takes possession which is when the owner begins to build and there being no words in the section to show a contrary intention the compensation must be assessed according to the state of things then existing and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him *Held* also that in cases of compensation granted under s 163 of the Municipal Acts III of 1872 and IV of 1878 the addition of 15 per cent cannot be allowed. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v PATEL HAJI MAHOMED JANU

[I. L R. 14 Bom 292

———— s 195—*Obstruction—Power given in Act for public benefit—Construction of Act*—The eaves of certain buildings belonging to the plaintiff projected over the public road. On the 17th May 1886 the Municipal Commissioner of Bombay gave notice to the plaintiff requiring him within thirty days to remove the said eaves as being a projection encroachment or obstruction within the meaning of s 195 of Acts III of 1872 and IV of 1878 The plaintiff thereupon filed this suit praying for an

BOMBAY LAND REVENUE ACT (V OF 1879)—*continued*

s 182 of the Land Revenue Code the plaintiffs were precluded from raising this point *Held* that though s. 182 forbade the Court to entertain a suit against defendants Nos 2 and 3 on the ground that they had bought the land for defendant No 1 it did not debar it from entertaining a suit against them on the ground that subsequently to the sale they were holding on behalf of defendant No 1 or against defendant No 1 on the ground that he was himself really in possession through defendants Nos 2 and 3 as his agents or tenants The same principle of equity which would make defendant No 1 a trustee for the mortgagors if he had bought in his own name would make defendants Nos 2 and 3 trustees for them if subsequently to the sale they held the land on behalf of defendant No 1 and would also make defendant No 1 himself a trustee if subsequently to the sale the property came into his possession as beneficially entitled thereto owing to an agreement between him and the certified purchasers GENU *v* SAKHARAM

[I L R., 22 Bom. 271

——— s 198

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES

[I. L. R 19 Bom 48

——— s 211.

See KHOTI SETTLEMENT ACT s 17

[I L R. 21 Bom 244

——— s 214

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879

[I. L. R. 8 Bom 591

See RULES MADE UNDER ACTS

[I. L. R 13 Bom 291

1 ——— s 216—*Suit by an inamdar against a khot to recover balance of land revenue—Survey made by the British Government—Change in rate of assessment—Jurisdiction of Civil Court—Village partially alienated*—In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment) the defendant (khot) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government which was at a lower rate than he had previously paid and that the Civil Court had no jurisdiction to entertain the suit under the Land Revenue Code 1879 s 216 sub cl (*b*) *Held* that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by Government but *held* also that the plaintiffs were entitled to the old assessment as claimed by them It was plain that in cases falling within sub cls. (*a*) and (*c*) of s 216 of the Land Revenue Code the inamdar's interest in the assessment would not be affected by the application of Chs VIII to X of that Act He would still get the old assessment in the alienated lands in the village in the former case and the same amount of assessment in the latter and the same must have been the intention in cases contemplated by sub cl (*b*)

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BOMBAY LEGISLATIVE COUNCIL.

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[I. L. R. 8 Bom, 264
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BOMBAY LOCAL FUNDS ACT (III OF 1869)—*concluded*

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[9 Bom 217

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BOMBAY MUNICIPAL ACT (II OF 1865)—*concluded*

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See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS

[8 Bom O C 85

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[I L R., 14 Bom 292

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MBAY MUNICIPAL ACTS (III OF 872 AND IV OF 1878)—*concluded*

nction against the Municipal Commissioner The es in question projected to the extent of one foot it inches The width of the road in front of the dings was about forty feet and the length of the es varied from seven feet to nine feet two inches re the roadway At the time this suit was filed e was an open drain or gutter one foot three inches e running along by the side of the plaintiff's build and between them and the road. That gutter ever subsequently to the filing of this suit but ore the hearing was covered over and so much itional width was thereby added to the road. *ld* that the caves constituted an obstruction hin the meaning of the above section and that Municipal Commissioner was entitled to remove m Under the above section the question to be ided is not whether there is a real practical incon- ience to the public traffic in the street Those not the words used in the section and if that was intention of the Legislature it would have been ressed. Where an Act gives power to a munici ity or corporation for the public benefit a more ral construction should be given to it than where vers are to be exercised merely for private gain or er advantage OLLIVANT v RAHIMTULA NUR HOMED I L R. 12 Bom., 474

——— s. 220 (amended by IV of 1878) *Houses—City of Bombay—Ridge ventilation—t ce*—The Municipal Commissioner for the City Bombay issued a notice requiring the owner of a ge of buildings to put it in a proper state by viding ridge ventilation within seven days which owner did not comply with. *Held* that s 220 Bombay Municipal Act III of 1872 as amended Bombay Act IV of 1878 does not empower the nicipal Commissioner to direct structural altera ns that the notice requiring ridge ventilation to be ovided was illegal and the owner by refusing to nply with it committed no offence EMPRESS v DANAND KRISHNAJI I L R. 8 Bom 151

——— Sch B—*Spirits—Toddy juice*— ddy juice whether in a fermented or unfermented te is not spirits within the meaning of Bombay t III of 1872 and is therefore not liable on im rtation into Bombay to a town duty of annas 4 r gallon imposed on spirits by Sch B of that t. HARMASJI KARSETJI v PEDDER [12 Bom, 199

OMBAY MUNICIPAL ACT (III OF 1888)

——— s 3

See BOMBAY DISTRICT MUNICIPAL ACT s 17 I L R. 20 Bom. 146

——— ss 143 144—*University buildings—ilding occupied for charitable purposes—Charit ble purposes—Stat. 43 Eli c 4—Municipal xat on Exempt on from.*—The following build gs occupied by the University of Bombay et he Sir Cowasji Jehanghir Hall the Library and e Rajabai Tower are not Government property

BOMBAY MUNICIPAL ACT (III OF 1888)—*continued*

and are not included in the property for which Government pays a lump sum under s 144 of the Bombay Municipal Act (III of 1888) The above buildings are exempt from taxation being buildings exclusively occupied for charitable purposes within the meaning of cl (*a*) of s 143 of the Bombay Municipal Act (III of 1888) The words *charitable* purposes have acquired a technical meaning in the Presidency of Bombay and in that sense they include all purposes within the meaning of Stat 43 Eliz c 4. UNIVERSITY OF BOMBAY v MUNICI PAL COMMISSIONERS OF BOMBAY [I L R. 16 Bom, 217

——— s 158—*Tax—Drawback—General con ditions prescribed by the Standing Committee limit ing right to drawback*—Under s 158 of the City of Bombay Municipal Act (Bombay Act III of 1888) the following general conditions were prescribed by the Standing Committee with reference to claims for draw back of the general property tax leviable in Bombay —(1) Except with the special sanction of the Com missioner no claim for drawback shall be enter tained unless submitted to the Commissioner not less than thirty days before the commencement of the half year to which such claim relates (2) Drawback of the one-fifth part of the general tax shall be sanctioned by the Commissioner in cases falling within either of the following classes and in no others —(*a*) Chawls or buildings let out for hire in single rooms either as lodging or godowns for the storage of goods. (*b*) Properties which in the opinion of the Commissioner are usually or frequently vacant either wholly or partially (3) No sanction for drawback shall extend or apply to any floor on which trade or manufacture is carried on or any goods are sold The Commissioner having refused to sanc- tion a drawback of the tax leviable on certain pro- perties of the plaintiff on the ground that they did not fall within the terms of the above conditions, the plaintiff filed this suit. It was contended on his behalf that the second and third of the above con ditions were bad and that the Standing Committee could not by so called general conditions limit or curtail the right given to tax payers by s 158. *Held* that the conditions prescribed by the Standing Committee were not *ultra vires* and that the Com missioner was justified in refusing the drawback. GOVARDHANDAS GOCULDAS TEJPAL v MUNICIPAL COMMISSIONERS OF BOMBAY [I. L R, 17 Bom., 394

——— ss 222 265—*Water-works—Muni cipality of Bombay—Right to enter on land of Railway Company to lay pipes etc—Railway Act IX of 1890 s 12—Accommodation works*—Under the Bombay Municipal Act (Bombay Act III of 1888) the Corporation of Bombay has the right for the purpose of supplying the city with water to enter upon land belonging to other owners to make connections between the mains, and to lay the pipes forming the connections through or under such lands without the owners' permission though not without giving them reasonable notice in writing. *Held* also that s 12 of the Railways Act (IX of

BOMBAY MUNICIPAL ACT (III OF 1888)—*continued*

1890) does not exclude the above right of the Corporation of Bombay to enter on land belonging to the Great Indian Peninsula Railway Company for the said purposes GREAT INDIAN PENINSULA RAILWAY *v* MUNICIPAL CORPORATION OF BOMBAY

[I. L R 23 Bom 358

———— s 248—*Fazendar—Liability to provide privy accommodation— Owner' — Premises —Construction of statutes* —A fazendar is not the person liable as owner of the premises to provide privy accommodation under s 248 of the Bombay Municipal Act (Bombay Act III of 1888) the beneficial owner of the house built on the fazendar's land being the owner within the meaning of the section *Per* RANADE *J*—The word "premises in s. 248 of Municipal Act is used with reference to the building to which the privy belongs MUNICIPALITY OF BOMBAY *v* SHAPURJI DINSHA

[I. L. R. 20 Bom , 617

1. ———— s 249— *Employed Meaning of the word—Discretion vested in the Municipal Commissioner*—The word employed in s. 249 of the Bombay Municipal Act (Bombay Act III of 1888) refers to employment of any kind or for any length of time. MUNICIPALITY OF BOMBAY *v* AHMEDBHOY HABIBBHOY I. L. R. 23 Bom 528

2. ————————*Notice to construct urinals in a particular place in the owner's premises—Illegality of such notice* —Accused was convicted and fined R50 for not complying with a notice issued by the Municipal Commissioner of Bombay under s 249 of Bombay Act III of 1888 The notice required him to construct a urinal of six compartments in the open space inside the entrance gateway to the Cloth Market from Champawady and a water-closet in the corner of the entrance from 1st Ganeshwady near the fire-engine station. *Held* reversing the conviction and sentence that the notice was *ultra vires* inasmuch as it required the accused to construct urinals in a particular place in his premises. IN RE KHIMJI JAIRAM

[I L. R. 24 Bom. 75

———— ss 298 299 and 301

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT 1888

[I L R 18 Bom 184

1 ————————*Compulsory acquisition of land—Set back—Compensation paid to owner for land with buildings—Basis of valuation of land* —Where in a case of set back land with buildings thereon was taken up by the Municipal Commissioner from a private owner under Bombay Act III of 1888 ss 298 299 and 301:—*Held* that the amount of compensation awarded to the owner should be calculated with regard to the price given within a few years previously for land of a similar character in the immediate neighbourhood of the land in question *Held* also that the addition of 15 per cent could not be allowed. *Municipal Commissioner* v *Patel Haji Mahomed I L R 14 Bom*

BOMBAY MUNICIPAL ACT (III OF 1888)—*continued*

292 followed MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v* ABDUL HUK

[I L R 18 Bom. 184

2. ———————— and ss 504 and 527 —*Land taken by the municipality for street improvement—Compensation for land taken—Dispute as to amount of compensation—Notice of suit —Limitation* —In 1891 the municipal authorities of Bombay gave notice to the plaintiffs under s. 299 of Bombay Act III of 1888 that they required 23 30 square yards of the plaintiff s land for street improvement. On the 14th December 1891 the plaintiff gave possession of the land to the municipality and on 27th January 1892 claimed R60 per square yard as compensation By letter dated 23rd February 189? the Municipal Commissioner (without prejudice) offered R50 per square yard as compensation and stated that on the plaintiff producing the title-deeds and papers to establish his title the necessary documents in connection with the payment would be prepared. Nothing further took place in the matter until the 14th February 1894 on which date the plaintiff wrote a letter to the Municipal Commissioner in which without mentioning any sum he requested the payment of the amount which might be due to him as compensation for his land taken by the municipality The Commissioner refused to pay the compensation contending that the plaintiff s claim was time-barred. The plaintiff thereupon brought this suit claiming R1 165 (being at the rate of R50 per square yard) as compensation for the land taken by the defendant or in the alternative for that sum as damages for the breach of contract to pay purchase money for the land The defendant pleaded (1) that notice under s 527 of the Municipal Act (Bombay Act III of 1888) was necessary before suit filed and (2) that the suit was barred by limitation The Chief Judge of the Small Cause Court found for the defendant with costs and dismissed the suit contingent on the opinion of the High Court. On a case stated for the High Court—*Held* (1) that notice under s 527 of Bombay Act III of 1888 was not necessary that section not being applicable to suits brought to enforce payment of compensation under s 301 of the Act; (2) that the suit was not barred by limitation *Per* FARRAN *J*—A suit against the municipality of Bombay for compensation for land acquired by the municipality under s 299 of Bombay Act III of 1888 is not an action of tort or quasi tort but a simple action for the price of land which the terms of s. 301 of the Act impose upon the Commissioner to pay The obligation to pay that price is of the same nature (1) whether the owner assents to the valuation of the land placed upon it by the Commissioner; (2) whether the value is determined by the Chief Judge of the Small Cause Court or (3) whether it is left undetermined S 527 does not apply to any of these three cases In all of them the obligation to pay is imposed by s. 301 and does not arise from the manner in which the amount of the price to be paid is arrived at S. 504 prescribes the only mode in which in case of dispute the value

BOMBAY MUNICIPAL ACT (III OF 1888)—*continued*

of the land can be determined If the owner of land disputes the Commissioner s valuation he must apply to the Chief Judge of the Small Cause Court within a year If he does not do so the result is that he loses the power of effectually disputing the Commissioner's valuation but does not lose his right to the amount of the valuation The owner of land has a remedy independent of the provision of s 304 That section only deals with cases where there is a dispute as to the value of the land and leaves untouched those cases where there is no such dispute but where the Commissioner for some reason declines to pay In such cases the owner is left to his ordinary remedy no special mode of procedure being prescribed Cases in which there has been a dispute but in which the owner abandons his claim to dispute the valuation of the Commissioner fall within the latter category MANEKLAL MOTILAL *v* MUNICIPAL COMMISSIONER OF BOMBAY

I L R, 19 Bom, 407

——— s 353—*Notice to a house owner to reduce the height of his building given more than three months after its completion— Completion Meaning of* —One *R* was served with a notice under s 353 of the City of Bombay Municipal Act (Bombay Act III of 1888) requiring him to reduce the height of a building which he had erected. The building was completed in June 1893 and the notice was issued on 13th January 1894. *R* was prosecuted for not complying with this notice He contended that the notice was time barred as it had not been given within three months after the completion of the building In answer to this plea it was urged on behalf of the municipality that the building could not be said to have been completed, unless and until such accommodations as privies and cesspools had been executed in accordance with the requirements of the Health Department and that therefore the notice was within time *Held* that the notice was time barred. The word completion in s 353 of Bombay Act III of 1888 must be taken in its ordinary sense and the Court cannot read into the section in accordance with sanitary regulations or sanitary officers' opinions IN RE RAGHUNATH MAKUND I L R. 19 Bom. 372

——— s. 381—*Low ground—Low lying ground—Notice by Municipal Commissioner requiring owner of low lying ground to fill it with sweet earth up to a certain level* —Under s. 381 of the Bombay Municipal Act III of 1888 the Municipal Commissioner for the City of Bombay issued a notice to the appellant as owner of certain low lying ground. The notice stated that in the opinion of the Commissioner the ground accumulated water in the monsoon and caused nuisance to the tenants of two chawls situated on the premises The owner was therefore required by the notice to fill in the low lying ground with sweet earth to the level of the road and slope it towards the new drain on the road side As the owner refused to comply with the notice he was convicted and sentenced to pay a fine of R15 by the Presidency Magistrate under s. 471 of the Municipal Act (Bombay Act III of 1888) *Held* reversing the conviction and sentence that the notice was illegal The words used in s 381 are low ground' which is not the same as low lying ground. And though the section gives power to the Commissioner to require the owner of low ground to cleanse and fill up the same it does not permit him to issue an order that an indefinite extent of low lying ground shall be filled up much less that it shall be filled up to some particular level or filled up with sweet earth or that it shall be sloped in a particular direction MUNICIPAL COMMISSIONER OF BOMBAY *v* HARI DWARKOJI I. L. R, 24 Bom. 125

——— s 461 (d)—*Bye law restricting the height of buildings on a site previously built upon—Validity of such bye law* —The Municipality of Bombay has power under s 461 cl (*d*) of Bombay Act III of 1888 to make a bye law restricting the height of a new building erected on a site which had been previously built upon MUNICIPALITY OF BOMBAY *v* SUNDERJI I. L. R. 22 Bom. 980

——— s 472—*Continuing offences—Punishment for such offences after a fresh conviction—Separate prosecution for continuing the offence* —A Presidency Magistrate having convicted certain accused persons and fined them under s 471 of the City of Bombay Municipal Act (Bombay Act III of 1888) proceeded in the same order purporting to act under the provisions of s 472 to fine them so much per day in case they continued the offence *Held* that the latter order was illegal under s 472 of the Act The section requires a separate prosecution for a distinct offence a prosecution in which a charge must be laid for a specific contravention for a specific number of days and for which charge if proved the Magistrate is to impose a daily fine of an amount which is left to his discretion to determine IN RE LIMBAJI TULSIRAM I. L. R. 22 Bom., 766

——— s 527—*Suit for damages against Municipal Commissioner—Notice of suit—What is sufficient notice* —The plaintiffs were owners of a house consisting of a ground floor and upper story and measuring 77 feet in length On the south side of the house was a gully 3 feet 6 inches wide separating it from another upper storied house The plaintiffs in this suit complained that in January 1891 the defendant by his servants dug a trench 8 feet deep along the whole length of the gully for the purpose of laying a drain pipe and that the work was done so negligently that the plaintiffs' house was injured and became in such a dangerous condition that it had to be pulled down The plaintiffs claimed R3 996 as damages The defendant denied the negligence and alleged that the work was not done by his servants or agents but by a contractor For the defendant it was contended that the notice of action given by the plaintiffs under s. 527 of the Bombay Municipal Act (III of 1888) was insufficient The notice stated that one *S L* a contractor under you and as such being your agent and servant excavated a trench etc It was argued that this was not a good notice as it only alleged a

BOMBAY MUNICIPAL ACT (III OF 1888)—*concluded*

cause of action arising out of the acts of the defendant's servants and agents, and not out of the acts of a contractor *Held* that the notice was sufficient. The section only required the notice to state with reasonable particularity the cause of action and this was done The individual by whom the damage was done was specified and the acts which caused the damage were clearly set forth DHONDIBA KRISHNAJI v MUNICIPAL COMMISSIONERS OF BOMBAY I. L. R., 17 Bom 307

BOMBAY PORT TRUST ACT (I OF 1873)

See INJUNCTION—SPECIAL—CASES—PUBLIC OFFICERS WITH STATUTORY POWERS [I. L. R. 1 Bom 132

See LIBEL I. L. R. 1 Bom 477

BOMBAY PORT TRUST ACT (VI OF 1879).

——— ss 43 and 62.

See SALE OF GOODS [I. L. R. 17 Bom. 62

BOMBAY REGULATION—1800—I s 13

See LIMITATION—BOMBAY REGULATION I OF 1800 [5 W R. P C 31 1 Moore's I. A 154 1 Moore's I A 414

——— 1808—I, s 4

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE 11 Bom 162

——— 1818—IV s 52

See SUBORDINATE JUDGE JURISDICTION OF [I L R. 21 Bom 773

——— 1823—VI

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT [1 Agra 69

——— 1827—II.

See HINDU LAW—INHERITANCE—LAW GOVERNING PARTICULAR CASES [I. L R 11 Bom 285

See JURISDICTION OF CIVIL COURT—CASTE I. L. R. 11 Bom 534 [I. L R 13 Bom 429 I. L. R. 19 Bom 507 I L. R. 20 Bom 190

See PENSIONS ACT s 4 [I. L. R 17 Bom 224

——— s 1.

See JURISDICTION OF CIVIL COURT—CASTE I. L. R., 15 Bom 599

See LIMITATION ACT s 26. [I L. R. 16 Bom 592

BOMBAY REGULATION—1827—II —*concluded*

——— s 5

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622 [I L R 10 Bom 610

——— s 5, cl (2)

See HIGH COURT JURISDICTION OF—BOMBAY—CIVIL 9 Bom 249

——— s 16 cl. (2)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [2 Bom 112 2nd Ed 106

——— s 21

See JURISDICTION OF CIVIL COURT CASTE [I. L R. 5 Bom 83 I L R 6 Bom 725 I. L R 7 Bom., 323

See RIGHT OF SUIT—CASTE QUESTIONS [I. L R. 2 Bom. 470

——— s 43

See PUBLIC SERVANT 4 Bom A C., 93

See SUBORDINATE JUDGE JURISDICTION OF [I. L. R. 21 Bom 754 773

——— s 47

See PLEADER—APPOINTMENT AND APPEARANCE I L R. 8 Bom 105

——— s 52

See PLEADER—REMUNERATION [9 Bom. 33 I L R. 21 Bom 42

——— s 54

See PLEADER—APPOINTMENT AND APPEARANCE I. L R 22 Bom., 654 [I L R. 23 Bom. 657

——— IV s 26

See CUSTOM 1 Bom 36

See ENGLISH LAW [2 Bom 38 2nd Ed. 36 2 Bom 55 2nd Ed., 52

See PARSIS 5 Bom A C., 109

——— s 27 cl (1)—*Family custom or usage—Duty of the Courts*—Cl 1 s 27 Regulation IV of 1827 (Bombay) imposes no obligation on the Courts to ascertain whether there is family rule or usage where there is no allegation of such fact in the pleadings or where the parties have waived resort to the course prescribed by the Regulation MODEE KAIKHOOSROW HORMUZJEE v COOVERBAEE [4 W R. P C 94 6 Moore's I. A 448

——— V

See GRANT—PRESUMPTION OR REVOCATION OF GRANTS 14 Moore's I A 55

BOMBAY REGULATION—1827—V
—concluded

See CASES UNDER LIMITATION—BOMBAY REGULATION V OF 1827

See LIMITATION ACT 1877 ART 147
[I. L. R 23 Bom, 781

See MORTGAGE—POSSESSION UNDER MORTGAGE I. L. R. 11 Bom. 475

See MORTGAGE—POWER OF SALE
[I. L. R., 21 Bom 267

See PLEADER—APPOINTMENT AND APPEARANCE I. L. R 12 Bom 85

See POSSESSION—EVIDENCE OF TITLE
[I L R 1 Bom 592

See RIGHT OF SUIT—CASTE QUESTIONS
[I. L. R, 13 Bom, 429

——— *Prescriptive right—Title by long possession*—The holder of a cocoanut oart in Bandora in the Island of Salsette in the Thanna district paying an annual assessment of R39 to Government built a bungalow upon it without the permission of the Collector who under the rule purporting to have been issued by the Government of Bombay on the 1st February 1869 in accordance with the provisions of s 35 of Bombay Act I of 1865 demanded from him a fine equal to sixty times the assessment and on the plaintiff's failure to pay the fine summarily attached the land under the provisions of s. 48 of that Act *Held* that by virtue of uninterrupted enjoyment for more than thirty years the plaintiff had under s 1 of Regulation V of 1827 acquired a prescriptive title to the land and had become its absolute proprietor COLLECTOR OF THANA v DADABHAI BOMANJAI I. L. R 1 Bom., 352

——— s 7

See MAJORITY AGE OF
[5 Bom A C 95

——— s 12.

See LIMITATION ACT 1877 ART 132
[I. L. R., 9 Bom, 233

——— s 15 cl. (3)

See MORTGAGE—CONSTRUCTION
[I. L R. 15 Bom 303
I. L R. 20 Bom 296

——— VII.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—BOMBAY REGULATION VII OF 1827
[6 Moore's I. A. 134

——— VIII.

See APPEAL—CERTIFICATE OF ADMINISTRATION I. L R 18 Bom. 748
[I. L. R., 19 Bom 399

See CASES UNDER CERTIFICATE OF ADMINISTRATION—CERTIFICATES UNDER BOMBAY REGULATION VIII OF 1827 ETC

BOMBAY REGULATION—1827—VIII
—concluded

See REPRESENTATIVE OF DECEASED PERSON 8 Bom A C 152

——— *Certificate of heirship—Minor*—Under the provisions of Regulation VIII of 1827 a certificate of heirship cannot be granted to a minor BAI BAIBA v BAI DAGUBA
[I. L. R. 6 Bom 728

——— s 2

See SUBORDINATE JUDGE JURISDICTION OF I L R., 17 Bom 230

——— s 10

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS
[I L R. 21 Bom 102

See REPRESENTATIVE OF DECEASED PERSON I. L R. 21 Bom., 102

——— IX.

See REGISTRATION ACT 1877, s 17
[3 Bom., A C 167

——— s 6

See REGISTRATION ACT 1877 s 50
[1 Bom., 60
9 Bom 121
I. L. R., 18 Bom. 332

——— XII ss 5 and 41.

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAY ACTS 1854
[3 Bom. Cr., 54

——— s 19

See NUISANCE—MISCELLANEOUS CASES
[8 Bom Cr 23

——— s. 32.

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER 6 Bom Cr., 75

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See OFFENCE COMMITTED BEFORE PENAL CODE 1 Bom 93

——— XVI

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[I. L. R. 5 Bom 283 435 437
I L R. 6 Bom, 211
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[I L. R. 15 Bom. 13

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See BOMBAY SURVEY AND SETTLEMENT ACT I OF 1865 7 Bom A C., 82
[10 Bom 218

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY
[12 Bom Ap 1 225 275, 276

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—*concluded*

See LAND REVENUE
[10 W R., P C 13
11 Moore s I. A., 295
12 Bom., Ap 1 225
I. L. R 1 Bom 70
I L R. 9 Bom 483

See MAMLATDAR JURISDICTION OF
[I L. R. 14 Bom 372

———— s 16

See CHARGE—FORM OF CHARGE—SPECIAL CASES—CRIMINAL BREACH OF TRUST
[8 Bom Cr 115

See SESSIONS JUDGE JURISDICTION OF
[8 Bom., Cr 115

———— s 31 cl (3)

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS
[2 Bom 193 2nd Ed 185

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See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE
[11 Bom 129

See CASES UNDER STAMP (BOMBAY REGULATION XVIII OF 1827)

———— s 10

See STAMP ACT 1879 s 34
[I L R 13 Bom 493

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See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS
[5 Bom O C, 1

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See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) I. L. R. 9 Bom. 462

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY REGULATION XXI OF 1827
3 Bom Cr 39 50
[7 Bom Cr 59
8 Bom Cr 118
9 Bom, 116 343

See MAHOMEDAN LAW—KAZI
[I. L. R. 1 Bom., 633
I L R 3 Bom 72

See OPIUM 1 Bom., 50
[7 Bom. Cr., 39

See SESSIONS JUDGE JURISDICTION OF
[9 Bom 160

———— XXIX.

See AGENT OF FOREIGN SOVEREIGN
[1 Bom, 96

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See PENSIONS ACT s 4.
[I L. R. 11 Bom 232
I L R. 17 Bom. 234

BOMBAY REGULATION—1827—XXIX
—*concluded*

———— Appeal under—

See SERVICE TENURE
[I L. R 17 Bom., 431

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[1 Bom 17

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[1 Bom 96

———— 1831—XVIII

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[5 Bom A C., 26

BOMBAY REVENUE JURISDICTION ACT (X OF 1876).

See JURISDICTION OF CIVIL COURT—OFFICES RIGHT TO
[I. L. R. 5 Bom. 578
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See JURISDICTION OF CIVIL COURT—REVENUE I L. R. 9 Bom., 462
[I. L. R. 22 Bom. 377

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY

———— ss 3 4 5—*Abkari—Land revenue—Toddy spirit—Bombay Abkari Act V of 1878 ss 21 43 54 and 67—Land Revenue Code Bombay Act V of 1879 s 87—Reg XXI of 1827 s 60*—The plaintiff sued to recover from the defendant a farmer of abkari duties on the manufacture of spirits under s 60 of Bombay Regulation XXI of 1827 a sum of money alleged to have been illegally levied by him as tax or rent through the mamlatdar in respect of certain cocoanut trees tapped by the plaintiff in 1877 78 and 1878 79 *Held* that the Civil Courts have jurisdiction to entertain such a suit If the claim be held to be one in respect of land revenue it falls within the exception contained in cl (c) of s. 5 of Act X of 1876 If it is not s 4 of the Act has no application *Per* BIRDWOOD J—The expression land revenue as used in Act X of 1876 does not include either the duties leviable under Reg XXI of 1827 on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalized by s 24 of the Bombay Abkari Act, V of 1878 A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees, either under Regulation XXI of 1827 or Act X of 1876, or Bombay Act V of 1878 Juice in toddy producing trees is not spirit which includes toddy in a fermented state only NARAYAN VENKU KALGUTKAR v SAKHARAM NAGU KOREGAUNKAR
[I. L. R. 9 Bom. 462

———— s 4.

See BOMBAY IRRIGATION ACT s. 48.
[I. L. R. 23 Bom. 377

BOMBAY REVENUE JURISDICTION ACT (X OF 1876)—*continued*

See HEREDITARY OFFICES ACT s 17
[I. L. R. 19 Bom. 581

See JURISDICTION OF CIVIL COURT—OFFICES RIGHT TO I. L. R. 12 Bom., 614

See JURISDICTION OF CIVIL COURT—REVENUE COURTS ORDERS OF
[I. L. R. 5 Bom, 73

See PENSIONS ACT s 4
[I. L. R., 11 Bom. 222

See RIGHT OF SUIT—OFFICE OR EMOLUMENT I. L. R. 12 Bom. 614

See SALE FOR ARREARS OF REVENUE—RIGHT OF SALE I. L. R., 5 Bom., 73

1. ———— s 4— *Competent Officer'—Governor in Council—Powers conferred by Act XI of 1852—Per* BIRDWOOD J—The words competent officer as used in prov (*k*) of s 4 of the Bombay Revenue Jurisdiction Act includes the Governor in Council who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852 JANARDANRAV *v* SECRETARY OF STATE FOR INDIA I. L. R. 13 Bom., 442

2 ———— *Limitation—Limitation Act 1877 art 120—Attachment for arrears of land revenue—Suit for declaration that order of forfeiture was illegal—Bombay District Police Act (Bombay Act VII of 1867) s 4—Punitive police post*—The plaintiff was the talukhdar of the village of *K* At the end of the revenue year 1878 79 i e on 31st July 1879 the plaintiff was a defaulter in respect of the assessment payable to Government for that year In November 1879 a punitive police post was established in the village under s 16 of Bombay Act VII of 1867 on account of the turbulent conduct of the inhabitants Between January and April 1880 the Collector sold certain property of the talukhdar for arrears of revenue and realized by the sale a sum of R1 608 12 8 This sum was more than sufficient to cover the arrears due for 1878 79 as well as the assessment payable for 1879 80 but the Collector after deducting the arrears due for 1878 79 applied the rest of the sale-proceeds towards the payment of the cost of the punitive post. The assessment for 1879 80 having remained unpaid the village was attached on the 1st of July 1880 under s 150 of the Bombay Land Revenue Code (Act V of 1879) The attachment was followed on the 6th January 1881 by an order declaring the village to be forfeited under s. 153 of the Code In 1886 the plaintiff filed the present suit against Government to recover possession of the village and for a declaration that the order of forfeiture was illegal and *ultra vires* The defendant pleaded (*inter alia*) that the suit was barred under s. 4 cl (*c*) of the Bombay Revenue Jurisdiction Act (X of 1876) that it was also barred by limitation *Held* also that the plaintiff's claim for a declaration that the order of forfeiture was illegal was not barred by s. 4 cl (*c*) of Act X of 1876 as the order of forfeiture could not be considered a proceeding for the realization of land revenue' The proceeding authorized by law for the realization of land revenue i e the attachment of the village having been taken no other proceeding could legally be taken as against the plaintiff till the expiration of twelve years from the date of the attachment *Held* further that the claim for a declaration that the order of forfeiture was illegal was not time barred as it was governed by art 120 of the Limitation Act (XV of 1877) SAMALDAS BECHAR DESAI *v* SECRETARY OF STATE FOR INDIA I. L. R. 16 Bom. 455

3 ———— *Service inam land—Suit for a declaration of title to trees thereon and for damages—Jurisdiction of Civil Court—Hereditary Offices Act (Bombay Act III of 1874)—Hereditary officer—Officiator*—The plaintiff complained that he was prevented from cutting the trees growing on land situate in the village of Tungarli belonging to certain persons who had sold the trees to him. He claimed damages and an injunction restraining the Collector from interfering with him The defendant pleaded that the trees did not belong to the plaintiff's vendors being on service inam land. The lower Court dismissed the plaintiff's claim holding that the land on which the trees were growing was service inam land and that the plaintiff s vendors had no title to them On appeal the High Court on the evidence upheld the lower Court s decision that the land was inam service land but held that it did not necessarily follow that the trees upon it were the property of Government and not of the vatandars The latter might be the owners of the trees subject to a condition The case was therefore remanded to the District Court for a finding on an issue as to whether the holders of service inam lands had a title to the trees on the lands, and if so whether they had the right to cut down trees without the permission of the Collector On this finding the District Judge found in the affirmative The case then came again before the High Court when a preliminary objection was taken that under s. 4 of Act X of 1876 the Court had no jurisdiction *Held* that it having been decided that land in question was service inam land the Court under s. 4, cl (*a*) of Bombay Act X of 1876 ceased to have jurisdiction over the plaintiff s claim against Government in respect of the trees growing thereon as such claims related to property appertaining to the office of a village officer DESOUZA DEVINO *v* SECRETARY OF STATE FOR INDIA I. L. R. 18 Bom., 319

1 ———— s 11—*Revenue Officer—Forest Officer—Forest Act (VII of 1878)—Right of Appeal*—S 11 of Act X of 1876 only applies to an act or omission of a Revenue Officer and only in cases where the law allows an appeal A Forest Officer is not a Revenue Officer Act X of 1876 must be construed strictly No right of appeal can be given except by express words. NARAYAN BALLAL *v* SECRETARY OF STATE FOR INDIA
[I. L. R. 20 Bom., 803

2 ————*Practice—Procedure*—Under s. 11 of the Bombay Revenue Jurisdiction Act (X of 1876) in a suit to which that Act applies the Court before taking evidence on the merits should

BOMBAY REVENUE JURISDICTION ACT (X OF 1876)—*concluded*

require the plaintiff to prove first of all that he has previously t bringing the suit presented all such appeals all wed by the law f r the time being in f rce as within the peri d cf limitati n all wed f r bringing such suit it was p ssible to present RANCHHOD HORIBHAI v SECRETARY OF STATE FOR INDIA

[I. L. R. 22 Bom, 173

3 ——— *Suit against Government —Practice—Procedure—Appeal from an order of a Revenue Officer—Presentation of such appeal* —All that s 11 cf the Bombay Revenue Jurisdicti n Act (X cf 1876) requires is that the appeal referred to therein shall be presented. When theref re the only appeal all wed by law against a certain order of the Collector lay to the Commissioner and such appeal was presented —*Held* that the plaintiff was nct bound to wait for a reply before filing his suit against Government ABAJI PARASHRAM v SECRETARY OF STATE FOR INDIA I L R 22 Bom 579

4 ——— *Meaning of the words appeal allowed by law —Limitation* —The words an appeal all wed by law used in s 11 of the Revenue Jurisdiction Act (X of 1876) do not mean an appeal within the time allowed by law They refer to the appeals which the law prescribes and have no reference to the limitation in point of time which the law may impose upon the bringing cf such appeals RANCHOD HARIBHAI v SECRETARY OF STATE FOR INDIA I L R 22 Bom, 583

——— s 15

See MAMLATDAR JURISDICTION OF [I L R, 23 Bom 761

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS [I L R. 7 Bom 100

See SUBORDINATE JUDGE JURISDICTION OF I L R 12 Bom 358
[I L R 15 Bom 441
I. L. R. 21 Bom 754 773

BOMBAY REVENUE JURISDICTION ACT (XV OF 1880).

See GUARDIAN—APPOINTMENT OF GUARDIAN I L R. 5 Bom 306

See SUBORDINATE JUDGE JURISDICTION OF [I L R 21 Bom 754

BOMBAY SALT ACT (II OF 1890)

——— s 47 (a)—*Possession of salt water with the intention of manuf ct ring salt* —The mere possessi n of salt water with the intention of manufacturing salt therefrom is not an offence under the B mbay Salt Act (Bombay Act II of 1890) QUEEN EMPRESS v DABHAI KABHAI

I L. R. 23 Bom, 788

BOMBAY SUMMARY SETTLEMENT ACT (VII OF 1863)

See LAND REVENUE [12 Bom Ap 1 225 276

See SERVICE TENURE [I. L R 15 Bom 13

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT I. L. R., 17 Bom 407

——— s 2

See SERVICE TENURE [8 Bom A C 195
I L. R. 9 Bom. 198

——— ss 2 6 9

See CONTRACT ACT ss 69 70 [I. L. R. 6 Bom. 244

See CONTRIBUTION SUIT FOR—VOLUNTARY PAYMENTS I L R. 6 Bom 244

——— s 7

See SETTLEMENT—EXPIRATION OF SETTLEMENT I L R., 4 Bom., 367

——— ss 27 and 32.

See DUTIES [2 Bom. 253 2nd Ed. 239

——— s 32.

See JURISDICTION OF CIVIL COURT—REVENUE 5 Bom A C 202

BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865)

See BOMBAY LOCAL FUNDS ACT 1869 [I. L. R. 17 Bom 422

See KHOTI SETTLEMENT ACT s 17 [I L. R. 21 Bom 235

See LAND REVENUE I L. R. 1 Bom. 70

1 ———Revenue survey—*Entry of tenants in registers—Landlord and tenant* —The mere entry of the names of the tenants of a khot in the Government registers as occupants under the Revenue Survey Act, I (Bombay) of 1865 does n t constitute an injury to the landlord of a tangible kind of which the Civil Courts can take cognizance The khot s rights as landl rd if they can be established cannot be prejudiced by any proceeding under the Survey Act there being nc thing in that Act or the rules framed under it which affects the rights of subjects of the Government *inter se* The utm st benefit which the tenants can derive as against their landlord fr m being e tered as occupants under the Act is a right to claim a deducti n of the amount of assessment paid by them direct to the G vernment If they deny his title he can sue them either to establish his title and recover the full rent due to him under his c ntract with them or to eject them as h lding possession of his lands by a title which they themselves repudiate. BAM v SURVEY COMMISSIONER AND THE COLLECTOR OF RATNAGIRI

[I. L. R., 3 Bom. 134

BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865)—*continued*

2 ——— **Boundary dispute**—Boundary dispute as used in the Survey Act (Bombay Act I of 1865) means a contention between two neighbouring land proprietors as to where a boundary line or boundary marks has or have been fixed by the survey officers After the *functions of the latter officers have ceased* in a district the Collector acting under Act III of 1846 is the proper officer to determine such a dispute and fix the proper position of the boundary marks But where a landholder claims to recover from a neighbouring holder land alleged to have been usurped or encroached upon by the latter the person aggrieved must file his plaint in Court (which in the case of a claim for mere possession may be the Court of the Mamlatdar or the ordinary Civil Court) where the determination of the Collector as to the proper position of the boundary line or marks (although it of itself confers or withdraws no right of possession) affords valuable evidence in adjudicating upon the rights of the parties PITAMBAR DHARI *v* SAMBHAJIRAV 8 Bom A C 185

3 ——— **Bom Reg XVII of 1827**—*Building sites in towns before Bom Act II of 1868*—*Semble*—That Bombay Regulation XVII of 1827 and Bombay Act I of 1865 were not applicable to building sites in towns and cities until Bombay Act I of 1865 was expressly made applicable to such sites by Bombay Act IV of 1868 DADABHAI NARSIDAS *v* SUB COLLECTOR OF BROACH [7 Bom A C 82

——— s 11

See KHOTI TENURE 7 Bom A C, 41

——— *Entry into private house for survey purposes*—*Quære*—Whether s 11 of Act I of 1865 (Bombay) justifies surveyors in entering private houses for the purpose of measuring them REG *v* BHAGIIDAS BHAGVANDAS 5 Bom, Cr 51

——— s 14

See INSPECTION OF DOCUMENTS [11 Bom 231

——— s 25

See LAND REVENUE [12 Bom Ap 1 225

——— *Power of Government to raise assessment*—*Bom Reg XVII of 1827 s 4 cls 2 and 3*—The words in s 25 of Bombay Act I of 1865 confer upon Government no absolute power in all cases to fix any assessment they may please But that section as also s 4 cl 2 Regulation XVII of 1827 distinctly limit the power of Government to raise the assessment on land held partially ... by ... Government however may set aside such limitations at their discretion by a legislative enactment as provided by cl 3 of the above Regulation But Government can exercise this power only under ... specific rules In Bombay Act I of 1865 s 2 ... specific rules are to be found as would indicate th ... Legislature intended to set aside the provisions ... cl 2 s 4 Regulation XVII of 1827 and to ... e the revenue officers to ignore all exemptions except those which they may themselves choose to recognize Where plaintiff had enjoyed "Savai sut" or a remission of one-fourth for a period of more than thirty years with respect to lands on which assessment became leviable in 1865 A D he was held by the High Court to have established a prescriptive right to such a *remission* COLLECTOR OF COLABA *v* GANESH MAHESHVAR MEHENDALE 10 Bom., 216

——— s 32

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS BOMBAY [I L R., 21 Bom., 684

——— *Village cattle*—*Sanction of Revenue Commissioners to grazing*—The phrase "village cattle" in s 32 of Bombay Act I of 1865 does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves but in the Revenue Commissioner whose consent must be obtained COLLECTOR OF THANA *v* BAL PATEL [I L R. 2 Bom, 110

——— s 34

See LIMITATION ACT 1877 ART 144—ADVERSE POSSESSION [I L R 8 Bom. 585

——— ss 35 48—*Power of local Legislature*—*Government land*—*Suit to set aside attachment on land*—*Building*—*Erection of*—In a suit for setting aside a summary attachment under Bombay Act I of 1865 placed by the Collector on land held on a settlement for a period not exceeding thirty years the value was held to be five times the assessment and the stamp duty calculated upon it irrespective of the actual market value or the amount for which the land was attached. The holder of a cocoanut oart in Bandora in the island of Salsette in the Thana district paying an annual assessment of R39 to Government built a bungalow upon it without the permission of the Collector who under the rule purporting to have been issued by the Government of Bombay on the 1st February 1869 in accordance with the provisions of s 35 of Bombay Act I of 1865 demanded from him a fine equal to sixty times the assessment and on the plaintiff's failure to pay the fine summarily attached the land under the provisions of s. 48 of that Act *Held first* that the Government of Bombay had no authority to make the rule of 1st February 1869 and that s 35 of the Survey Act providing no penalty for building without the Collector's permission the attachment was illegal *Secondly* that the expressions "Government land" and "land belonging to Government" in Bombay Act I of 1865 mean land of which Government is the proprietor and do not apply to land in which the proprietary right in the soil vests in a private individual whether or not it be subject to the payment of assessment to Government *Quære*—Whether the amount of the

BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865)—*concluded*

fine contemplated in s 35 of Bombay Act I of 1865 if not paid is a charge leviable by summary attachment under s 48 COLLECTOR OF THANA v DADABHAI BOMANJI I L R 1 Bom 352

——— s 36—*Revenue survey—Right of tenant to hold land on paying ordinary assessment—Usage having force of law*—S 36 of Bombay Act I of 1865 applies only to lands to which a revenue survey has been extended under that Act Prior to the passing of the above Act by usage having the force of law Government was unable to eject an ordinary tenant of land so long as the latter was willing to pay the reasonable assessment upon the land occupied by him. This usage might be limited or varied by special contract —*e g* by the terms of a lease inconsistent with it DULIA KASHAM v ABRAMJI SALE 8 Bom A C 11

——— s 38

See KHOTI TENURE 7 Bom A C, 41

——— s 40

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOODS ON LAND [6 Bom A C 188

——— s 42—*Survey settlement—Notice of increased assessment*—S 42 of Bombay Act I of 1865 (which prohibits an occupant from relinquishing his holding unless he gives a written notice to the Collector on or before the 31st of March in each year) is not applicable only to the holders of land under a survey settlement but by implication imposes on the revenue officers the obligation of giving the holder notice when an increased assessment is about to be demanded from him within a reasonable time before the latest date on which he can exercise his right of relinquishing his lands GOVIND VINAYAK GADRE v COLLECTOR OF RATNAGIRI [6 Bom A C 101

——— s 48

See LAND REVENUE [I. L R 1 Bom 70

——— s 49

See LAND REVENUE [12 Bom Ap 1 225

BOMBAY SURVEY AND SETTLEMENT ACT AMENDMENT ACT (IV OF 1868)

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 33 I. L. R, 15 Bom. 516

See BOMBAY SURVEY AND SETTLEMENT ACT 1865 7 Bom., A C 82

1. ——— Liability to assessment—*Possession without payment of land in a town*—Where land in a town in the Presidency of Bombay was found to have been in plaintiff's possession from 1868 to 1871 without any payment by him of land revenue to Government —*Held* that it was not liable to pay assessment under Bombay Act IV of 1868 VRIJAVALABHDASS KHUSHALDAS v COLLECTOR OF AHMEDABAD 10 Bom 100

BOMBAY SURVEY AND SETTLEMENT ACT AMENDMENT ACT (IV OF 1868)—*concluded*

2 ——— s 5 cl (1), para (2)—*Bombay Act I of 1865—Building sites—Exemption from payment of Government land revenue*—On the 6th April 1836 the Collector of Ahmedabad demised by lease a building site in that city to the plaintiff's grandfather for a term of ninety nine years No rent was reserved by the lease as then presently payable but it contained a provision that the lessee should pay in respect of the said site such land tax as might fall up on all The lessee and his heirs held the site from the date of the lease down to 1873 without paying or being required to pay any land tax or rent to Government In 1873 however Government levied from the plaintiff R2 11 0 as land revenue assessed on the site Plaintiff thereupon sued the Collector of Ahmedabad for recovery of the amount on the ground that the assessment and levy were illegal *Held* that the plaintiff's building site was exempted from liability to assessment by Bombay Act IV of 1868 s 5 cl 1 para 2 which enactment applied to the case *Held* also that this exemption was not to continue beyond the term for which the site had been demised by Government but that on its expiration it will be open to Government to resume the land altogether or to re let it on such terms as to assessment or otherwise as might be the pleasure of Government The origin of Bombay Act IV of 1868 mentioned and the provisions contained in it relating to exemption from the payment of assessment referred to and discussed. COLLECTOR OF AHMEDABAD v BALABHAI KEVALDAS [I L R 4 Bom 505

——— s 15

See INSPECTION OF DOCUMENTS [11 Bom. 231

BOMBAY TOLLS ACT (III OF 1875)

——— s 7—*Lease to levy tolls—Lessee Right of to admit partners—Keeping two sets of accounts—False accounts kept to deceive Government*—A lessee from Government of the right to levy tolls admitted into partnership with him the plaintiff and two others One of the conditions attached to the lease prohibited sub letting The plaintiff having brought a suit for his share of the profits realized in the transaction the Judge dismissed the suit on the ground that the partnership was illegal being of opinion that sub letting and admitting a partner were identical *Held* reversing the decree that the partnership was not illegal Where in such a partnership two sets of account were kept one true and the other false *held* that such practice however reprehensible was not illegal under s. 7 of the Tolls Act (Bombay Act III of 1875 and did not disentitle the plaintiff to show as between himself and his partners what was the actual profit of the concern GANESH VITHAL v SHRIPAD DATTOBA NAIK [I. L R. 20 Bom. 683

BOMBAY TOLLS ACT (III OF 1875)—*concluded*

——— s 10

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
[I. L R. 24 Bom, 623

BOMBAY TOLLS ACT AMENDMENT ACT (V OF 1881)

See BOMBAY TOLLS ACT

BOMBAY TRAMWAYS ACT (I OF 1874)

——— s 24—*Meaning of the words Regulating the travelling"—Validity of Regulation made under the section for regulating the conduct of the Company s servants*—The words regulating the travelling in s 24 of the Bombay Tramways Act (Bombay Act I of 1874) mean laying down rules as to how persons shall travel that is to say rules for the conduct and behaviour of the persons who travel and cannot be held to include rules for the conduct of the Company s servants prescribing what they shall do or what they shall not do in the matter for instance of issuing tickets S 24 of Bombay Act I of 1874 authorizes the Bombay Tramway Company to make regulations for regulating the travelling in or upon any carriage belonging to them Under this section the Company made the following regulation — Any conductor who shall neglect to issue a ticket to a passenger or shall issue to such passenger a ticket bearing a number other than one of the numbers contained in such books or shall issue a ticket of a lower denomination than the amount of the fare or non consecutive in number or a ticket other than the ticket provided by the Company for the journey to be travelled shall for every such offence be liable to a penalty not exceeding R25 *Held* that the regulation was *ultra vires* MANOCKJI DADABHAI *v* BOMBAY TRAMWAY COMPANY I. L R. 22 Bom. 739

BOMBAY UNIVERSITY ACT (XXII OF 1857)

——— s 12—*Candidate for a degree—Obligation to present certificate of previous examination*—The words candidate for a degree in s 12 of the Act (XXII of 1857) to establish the University of Bombay mean a candidate for the final examination the passing of which entitles him to a degree They do not mean a candidate for a degree at any stage of his University career Students therefore presenting themselves for the previous examination prescribed by the Senate of the Bombay University need not present the certificate required by that section. IN THE MATTER OF DARABHA RUSTOMJEE
[I. L. R., 23 Bom., 465

BOMBAY VILLAGE POLICE ACT (VIII OF 1867).

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER 6 Bom Cr., 75

BOMBAY VILLAGE POLICE ACT (VIII OF 1867)—*concluded*

——— s 9

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I L R., 4 Bom. 357

——— *Police patel neglecting to report encroachment made by villagers on public road*—Conviction of a police patel for neglecting to report an encroachment made by the villagers on the public road reversed as the circumstances of the case did not bring it within the provisions of s 9 of Bombay Act VIII of 1867 REG *v* UKHA SAV
[7 Bom. Cr, 88

——— ss 10 11 and 12—*Duties of the police patel in cases of unnatural or sudden death—Ancient village system of Police how affected by the Code of Criminal Procedure (1882)*—The ancient village system of police as regulated by Bombay Act VIII of 1867 remains unaffected by the Code of Criminal Procedure (Act X of 1862) except where the Code contains a specific provision Under Bombay Act VIII of 1867 the police patel has to do much more than merely inform the district police He has himself to investigate the matter of a crime and obtain all procurable evidence Under s 11 of the Act if an unnatural or sudden death occur or any corpse be found he must forthwith hold an inquest and investigate with the panch the causes of death and all the circumstances of the case and make a written report of the same If it appears that the death was unlawfully caused he must immediately give notice to the police station and if the state of the corpse permits he shall at once forward it to the Civil Surgeon or other appointed medical officer These provisions of the law are likely to be defeated if the police patel refrains from the proper action until the district police officers arrive on the spot QUEEN EMPRESS *v* RAGHO MAHADU
[I. L. R., 19 Bom. 612

——— s 13

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I. L. R., 4 Bom. 479

BOMBAY VILLAGE POLICE ACT AMENDMENT ACT (I OF 1876)

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I L. R. 4 Bom. 357

BONA FIDES

See DEFAMATION I. L. R. 4 Calc. 124
[4 W R. Cr 22
2 N W, 473
I. L. R, 6 All. 230
8 Bom. Cr 168
I. L. R., 3 All. 342 664, 815
I. L. R. 4 Bom., 293
I. L. R. 9 Bom., 269

See JUDICIAL OFFICERS LIABILITY OF
[I. L. R., 1 All., 280
I. L. R., 1 Mad., 89

BONA FIDES—*concluded*

See CASES UNDER LIMITATION ACT 1877 ART 134 (1859 s 5 1871 ART 134)

See TRANSFER OF PROPERTY ACT s 53 [I. L. R. 20 Mad., 4 5

See UNLAWFUL ASSEMBLY [I. L. R. 21 Mad 249

BOND

See CASES UNDER INTEREST—MISCELLANEOUS CASES—BOND

See CASES UNDER INTEREST—OMISSION TO STIPULATE ETC

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES

See CASES UNDER LIMITATION ACT 1877 ART 66

See CASES UNDER MORTGAGE—MONEY DECREE ON MORTGAGE

See CASES UNDER REGISTRATION ACT 1866 s 53

See CASES UNDER STAMP ACT 1879 s 3

——— creating or not charge on immoveable property

See CASES UNDER REGISTRATION ACT 1877 s 17

——— payable by instalments

See CASES UNDER LIMITATION ACT 1877 ART 75

——— Recitals in—

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS [I. L. R. 20 Bom. 636

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS ETC

1. ——— Form of bond—*Bond not to be operative until dishonour of hundi with respect to which bond has been executed* An instrument which is in the nature of a bond is not the less a bond because it does not come into operation unless and until the hundi with respect to which it is passed has been dishonoured LAKSHMANDAS RAGHUNATHDAS *v* RAMBHAU MANSARAM [I. L. R. 20 Bom. 791

2 ——— Condition in bond for money lent—*Right of suit* — An agreement to put a party in possession of certain lands if default be made in the payment of money lent does not preclude that party from suing for the money lent if he elect to do so ANNASAMI *v* NARANAYEN [3 Ind. Jur O S 12

3 ——— Admission of liability on bond—*Remission of condition—Default—Right of suit* —When the full sum specified in a bond was admitted to be due the fact of the plaintiff having on condition of the payment of half the amount by a certain day agreed to remit his claim to the other half cannot affect his right to recover the entire

BOND—*continued*

amount due on the defendant failing to fulfil the condition VENGAPPAYAN *v* PAJAPAYAN [1 Mad. 208

4 ——— Bond with collateral agreement to accept rents—*Right of suit* —In a suit to recover money (principal and interest) alleged to have been due on a bond defendant pleaded that subsequent to the execution of the bond plaintiff had taken from the obligor an ijara and a dur ijara and executed ijara kabuliats agreeing to accept payment of the bond by setting off the rents due under the kabuliats It was found that the kabuliats stipulated that during their term the rent should year after year and instalment by instalment be credited in payment of the bond debt and that at the end of the term of the ijara accounts should be settled and the balance paid neither party being at liberty to put an end to the lease *Held* that till the termination of the lease plaintiff could not sue on the bond his right of suit having been suspended during the continuance of the ijara and dur ijara the stipulations in which qualified the stipulation in the bond for absolute payment at the end of a specified period DYA CHAND OSWAL *v* MOOKTEEDA DABEE [13 W R. 24

5 ——— Cause of action—*Limitation* —*J* after entering into a bond for the payment of a sum of money adopted one *S* who took the family estate at *J* s death While in the enjoyment of the estate the bond holders brought a suit against him to realize the debt and obtained a decree Under the decree the obligees sought to sell the property which by the time of the execution had come into the hands of *R* (a great nephew of *J* s) who sued and eventually succeeded in having *J* s adoption declared void *R* then sued to set aside so far as it affected him the decree for the sale of the property and in this suit also he eventually succeeded The representative of the original bond holders then brought a suit against *R* to recover the money due on the bond *Held* that plaintiff s right of suit first arose not from the last decree in favour of *R* but from the time when the debt became due under the terms of the bond. RAJKRISTO SING *v* HURO SOONDUREE CHOWDRAIN 13 W R 313

6 ——— *Suit to recover share of bond debt* —In a suit by the widow of one of three judgment creditors to recover the third part of a bond debt which had been decreed in their favour and of which execution had been taken out —*Held* that as she had failed in her endeavour to be made a party to the original suit her only course was to sue for her share of the money received under the decree; though she might have sued to have herself declared a sharer in the decree her not adopting that form of action held not to bar her suit As the entire sum due on the bond with penal interest to date of decree had been recovered plaintiff s cause of action had fully accrued though a balance of interest was still due BUZMOONISSA *v* ROWSHAN JAHAN [10 W R. 337

7 ——— *Suit on bond before due date—Denial of execution* —*Held*, reversing

BOND—*continued*

the decision of the Court below that the denial of the execution of a bond in the Criminal Court by the defendant does not give the plaintiff any cause of action to recover the amount of the bond before due date BUJEEWUN SINGH v RUNTAL SINGH
[10 W R, 351

8 ——— Failure to deliver bond—*Suit for amount before due date*—If an obligor fraudulently withholds delivery of a bond which has been executed within a reasonable time after the receipt of the money the obligee has a right to sue for the return of the money before the time fixed for payment PEAREE MONEE DOSSEE v THAKOOR DOSS DUTT 21 W R, 443

9 ——— Right of one of several heirs to sue creditor for share of debt—*Joint obligation—Obligation—Act XXVII of 1860—Contract Act IX of 1872 ss 42 45*—*Held* by the Full Bench (MAHMOOD J dissenting) that when upon the death of the obligee of a money bond the right to realize the money has devolved in specific shares upon his heirs each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond KANDHIYA LAL v CHANDAR
[I L R, 7 All, 313

10 ——— Suit by obligee against some of obligors taking fresh bond from the rest—Where an obligee sues some of the persons jointly liable to him under a bond and takes another bond from the rest for what he considers to be their share of the debt he does not discharge the latter from their liability to contribute according to the shares in which they are liable among themselves nor does his transaction with them (they not being sureties) destroy the joint liability SHUSHEE MOHUN PAL CHOWDHRY v RAM KOOMAR KOONDOO
[22 W R, 193

11 ——— Bond used to pay debt of third party—*Liability of third party*—The fact that the money raised on a bond is used to pay a debt due by a third party (G) does not make such third party liable to the party who executed the bond unless the latter joined in the bond at the request of the third party or of some one acting under his authority GOUR KISHORE DUTT CHOWDHRY v OZEER ALI
[24 W R, 99

12 ——— Sale of interest of obligee in a hypothecation bond—*Civil Procedure Code 1882 ss 268 274*—The interest of the obligee in a bond hypothecating certain land as security for a debt having been attached under s 274 of the Code of Civil Procedure and sold a suit was brought by the purchaser upon the said bond; it was objected that the suit was not maintainable because the bond had not been also attached as a debt under s 268 *Held* that the fact of the bond not having been attached as a debt under s 268 did not affect the right of the purchaser to realize the amount due under it SAMI AYYAR v KRISHNASAMI
[I L R, 10 Mad, 169

13 ——— Fraudulent alteration of hypothecation clause—The obligee of a bond for the payment of money in which a certain share of a village had been hypothecated as collateral security having fraudulently altered such bond so as to make it appear that a larger share of such village was hypothecated sued the obligor to recover the money due on such bond by the sale of such larger share The obligor admitted the execution of the bond and that a certain sum was due thereon *Held* on the question whether under these circumstances the obligee was entitled to relief as regards his claim for money that he was not so entitled inasmuch as the bond on which his suit was brought must be discarded being a forgery and therefore the suit as brought failed GANGA RAM v CHANDAN SINGH
[I L R 4 All 62

14 ——— Appropriation of payment—*Mode of calculating interest—Reg XV of 1793*—Where payment was made upon a bond the amount paid being less than the interest due—*Held* the payment ought to go to reduce the amount of interest due and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree LUCHMESWAR SINGH v LUFT ALI KHAN 8 B L R, P C, 110

15 ——— Failure of bond—*Evidence—Non registration*—In an action on a bond and mortgage which was not registered and the *factum* of which was denied the Principal Sudder Ameen decided in favour of the plaintiffs but such judgment being reversed by the High Court the Judicial Committee considering that too much weight had been given to the fact of non registration reversed that finding and after a careful analysis of the evidence found the bond to be genuine GANGA PRASAD v MAWJI LAL
[9 B L R, 426 16 W R P C, 30

16 ——— Presumption of payment—*Possession of bond by obligor*—The presumption of payment of a bond which arises from its possession by the obligor loses much of its force when raised not between the original creditor and the debtor but between the debtor and the purchaser of the debt at an execution sale DEBENDRA KUMAR MANDAL v RUP LALL DASS I L R 12 Calc 546

17 ——— Evidences of payment—*Error in account—Waiver—Estoppel—Indorsement*—Where the defendant executed to the plaintiff a bond for the payment of the balance found to be due from the defendant to the plaintiff upon an adjustment of the account of their mutual dealings which bond contained the following stipulation I shall pay the money after causing the payment to be entered on the back of this bond or after taking a receipt for the same I shall not lay any claim to any payment made except in this way—*Held* that though the defendant at the time of the adjustment disputed the correctness of the account yet that by having executed the bond and made payments under it he must be held to have waived his objection and in a suit on the bond could not be permitted to re-open the question of the correctness of the balance though he might possibly have been allowed to do so had he alleged that

BOND—*continued*

he had discovered errors in the account after the execution of the bond and had he specified some of the alleged errors. *Held* also that the stipulation in the bond could not be permitted to control Courts of justice as to the evidence which, keeping within the rules of the general law of evidence in this country they may admit of payments and the Anglo Indian law of evidence not excluding oral evidence of payments it would be against good conscience and the policy of the law to reject it, though the absence of indorsements is a circumstance of some importance which ought not to be overlooked but is by no means conclusive *Bekana Tatiah* v *Vasun am Ch nna Mad S D A., 1855 pp 49 and 50* impeached. *Sashachellum Chetty* v *Gobindappa 5 Mad 451 Kashinath Balal Oka* v *Narria Jan Bom Sp Ap 438 of 18 2* and *Nugur Mull* v *A eemoolah 1 N W 146* approved. NARAYAN UNDIR PATIL *v* MOTILAL RAMDAS I. L R 1 Bom 45

KALEE DOSS MITTRA *v* TARACHAND ROY [8 W R, 316

See GIRDHAREE SINGH *v* LALLOO KOONWAR [3 W R. Mis 23

18 ——— Novation of bond—*Surety Liability of*—*B* became surety under a bond to Government for the treasurer of a Collectorate The Collector yearly examined the accounts and struck a balance which he certified to be correct *B* on each such occasion executed a new bond but the old bonds were not cancelled or given up On subsequent enquiry, the treasurer was discovered to have embezzled moneys during each year *Held* that on such discoveries being made *B* was still liable under the old bonds there having been no novation LALA BANSIDHAR *v* GOVERNMENT OF BENGAL [9 B L R 364 14 Moore s I A 86 16 W R P C 11

19 ——— *Bond given in renewal of former bonds*—Where a bond is given in renewal of former bonds such bond constitutes a new security to take effect from its date HAMED BUX *v* BINDRABUN 2 N W 37

20 ——— *Fraud*—*Undue influence and threats*—The three childless widows of a zamindar instituted a suit against the rightful heir to their husband's estate in which they unsuccessfully disputed his legitimacy Previously thereto they had obtained advances of money from the present plaintiff and executed in his favour an agreement and a bond whereby they secured to him the payment of large sums in case they recovered their husband's estate and virtually gave to him the entire control of their suit Subsequently they agreed with the rightful heir to compromise the suit which compromise however was never acted upon partly owing it was alleged to the subsequent conduct of the heir At the date of the compromise the heir who had just attained his majority and was without proper counsel or assistance and acted under threats from the plaintiff a powerful and wealthy banker that he would carry on the litigation against him *per fas aut nefas* was induced contrary to his own judgment and sense of right and without any evidence that the sum claimed was really due to the plaintiff to execute a bond in his favour whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows the plaintiff on his part agreeing that he would treat such payment as a satisfaction of his claim against the widows but meanwhile that he would retain the securities which he held from them In a suit brought by the plaintiff against the heir to enforce the last mentioned bond —*Held* that the bond was wholly invalid and fraudulent as against the defendant and that as there was no privity of contract between the plaintiff and defendant independently of the bond, it could not stand as a security for anything which might be justly due from the widows *Semble* —The transaction even if valid did not amount to a novation for the plaintiff never abandoned his claim against the widows but only agreed to abandon his remedy against them in case he obtained satisfaction of his claim from the heir CHEDAMBARA CHETTY *v* RENGA KRISHNA MUTHU VUCHANGA NAIKAR [13 B L R, 509 22 W R 148 L R 1 I A 241

Affirming decision of High Court 7 Mad 85

21 ——— *Bond for payment of bills of exchange*—*Collateral security*—*Presumption*—Where a person who is indebted on certain bills of exchange accepted by him gives a bond for securing payment of the whole amount with interest by instalments the fact that the bills were not to be given back until all the instalments should be paid raises a presumption that the bond was only intended to be a collateral security and not a substitution for the obligation arising from the bills of exchange Such a presumption may be impliedly rebutted by other circumstances *Weston* v *Foster 2 Bing N C 693* cited RADHA GOBIND SHAHA *v* BANK OF BENGAL 2 C L R 505

22 ——— *Verbal assignment of rent of land in satisfaction of interest*—*Jamog*—*Mutation of names in favour of assignee not effected*—*Suit on bond*—*Claim for interest notwithstanding assignment*—Subsequent to the execution and registration of a bond a jamog was made orally between the creditor and the debtor by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest the latter agreed to release the tenants from payment of rent to himself and the tenants (who were parties to the arrangement) agreed to pay their rents to the creditor No mutation of names in favour of the creditor was effected in the revenue registers The creditor brought a suit against the debtor to recover the principal and interest agreed to be paid under the bond alleging that he had never received any rents under the jamog *Held* that the effect of the jamog or novation was that the plaintiff's right to recover interest from the defendant was gone and the plaintiff was therefore not entitled to maintain his suit against the defendant in respect of the interest which was payable under the bond ACHU SINGH *v* AJUDHIA SAHU I L R 9 All. 249

23 ——— Bond payable by instalments—*Limitation*—*Act XIV of 1859 s 1*—*Cause of action*—Where a bond payable by instalments, provided that upon default in payment of any

BOND—*continued*

one of the instalments the whole amount secured by the bond should become payable —*Held* that a suit to recover the money due upon the bond brought after a lapse of more than three years from the date when the first default was made though within three years from the date of the last payment was barred by lapse of time HURRONATH ROY *v* MAHER OOLAH MOLLAH

[B L R., Sup Vol 618 7 W R 21

24 ———— *Cause of action —Decree payable by monthly instalments* —When a bond is entered into to pay off money due under a decree monthly by instalments each monthly instalment becomes a separate cause of action and limitation applies to each instalment separately KHIDU *v* KALI SAHU

[3 B L R Ap, 112 12 W R 71

25 ———— *Default—Cause of action* —Where a bond was given to secure a debt which was to be repaid by seven annual instalments and the bond provided that upon failure to pay a single instalment the whole principal sum secured should immediately become due and recoverable with interest —*Held* that the cause of action in respect of the principal and interest arose on failure to pay the first instalment KARUPPANA NAYAK *v* NALLAMMA NAYAK 1 Mad. 209

MADHO SINGH *v* THAKOOR PERSHAD

[5 N W 35

26 ————*Limitation—Waiver* —*Quære*—Whether a suit on a bond for payment by instalments with a clause making the whole amount payable on default in payment of any instalments must be instituted within three years from the time of the first default Payments made and accepted afterwards may operate to waive the effect of a default and to restore the provision for payment by instalments HULLODHUR BANGAL *v* HOGG 1 W R. 189

See BREEN *v* BALFOUR Bourke 120

Contra MADHO SINGH *v* THAKOOR PERSHAD

[5 N W 35

SUMBHOO CHUNDER SHAHA *v* BARODA SOONDUREE DEBEA 5 W R 45

27 ———— Suit upon a bond executed by the defendants to the plaintiff for the payment of a sum of money by instalments The bond contained a proviso that on default being made in the payment of any one instalment the whole amount should become due Default was made in the payment of several instalments but subsequently payments were made by the defendants and accepted by the plaintiff on account of the unpaid instalments. The defendants pleaded the law of limitation The suit was brought more than three years after the first default in payment of an instalment had been made but within three years from the time when taking into account the payments that had been made the first instalment claimed became due *Held* that these payments as regards both parties must be considered as if made at the time fixed; that the defendants could not rely upon the stipulation as making the whole debt due and fixing the period from which the time of limitation ran and that the first of the instalments claimed having become due within three years the suit was not barred RAM KRISHNA MAHADEV *v* BAYAJI BIN SANTAJI

[5 Bom., A C, 35

But *see* GUMNA DAMBERSHET *v* BHIKU HARIBA

[I. L R. 1 Bom. 125

28 ———— *Execution of decree—Failure to keep decree alive—Suit on bond* —In execution of a decree seven out of nine judgment debtors with the consent of the decree holder filed an instalment bond agreeing to pay the amount of the decree with interest thereon in two instalments. The decree holder neglected to take proceedings to keep alive the decree and his application to execute the decree was disallowed. In a suit brought by the decree-holder against the person who had executed the instalment bond for the amount of principal and interest due thereon —*Held* that the suit was maintainable ASHIDHARI CHOWDHRY *v* JAGESSUR KUMAR 6 B L R, Ap 82

S C ASHIDHAREE CHOWDHRY *v* JUGGESSUR KUMAR 14 W R. 430

29 ———— *Waiver of default—Limitation* —Suit brought on 24th April 1873 for principal and interest due on a bond dated 30th October 1860 The debt was payable by eight annual instalments on failure of any one of which the whole amount was to be payable on demand. No instalment was paid and when the suit was brought defendant pleaded that the suit was barred as three years had elapsed from the date on which the last instalment became due *Held* that the usual clause that on failure to pay one instalment the whole amount shall be payable on demand gave a mere election to plaintiff of converting the obligation into a different one that that election was never exercised and that the document continued to be one securing the payment of a debt by instalments as to all of which the action had long been barred; and that it was unnecessary therefore to consider whether in the present case, on demand must not be construed according to its meaning at the period at which the words were written EATHAMAKALA SUBBAMMAH *v* RAGHIAH 7 Mad., 293

30 ———— *Construction of bond—Payments towards interest and principal*—Defendants were indebted to the plaintiff in the sum of R1 400 With the object of liquidating this debt with interest at 12 per cent per annum the parties executed a bond whereby it was agreed that the defendants should grant an ijara lease of certain property for the term of fourteen years to the plaintiff's husband and that the rent reserved on the lease should be paid by the lessee to the plaintiff during the terms in semi annual payments each of R 3-12 *Held* that on the proper construction of this agreement the semi annual instalments were to be applied first to the reduction of the principal money due and not to the payment of the interest. SHURNOMOYEE DOSSEE *v* UMA SOONDERY CHOWDHRAIN 2 C. L R., 138

BOND—*continued*

31 ———————— *Cause of action—Waiver of default in payment*—When a sum of money is payable under a bond by instalments with a condition that in default of paying one instalment the whole amount shall then become due and default is made but the obligee subsequently accepts payments of one or more sums as an instalment or instalments due under the bond such acceptance amounts to a waiver of the condition of forfeiture and puts an end to the cause of action which had accrued so that the bond is set up again as a bond payable by instalments, and no cause of action under the condition arises until some fresh default is made in the payment of a subsequent instalment PASSAMMA ROW GARU v JOLETI VENKAYA 5 Mad 198

See on the same principle HUR PERSHAD v KHOWANEE 5 N W 18

32.———————— *Default—Waiver*—Where after default in payment of an instalment upon a bond conditioned that upon such a default the whole amount of the bond should become due plaintiff accepted payment of such instalment as also several subsequent ones—*Held* that by so doing the parties reverted to the old arrangement for payment by instalments or made a new one to the same effect and that the penalty occasioned by the first default could not be enforced GYAN CHUND v JAWAHUR 2 N W 83

33 ———————— *Waiver of default—Limitation Acts 1871 and 1877 art 75—Civil Procedure Code 1859 s 194 1877 s 210—Power of Court to alter contract between the parties*—Where a bond is payable by instalments and expressly stipulates for the payment of the whole debt on failure in the payment of any instalment the law of limitation runs on the whole amount of the bond against the obligee from the day on which the obligor first makes default in the payment of any instalment unless the obligee waive the default and afterwards from the day on which any fresh default is made in respect of which there is no waiver The obligee may waive the default under Acts IX of 1871 and XV of 1877 sch. II art 75 but the Courts have no authority to compel him to waive it Neither Act VIII of 1859 s 194 nor Act X of 1877 s 210 confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments as to the consequence of default in punctual payment of the instalments A debt being presently due an agreement to pay it by instalments with a stipulation that on default the creditor may demand immediate payment of the whole balance due with interest is not to be relieved against in equity Such a stipulation is not in the nature of a penalty inasmuch as its object is only to secure payment in a particular manner The defendant executed to the plaintiff a bond payable by instalments and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment but made default in paying the second which fell due on the 3rd August 18 8 On the 20th August plaintiff sued to recover the whole balance due on the bond Defendant admitted the bond but pleaded tender of the amount of the second instalment soon after the due date and prayed for payment by instalments without any interest The first Court passed a decree in the plaintiff's favour for the amount claimed with costs but ordered defendant to pay R100 and the costs at once and the balance by yearly instalments of R100 each with interest at six per cent till payment The District Judge on appeal affirmed the decree with a slight variation as to interest which he directed the defendant to pay on overdue instalments only *Held* by the High Court on second appeal that neither of the lower Courts had jurisdiction without the consent of the parties to substitute for the contract made by them terms which the Court preferred *Held* also that plaintiff was entitled to sue on the day after that on which the default was made —*viz* on the day after that fixed for the payment of the instalment —and that the Subordinate Judge had no power to rule the contrary RAGHO GOBIND PARANJPE v DIPCHAND I L R 4 Bom 96

34 ———————— *Waiver of default—Limitation Act 1871 art 75*—Where a bond is payable by instalments with a provision that upon default of payment of any instalment the whole sum then unpaid shall become due with interest the creditor though he can elect but once to enforce this provision may waive the benefit of it not only on the first but on any subsequent default SATRACHERLA v SETARAMA I L R 3 Mad, 61

35 ———————— *Default in payment—Expiration of time for specific enforcement of contract*—A bond for money provided that on failure on the part of the obligor to pay interest as agreed in the bond and within a certain period from the date of the bond the obligee might sue for possession of the immoveable property mortgaged in the bond Default was made in the payment of interest as agreed but the obligee deferred bringing a suit for possession of the mortgaged property so long that the time mentioned in the bond expired before he could obtain a decree *Held* that under these circumstances a decree for possession of the property could not be granted to him BALWANT SINGH v GUMANI RAM [I L R, 5 All 591

36 ———————— *Suit on bond—Limitation—Burden of proof—Indorsement of payment of instalments*—Where a defendant sets up the defence of limitation he must plead it and say that the claim is barred If when the plaintiff has proved his case the facts show that the cause of action accrued at a date earlier than the period of limitation and the plea of limitation has been set up by the defendant the latter will be entitled to take advantage of the plaintiff's evidence that the claim is barred and to have judgment given in his favour The obligee of a bond by which obligor covenanted to pay the sum of R3 00 by annual instalments of R200 and in which it was also agreed that payments of the instalments should be indorsed on the bond brought a suit against the obligor alleging default in payment and claiming to recover the amount of the bond. He gave credit for payment of the instalments for seven years and alleged that his cause of action arose upon

BOUNDARY—*continued*

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS 16 W R, 109

See SUNDERBUNS BOUNDARY [2 B L R, P C, 33

——— Disputed—

See BENGAL SURVEY ACT V OF 1875 [I L R 6 Calc 453 I L R 13 Calc., 230

See BOMBAY LAND REVENUE ACT, 1879 ss 119 121 I L R, 10 Bom 456

——— Fluctuating—

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS [11 B L R 265 18 W R 160 L R, I A Sup Vol 34

——— Marks

See BOMBAY LAND REVENUE ACT 1879 s 56 I L R 15 Bom 67

See MADRAS BOUNDARY MARKS ACT [I L R 1 Mad 192 I L R 7 Mad 280

——— Interfering with—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY LAND REVENUE ACT (V OF 1879) [I L R 13 Bom, 291

See RULES MADE UNDER ACTS [I. L R., 13 Bom., 291

——— Question of—

See BENGAL TENANCY ACT s 158 [I L R, 17 Calc 277

1. ——— Demarcation of boundary line—*Beng Reg X of 1822 ss 2 3 and 8—Suit for declaration of boundary contrary to survey award—Proprietary rights Exercise of—Presumption of ownership—Beng Reg XI of 1825 s 5 cl 12* — At the time of the Permanent Settlement the northern boundary of the pergunnah Shoosung (situated in Mymensingh at the foot of the Garrow hills) was not defined by Government From before that time and certainly for more than sixty years the zamindars of the pergunnah have always but in an irregular and uncertain manner exercised certain rights in the Garrow hills and over the inhabitants who are half savages such as hunting elephants cutting wood levying cesses on the inhabitants when possible (including in some parts of the hills a tribute of one rupee per hut) and exacting occasional services from them Government held a survey and declared the northern boundary of pergunnah Shoosung to be a line running along the base of the Garrow hills. The zamindar thereupon sued to set aside the survey and for a declaration that the northern boundary lay many miles further north and that the intermediate hill country belonged to him as forming part of pergunnah Shoosung *Held* (by SETON KARR J) that the acts of possession proved by the zamindar were sufficient under the circumstances to prove his proprietary right in the disputed tract and for the passing of a decree in his favour *Held* (by MACPHERSON J) that they were not sufficient to entitle him to a decree being acts of mere easement independent of possession *Held* by PEACOCK C J JACKSON and PHEAR JJ on appeal under the Letters Patent —The rules laid down by Regulation X of 1822 were intended to take effect only within the tract of country described in s 2 within which the administration of civil and criminal justice etc was by s 3 declared to be vested in an officer to be denominated the Civil Commissioner of the north eastern parts of Rungpore The proviso in s 8 was not intended to give substantive powers to the Governor General in Council in respect of other tracts of the country and cl 2 of the same section did not intend to take away the power of any Civil Court except within that tract The proviso contained in s 8 does not authorize Government to separate any part of the Garrow country beyond that described in s 2 from the district and from the general Regulations but merely directs the separation of such tracts from the estates of the neighbouring zamindars and the discontinuance of the collection of cesses by the zamindars from the Garrows By cl 2 s 8 the jurisdiction of the Civil Courts is taken away only in respect of acts of the above description done under the authority of the Government but that does not take away the right of a zamindar to contest a survey award drawing a line which deprives him of part of his zamindari and his permanently settled estate Where a Rajah had exercised rights and collected dues on certain hills and in forests north of an alleged line and it was the unanimous opinion of all the revenue authorities that the forests were within his permanently settled estate the assumption by them and Government of such line as the boundary of the Rajah s estate throwing upon him the onus of proving his claim to any portion north of that line was held to be arbitrary and anomalous If such proceedings were adopted under cl 12 s 5 Regulation IX of 1825 they were wholly irregular and the irregularity can be no ground for excluding the Court from examining them When a man is found exercising on both sides of a boundary line without objection rights of ownership or incorporeal rights, and when it is not shown that there is any other owner of the soil or that any objection to the exercise of such rights was made during a long course of years his acts cannot be treated as the encroachments of a wrong doer *Per* PHEAR J —Where acts of user illustrate all the modes of enjoyment of which a disputed property can reasonably be expected to be capable it can be rightly attributed to proprietorship of the tract upon which they were exercised. GOVERNMENT v RAJKISHEN SINGH [8 W R. 343 and on appeal 9 W R., 426

2 ——— Disputed boundary—*Survey—Suit for land from lessee of adjoining mouzah*—In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah both making title under one zamindar where a survey had taken place at a time when both mouzahs

BOUNDARY—*concluded*

to which respectively the land was claimed as belonging were in his possession and when neither of the leases were in existence —*Held* that the suit involved simply a question of boundary and what was to be ascertained was to which mouzah the land in dispute was found to belong at the time of the survey AMEEREE BEGUM *v* GOBIND PANDEY

[15 W R 35

3 ——— Question of boundary—*Evidence in cases of disputed boundary—Onus probandi* —In questions of boundary especially where the dividing line in dispute runs through waste lands which have not been the subject of definite possession the rule as to the burden of proving the affirmative is not applicable The litigants are in the position of counter-claimants and both parties are bound to do what they can to aid the Court in ascertaining the true line LUKHINARAIN JAGADEB *v* JADU NATH DEO

[I. L. R 21 Calc. 504
L R 21 I A. 39

4. ——————— *Privy Council Practice of—Reports of Deputy Collectors at local investigations* —Unless there be very good grounds for dissenting and differing from the reports made by the Deputy Collectors upon local investigations the Courts even in India and *à fortiori* the Courts in England in dealing with boundary questions ought to give great weight to them and to be guided by them The Privy Council will never interfere with the finding of an Indian Court upon a question of boundary unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands and make it the ground for an order reversing or varying the decree RAM GOPAL ROY *v* GORDON STUART & Co

[17 W R 285 14 Moore s I. A. 453

5 ——— Ascertaining and defining boundaries —The appellant having obtained a decree in 1854 declaring him entitled to erect boundary pillars according to a certain khusrah —*Held* that it was now a work of great difficulty to ascertain and define the boundaries and that the Court in executing that decree was not precluded from taking into consideration other decrees between the same parties not as contradicting or altering that khusrah but as explaining and supporting the views taken by the Court of what the boundaries really were according to the khusrah. RAJENDRO KISHORE SINGH *v* HYABUL SINGH 17 W R 370

BREACH OF CONDITION

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY

See LANDLORD AND TENANT—FORFEITURE —BREACH OF CONDITIONS

See WILL—CONSTRUCTION 12 B L R 1
[14 B L R 60 22 W R 377
L R 1 I A, 387

BREACH OF CONTRACT

See CASES UNDER ACT XIII OF 1859

See CASES UNDER CONTRACT—BREACH OF CONTRACT

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT

See CASES UNDER LIMITATION ACT 1877 ARTS 115 116 (1859 s 1 CLS 9 AND 10)

BREACH OF PEACE

——— Dispute likely to cause—

See CASES UNDER POSSESSION ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF PEACE

See CASES UNDER RECOGNIZANCE TO KEEP THE PEACE

——— Procession likely to cause—

See MADRAS POLICE ACT s 21
[I L R. 17 Mad 37

BREACH OF TRUST

See CASES UNDER CRIMINAL BREACH OF TRUST

See CASES UNDER CRIMINAL MISAPPROPRIATION

See LIMITATION ACT s 10
[I L R. 20 Mad 398

See PARTNERSHIP PROPERTY
[13 B L R 307 308 note 310 note

See TRUST 1 C L R 80

BREACH OF WARRANTY

See WARRANTY

BRIBE (OFFER OF) TO PUBLIC OFFICER

See ACCOMPLICE I. L. R. 14 Bom 331

BRITISH SUBJECT

See EUROPEAN BRITISH SUBJECT

See CASES UNDER JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS

——— Offence committed by, in foreign territory

See WRONGFUL CONFINEMENT
[I L R., 19 Bom., 72

BROACH ENCUMBERED ESTATES ACT (XIV OF 1877)

——— s 19— *Suit'—Application for execution of decree*—The term suit" in the last paragraph of s 19 of Act XIV of 1877 includes applications for execution of decrees BHULJI BECHAR v BAWAJI DAJI I L R 5 Bom 448

BROACH TALUKHDARS RELIEF ACT (XV OF 1871)

——— s 23—Manager of Thakoor's estate—*Liability for damages for attachment in execution*—The Broach Talukhdars Relief Act XV of 1871 does not bar the cognizance by the Civil Court of a suit to recover the amount improperly levied a rent of rent free land and to obtain a declaration that such land is not subject to the payment of rent albeit that under s 23 of the Act the manager of a Thakoor estate is exempt from personal liability for anything done by him *bona fide* pursuant to the Act and is not subject to an action for damages on account of the attachment of the plaintiff's property ASMAL SALEMAN v COLLECTOR OF BROACH
[I. L. R 5 Bom 135

BROACH AND KAIRA ENCUMBERED ESTATES ACT (XXI OF 1881)

See PUBLIC OFFICER
[I L R 14 Bom, 395

BROKER

See CONTRACT—WAGERING CONTRACTS
[I L R 22 Bom 899

1. ——— Position and rights of broker —*Agent—Right to commission—Claim of brokerage from both vendor and vendee—Vendor and purchaser*—A broker is entitled to his commission if the relation of buyer and seller is really brought about by him although the actual sale has not been effected by him A broker is entitled to his commission where he has induced in the vendor the contracting mind the willingness to open negotiations upon a reasonable basis even though a change or modification of the terms of the contract is made by the buyer and seller without his intervention A broker sued the Municipality of Bombay for brokerage in respect of lands purchased by them. *Held* that if during the time that the broker was negotiating with the vendor the latter was induced to consent to the sale the broker was entitled to his brokerage It was not material to inquire what operated upon the mind of the vendor and whether it was the advice of friends or the knowledge that his land could be acquired compulsorily or the persuasions of the broker It was sufficient to support the broker's claim if the vendor's acceptance of the terms was brought about during his intervention; and the fact that the Municipal Commissioner stepped in at the last moment and himself actually struck the bargain did not deprive the broker of his brokerage Primarily a broker is merely the agent of the party by whom he is originally employed. To make the other side liable to pay him brokerage it must be

BROKER—*concluded*

shown that he has been employed by such party to act for him or that in the contract he has agreed to pay brokerage MUNICIPAL CORPORATION OF BOMBAY v CUVERJI HIRJI MOTLIBAI v CUVERJI HIRJI I L R, 20 Bom 124

2 ——— Suit for brokerage—*Contract effected by broker not carried out by purchaser—Quantum meruit*—The plaintiff was employed by the defendants as broker to sell certain property The defendants letter dated 3rd January 1895 engaging him as broker stated as follows — It is understood that the brokerage will be paid on receipt by us of the money and that this transaction is to be completed within a fortnight from date The plaintiff negotiated with one Pestonji Patel and his brother who eventually agreed to become purchasers but stipulated for four or five months within which to pay the purchase money On the 1st February 1895 the defendants through the plaintiff finally closed the contract with the purchasers one of the terms of which provided that R10 000 should be paid immediately as earnest and the balance (R–,000) of the purchase money to be paid within four months. The purchasers were however unable to pay the R10 000 earnest money and they handed to the defendants three Bank of Bombay shares as security for the performance of the contract One of the purchasers shortly afterwards died the defendants apparently abandoned the idea of enforcing the contract, and at the end of the year they returned to the purchaser's family two of the Bank of Bombay shares having (as they alleged) sold the third to defray the expenses which they had incurred in connection with the transaction The plaintiff sued to recover R1 00 as brokerage from the defendants. *Held* that under the circumstances the plaintiff was not entitled to recover the R1 00 but only to a *quantum meruit* there being no previous agreement as to the time when the brokerage was to be paid; and that he was only entitled to a percentage (5 per cent.) on the value of the shares which had been actually received by the defendants Part of the business for which the plaintiff was employed was to find a solvent purchaser STOKES v SOONDERNATH KHOTE
[I. L R. 23 Bom., 540

BROTHER

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—NEPHEW
[I. L. R., 2 Calc., 379

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—SISTER

BROTHERS OF THE HALF BLOOD

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—HALF BLOOD RELATIONS

BUDDHIST LAW

See BURMESE LAW—DIVORCE
[I. L. R., 19 Calc., 469

BUILDING

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDING AND HOUSE MATERIALS I. L. R. 21 Bom. 583

— — Completion of—

See BOMBAY MUNICIPAL ACT s 353 [I. L. R 19 Bom 372

——— occupied for charitable purposes
See BOMBAY MUNICIPAL ACT 1888 ss 143 144 I. L R 16 Bom. 217

BUILDING LEASE.

——— Party wall Liability for cost of—*Agreement to refer disputes to a third person—Effect of such agreement on the right to sue—Award of such third person essential to right of action—Surveyor's certificate—Limitation—Covenant—Right to sue—Stranger to consideration—Landlord and tenant* —The plaintiff sued to recover from the defendant half the cost of a party wall The plaintiff and defendants were lessees of adjoining pieces of land under agreements made between them respectively and the Secretary of State for India in Council as lessor The terms and conditions of the two agreements were the same By these agreements the plaintiff and defendant respectively agreed to build houses upon the said pieces of land in the manner therein specified, and the agreements contained the two following clauses —(1) " The buildings to be continuous with party walls common to both adjoining houses (2) All disputes regarding the cost and maintenance of party walls to be decided by the Government surveyor whose decision shall be binding on both parties In pursuance of the said agreements the plaintiff and defendants respectively erected buildings on the said pieces of land. The plaintiff caused the northern wall of his building to be built as a party wall and it was used by the defendants as the southern wall of the building erected by them The defendants paid the builder who was employed by the plaintiff a sum of R700 on account of the cost of erecting the party wall but the rest of the cost was defrayed by the plaintiff The party wall was completed in November 1871 but in consequence of disputes which arose between the plaintiff and the building contractor the sum payable to the latter was not ascertained for some years. In March 18 9 the plaintiff caused the party wall to be measured by a surveyor and on the th June 1879 demanded from the defendants payment of half the cost The defendants however failing to pay the sum demanded the plaintiff after notice to the defendants caused the cost of the said party wall to be ascertained by the Government surveyor who by a certificate dated the 2 th February 188_ certified that the share of the cost to be borne by the defendants for the said party wall was R 22 The plaintiff in this action sought to recover this sum from the defendants minus the R700 which as above stated the defendants had already paid and for which the plaintiff gave them credit The defendants in their written statement alleged that the party wall had been partly built with materials supplied by them and

BUILDING LEASE—*concluded*

that in the year 18 0 they had adjusted accounts with the plaintiff in respect of the said materials and the said party wall and it was then agreed that the sum of R CO paid by the defendants should be treated as a final settlement They also alleged that the plaintiff had settled disputes with the building contractors and had only paid them three annas in the rupee on the amount of their claim in full satisfaction the defendants pleaded that they ought not to be charged with more than their due proportion of such reduced amount It was further contended for the defendants that their obligation to pay half the cost of the party wall existed independently of the arrangement between them and the plaintiff to refer the matter to the Government surveyor that this latter covenant was only collateral and did not interfere with the plaintiff's right to sue the defendants for their half share of the cost that the plaintiff s cause of action in this respect arose on the 1 th October 18 8 when the contractor's claim was finally settled and that this suit not having been brought for more than three years after that date it was barred by limitation *Held* that the suit was not barred There was no right of action independently of the valuation and award of the Government surveyor There was no separate covenant to pay compensation to which the covenant for reference to the Government surveyor could be collateral The rights of the parties were defined by the contracts and under these each lessee might have the benefit of a party wall on such terms and no others as he on his part submitted to Payment of a share of the cost was not one of these terms except in so far as each lessee if a dispute arose was bound by the decision of a Government surveyor That decision was not ancillary serving to give greater explicitness to a right already fully subsisting It was essential to the right itself and until it was made no cause of action for the moiety of the cost arose Where in leases granted by one lessor to several lessees taking sites for buildings intended to be contiguous and to form one block or group in mutual relation there is a common covenant which is an inducement to the lessee to take the lease and which he must know is equally an inducement to his neighbour to take his lease neither can be called a stranger to the consideration Each may be regarded as an equitable assignee of the covenants which the lessor made for his benefit as lessee Each consequently has an equitable right to enforce against the other the obligation stipulated for in his interest and serving as a part of his inducement (as the other knew) to the contract. COOVERJI LUDDHA v BHIMJI GIRDHAR [I L R. 6 Bom 523

See COVERJI LUDDHA v MORARJI PUNJA [I. L. R. 9 Bom 183

BUILDING ON LAND WITHOUT TITLE

——— Right of person building to compensation—*Bonâ fide belief of title* —Where a man builds on land belonging to another he will not when ejected be allowed any compensation for the buildings unless the circumstances show that he built

BUILDING ON LAND WITHOUT TITLE—*concluded*

in good faith believing the land to be his own *Bani Madhub Das* v *Ramjoy Bokh* 1 B L R A C 213 *Rama* v *Jan Mahomed* 3 B L R A C 18 *Bromo Moye Debea* v *Koomoodinee Kant Banerjee* 17 W R 467 and *Banee Madhub Banerjee* v *Jai Krishna Mookerjee* 7 B L R 152 12 W R 495 FURZAND ALI KHAN v AKA ALI MAHOMED

[3 C L R, 194

See WAHADOOLLAH v GOLAM AKBUR

[25 W R, 205

BUILDING ERECTED BY ADJOINING OWNERS

———— **Liability of adjoining owners for costs of party wall**—*Agreements for building—Decision of Government surveyor made final in case of dispute—Right of suit—Right of one owner over portion of party wall not used or built on by the other* —Under separate agreements made by them respectively with Government the plaintiff and defendant held adjoining plots of land for building The agreements contained the same terms and stipulations among which were the following — (*a*) The buildings to be continuous with party walls common to both adjoining houses (*b*) All disputes regarding the cost and maintenance of party walls to be decided by the Government surveyor whose decision shall be binding on both parties The plaintiff employed a contractor to erect a house upon his plot of land The house was completed in 1870 the north wall of which was built as a party wall in pursuance of the condition contained in the agreement with Government Disputes subsequently arose between the plaintiff and his contractor which were not settled until the 26th August 1878 on which date the plaintiff paid the contractor a sum of R20 51 -4-11 which included the cost of the party wall After the plaintiff s house had been completed the defendant built his house upon the adjoining land and in so doing he used a large portion of the party wall as the southern wall of his house He paid the plaintiff half the cost of the portion so used by him The rear portion of the said wall was not used by the defendant as his house did not extend as far to the rear as the house of the plaintiff The plaintiff demanded payment of half the cost of that part of the wall not used by the defendants but the defendants refused to pay The plaintiff then claimed that part of the wall as his own property and proceeded to open windows in it The defendants objected The plaintiff subsequently filed the present suit claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants and in the event of such payment not being awarded he prayed for a declaration that he was the sole owner of the said portion of the wall and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof The brother (Khatav Luddha) of the first defendant was originally made the second defendant of the suit He however disclaimed all interest in the premises and it appeared that in 1870 the first defendant had sold the property to him (Khatav Luddha) who in 1879 sold it to Kesserbai the first defendant s wife Kesserbai accordingly was made the second

BUILDING ERECTED BY ADJOINING OWNERS—*continued*

defendant in the place of Khatav Luddha Both the defendants pleaded limitation and denied their liability to pay any part of the cost of that part of the wall which they did not use The first defendant further alleged that he had paid the whole cost of the foundation and other parts of the said wall and claimed to set off this payment against the claim of the plaintiff. At the original hearing SCOTT J held (1) that the part of the wall in dispute although not used by the defendants was a party wall having regard to the terms of the agreement under which the said wall was erected (2) that Kesserbai was liable equally with the first defendant to pay for this part of the wall having purchased the property subject to the terms of the original agreement of which she presumably had notice (3) that the suit was not barred but that there was no right of action for the cost of the party wall independently of the award of the Government surveyor in whose decision lay all disputes as to such cost and that until his decision was given there was no complete cause of action SCOTT J accordingly on 11th December 1882 decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall and that the defendants were entitled to set off in the calculation of what was due from them the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant The case was thereupon adjourned in order that the certificate of the Government surveyor might be obtained. The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall but stated that on the evidence before him he was unable to decide as to the ownership of the foundations etc of the wall The case came on again before SCOTT J who decided to take evidence on the points left undetermined by the Government surveyor Witnesses were accordingly examined and on 11th December 1883 the Court disallowed the defendant s claim of set-off and gave judgment for the plaintiff for half the sum certified by the Government surveyor as the cost of the disputed part of the wall The defendants appealed *Held* that having regard to the terms of the agreements under which the plaintiff and defendants respectively held their property the Court was not competent to determine the question of the defendant s set off or the other points raised by the pleadings These were matters to be decided by the Government surveyor whose certificate was a condition precedent to the plaintiff s right to sue and upon which the Court might give judgment *Held* also that the plaintiff was not entitled to use the portion of the wall not occupied by the defendants in any way except as a party wall It was erected under the agreement as a party wall and that it should be used for a purpose inconsistent with the idea of its being a party wall would be opposed to the true intention of the parties to the agreement whether Government or the lessees. The plaintiff was not entitled to the full right of ownership over it as if it had been built on his own ground: the declaration and injunction asked for therefore were refused. COWASJI LUDDHA v MORARJI PURSA

[I L R 9 Bom, 183

BUILDING ERECTED BY ADJOINING OWNERS—*concluded*

See COOVERJI LUDDHA *v* BHIMJI GIRDHAR [I. L R., 6 Bom 528

BUILDINGS

——— Erection of—

See CASES UNDER ACQUIESCENCE [I. L. R. 1 All 82

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 33 I. L. R 18 Bom 547 [I. L. R. 19 Bom 27 I. L. R. 21 Bom 187

See BOMBAY SURVEY AND SETTLEMENT ACT 1865 ss 35 48—ENJOYMENT OF JOINT PROPERTY [I. L. R. 1 Bom. 352

See CO SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS

See IMPROVEMENTS 25 W R. 205 [3 C L R 194

See CASES UNDER LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS

See CASE UNDER LANDLORD AND TENANT—BUILDINGS ON LAND—RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS

See MISCHIEF I. L. R. 3 Calc 573

See POSSESSION ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION [I. L R 3 Calc 573 I L R 7 Mad 460

——— Repair of—

See MADRAS DISTRICT MUNICIPALITIES ACT s 179 I. L R 19 Mad 241

——— Right to removal of—

See CASES UNDER CO SHARERS—ERECTION OF BUILDINGS—ENJOYMENT OF JOINT PROPERTY

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

See CASES UNDER PRESCRIPTION—EASEMENTS—LIGHT AND AIR

BULAHAR OFFICE OF—

——— Nature of office—*Power of zamindar to dismiss officer*—The office of a bulahar is an office held only during the zamindar's pleasure and the person holding such an office is removeable by the zamindar SUNOO KHAN *v* OODEA 2 Agra 140

BULL

——— Definition of—

See PENAL CODE s 429 [I L R 22 Calc 457

BULL—*concluded*

——— set at large in accordance with Hindu religious usage

See RELIGION OFFENCES RELATING TO [I. L R 17 Calc 852

See THEFT I L R 17 Calc 852

BUNKUR RIGHT OF—

——— Proprietorhip on the soil—The right of bunkur (a right of cutting wood) is a right indicative of a certain dominion over the soil SEELANUND SING *v* MOHESHUR SINGH [3 W R P C 19 10 Moore s I A 81

BURIAL GROUND

See RIGHT OF SUIT—CHARITIES AND TRUSTS I L R, 21 All 187

——— Prohibiting use of—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s 381 [I L R 25 Calc 492 2 C W N 145

——— Trespass on—

See RELIGION OFFENCES RELATING TO [I L R 18 All 395

BURMA CIVIL COURTS ACT (XVII OF 1875)

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT [I. L R 4 Calc 667

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I. L. R. 10 Calc 643

——— s 4—*Buddhist law of marriage in British Burma—Wife s claim upon husband for maintenance*—By the Buddhist law of marriage as administered in the Courts of British Burma it is the duty of the husband to provide subsistence for his wife and to furnish her with suitable clothes and ornaments. If he fails to do so he is liable to pay debts contracted by her for necessaries but it appears that this law would not be applicable where she has sufficient means *of her own* *No authority* has been found for saying that, where the wife has maintained herself she can sue her husband for maintenance for the period during which she has done so A wife married according to Burmese rights and customs claimed from her husband in a Court in British Burma a certain sum for her expenses of necessaries and living for a past period during which she had maintained herself *Held* that this was a question regarding marriage within the meaning of the Burma Courts Act XVII of 1875 s 4 and that therefore the Buddhist law formed the rule of decision The law as stated above was accordingly applicable *Semble*—That if this had been a case in which by the above Act a Court would have had to act according to the rule of justice equity and good conscience *there would have been no ground for*

CALCUTTA MUNICIPAL ACTS (VI OF 1863 AND IV OF 1876)—*continued*

of Justices—Procedure —The Chairman of the Justices of Calcutta on the complaint of the Health Officer issued a warrant for the seizure of certain articles of food and without notice to the owners or reducing the proceedings to writing condemned them as unfit for use In support of a rule *nisi* for a *certiorari* for bringing up the order that it might be quashed it was argued that the Chairman had not as such jurisdiction to make the order and that it was invalid as notice had not been given and the proceedings had not been reduced to writing Cause was shown that the description of the Chairman was immaterial as he was also a Justice of the Peace and that such summary proceedings were necessary for the public safety *Held* that the Act does not empower the Chairman of the Justices as such to issue a warrant under the 200th section that such a warrant must show on the fact of it that the Justice issuing it had jurisdiction that the application under s 200 must be reduced to writing that the evidence taken therefrom must be recorded and that notice must be given to the party proceeded against DAY & CO *v* JUSTICES FOR THE TOWN OF CALCUTTA Bourke, O C 232

——— s 226—*Suit against Justices for damage in repairing drains—Contractors—Negligence—Cause of action—Notice of action* —In a suit for alleged damage done to the plaintiff s premises by excavations for drainage purposes which the Justices are authorized to make by Bengal Act VI of 1863 it being shown that the Justices had entrusted the execution of the work to skilled and competent contractors —*Held* the Justices were not liable In such a suit no cause of action will be allowed to be raised except that disclosed in the notice of action required to be given to the Justices by s 226 of the Act ULLMAN *v* JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA [8 B L R 265

——— Bengal Act IV of 1876

See RIGHT OF WAY

[I. L. R. 13 Cal. 136

——— ss 75-79

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I L R 2 Calc 290

——— ss 75 77 79—*Evidence, Refusal to hear—Finality of assessment—High Court s Criminal Procedure Act (X of 1875) s 147* —*A* alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV of 1876, was summoned at the instance of the Corporation by *B* a servant of the Corporation and also a Justice of the Peace The case was subsequently heard by B and it was shown that notice of the assessment under class II sch 3 had been duly served on *A* and that though he then denied his liability to take out any license and stated that he carried on no business as alleged h had not appealed against the assessment under s 79 It was further shown that the assessment had been confirmed by the Chairman of the Corporation but that the amount had not been paid *A* thereupon tendered evidence to show that he was not liable to take out any license but B refused to hear such evidence and convicting *A* sentenced him to pay a fine On an application under the above circumstances to the High Court under s 147 Act X of 1875 —*Held* that the finality of the decision of the Chairman referred to in s 79 has only reference to the class under which a particular person who is admittedly bound to take out a license under s 75 should be assessed and not to the case where the liability to take out a license at all is denied this being a question which can only be determined judicially after taking evidence by a competent Court in a prosecution under s 77 and that therefore the refusal of *B* to hear the evidence tendered by *A* on this point was illegal WOOD *v* CORPORATION OF THE TOWN OF CALCUTTA [I L R 7 Calc, 322 9 C L R 193

——— s 77—*License—Assessment—Fine—Boarding house keeper* —In order to obtain a conviction under s 77 Bengal Act IV of 1876 for keeping a boarding house without taking out a license it must be shown that the accused held himself out to the public as one whose business or profession it is to receive boarders for profit In order to pass a proper sentence of fine under s 77 Bengal Act IV of 1876 evidence should be given of the amount of assessment on the accused s house or place of business and of the amount payable on account of the license which the accused should *have taken out* IN THE MATTER OF THE PETITION OF WOOD WOOD *v* CORPORATION FOR THE TOWN OF CALCUTTA [I L R 8 Calc 891 11 C L R., 357

——— s 88—*Municipal Commissioners Jurisdiction of—Assessment—House rate—Annual value* —*Per* WILSON *J* —The words annual value' in s 88 of the Municipal Act must be taken to mean annual letting value NUNDO LAL BOSE *v* CORPORATION FOR THE TOWN OF CALCUTTA [I L R. 11 Calc 275

——— s 104 and s 88—*Construction of s 104* —*Per* WILSON *J* —*Quare*—Whether s. 104 of the Act is in the nature of an interpretation clause or merely directory as containing instructions to the Commissioners how to proceed when exercising the jurisdiction conferred by s 88 NUNDO LAL BOSE *v* CORPORATION FOR THE TOWN OF CALCUTTA [I L R 11 Calc 275

——— s 117

See CERTIORARI I. L. R. 11 Calc., 275

——— ss 189, 191, 213 252

See MUNICIPAL COMMISSIONERS [I. L. R. 10 Calc. 445

——— s 248—*Conviction for keep of animals without license—Continuing offence between date of summons and date of conviction—Second prosecution for same offence on different date before conviction* —Under s 248 of Bengal Act IV of 1876 a milkman who has been convicted and fined for keeping an animal without a license cannot

CALCUTTA MUNICIPAL ACTS (VI OF 1863 AND IV OF 1876)—*concluded*

again be prosecuted for the continuance of the same offence before conviction nor can he be separately prosecuted for the same offence for each day the offence is continued as a separate and distinct offence under that section before conviction In a summons taken out on the 27th March against a milkman for an offence under s. 248 Bengal Act IV of 1876 the offence was stated to have been committed on the 16th March the case was fixed for the 8th April when the defendant was convicted and fined by the Magistrate Another summons had been taken out against him on the same day (27th March) for a similar offence stated to have been committed on the 25th March *Held* that he could not be convicted on the second charge IN THE MATTER OF THE CORPORATION FOR THE TOWN OF CALCUTTA v MATOO BEWAH I. L. R 13 Calc 108

——— ss 280 281 282

See CALCUTTA MUNICIPAL CONSOLIDATION ACT 1888 s 2
[I. L R, 21 Calc 528

——— s 357—*Limitation—Accrual of right to sue—Suit for damages—Notice in writing—Continuing damage*—The plaintiff in April 1888 sued the defendants for damages for injuries caused by the defendants works to his house On the case coming on for hearing it appeared that the notice of action served upon the defendants was defective in form and the suit was on the 11th December 1888 dismissed with liberty to the plaintiff to bring a fresh suit on the same cause of action On the 15th December 1888 the plaintiff served the defendants with a fresh notice and on the 15th March 1889 instituted the present suit It appeared from the plaintiff s evidence that in the beginning of December 1888 the house had been reduced to such a condition that it was incapable of sustaining further damage *Held* that the right to sue accrued to the plaintiff upon the happening of damage by reason of the subsidence arising from the defendants' act; that the plaintiff had not shown that a right to sue upon which the suit could be maintained had accrued within three months before the institution of the suit as required by s 357 of the Municipal Act (Bengal Act IV of 1876) and within the terms of the notice of the 15th December; and that the suit was therefore barred. *Darley Main Colliery Co v Mitchell L R 11 Ap Ca 127: L R 14 Q B D 125* distinguished *Per* PIGOT J—*Semble* that as to whether under s 357 damage arising out of a subsidence referred to in the notice but arising after the date of the notice could be recovered without fresh notice and fresh suit a liberal construction should be placed upon s 357 as to the requirements of the notice DWARKA NATH GUPTO v CORPORATION OF CALCUTTA
[I L R 18 Calc 91

CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)

——— s 2 and ss 252 256 257 265 —*Calcutta Municipal Act (Bengal Act IV of 1876) ss 280 281 282—Busti land—Urgency—Trespass—Suit for damages*—S 2 para 5 of Bengal Act II of 1888 the Calcutta Municipal Consolidation Act by which Act the former Calcutta Municipal Act (Bengal Act IV of 1876) is repealed provides that pending proceedings which may have been commenced under any repealed Act shall be deemed to have been *commenced* under the new Act; but though commenced before the passing of the new Act they must to be effectual be continued under its provisions and can only be used to enforce rights and powers in existence at the time when it is sought to enforce them Where therefore before the passing of Act II of 1888 and whilst Act IV of 1876 was in force the municipality took measures under the latter Act to cleanse busti land which was in an insanitary state and notwithstanding the passing of Act II of 1888 which provided totally different preliminaries and procedure for the purpose continued the improvements practically under the Act of 1876—*Held* that even if the proceedings could be considered under s 2 of Act II of 1888 to have been commenced under the new Act the action of the municipality amounted to trespass for which they were liable in damages to the owner of the land CORPORATION OF CALCUTTA v JADU LALL MULLICK
[I L R 21 Calc 528

——— s 3

See BENGAL TENANCY ACT
[I. L R 27 Calc, 202

1. ——— s 31 and ss 24 25—*Municipal election—Joint family representation for voting purposes—Judicial discretion of Chairman as to list of candidates—Franchise*—S 31 of Bengal Act II of 1888 does not impose on the Chairman of the Municipality the duty of exercising any judicial discretion or taking any judicial action with regard to the list of candidates prepared under that section. In this case therefore a rule which had been granted on the application of one of the candidates calling on the Chairman to show cause why the name of another of the said candidates should not be removed from the list he being merely the manager appointed to vote on behalf of a joint family under s 24 and not qualified to be elected as a Commissioner was discharged by TREVELYAN J IN THE MATTER OF MUTTY LAL GHOSE I L. R, 19 Calc 192

2 ——— and ss 11 12.—In a case in 1882 in which a similar rule had been granted calling on the Chairman of the Municipality to show cause why the name *R J M* should not be expunged from the list of candidates for election as Municipal Commissioners he being merely the manager and trustee of certain debutter property having no beneficial interest in such property and being ineligible for election as a Commissioner as not coming under s 11 or 12 of the Municipal Act NORRIS J made the rule absolute and directed the Chairman to expunge the name from the list of candidates. IN THE MATTER OF RAJENDRA LALL MITTER
[I. L. R., 19 Calc 195 note

3 ——— and ss 8 24 25—In another case in 1889 where a rule had been granted calling on the Chairman to show cause why he should

CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—*continued*

not forbear from counting certain votes given in favour of *R B D* one of the candidates at a municipal election which votes were those of persons who were merely agents appointed under ss 24 and 25 of the Act by joint families or firms to vote on the ground that they possessed none of the qualifications required by s 8 and were not members of such joint families or firms and therefore had no right to vote —NORRIS J whilst thinking that the Legislature intended that a joint family or firm should be represented by one of their own members and that the omission so to provide was one which might well be taken into consideration by the Legislature *held* that he could not put an interpretation on the Act which would involve the addition to the Act of words which the Legislature had left out and therefore discharged the rule IN THE MATTER OF THE ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD NO 10 CALCUTTA

[I. L R., 19 Calc 198

4 ——————— and ss 8 19 20 21 22 and 23—*Specific Relief Act (I of 1877) s 45—Municipal election—Municipal Commissioner Election of—List of voters—Chairman Jurisdiction of—Quo warranto—High Court Jurisdiction of—Rules of Local Government* —There is nothing in the Calcutta Municipal Act (Bengal Act II of 1888) or in the Local Government rules issued under s 19 of the Act which requires that the name of a candidate or of the proposer seconder or approver of a candidate at a municipal election should be published in the revised list of voters. Ss 20 and 23 of the Act only lay down rules applicable to voters they do not control the qualifications of proposers seconders or approvers *Semble*—The High Court has jurisdiction by proceeding in the nature of a *quo warranto* to restrain a person who has not been duly elected from exercising the functions of a duly elected Commissioner The Chairman has no judicial discretion in preparing the list of candidates *In the matter of Mutty Lall Ghose I L R 19 Calc 192* approved Under s 31 of the Act every candidate for election must send in his name to the Chairman not less than seven days before the day fixed for election together with the names of his proposer seconder and approvers. The Chairman has no power to waive this rule Where there is a *prima facie* compliance with s 31 of the Act the Chairman has no power to go further and determine questions affecting the status of persons claiming to be candidates. The Chairman can only revise the original list of voters in the manner laid down by s 2– or on applications made under s 21 or in pursuance of an order from the Presidency Magistrate under s. 23 The issue of a supplementary list of voters is not sanctioned by the Act A definition of the term voter with necessary qualifications is given in s 8 of the Act There is nothing in the Act preventing a person qualified to vote under s 8 from voting although his name does not appear on the revised list of voters. The only prohibition is that found in the Local Government rules issued under s. 19 of the Act. IN THE MATTER OF CORNHILL

[I L. R. 22 Calc 717

CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—*continued*

1. ——————— s 87 and sch. II—*Insurance Companies registered in England and carrying on business through agents in Calcutta Liability of to pay the municipal license tax* —The Standard Marine Insurance Company being an insurance company which is registered in England and carries on insurance business through the agency of a firm of general merchants in Calcutta is not liable to pay the license tax imposed by s 87 and the second schedule of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888) The business of insurance is not one of the occupations mentioned in the second schedule of the Act and s 87 only imposes the tax upon persons who exercise some or one of the professions trades or callings mentioned in that schedule. The words of the section limit its operation to "persons" which expression includes joint stock companies who exercise the particular occupations prescribed in the schedule The Standard Marine Insurance Company is not liable to be taxed as keepers of a place of business under class VI of the second schedule of the above Act because its business is carried on in Calcutta by its agents at their own offices and the Company has no place of business of its own at all in Calcutta CORPORATION OF CALCUTTA v STANDARD MARINE INSURANCE COMPANY I. L R., 22 Calc 581

2 ——————— Rule 7 cl. (6)—*License tax—Liability to tax of Company carrying on business through agents in Calcutta and not having a registered place of business* —A joint stock company carrying on money lending business through agents in Calcutta where it has no registered place of business is liable to pay license tax under s. 87 and sch II of the Calcutta Municipal Act of 1888 *Corporation of Calcutta v Standard Marine Insurance Company I L R 22 Calc 581* distinguished. CORPORATION OF CALCUTTA v EASTERN MORTGAGE AGENCY CO

[I. L. R., 25 Calc. 483
2 C W N 328

——————— ss 117 and 119

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MUNICIPAL TAX

[I L R 23 Calc 835

——————— ss 135 157—"*Valuation*" *Meaning of—Revaluation made by the Municipality within six years from the date of the valuation made after hearing objection Legality of—Provincial Small Cause Courts Act (IX of 1887) s 25—Code of Civil Procedure (Act XIV of 1882) s 622—Stat 24 & 25 Vic c 104 s 15—Superintendence of High Court*—The word "valuation" in s 135 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888) means not "the amount of the valuation" only but also the process or act of valuation. A valuation was made by the Calcutta Municipality of a holding the ratepayer objected to the amount and the Vice-Chairman of the Municipality on hearing the objection fixed the valuation at a certain amount Within six years from this valuation fixed after objection a revaluation was made by the municipality and the ra[te]

CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—*continued*

payer objected to the legality of such valuation on the ground that the municipality had no power to make a re valuation within six years from the date of the last valuation The Vice Chairman overruled the objection and the rate-payer appealed under s 157 of the Act to the Judge of the Court of Small Causes at Sealdah who allowed the appeal *Held* that inasmuch as the objection raised by the rate payer was an objection to the valuation within the meaning of s 135 of the Act the Judge of the Small Cause Court had jurisdiction to deal with it That being so it was not open to the High Court to interfere either under s. 25 of the Provincial Small Cause Courts Act or under s. 622 of the Code of Civil Procedure, or under s 15 of 24 & 25 Vic c 104 CORPORATION OF CALCUTTA *v* BHUPATI ROY CHOWDHRY [I. L. R. 26 Calc. 74 3 C W N, 70

———— ss. 307 335 336 sch. II rule 6 —*Liability for keeping animals without license—Penalty to whom attached—Owner—Lessee* —The petitioners as owners, let out a stable on hire where ticca gharries and horses were kept by the lessee without taking out a license from the Municipal Commissioners The petitioners were convicted under ss 307 and 336 of the Calcutta Municipal Act (Bengal Act II of 1888) for having permitted offensive matters etc and animals to be kept on the premises in contravention of the provisions of s 335 of the Act *Held* that the convictions were bad the lessee alone being answerable in such a case for disregarding the provisions of the Act The penalty under s 336 of the Calcutta Municipal Act of 1888 attaches to the owner of any land for permitting any animals to be kept thereon when he has direct possession of the land, and not when he has leased it out to another ABHOY CHARAN DASS *v* MUNICIPAL WARD INSPECTOR I. L. R., 25 Calc, 625 [2 C W N 289

———— s 335—*Date of taking out license* —In a case where the owner of a cowshed delayed taking out a license under s 335 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888) until the end of the month of May and was prosecuted for keeping an unlicensed cowshed,—*Held* that under the section as it stands there is nothing to compel a licensee to take out his license before 1st June in every year AUKHOY CHANDRA HATI *v* CALCUTTA MUNICIPAL CORPORATION I. L. R, 24 Calc., 360

———— s 364—*Sale of articles of food not of the proper nature substance or quality—Mixture Usage of market with regard to—Adulteration* —Where a person is accused of selling adulterated articles of food on the evidence of a Chemical Analyst and alleges in defence that it is a mixture recognized in the market he ought to be allowed to prove his allegation So where an oil seller was prosecuted by a food inspector for selling mustard oil mixed with other kinds of oil and he succeeded in proving that what is known as mustard-oil in the market was ordinarily prepared in the same manner as the specimen analyzed the case was held to be protected under the first proviso to s 364 of the Calcutta Municipal Consolidation Act (Bengal Act I of 1888) BAISHTAB CHARAN DAS *v* UPENDRA NATH MITRA 3 C W N 66

———— ss 381 382—*Burial ground—Certificate for closing a burial ground Requisites of*—The municipal authorities issuing a certificate under the provisions of s 381 of the Calcutta Municipal Act (Bengal Act II of 1888) prohibiting the use of a burial ground must definitely specify the point of time from which the period fixed by them under that section is to run LUTFUR RAHMAN NUSKUR *v* MUNICIPAL WARD INSPECTOR CALCUTTA MUNICIPAL CORPORATION I L R 25 Calc 492

LUTFER RAHMAN NASKAR *v* CALCUTTA MUNICIPAL CORPORATION 2 C W N 145

CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888)—*concluded*

———— s 412 and ss 417, 419—*Bye-laws (C) 4 6 7—Permit for removal of offensive matter or rubbish—Failure to take out permit—Continuation of offence* —Where a milkman who had been convicted for not taking out before the 1st December 1891 a half yearly permit for the half year ending the 31st March 1892 in accordance with bye laws (C) 4 6 made by the Municipal Commissioners of Calcutta under the provisions of s 412 of Bengal Act II of 1888 and was charged with continuing his offence by failing for the space of seven days subsequent to the said conviction to take out the permit whilst still carrying on his business of a milkman —*Held* that the offence of which he had been convicted of not taking out a permit on or before 1st December 1891 which was complete when that day had passed could not be continued by his omission to take out a permit *Quære*—Whether it is competent for the Municipal Commissioners by the bye laws made under s 412 to create the duty or obligation of taking out a permit and whether under s 417 disobedience to such bye laws constitutes a punishable offence CORPORATION OF CALCUTTA *v* JADUB DOOLEY I. L R. 22 Calc, 605

CALCUTTA POLICE ACT (IV OF 1866)

———— s 5 and s 46—*Deputy Commissioner of Police Powers of—Search warrants in gaming cases* —A Deputy Commissioner of Police appointed under s 5 of the Calcutta Police Act has all the powers of the Commissioner of Police subject to the control of that officer that is to say the Commissioner may at any time set aside any of his orders, or he may give either in writing or verbally or otherwise any special direction with regard to any matter Apart from such special direction however any act of a Deputy Commissioner provided it be within the powers of the Commissioner is valid and no instructions either in writing or otherwise, or general or in regard to specific acts are necessary to render such act valid. A Deputy Commissioner has power to issue search warrants under s. 46 of the Act FORSYTH *v* WILSON I L. R 20 Calc 670

———— ss 36 37, 39 40

See OPIUM 13 C L R 336

CAMP FOLLOWERS

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MILITARY MEN
[2 B L R, S N, 7

CANARA FOREST RULES 7, 12 AND 23

See MADRAS FOREST ACT s 26
[I L R, 13 Mad 21

CANDIDATE FOR DEGREE AT UNIVERSITY

See BOMBAY UNIVERSITY ACT
[I L R 23 Bom, 405

CANTONMENT

1 ——— Grant of land for building purposes—*Right of Government to eject grantee—Regulations and orders for the Bengal Army—Alluvial land—Assessment of rent*—Certain ground situate within the limits of a cantonment was granted for building purposes by the military authorities in 1802 In June 1873 such cantonment was abandoned and the ground comprised therein was made over to the Collector of the district in which it was situate The Government subsequently sued *P* who had succeeded to such grant claiming (i) a declaration of its proprietary right to the ground comprised in such grant and to the alluvial accretions to such ground (ii) that *P* should be directed to pay rents for such ground and such alluvial accretions and (iii) that should *P* refuse to pay the rents fixed she might be ejected and the Government put in possession *Held* that inasmuch as under the Military Regulations relating to such grants such a grant cannot be resumed by the Government without a month s notice and without payment of the value of any buildings which may have been authorized to be erected and as the Civil Court had no jurisdiction in the matter of assessing rent on such alluvial accretions which were outside the original grant the Government was not entitled to the second and third reliefs it claimed but was entitled only to a declaration of its proprietary title to such ground and to such alluvial accretions PATTERSON *v* SECRETARY OF STATE FOR INDIA
[I L R 3 All 669

2 ——— Grant of land by military authorities for building purposes—*Resumption of land by civil authorities—Assignment of profits of the land to municipal Committee—Liability of grantee to pay ground rent—Refusal of grantee to pay ground rent to municipality—Suit by the Secretary of State for India for declaration of title and assessment of rent—Cause of action—Jurisdiction of Civil Court—Right of grantee to compensation in case of ejectment*—Certain land situate within the limits of a cantonment was granted free of rent for building purposes by the military authorities. Under the Military Regulations relating to such grants such a grant could not be resumed by the Government without a month s notice and without the payment of the value of such buildings which

CANTONMENT—*concluded*

might have been authorized to be erected. The land was subsequently resumed by the civil authorities, and the land being within municipal limits the ground rents on it were assigned to the municipality The Municipal Committee having demanded ground rent in respect of the buildings erected on such land under such grant from the representative in title of the original grantee and the latter having refused to pay the same or to vacate the land the Secretary of State for India in Council sued him in the Civil Court for a declaration of proprietary right to the land for its assessment to ground rent and in the event of the refusal of the defendant to pay such rent when fixed for his ejectment therefrom and for mesne profits of the land for six years The cause of action was stated in the plaint to be the refusal of the defendant to pay ground rent or to accept a lease or to surrender the land after a notice to that effect had been issued to him by the Municipal Committee as the plaintiff s agents. *Held* that the Municipal Committee were the plaintiff's duly authorized agents to lease and obtain rent for the land occupied by the defendant s buildings with their compounds that such notice was properly issued in that character on behalf of the plaintiff; and that the defendant s subsequent refusal to pay rent or to accept a lease or evacuate the premises amounted to a sufficient denial of the plaintiff's title to afford him a good cause of action that assuming that no agreement to pay rent existed the plaintiff was entitled to demand and recover reasonable compensation for the use and occupation of the land by the defendant that the suit was maintainable in the Civil Court and it had power to grant the plaintiff the reliefs sought; that by the conditions of the grant by the military authorities the plaintiff was not disqualified from demanding ground rent for the land before he had paid the defendant the value of the buildings but that looking to those conditions it would not be fair or equitable to grant the plaintiff a decree pure and simple for the ejectment of the defendant but he should be put under the condition that if in case of the defendant s refusal to pay the rent fixed he desired to eject him the value of the buildings as cantonment residences must first be determined and when determined must be tendered to the defendant and if the latter refused to accept it the plaintiff would then be entitled to eject him. SECRETARY OF STATE FOR INDIA *v* JAGAN PRASAD
[I L R 6 All 148

3 ——— Right of military authorities to quarter troops in houses belonging to private individuals in cantonments—*Military Regulations*—The military authorities have no right to appropriate to their own uses houses the property of private individuals in cantonments except subject to the conditions prescribed by the Military Regulations on the faith of which the houses were built or purchased *Held* by the Appellate Court that when a person was in the occupation of a house in cantonments he could not be ejected without due notice CAREY *v* ROBINSON
[1 Ind Jur, N S, 88; Bourke O C 393
S C in the Court below Cor, 137

CANTONMENT MAGISTRATE

1. ——— Jurisdiction—*Act III of 1859 s 1—European Brit sh subject* —A European British subject n t bel nging to r connected with the army wh r sides within a cant nment was amenable to the jurisdicti n of a Cantonment J int Magistrate und r s 1 f Act III of 1859 SHAPURJI JEHANGIR v MORGAN [4 Bom, A. C 187

2. ——— *Small Cause Court Act XI of 1865 ss 12 and 8—Act III of 1859* —A plaintiff may sue in the Court of the Cantonment Magistrate although he is not carrying on business or resident within the limits of the military cantonment. If a defendant is amenable to the Articles of War contemplated by s 4 of Act III of 1859 he can only be sued in the C urt of the Cantonment Magistrate but in all other cases a defendant may also be sued in the Court of th Subordinate Judge provided the cause of acti n arose within his jurisdiction SUNDARDAS JAGJIVANDAS v MOHANDAS LICUMDAS [I L. R. 9 Bom 454

3 ——— *Power to cancel license—Bengal ExciseAct (III of 1880)* —A Cantonment Magistrate in his judicial capacity has no authority to cancel a license under the Bengal Excise Act III of 1880 The power to cancel licenses belongs to the revenue auth rities QUEEN EMPRESS v RAMDHANI PASSI [I L R 15 Calc 452

4 ——— *Civil Procedure Code (Act XIV of 1882) s 15* —The plaintiff who was a m ney lender residing within the limits of the Ahmedabad Cantonment sued the defendants who resided within the jurisdiction of the City Small Cause Court at the same place upon a bond executed by them at the cantonment He presented his plaint to the Cantonment Magistrate whose pecuniary jurisdiction extended to R200 only but that officer being of opinion that the suit was cognizable by the City Small Cause Court returned it to the plaintiff who subsequently presented it to the Judge of the City Small Cause Court whose pecuniary jurisdiction extended to R500 On reference by him to the High Court —*Held* that both the Courts had jurisdiction to try the suit but that the Court of the Cantonment Magistrate was to be regarded as the Court of lower grade and therefore under s 15 of the Civil Procedure Code was the proper Court to try the suit *Dwarkanath Dutt* v *Bhatten Hawaldar 22 W R 457* followed. MOHANLAL RAICHAND v VIRA PUNJA I L R 12 Bom 169

5 ——— Madras Act I of 1866 s 22 —*General Clauses Act 1868 s 5* —S 5 of the General Clauses Act 1868 does not authorize a Cantonment Magistrate to award rigorous imprisonment in default of payment of a fine imposed under Act I of 1866 (Madras) QUEEN EMPRESS v GOUNDADU [I L R, 8 Mad 350

6 ——— Summary conviction—*Police Act (V of 1861) s 29—Complaint* —*Held* that the summary conviction and punishment of two police officers under s 29 Act V of 1861 by a Cantonment Magistrate without formal trial was irregular and illegal *Held* also that a Cantonment Magistrate has p wer to try cases under s 29 of the Police Act without complaint GOVERNMENT v GIRDHAREE LALL 1 Agra Cr 24

CANTONMENTS ACT (BOMBAY ACT III OF 1867)

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS [I L. R. 14 Bom 286

See SANCTION TO PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION [7 Bom Cr 87

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 7 Bom. Cr 87

CANTONMENTS ACT (MADRAS ACT I OF 1866)

——— Cantonment Rules ch IV, s 16—*Failure to report small pox* —Failure by a house holder to report a case of small pox in his house as directed by s 16 of Ch. IV of the Cantonment Act Rules is not punishable under Madras Act I of 1866 QUEEN EMPRESS v LALLA L L. R. 8 Mad. 428

——— s 30—*Beer— Spirituous liquor* — Beer is not a spirituous liquor' as the term is used in s 30 Madras Act I of 1866 ANONYMOUS [7 Mad. Ap 15

CANTONMENTS ACT (III OF 1880)

See CANTONMENTS ACT (XIII OF 1889)

——— s 14— *Soldier —Sub Conductor—Sale of spirituous liquor* —A Sub Conductor in the Commissariat Department is not a soldier within the meaning of s 14 of Act III of 1880 and consequently the sale of spirituous liquor to the wife of such a person without the license required by that section is not an offence against that section EMPRESS OF INDIA v DOSABHOY FRAMJI [I L. R. 3 All, 214

——— *Bengal Excise Act (Bengal Act VII of 1878) ss 4 11 29 32—Spirituous liquor—Tari—Cantonment Magistrate Powers of to cancel license—Revenue authorities* — Tari or toddy is spirituous liquor within the meaning of s 14 of Act III of 1880 The words spirituous liquor wine and intoxicating drugs in that section must be taken in th ir popular and ordinary meaning QUEEN EMPRESS v RAMDHANI PASSI [I. L. R. 15 Calc. 452

CANTONMENTS ACT (XIII OF 1889)

——— s 2 cl. (2) and s 10—*Jurisdiction—Order of the Local Government to the contrary—Pecuniary limits of jurisdiction of Cantonment Court—Cantonments Act (III of 1880) Repeal of* — Under s. 10 of the Cantonments Act (XIII of 1889) the Cantonment Judge has jurisdiction up to R500 only in the absence of any order of the Local

CANTONMENTS ACT (XIII OF 1889) —concluded

Government to the contrary In a suit filed in the Court of the First Class Subordinate Judge of Belgaum in its small cause jurisdiction to recover R172 as arrears of rent a question having arisen whether that Court the pecuniary limit of whose jurisdiction as the Court of Small Causes was R500 or the Court of the Belgaum Cantonment Magistrate invested with small cause powers had jurisdiction to entertain the suit *Held* that the Cantonment Court alone had jurisdiction By Notification No 2305 published at page 314 of the *Bombay Government Gazette* for 1887 the pecuniary limit of the (Belgaum) Cantonment Court is declared to be R200; and the declaration which was made under Act III of 1880 [which is an Act repealed by the Cantonments Act] is kept alive by s. 2 cl 2 of the Cantonments Act and it is therefore such an order of the Local Government as is contemplated by s 10 of Act XIII of 1889 GULABCHAND MOTIRAM v GEORGES [I L R., 16 Bom 702

——— s 26—*Rule 2 of the rules made under s 26—Additional fine for continuing offence* —The additional fine referred to in rule 2 of the rules framed under s 26 of the Cantonments Act XIII of 1889 is not only to be imposed *after* the first conviction but is to follow proof that failure is persisted in The additional fine cannot be imposed as a threat in case of possible persistence which being in the future cannot be made matter of present proof The continuing failure must be matter of later and separate inquiry and proof *In re Limbaji Tulsiram I L R 22 Bom 766* followed. QUEEN EMPRESS v PLUMMER I. L. R. 22 Bom 841

CARRIERS

See CASES UNDER BILL OF LADING

See NEGLIGENCE I. L. R. 1 All. 60 [9 W R 73

See CASES UNDER RAILWAY ACTS

See CASES UNDER RAILWAY COMPANY

1. ——— Misdescription—*Loss of goods* —Misdescription of the nature of goods entrusted to a common carrier disentitles the sender to recover for their loss although the goods would not be subject to any extra rates had they been properly described ROHEEMOOLLAH v PALMER Cor 133

S C in Court below Cor 24

2 ——— Time for delivery of goods—*Lien for carriage of goods* —Although a carrier may not be bound to deliver goods on any specific day or within any specific time he is bound to deliver them within reasonable time and what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case A carrier is entitled to his freight and charges and he is entitled to retain the goods in satisfaction of his lien upon them BULDEO DASS v NATHOOMUL [2 Agra 132

3 ——— Delivery of goods to carrier at consignor's risk—*Delivery to consignee* —

CARRIERS—continued

So long as goods though delivered to a common carrier appointed by the consignee remain at the risk of the consignor they are not delivered to the consignee WINTER v WAY 1 Mad. 200

4. ——— Delivery of goods carried by sea—*Landing goods—Custom of port of Bombay—Possession of goods* —A carrier by sea is obliged to make an actual delivery of goods carried by him to the consignee but such *primâ facie* obligation may be affected by the custom of the port where the goods are to be delivered. Neither by the custom of the port of Bombay nor by the provisions of the Customs Act is the master of a ship bound to wait fifteen days before commencing to land his cargo but within a reasonable time after the arrival of his ship—48 hours in the case of a sailing vessel, and somewhat less in the case of a steamer—he is at liberty to land goods if the consignee has not sent boats for them; and such landing is not unlawful nor a breach of contract as carrier on the part of the master The landing of the goods under the above circumstances and setting them apart for the consignee do not constitute a delivery of them to the consignee; but such goods after being so landed continue in the possession of the master as carrier Course of legislation with reference to the landing of goods on the custom house wharf reviewed. *Quære*—Whether under the special circumstances of this case the goods when so landed remained in the custody of the master in his capacity of common carrier or as a warehouseman? HONGKONG AND SHANGHAI BANKING CORPORATION v BAKER [6 Bom. O C 71 7 Bom. O C. 186

5 ——— Dâk carriage proprietor—*Bailee for hire—Negligence—Onus of proof* —A person carrying on the ordinary business of a proprietor of dâk carriages does not come within the term "common carrier" as that term is understood in the English law Such a person is bound to exercise reasonable and ordinary care in respect of baggage entrusted to him but is not responsible for any loss which may not arise from the negligence or default of himself or his servants he not being a common carrier bound to ensure the safe conveyance of the baggage against all risk save the act of God or the Queen's enemies He is to be regarded as a bailee for hire and the fact that he does not deliver the baggage at the end of the journey should be accepted as *primâ facie* proof that the loss has been occasioned by negligence for which he is responsible and consequently the onus of proof lies on him that reasonable care was exercised by him TODAL SINGH v THOMPSON 2 N W 237

6 ——— Conveyance of goods by Government bullock train—*Post Office Act XII of 1866—Bailee for hire—Negligence—Condition* —Goods conveyed by the Government bullock train are not entrusted to the Post Office for conveyance within the meaning of Act XIV of 1866 In respect of the Government bullock train Government must be regarded as an ordinary bailee for hire and not as a common carrier As such bailee apart from any special condition limiting its liability it is bound to take ordinary care of goods entrusted to it

CARRIERS—*continued*

for conveyance and if goods are stolen through the negligence of its servants it is liable to make good the loss to the consignor But it may as may any other bailee for hire limit its liability by conditions provided those conditions are not repugnant to public policy or positive law A condition that it will not be responsible for loss occasioned by the negligence of its servants is certainly not repugnant to positive law nor a condition repugnant to public policy POSTMASTER OF BAREILLY *v* EARLE [3 N W 195

7 ———— Suit for damages for negligence—*Onus probandi* —In an action to recover damages for injury caused to the goods by the negligence of the defendant as a common carrier it is not necessary for the plaintiff to give evidence of such negligence unless the defendant has shown that the injury was occasioned by a cause which was within the exceptions Then the plaintiff would be at liberty to show that there was negligence so as to deprive the defendant of the benefit of the exceptions. SHETLIFF *v* SCOTT 22 W R. 39

8 ———— Passenger s luggage Loss of —*Negligence—Conditions indorsed on ticket—Foreign Steam ship Company—Contract Act s 151* —In a suit for damages for loss of passenger's luggage by the wreck of a ship belonging to a foreign company it appeared that the plaintiff had received a ticket in the French language which on its face stated that it ought to be signed by the passenger and that it was issued subject to certain conditions on the back These conditions among other things stated that the company would not be responsible for loss or damage arising from accidents or risks of the sea that the ticket was delivered subject to the conditions that certain articles of a specified nature should be made the subject of a special declaration in default of which the company would not be liable; that the company would not be answerable for unregistered luggage and that luggage might be insured at any of the company's offices It was not stated where registration of luggage might be effected The ticket was not signed by the plaintiff The plaintiff alleged that he did not understand the French language and that the conditions had not been explained to him by any person *Held* that the company being a foreign company were not common carriers that the plaintiff was bound by the clauses and conditions on the back of the passage ticket; that none of the conditions had the effect of relieving the company from the consequences of their own negligence that in order to establish a defence upon the ground that the plaintiff s luggage was not registered it was necessary for the defendants to prove not only that the plaintiff was bound by the conditions but also that they were ready and willing to register the plaintiff s luggage and that the plaintiff did not in fact register it that as the contract was made in Calcutta the defendants were bound by the provisions of s 151 of the Indian Contract Act MACKILLICAN *v* COMPAGNIE DES MESSAGERIES MARITIMES DE FRANCE I L R. 6 Calc. 227 [7 C L R 49

9 ———— Special contract—*Railway Act (IV of 1879) s 10—Contract Act (IX of 1872) ss 151 161—Railway Company* —The plaintiff despatched certain goods by the East Indian Railway Company for carriage to *A* and signed a special contract in conformity with the form approved by the Governor General in Council under s 10 of Act IV of 1879 holding the Company harmless and free from all responsibility in regard to any loss destruction or deterioration of or damage to the said consignment from any cause whatever before during and after transit over the said railway or other railway lines working in connection therewith The goods were short delivered and the plaintiff brought a suit to recover the value *Held per* GARTH C J PRINSEP J and WILSON J that the Railway Company could not be held liable to account to the consignee for any loss from any cause whatever during the whole time that the goods were under their charge inasmuch as the plaintiff had entered into a special contract to hold them harmless in accordance with s 10 of Act IV of 1879 *Held per* O KINEALY J that it was doubtful whether ss 151 and 161 of the Contract Act applied to carriers by rail but even assuming that these sections did not apply the Railway Company would be in the position of carriers before the passing of the Carriers Act and were entitled to protect themselves from liability by special contract MOHESWAR DAS *v* CARTER I L R 10 Calc 210 [12 C L R 122

10 ———— Common carriers—*English law—Contract Act (IX of 1872) ss 151 152—Carriers Act (III of 1865)—Railways Act (IV of 1879) s 10—Statement of objects and reasons of the Contract Act* —The common law of England regulating the responsibility of common carriers was at the time of the passing of the Carriers Act 1865 and is still in force in this country and is unaffected by the provisions of the Indian Contract Act. *Kuverji Tulsidas* v *G I P Railway Co I L R 3 Bom 109* dissented from The plaintiffs entrusted to the defendants who were common carriers under the Carriers Act III of 1865 certain goods which were lost in the course of their carriage on one of the defendants' steamers On the facts it was found that the defendants took as much care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk quality and value as the goods bailed; and that the loss was not occasioned by the act of God or the Queen s enemies There was no special contract of the nature provided for by s 6 Act III of 1865 *Held* that ss 151 152 of the Contract Act did not apply and that the defendants were liable for the loss of the goods MOTHOORA KANT SHAW *v* INDIA GENERAL STEAM NAVIGATION COMPANY [I L R 10 Calc 166 13 C L R 342

11 ———— *Carriers Act (III of 1865) ss 6 8—Negligence—Accident, Loss by—Special contract—Divisibility of contract* —A flat belonging to the defendants carrying goods belonging to the plaintiff was lost by coming into contact with a snag in the bed of a certain river the

CARRIERS—*continued*

existence of which snag could not have been ascertained by any precautions on the part of the defendants The goods were received for carriage by the defendants under conditions printed on the back of forwarding note signed by the plaintiff by one of which conditions the defendants protected themselves from liability against accident of certain particular kinds and from any accident loss or damage resulting from negligence etc *Held* that the loss was not occasioned by the negligence of the defendants; that the forwarding note was a special contract within the meaning of the Carriers Act; that the clause purporting to protect the defendants from negligence was bad as being in contravention of the Carriers Act but that nevertheless the contract was not thereby rendered wholly bad but was divisible being good so far as it provided that the defendants were not to be liable for loss by accident but bad so far as it provided that they should not be liable for negligence INDIA GENERAL STEAM NAVIGATION CO v JOYKRISTO SHAHA I L R, 17 Calc, 39

12 ———— *Carriers by railway Liability of—Railway Act (IV of 1879) s 210—Loss by negligence—Insurer—Act of God*—A carrier by railway is under Act IV of 1879 liable as an insurer of goods entrusted to him and not merely for loss occasioned by negligence CHOOMUL v COMMISSIONERS FOR THE IMPROVEMENT OF THE PORT OF CALCUTTA I L R, 18 Calc, 427

13 ———— *Contract Act (IX of 1872) ss 148 151 152—Carriers Act (III of 1865)—Insurers—Railway Acts (IV of 1879 and IX of 1890)—Bailees*—That the duties and liabilities of a common carrier are governed in India by the principles of the English common law on that subject however introduced has been recognized in the Carriers Act (III of 1865) His responsibility to the owner does not originate in contract but is cast upon him by reason of his exercising this public employment for reward. His liability as an insurer is an incident of the contract between him and the owner not inconsistent with the provisions of the Contract Act and the Law of Carriers partly written and partly unwritten remained as before that Act The Railway Acts of 1879 and 1890 reduced the responsibility of carriers by railway to that of bailees under the Contract Act but this does not affect the construction of the law relating to common carriers and the Act of 1865 Notwithstanding some general expressions in the chapter on bailments a common carrier's responsibility is not within the Contract Act 1872 The decision of the Calcutta High Court in *Mothoora Kant Shaw* v *India General Steam Navigation Co I L R 10 Calc 166* approved and that of the Bombay High Court in *Kuverji Tulsidas* v *G I P Railway Co I L R 3 Bom 109* not supported IRRAWADDY FLOTILLA CO v BUGWANDAS I L R, 18 Calc 620 [L R 18 I A 121

14 ———— *Railway Act (IV of 1879) s 11—Railway Company Liability of—Carriage of gold and silver etc—Insurance Increased charge for*—Plaintiffs delivered a box of coins for carriage to the servants of a railway and declared the nature of the contents at the time of delivery No demand was made on the part of the railway for any increased payment for insurance The box having miscarried—*Held* on the authority of *Great Northern Railway Company* v *Behrens 7 H and N 950* that the railway were liable for the loss. SECRETARY OF STATE FOR INDIA v BUDHU NATH PODDAR I L R, 19 Calc, 538

CARRIERS—*concluded*

CARRIERS ACT (III OF 1865)

See BILL OF LADING [I L R 3 Mad 107

See CARRIERS [I L R, 10 Calc, 166 13 C L R 342
I L R 17 Calc 39
I L R 18 Calc 620
L R, 18 I A 121

See RAILWAY COMPANY [I L R 3 Bom 109 120
I L R 17 Bom, 417
I L R, 17 Mad, 445

———— ss 6 and 8—*Negligence—Accident Loss by—Special contract—Suit for damages*—The plaintiffs delivered to the defendants certain goods for carriage to Calcutta in a flat belonging to the defendants The goods were carried under the terms of a special contract or forwarding note" signed by the shipper One of the conditions of the forwarding note was as follows — The Company will not be under any liability for damages or compensation in respect of loss of or damage to goods except such liability as they are or may be subject to under the provisions of any law for the time being in force or of any contract other than this for the time being in existence between the Company and the shipper While on board the defendants flat the goods were destroyed by fire At the trial of the case the defendants gave evidence showing the state of things before the fire occurred the circumstances leading to the discovery of the fire (but not the cause or origin of it) and the measures taken to extinguish the fire *Held* that the occurrence of a fire under the circumstances disclosed in the case without any explanation as to the origin of it was of itself evidence of negligence *Held* also reversing the decision of SALE J that the defendants had not discharged the onus cast upon them by law of showing that there was no negligence *Central Cachar Tea Company* v *Rivers Steam Navigation Company I L R 24 Calc, 787 note* explained *Held* on the construction of the above clause (*per* SALE J, in the Court below and *per* TREVELYAN J, in the Court of Appeal) that the words in any law for the time being in force must be taken to refer not to the common law but to the law as laid down in the Carriers Act (III of 1865) and that unless their liability was enlarged by express contract the defendant company were liable only for loss or damage of which under s 6 of that Act they were not allowed to relieve themselves that is only for loss occasioned by the negligence or criminal acts of themselves, their servants or agents The decision of HILL J, in

CARRIERS ACT (III OF 1865)—*concluded*

Central Cachar Tea Co v *Rivers Steam Navigation Co* unreported followed. *Semble* on appeal (*per* MACPHERSON J MACLEAN C J doubting) that the above construction of the clause was correct CHOUTMULL DOOGUR v RIVERS STEAM NAVIGATION COMPANY I. L. R. 24 Calc 786 [1 C W N 200

———— The Judicial Committee dismissed an appeal in the above case from the decree of the Appellate High Court which proceeded on s. 9 of the Carriers Act (III of 1865) that Court having taken the non-delivery as placing the burden of proving absence of negligence on the carriers There were facts showing that no adequate means had been provided by the defendants for extinguishing a fire on board and that the watch was inefficient The defendants accordingly had failed to exonerate themselves RIVERS STEAM NAVIGATION CO v CHOUTMULL DOOGAR I. L. R. 26 Calc 398 [L R 26 I A 1 3 C W N 145

CARRYING ON BUSINESS.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING—CARRYING ON BUSINESS ETC

CASH ON DELIVERY MEANING OF—

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R., 16 Calc 417

CASTE

See CUSTOM I. L. R. 12 Mad. 495

See DEFAMATION 6 Mad. Ap 47 [I. L R 6 Mad. 381 I. L. R. 12 Mad. 495 I L. R. 22 Calc 46 I L R. 24 Bom 13

See HINDU LAW—CUSTOM—CASTE [I. L. R. 10 Mad. 133 I. L. R. 17 Mad. 222

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS I L. R. 17 Mad. 479

See CASES UNDER JURISDICTION OF CIVIL COURT—CASTE

See CASES UNDER RIGHT OF SUIT—CASTE QUESTIONS

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT I L. R. 13 Bom. 131

See RIGHT OF WAY [I. L. R. 16 Bom. 552

———— Authority of to declare marriage void

See BIGAMY I L. R. 1 Bom. 347

———— Loss of—

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP I. L. R., 1 All. 945

CASTE—*concluded*

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF EXCLUSION FROM ETC —OUTCASTES

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW [I. L. R. 1 Bom 559

See HINDU LAW—MARRIAGE—RESTRAINT ON OR DISSOLUTION OF MARRIAGE [2 N W 300 I L. R. 8 Mad. 169

CATTLE TRESPASS

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT [I. L. R. 18 Mad. 228

See MISCHIEF 6 B L. R. Ap 3 [10 W R. Cr 29 16 W R. Cr 72 6 Mad Ap 30 37 4 Bom. Cr 14 I L R 7 Bom 126 I L R 9 Bom 173

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 2 B L R. A Cr 45 [9 B L R. Ap 36

CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)

———— III of 1857

See COURT FEES ACT 1870 SCH II ART 1 [8 Bom Cr 22

See DAMAGES—SUITS FOR DAMAGES—TORTS 15 W R 279

See FINE 7 Bom. Cr 55

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT [1 Bom 100 4 Bom Cr 13 5 Bom Cr 13 7 W R 155

See CASES UNDER MISCHIEF

See SENTENCE—GENERAL CASES [16 W R Cr 12

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE [5 Mad Ap 21 7 Mad. Ap 22

See WITNESS—CRIMINAL CASES—SUMMONING AND ATTENDANCE OF WITNESSES [10 W R. Cr 42

———— I of 1871.

See DAMAGES—SUITS FOR DAMAGES—TORTS I. L. R 16 Cal. 159

See REVISION—CRIMINAL CASES—GENERALLY I L. R 19 Mad. 238

See RIGHT OF SUIT—COMPENSATION [2 C L R 344 I L. R., 16 Calc 549

CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)—*continued*

See SENTENCE—GENERAL CASES
[16 W R, Cr, 12

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 2 C L R 507

——— ss 6 and 27—*Pound keeper —Police patel* —Where a Magistrate convicted under s 27 of Act I of 1871 a person who was not himself a pound keeper but was merely entertained by the police patel who was *ex officio* pound keeper under s 6 of the Act the High Court annulled the conviction and sentence passed upon the accused. REG v VAKTA VALAD LAKHU 9 Bom 164

——— s 10

See MISCHIEF I L R. 7 Bom, 126
[I L R. 9 Bom, 173

——— s 11

See FOREST ACT s 69
[I L R, 22 Bom., 933

——— s 19

See CRIMINAL BREACH OF TRUST
[8 B L R, Ap, 1

——— s 20

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT
[2 C L R. 507
I L R, 13 Calc 304
I L R, 9 Mad. 102 374

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT
[I L R, 23 Calc, 300 442

1 ——— *Criminal Procedure Code (1882) s 560—Frivolous and vexatious complaint—Complaint of wrongful seizure of cattle — Offence* —A complaint of the wrongful seizure of cattle is not a complaint of an offence within the meaning of the Code of Criminal Procedure Consequently on the dismissal of such a complaint it is not competent to a Court to act under s 560 of the Code and award compensation to the persons against whom the complaint is made *Pitchi* v *Ankappa I L R 9 Mad 102 Kottalanada* v *Muthaya I L R 9 Mad 374 Kala Chand* v *Gudadhur Biswas I L R 13 Calc 304* and *Kedaram Thakur* v *Joonab I L R 23 Calc 248* referred to. MEGHAI v SHEOBHIK
[I L R. 18 All 353

2. ——— and ss 22 and 23—*Criminal Procedure Code (1882) s 4 (p) and Ch XXII—Illegal seizure of cattle— Offence —Summary trial* —The illegal seizure of cattle alluded to in ss 20 to 23 of the Cattle Trespass Act (I of 1871) is not an offence under s 4 (*p*) of the Criminal Procedure Code and cases connected therewith are accordingly not triable by the summary procedure described in Ch XXII of that Code *Pitchi* v *Ankappa I L R 9 Mad 102* and *Kottalanada* v *Muthaya I L R 9 Mad 374* followed NEDARAM THAKUR v JOONAB I L R 23 Calc, 248

CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)—*continued*

——— s 22

See APPEAL IN CRIMINAL CASE—ACTS—CATTLE TRESPASS ACT
[I L R 10 Bom. 230
3 N W 200
I L R. 15 Calc 712
I L R 11 Mad. 259
I L R 19 Mad 238

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE
2 C L R. 507
[I L R., 7 Mad 345
I L R. 14 Calc 175
I L R. 19 Mad., 238
I L R. 22 Calc, 139

See FINE 7 Mad., Ap 24

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT
[I L R., 23 Calc, 300 442

1. ——— *Power of Magistrate—Seizure of cattle and dispute as to ownership of land* —Where there was a dispute as to the ownership of land on which the complainant's cattle were found the complainant stating the land belonged to *A* who gave him the right to graze his cattle there and the party charged (who had seized and impounded the cattle) claiming the land as his own it was held that the order of the Magistrate referring the parties to the Civil Court was illegal and that he should have disposed of the case himself under the Cattle Trespass Act I of 1871 s 22 TUNNOO v KUREEM BUKSH
[23 W R Cr 2

2 ——— *Joint fine—Fine and compensation* —Proceedings under s 22 of the Cattle Trespass Act are quasi-civil in their nature a Magistrate being at liberty under that section to assess and enforce in a summary manner compensation for an injury for which a civil action might be brought An order therefore for the payment of a sum as fine and compensation passed against two persons under that section which does not specify the proportionate amount payable by each is good. IN THE MATTER OF NEAZ v MONSOR
[I L R. 14 Calc 175

3 ——— *Illegal seizure of cattle—Theft—Compensation—Fine—Imprisonment in default of payment of compensation—Criminal Procedure Code (1882) s 386—Penal Code s 378* —An accused was found to have loosed the complainant s cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound keeper the fees to be paid for their release He was proceeded against under Act I of 1871 (Cattle Trespass Act) and under the provisions of s 22 ordered to pay compensation to the complainant, and in default to undergo one month s rigorous imprisonment *Held* that s 22 was inapplicable to the facts of the case and that the order must be set aside On the facts it was not a case of illegal seizure and detention of cattle but rather one of theft as all the elements of that offence were present

CATTLE TRESPASS ACTS (III OF 1857 AND I OF 1871)—*concluded*

and the accused should have been charged with and tried for that offence *Held* further that the sentence of imprisonment in default of payment of the compensation was not warranted by law Compensation may be levied as a fine and the ordinary mode of levying fines is laid down in s 386 of the Code of Criminal Procedure The law nowhere provides that fines may be levied by means of imprisonment PARTAG PAI *v* ARJU MIAN I L R 22 Calc, 139

4 ———— *Compensation awarded under Cattle Trespass Act—Imprisonment in default of payment*—Imprisonment cannot be inflicted in default of payment of the compensation awarded under the Cattle Trespass Act QUEEN EMPRESS *v* LAKSHMI NAYAKAN [I. L R 19 Mad 238

5 ———— *Illegal seizure of cattle—Fine—Compensation*—A Magistrate is not competent under s 22 of the Cattle Trespass Act to pass any sentence of fine; he can only award compensation for the illegal seizure of cattle BHAGIRATHI NAIK *v* GANGADHAR MAHANTY [I. L R, 27 Calc, 992

CAUSE LIST

See PRACTICE—CIVIL CASES—CAUSE LIST [2 Hyde, 86
Bourke O C 238
4 B L R. Ap 75
I. L. R., 27 Calc. 355

CAUSE OF ACTION

See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—RIGHT OF SUIT

See CASES UNDER BOND

See CASES UNDER DECLARATORY DECREE SUIT FOR

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION

See CASES UNDER LIMITATION ACT 1877

See CASES UNDER POSSESSION—ADVERSE POSSESSION

See POSSESSION—NATURE OF POSSESSION [I. L R 4 Calc 216 870
24 W R 33 418
6 N W 137
I. L R., 4 All. 184
I L R 11 Calc 93

See CASES UNDER RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM

See CASES UNDER RES JUDICATA—CAUSES OF ACTION

See CASES UNDER RIGHT OF SUIT

CAUSING DEATH BY NEGLIGENCE

———— **Lessee of Government ferry allowing unsound boat to be used on ferry**—*Penal Code (Act XLV of 1860) s 304A*—The lessee of a Government ferry having the exclusive right of conveying passengers across a certain river at a particular spot allowed an unsound boat to be used at the ferry In consequence of its unsoundness the boat sank while crossing the river and some of the persons in it were drowned *Held* that the lessee of the ferry was properly convicted of the offence provided for by s 304A of the Penal Code QUEEN EMPRESS *v* BHUTAN [I L R, 16 All, 472

CAVEAT

See LETTERS OF ADMINISTRATION [15 B L R Ap 8
I L R 4 Calc 87
I L R 12 Bom 164

See CASES UNDER PROBATE—OPPOSITION TO AND REVOCATION OF GRANT

CEREMONIES

See CASES UNDER HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—CEREMONIES

See CASES UNDER MAHOMEDAN LAW—PRE EMPTION—CEREMONIES

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881)

———— s 87

See HINDU LAW—PARTITION—REQUISITES FOR PARTITION [I L R 27 Calc 515
4 C W N 582

CERTIFICATE OF ADMINISTRATION

See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION

CERTIFICATE OF ADMINISTRATION *—continued*

——— Application for—

See LIMITATION ACT 1877 ART 178
[I. L. R., 8 Mad. 207
I. L. R. 7 Bom. 213
I. L. R. 19 Calc., 48

1 CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827 AND ACTS XIX AND XX OF 1841

1. ——— Bom Reg VIII of 1827—*Right of suit—Suit to establish title under will* —A plaintiff can sue to establish his title under a will without producing a certificate under Regulation VIII of 1827 *Mulchand v Motichand Hargovandas 9 Bom H C A C, 31* distinguished. MAFATLAL NARANDAS v BAI PARSON
[I. L. R., 19 Bom., 320

2. ——— *Certificate of heirship Effect of grant of*—A certificate of heirship granted under Regulation VIII of 1827 was not *prima facie* evidence that the holder of it was the rightful heir of the deceased. The effect of such certificate was merely to give security to persons in possession of or indebted to the estate of the deceased in dealing with such holder as the legal representative of the deceased. RAMCHANDRA KULKARNI v VITHOJI VALAD MALHARJI PATIL
[4 Bom. A C 178

3 ——— *Effect of certificate under Regulation VIII of 1827 s 7 cl 2—Representative of estate* —A certificate of administration granted under Regulation VIII of 1827 only indicates the person who for the time being is in the legal management of the property in respect of which it is granted but does not constitute the holder of the certificate a representative of the estate for the purpose of distributing it amongst his co-sharers KESHAV JAGANNATH v NARAYAN SAKHARAM I. L. R 14 Bom., 236

4. ——— *Reversal of order —Payments made before reversal* —Where a widow obtained an order for a certificate of administration to the estate of her deceased husband which order was however reversed on appeal before the certificate was granted it was held that payments made to the widow before the order was reversed were unauthorized DAMODHAR BAPUJI PACHAPARKAR v ZINGA KOM KANDLIKA
[7 Bom., A C 31

5 ——— *Payment of debts to supposed heir of deceased before grant of certificate of heirship* —A defendant who is sued by the holder of a certificate of heirship to a deceased Hindu for a debt due from the defendant to the deceased is at liberty to show notwithstanding the certificate of heirship that he has paid the debt to the actual heir of the deceased before the grant of the certificate It will not however be sufficient for such defendant to show that he has paid his debt to a person whom he *bonâ fide* believed to be such heir PURSHOTAM MANSUKH v RANCHHOD PURSHOTAM 8 Bom., A C 152

CERTIFICATE OF ADMINISTRATION *—continued*

1 CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827 AND ACTS XIX AND XX OF 1841*—continued*

6 ——— *Bombay Regulation VIII of 1827 s 7—Holder of such certificate a transferee of decree within the meaning of s 232 of the Civil Procedure Code (Act XIV of 1882)—Right of such person to execute decree* —A holder of a certificate of administration granted under s 7 of Regulation VIII of 1827 is a transferee by law of a decree obtained by the deceased within the meaning of s 232 of the Civil Procedure Code and is competent to apply for execution of such a decree KHANDERAV RAYAJIRAV v GANESH SHASHTRI I. L. R., 11 Bom., 368

7 ——— *Bombay Regulation VIII of 1827 s 9—Construction of the words may appoint —Appointment of administrator—Discretion of Court* —Where the right of succession to the estate of a deceased person is disputed between two or more claimants and none of them have taken possession the District Judge within whose jurisdiction the property is situate is bound on the application of one of the parties concerned to appoint an administrator under s 9 of Regulation VIII of 1827 The words of the section are imperative and not permissive The use of the words '*may appoint*' in this section does not imply that the District Judge has any discretion in a proper case to appoint or not to appoint an administrator If any discretion is given as to the exercise of the power thereby conferred it is that of determining whether the occasion has arisen in the particular case VISHWAMBHAR PUNDIT v VASUDEV PUNDIT
[I. L. R. 13 Bom., 37

8 ——— *Application for certificate of heirship based on adoption—Procedure* —H applied under Bombay Regulation VIII of 1827 to a District Judge for a certificate of heirship to a deceased *D* under a registered deed of adoption by his widow executed nearly fifty years after *D*'s death. The opponent claimed to be the heir and denied the legality of the adoption. The District Judge referred the applicant to a regular suit to establish the validity of his adoption *Held* in appeal that the District Judge was bound to investigate the case following the procedure laid down in s 4 of Regulation VIII of 1827 and had no authority to dismiss the application and refer the applicant to a regular suit to establish the validity of the adoption HARISING DEVISINGRAO v BHAUSING I. L. R. 20 Bom. 548

9 ——— *Bombay Regulation VIII of 1827 s 9—Administrators appointed by the Court—Order to deliver property—Determined — Finally determined —Right of appeal—Civil Procedure Code (Act XIV of 1882) s 622—Superintendence of High Court—Illegal exercise of jurisdiction* —S 9 of Regulation VIII of 1827 empowers the District Court to make an order directing the administrators appointed under the Regulation to make over the property when it

CERTIFICATE OF ADMINISTRATION
—*continued*

1 CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827 AND ACTS XIX AND XX OF 1841—*continued*

has been determined between the rival claimants who is the heir of the deceased but to give full effect to the object of the Regulation the word determined must be understood finally determined. Where the Judge considered that he was bound to make an order directing administrators appointed under Regulation VIII of 1827 to make over the property of the deceased to one of the rival claimants who was judicially declared to be the heir of the deceased —*Held* that so long as the party against whom the decision in the matter of the rival claims was given had a right of appeal the order of the Judge was one which he could not make under the Regulation and that in exercising his jurisdiction under the Regulation he had exercised it illegally and, that being so, the High Court had power under s 622 of the Civil Procedure Code to interfere in the exercise of its extraordinary jurisdiction. ISHVAMBHAR PANDIT *v* VASUDEV PANDIT I. L. R 16 Bom., 708

10 ———— *Certificate under Act XXVII of 1860—Bombay Regulation VIII of 1827 s 9—Jurisdiction to grant certificate of administration—Foreigners residing abroad* —Under s 3 of Act XXVII of 1860 a certificate can be granted only for the estate of a British subject either resident within the district where the certificate is sought or else having no fixed place of residence The Act does not make provision for administration of the effects of a foreigner domiciled abroad. While Act XXVII of 1860 has regard to the person Regulation VIII of 1827 on the other hand looks simply to the locality of the assets as the ground of the Court's jurisdiction to grant a certificate of administration The intention of s 9 seems to be that when there are assets within a zilla and the circumstances exist which are specified in the section a certificate of administration may be granted. The authority given under s 9 must be understood to be the same as under s 7 *B* a sardar of Baroda, residing within the Gaikwar's territory died there leaving considerable property in the district of Surat On his death *L* the *Assistant Collector of* Surat was appointed administrator of *B*'s estate under s 9 of Regulation VIII of 1827 Shortly after his appointment as administrator *L* went to England on furlough During his absence the plaintiffs sued as heirs of *B* to recover the balance of principal and interest due on a bond executed by the defendants in favour of *B* *Held* that the plaintiffs were incompetent to sue *L* having been appointed administrator of *B*'s estate and never having been relieved of his office as administrator by the Court as contemplated by s 9 of Regulation VIII of 1827 his status still subsisted and while it subsisted *no one else could represent the estate* The appointment of an administrator excludes other representatives so long as it endures IBRAHIM ALIKHAN *v* ZIAULNISSA LADLI BEGAM [I. L. R, 12 Bom 150

CERTIFICATE OF ADMINISTRATION
—*continued*

1 CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827 AND ACTS XIX AND XX OF 1841—*continued*

11 ———— Act XIX of 1841—*Summary procedure—Act XXVII of 1860* —*A* (a Hindu) died intestate in December 1865 leaving his widow in possession of his property moveable and immoveable The descent of *A*'s property was admittedly governed by the law of the Mitakshara On the 19th January 1866 *A*'s nephew presented a petition to the Zillah Court under Act XIX of 1841 denying the title of the widow Upon this alone the Judge directed the widow to come in and show cause which she did on the 2nd February following A daughter of *A* on the 19th March presented a petition in opposition to the nephew's claim for possession The nephew filed a reply In the meantime the widow applied for a certificate under Act XXVII of 1860 which was opposed by both nephew and daughter The nephew also filed a cross-petition under Act XXVII of 1860 All these petitions came on by consent together for adjudication on a state of facts admitted by all parties through their pleaders who also by consent between themselves submitted their view of the question of law to be decided on the Acts of 1841 and 1860 The questions so submitted were—(1) Did it appear on the evidence that there was a separation between *A* and his nephew according to the Mitakshara doctrine? (2) If the evidence *per se* established a legal separation was such separation negatived by certain admissions of *A*? The Judge refused the application of the widow under Act XXVII of 1860 and granted possession to the nephew under Act XIX of 1841 The nephew was a man of substance and able to bring a regular suit and there was no evidence of possession by force or fraud on the part of the widow the only question being her right according to the Mitakshara law *Held* that the Judge was in error in proceeding summarily under Act XIX of 1841 on the declaration of the applicant alone and without other enquiry but that this defect was cured by the widow's appearing That the Judge ought not to have tried the cases under Act XIX of 1841 and Act XXVII of 1860 together and on the same issues but the Judge having jurisdiction over the subject matter and to frame the issues his order was not *open to appeal or review* JUSODA KOONWUR *v* GOWREE BYJNATH PERSHAD [1 Ind Jur N S 365 6 W R., Mis., 53

12 ———— Act XX of 1841—*Order granting certificate Effect of* —The effect of an order granting a certificate under Act XX of 1841 was not to establish a will incontestably against the whole world or to prevent a will from being impeached in a suit if set up to defeat the rights of parties claiming under the Law of Inheritance MAHOMED AZEEM OOLLAH KHAN *v* SUHOODRA BEBEE [W R. 1864 227

13 ———— *Nature of certificate* —A certificate for collecting the debts due to the estate of a deceased person given under Act XX of 1841 gives a personal right and is not transferable

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—*continued*

1 CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827 AND ACTS XIX AND XX OF 1841—*concluded*

by sale MEHDEE ALLY KHAN *v* LUCHMEEPUT BABOO 1 W R. Mis, 28

14 ———— *Cancelling of certificate* —A Court cannot solely on the petition of a party cancel a certificate granted to him under Act XX of 1841 or declare that his trust and guardianship have ceased. If he gives up his duties of his own accord he does so on his own responsibility and the Court will not order him to act SUMBHOO CHUNDER KHAN *v* ISHAN CHUNDER BANERJEE [W R., 1864 Mis 24

2 ACTS XXVII OF 1860 AND VII OF 1889 AND GRANT OF CERTIFICATE

15 ———— Act XXVII of 1860—*Object of Act—Trustee* —The object of Act XXVII of 1860 is not to enable parties to litigate questions of disputed title but to enable debtors to pay the debts due by *them with safety to the representatives of deceased* Hindus and others and to facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same In other words the objects of the Act are to enable debtors to get sufficient acquittances when they pay money due to the estate of a deceased and to preserve that estate from loss by giving some one the right to collect the debts lest they should be lost *e g* by the operation of the law of limitation The holder of a certificate is a trustee liable to account for the moneys received by him to the legal heirs or representatives of the deceased. IN THE MATTER OF THE PETITION OF NOBODIP CHUNDER BISWAS PRANKISTO BISWAS *v* NOBODIP CHUNDER BISWAS [I L. R., 8 Calc 868

16 ———— *Application of Act—Act XXVII of 1860 s 2—Presidency Towns—Natives—Refusal to pay—Want of fraudulent or vexatious motive in withholding debt* —Act XXVII of 1860 which provides that no debtor of a deceased person shall be compelled to pay his debt to any person claiming to be entitled to the effects of such deceased person without the production of a certificate to collect debts or probate or letters of administration except under certain circumstances is applicable to Hindus within the Presidency Towns Where a debtor of a deceased Hindu who died intestate declined to pay the debt to his widow unless she produced letters of administration to the estate of the deceased and the widow sued to recover the debt without taking out a certificate or letters of administration and it was found that there was no reasonable doubt that the widow was entitled to the debt but that the debtor refused to pay neither from any fraudulent nor vexatious motive but to avoid the risk of having to pay the debt twice over —*Held* that the suit must be dismissed. MUTTAMMAL *v* BANK OF MADRAS I L R 7 Mad 115

17 ———— *Jurisdiction to grant certificate of administration—Foreigners residing abroad.*—Under s 3 of Act XXVII of 1860, a certificate can be granted only for the estate of a British subject either resident within the district where the certificate is sought or else having no fixed place of residence The Act does not make provision for administration of the effects of a foreigner domiciled abroad. IBRAHIM ALIKHAN *v* ZIAULNISSA LADLI BEGAM [I L. R, 12 Bom. 150

CERTIFICATE OF ADMINISTRATION
—*continued*

2 ACTS XXVII OF 1860 AND VII OF 1889 AND GRANT OF CERTIFICATE
—*continued*

18 ———— *Act XXVII of 1860 s 2—Bond given to secure debt due to estate of deceased Hindu—Suit by heir—Waiver of right to protection implied* —*R* being a debtor to the estate of a deceased Hindu executed a bond promising to pay the debt to *P* the divided brother of the deceased as his heir A suit having been filed against *P* by the widow of the deceased who claimed his estate *R* offered to pay the debt to *P* on production of a certificate under Act XXVII of 1860 but not otherwise *Held* that as *R* had executed a bond promising to pay the debt to *P* he could not rely on the protection afforded by Act XXVII of 1860 KOTTAM ZAMINDAR *v* PITAPUR ZAMINDAR [I L. R., 9 Mad., 171

19 ———— *Omission to pay debt—Withholding debt from vexatious motive—Holder of certificate of administration* —*A* sued as only son and heir of *B* *C* the widow of *B* had with the concurrence of *A* taken out a certificate of administration to his estate *Held* that s. 2 of Act XXVII of 1860 prohibited *A* from suing alone for although he was no doubt beneficially entitled to recover the debt yet there was no vexatious or fraudulent withholding of the debt within the meaning of that section *Per* GARTH C J —A debt cannot be said to be vexatiously withheld within the meaning of that section simply because the debtor omits to pay it CHUNDER COOMAR ROY *v* GOCOOL CHUNDER BHUTTACHARJEE I L R. 6 Calc. 370

20 ———— *Necessity for grant of certificate* —Before the grant of a certificate under Act XXVII of 1860 some necessity for it must be shown as that there are debts to be collected RAJ CHUNDER BHUTTACHARJEE *v* MEERTUNJOY SHEEROMONEE 2 Hay 293

21 ———— *Necessity for certificate—Procedure on application under Act XXVII of 1860* —When an application is made for a certificate under Act XXVII of 1860 the Judge instead of considering the necessity or otherwise for a certificate should ascertain whether the applicant or any one else is entitled to the certificate sought and grant the same accordingly IN RE MEAN JAN [5 W R Mis 20

JAMSEDJI KAVASJI *v* MOTIBAI [2 Bom 397 2nd Ed. 375

22 ———— *Existence for recoverable debts—Act XXVII of 1860,*—Where an

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—*continued*

2 ACTS XXVII OF 1860 AND VII OF 1889 AND GRANT OF CERTIFICATE
—*continued*

application is made for a certificate under Act XXVII of 1860 the Judge instead of enquiring whether any debts are due and whether or not these debts are barred by limitation ought simply to determine the right to the certificate and if there be such a right to grant the certificate IN THE MATTER OF THE PETITION OF KALEENATH DUTT 8 W R 12

23 ———— *Existence of debts* —Before granting a certificate under Act XXVII of 1860 a Judge is not required to ascertain whether there are any debts due to the estate of the deceased. SHUBUT CHUNDER MOOKERJEE *v* THAKOORMONEE DEBIA 9 W R. 240

24. ———— *Existence of debts—Act XXVII of 1860 s 2—Debtor*—Certificates under Act XXVII of 1860 should be granted in those cases only in which it is shown that the deceased person at the time of his death had certain debts owing to him or in other words that there were persons who could be called debtors of the deceased A person in whose hands are the surplus sale-proceeds of a property belonging to the deceased is a debtor within the meaning of s 2 BISHNOO DAS *v* MUNGUL DASS 24 W R 203

25 ———— *Existence of debts* —A petitioner for a certificate under Act XXVII of 1860 need do nothing more than prove his title to collect the debts if there are any not even give *primâ facie* evidence of the existence of debts The title is the thing to be looked to and that would be established (no other reason being shown to the contrary) by relationship to the deceased BEEMUL DOSS *v* SHIKHUR CHAND 24 W R. 211

26 ———— *Existence of debts* —A certificate of administration ought not to be given without it being proved that there are debts and that the grantee has the best right to collect them UCHHUBA LOSSIA *v* NISTYANUND SHAHA [24 W R 463

WOOMA TARA GOOPTA *v* KALEE TARA GOOPTA [25 W R 93

27 ———— *Existence of debts—Act XXVII of 1860—Questions to be determined on application.*—The sole question in an application for a certificate under Act XXVII of 1860 is the title to collect the debts due to the estate of the deceased and it is not a matter for the Judge's consideration whether there are any and what debts due to the estate BHUGOBUTTY KOOER *v* BHOLANATH THAKOOR 8 W R. 317

28 ———— *Existence of debts* —To entitle an applicant to a certificate under Act XXVII of 1860 it is not necessary for him to show that debts are actually due it is sufficient if circumstances render it possible that debts may be due or may accrue within the jurisdiction of the Court IN THE MATTER OF BAMAKALLEE DOSSEE [10 W R 4

CERTIFICATE OF ADMINISTRATION
—*continued*

2 ACTS XXVII OF 1860 AND VII OF 1889 AND GRANT OF CERTIFICATE
—*concluded*

29 ———— *Existence of debts* —Where application is made for a certificate under Act XXVII of 1860 on the allegation that there are debts due to the estate of the deceased and the allegation is not denied the Court is bound to hear the petition FUZL MOULA *v* GHOLAM SHUBBUFF 12 W R 505

30 ———— Act VII of 1889—*Succession Certificate Act (VII of 1889) s 14—Refund of deposit* —If an application for a succession certificate is granted the sum deposited by the applicant cannot be refunded but if no order for the grant of the certificate has been made a refund can take place SANKARA AYYAR *v* NAINAR MOOPPANAR [I L R 21 Mad 241

3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE

31 ———— **Representative of deceased creditor Suit by**—*Act XXVII of 1860—Court Fees Act 1870 sch 1 cl 12*—A certificate under Act XXVII of 1860 is not necessary to give to a person claiming to be the representative of a deceased creditor the right to institute a suit to recover a debt due to the estate of the deceased or the right to present an application for execution of a decree obtained by the deceased But such certificate or a probate or letters of administration must be produced by the person proceeding as representative before a decree or order can be passed or process of execution issued for payment of the debt due unless the Court should think that payment is withheld from fraudulent or vexatious motives and not from any reasonable doubt as to the party entitled The effect of the provision in the note to art 12 sch 1 of the Court Fees Act (No VII of 1870) on the operation of a certificate duly granted which has become liable to cancellation under that provision but has not been cancelled considered Until cancellation the certificate remains in full force as proof of the representative right to sue or obtain execution whatever be the amount of the debt GOVINDAPPAH *v* KINDAPPAH SASTRULU GOVINDAPPA *v* KYATADOO MATTAPPA *v* NAGANNAH 6 Mad. 131

32 ———— *Succession Certificate Act (VII of 1889) s 4—Suit by assignee of debt due to a deceased creditor*—One S lent a sum of money to the defendant and died leaving an adopted son who assigned the debt to the plaintiff Neither the plaintiff nor his assignor obtained a certificate under Act VII of 1889 The plaintiff now sued to recover the amount of the assigned debt *Held* that the plaintiff was not entitled to recover no certificate having been obtained under Act VII of 1889 KARUPPASAMI *v* PICHU I L. R. 15 Mad 419

33 ———— *Legal representative Suit by to recover debt due to the deceased*—

CERTIFICATE OF ADMINISTRATION —*continued*

3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

Act XXVII of 1860—The production of a certificate under Act XXVII of 1860 is not a condition precedent to the institution of a suit by a person claiming to be the legal representative of a deceased creditor. It is only where there is a reasonable doubt as to the person entitled to the property claimed in the suit that such a certificate can be required. IN RE THE PETITION OF RAMDAS BRIJ GOVANDAS I. L. R., 10 Bom 107

34 ——— *Right to recover debts of deceased person—Act XXVII of 1860*—Where payment of a debt is not being withheld for fraudulent or vexatious motives but from a reasonable doubt as to the party entitled to it, the person desirous of recovering the amount of the debt is bound to produce a certificate under Act XXVII of 1860 before he can obtain a decree or execute a decree already obtained by the deceased, though he may institute his suit or apply for execution without such certificate, provided a certificate is filed before decree or before execution issues. JANAKI BALLAV SEN *v.* HAFIZ MAHOMED ALI KHAN [I. L. R., 13 Calc., 47

35 ——— *Suit by representative of deceased creditor—Act XXVII of 1860, s. 2—Special defence when not put in issue—Effect of—Want of certificate under Act XXVII of 1860, Effect of*—The want of a certificate under Act XXVII of 1860 is not of itself necessarily a bar to a suit by the representative of a deceased creditor, and such a special defence, unless insisted upon and put in issue in the Court of first instance, should not be entertained in appeal. *Semble*—The word "debtor" in s. 2 of Act XXVII of 1860 does not include the purchaser of a mortgaged property who is in no sense a debtor, nor does that section contemplate a case of a decree other than a personal decree. *Janaki Ballav Sen v. Hafiz Mahomed Ali, I. L. R., 13 Calc., 47*, doubted. RAGHU NATH SHAHA *v.* PORESH NATH PUNDARI [I. L. R., 15 Calc., 54

36 ——— Adoptive son of deceased creditor—*Act XXVII of 1860*—Suit by the adoptive son of the obligee (deceased) of a hypothecation-bond to recover principal and interest due on the bond and [illegible] the land [illegible] in the hypothecation. Defendant No. 1, the obligor of the bond, had executed it as manager of a joint Hindu family of which Defendant No. 2 was a member, and for the rightful purposes of the family. The family subsequently became divided, and now [illegible] property was divided [illegible] Nos. 1 and 2. Defendant No. 2 [illegible] part of his share of [illegible] who having [illegible] land [illegible] *He* [illegible] certificate [illegible] purpose of maintaining the suit [illegible] 12 Mad., 235

37 ——— [illegible] mortgaged property—[illegible]

CERTIFICATE OF ADMINISTRATION —*continued*

3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

s. 4—Debtor—Certificate to collect debts—Mortgagee asking for sale of mortgaged property—The assignee of a property mortgaged is not a debtor within the meaning of s. 4, Act VII of 1889, and a mortgagee praying for the sale of the property and asking for no relief personally against the mortgagor is not bound to take out a certificate under that Act before he can obtain a decree. *Raghu Nath Shaha v. Poresh Nath Pundari, I. L. R., 15 Calc., 54* applied in principle. *Janaki Ballav Sen v. Hafiz Mahomed Ali Khan, I. L. R., 13 Calc., 47* distinguished. KANCHAN MODI *v.* BAIJ NATH SINGH [I. L. R., 19 Calc. 336

38 ——— Application for execution by legal representative without certificate—*Execution of decree*—S. 4 of the Succession Certificate Act 1889 merely provides that the Court shall not proceed upon an application of a person claiming to be entitled to execute a decree except on the production of a certificate or other authority of a like nature. But it does not follow from that section that an application might not be made without the production of a certificate, the certificate being supplied during the pendency of the proceedings. *Janaki Ballav Sen v. Hafiz Mahomed Ali Khan, I. L. R., 13 Calc., 47* followed. BROJO NATH SURMA *v.* ISWAR CHUNDRA DUTT [I. L. R., 19 Calc., 453

39 ——— *Act XXVII of 1860, s. 2—General Clauses Consolidation Act (I of 1868), s. 6—Transfer of Property Act (IV of 1882), s. 59—Procedure—Suit for sale on a mortgage—Suit by representative of deceased mortgagee—Production of certificate of succession a condition precedent to decree*—S. 4 of Act VII of 1889 made no change in the substantive law, but enacted merely a rule of procedure. Inasmuch, therefore, as "no one has a vested right in any particular form of procedure," the above-mentioned section is applicable to suits instituted before the commencement of Act VII of 1889. [illegible] *Kisten Sahai, I. L. R.,* [illegible] *of Cur's Estate,* [illegible] *L. R., 3 Ch. D.,* [illegible] 69. *Warner v. Murdoch, L. R., 4 Ch. D.,* [illegible] *Knight v. Hale,* [illegible] of the Succession Certificate Act (VII of 1889) [illegible] to suits for sale under s. [illegible] of the Transfer of Property Act 1882. *Ammonan v. Gunnamati,* [illegible] *I. L. R.,* [illegible] *Kanhai Nath v. Bam Nath Sarkh, I. L. R.,* [illegible] dissented from. FATEH CHAND *v.* MUHAMMAD BAKSH [I. L. R., 16 All., 259

40 ——— [illegible] *Act* [illegible] *execution* [illegible] production of certificate. In cases where a certificate of succession is required before execution [illegible] a decree can be taken out, all that is necessary is that the certificate should be produced before an order for execution can be made. It is not necessary that the certificate should be produced along with the

CERTIFICATE OF ADMINISTRATION —*continued*

3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

application for execution *Brojo Nath Surma v Issur Chundra Dutt I L R 19 Calc 482* and *Mangal Khan v Salim ullah Weekly Notes All (1893) p 19* referred to KALIAN SINGH *v* RAM CHARAN I L R 18 All 34

41. ——— *Application for execution not accompanied by certificate*—Though under certain circumstances a Court may be prohibited by Act VII of 1889 from granting execution of a decree unless a certificate of succession as provided by the Act is produced before it it does not therefore follow that under such circumstances an application for execution is a bad application because it is unaccompanied by a certificate *Brojo Nath Surma v Issur Chundra Dutt I L R 19 Calc 482* followed. MANGAL KHAN *v* SALIM ULLAH KHAN [I. L. R. 16 All 26

42 ——— *Right to maintain suit without certificate—Death during execution proceedings of the original mortgagee and substitution of his heir*—S 4 of the Succession Certificate Act (VII of 1889) is not a bar to an execution proceeding instituted on a mortgage decree upon the application of the original mortgagee by reason of the original mortgagee having died during the pendency of the proceeding and his legal representatives who were substituted in his place not having produced any succession certificate *Fateh Chand v Muhammad Bakhsh I L R 16 All 259* dissented from MAHOMED YUSUF *v* ABDUR RAHIM BEPARI I L R 26 Calc 839 [4 C W N 558

43 ——— Recovery of property of deceased from party wrongfully in possession Suit for—*Act XXVII of 1860*—A certificate under Act XXVII of 1860 authorizes the holder of it to collect debts due to the deceased but not to recover property which belonged to the deceased from a person wrongfully in possession. AWKINPEE *v* MEENAY 8 W R 1

SEETARAM SAHOO *v* SHEO GHOLAM SAHOO [18 W R Cr 34

44 ———Hindu widow Suit by—*Suit for recovery of immoveable property—Hindu widow*—A Hindu widow as holder of a certificate under Act XXVII of 1860 is not necessarily the proper person to continue a suit for the recovery of immoveable property though she is entitled to do so as heir of the deceased if he died without issue and was the sole owner of the property SEVINTHIA PILLAY *v* MOOTOOSAWMY 8 W R 2

45 ——— *Act XXVII of 1860 s 2—Power of Hindu widow to sue executors and trustees for share of estate without certificate*—S 2 of Act XXVII of 1860 applies to debts and not to claims against executors and trustees At all events it does not apply to claims for immoveable property and therefore where a Hindu widow brought a suit for a share of the residuary immoveable property of a testator—*Held* that she was not disabled from suing by reason of her not having obtained a certificate of administration TREEPOORASOONDARY DOSSEE *v* DEBENDRANATH TAGORE [I. L R 2 Calc 45

46 ——— Devisee under a will Suit by—*Suit for rent—Possession*—A devisee under a will need not take out a certificate and can sue for rent without having obtained possession BANEE MADHUB GHOSE *v* THAKOOR DAS MUNDUL [B L R Sup Vol. 588 6 W R Act X 71

47 ——— Necessity to produce certificate—*Order directing certificate to issue*—A plaintiff suing as the heir of a deceased person is (where a certificate of heirship is necessary to enable him to sue) bound to produce the certificate itself It is not sufficient for the heir to show that the order has been made directing the issue of such certificate to him MULCHAND *v* MOTICHAND HARGOVANDAS [9 Bom 37

48 ——— Representatives of deceased decree holder Right of to execute decree—Parties who are representatives of decree holders on the record are *primâ facie* entitled to take proceedings in execution and draw the money standing to the credit of the deceased under their decree without the necessity of taking out a certificate under Act XXVII of 1860 when there are no debts to be collected as due to the estate of the deceased decree holder MANICK MOYEE CHOWDRAIN *v* POORNO CHUNDER ROY 17 W R 510

49 ——— Application for execution of decree by heir of deceased decree holder—*Act XXVII of 1860—Civil Procedure Code 1859 s 208*—To enable the heir of a deceased person to apply under s 208 of Act VIII of 1859 for the execution of a decree held by such person a certificate under Act XXVII of 1860 is not indispensable KARAM ALI *v* HALIMA [I. L. R. 1 All. 686

50 ——— Representative of assignee of debt by devise Right of to sue—*Act XXVII of 1860—Probate*—The representative of an assignee by devise of a debt cannot sue to recover the debt without having either taken out probate of the will of the testator or having obtained a certificate under Act XXVII of 1860 to realize the debts belonging to his estate SHODONE MOHALDAR *v* HALALKHORE MOHALDAR [I L R 4 Calc 615 3 C L R 462

51 ——— Debt due to estate of deceased person—Suit by legal representative—*Certificate for collection of debts*—It is not an imperative condition precedent to the institution of a suit by the legal representative of a deceased person for a debt due to his estate that such legal representative should first obtain a certificate under Act XXVII of 1860 LACHMIN *v* GANGA PRASAD [I L R. 4 All 485

CERTIFICATE OF ADMINISTRATION —*continued*

3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

52. ———— Debt due to estate of deceased person Execution of decree by representative for— *Necessity for certificate* — *Held* following the principle enunciated in *Ja hmin v Garga Prasad I L R 4 All 489* that the possession of a certificate under Act XXVII of 1860 was not an imperative condition precedent to the institution of execution proceedings by the representative of a deceased decree-holder; but that, where the judgment-debtor objects to the title of the person claiming to execute the decree the Court should consider whether the objection is vexatiously raised or is a *bona fide* one HOTI LAL *v* HARDEO **I L R 5 All 212**

53 ———— Right of heir to sue—*Act XXVII of 1860* —A certificate under Act XXVII of 1860 is not indispensable in order to allow a party who is next heir to come in to represent a deceased party in a suit OLONGO MOONJOREE DOSSEE *v* GOBINDNATH SEN **W R, 1864 Mis 13**

EKRAM HOSSEIN *v* KIRTEE CHUNDER [3 W R. Mis, 9

54 ———— Succession Certificate Act (VII of 1889) s 4—*Suit by undivided son of deceased creditor—Suit on bond*—A Hindu is not entitled to sue on a bond executed in favour of his undivided father deceased without the production of a certificate under Act VII of 1889 unless it appears on the face of the bond that the debt claimed was due to the joint family consisting of the father and the son VENKATARAMANA *v* VENKAYYA

[I L R 14 Mad 377

55 ———— *Application for execution*—Act VII of 1889 s 4 cl (1) does not apply to applications to execute decrees which were pending at the date of the passing of the Act but it refers to applications made after the Act came into force RAMA RAU *v* CHELLAYAMMA

[I L R 14 Mad 458

56 ———— *Proceedings in execution taken before and pending at the time at which the Act came into force*—Cl (b) of sub s 1 of s 4 of the Succession Certificate Act (VII of 1889) does not apply to applications or proceedings in execution of a decree made before and pending at the time at which the Act came into force The application therein mentioned must mean one made after the Act is in force and the proceeding of the Court in execution must be an initial one under that application and not one in continuation of proceedings taken on applications made before the Act came into force BALUBHAI DAYABHAI *v* NASAR BIN ABDUL HABIB FAZLY **I. L R 15 Bom 79**

57 ———— *Consent decree* — The plaintiff brought a suit to recover a certain sum of money due on a mortgage bond executed by defendant No 1 in favour of their (the plaintiffs) deceased father by the sale of the mortgaged property as well as from the defendants personally Some time after the institution of the suit the parties compromised the claim. The plaintiffs applied to the Court to pass a decree in terms of the compromise The Subordinate Judge referred the question whether a certificate under Act VII of 1889 was necessary before he could pass a decree as applied for *Held* that a certificate was necessary S 4 of Act VII of 1889 distinctly and peremptorily forbids any Court from passing a decree against a debtor of a deceased person for payment of his debt except on production by the person claiming of probate or letters of administration A decree would be against the debtor when passed although he consented to it SAKHARAM KHANDERAO *v* RAVJI

[I. L R. 15 Bom., 105

58 ———— *Application of Act—Decree passed prior to Act—Execution of decree after the passing of Act—Pending proceeding*—S 4 sub s. (1) cl (b) of Act VII of 1889 is not confined to the execution of decrees passed subsequently to the coming into operation of the Act *Held* that the heir of a judgment-creditor applying for execution of the decree after Act VII of 1889 came into operation was bound to obtain a certificate of heirship under that Act The fact that he had already on two occasions presented a darkhast which had been disposed of before the Act came into force did not affect the question *Balubhai Dayabhai v Nasar bin Abdul Habib Fazly I L R 15 Bom 79* referred to CHIMNIRAM UMAJI *v* HANMANTA

[I. L R 15 Bom 265

59 ———— *Debtor of a deceased person— Sale of deshmukhi hak—Vesting of the hak in the vendee—Death of the vendee—Recovery of the hak by the vendors—Suit for damages—Money had and received*—S 4 of Act VII of 1889 (Succession Certificate Act) prevents a Civil Court from passing a decree against a debtor of a deceased person for payment of his debt except on production of one or other of the documents there mentioned. *T* and others who were entitled to recover from the Government treasury a certain sum on account of deshmukhi hak sold it to *B* in 1873 in consideration of a debt due to him. *B* died in the year 1884 In the year 1886 *T* and his co-vendors themselves recovered from the Government the said sum which under the sale deed was recoverable by *B* In a suit brought by the heirs of *B* to recover the amount from *T* and the other executants of the sale deed —*Held* that a certificate under Act VII of 1889 was not required to enable the plaintiffs to sue By the sale in 1873 the property in the amount of the hak sold had become vested in the deceased before his death but the defendants never became his debtors at any time as the amount so assigned was not received by them from the revenue authorities till after his death in 1884 For wrongfully receiving it in 1886 the defendants could either be sued in damages by the persons entitled to receive the hak or treated as debtors and sued for money had

CERTIFICATE OF ADMINISTRATION
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3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

and received to their use NARAYAN BHAU BARTAKE v TATIA GANPATRAO DESHMUKH [I L R. 15 Bom 580

60 ———— *Death of one of two undivided brothers—Suit by surviving brother and manager for debt due to family—Filing award in suit referred to arbitration*—R and N were undivided brothers N was the elder but P was the manager of the family property N died leaving a widow and three sons and after his death R sued the defendant to recover certain debts due to the family The parties referred the dispute to three arbitrators appointed by them without the intervention of the Court and applied to the Court to have the arbitrators award filed. A question having arisen whether the award could be filed without a succession certificate under Act VII of 1889 —*Held* that there was nothing in Act VII of 1889 to prevent the award being filed without a certificate RAMCHANDRA HARI v BAPU I. L. R. 16 Bom 240

61 ———— *Undivided brothers—Decree obtained by one of two undivided brothers—Right of surviving brother to execute decree—Certificate of heirship*—A decree was obtained by one of two undivided brothers He died and the surviving brother applied for execution of the decree *Held* that if the debt was in its nature a family debt the right to execute the decree would have devolved on him by survivorship and not as the heir of his deceased brother and in that case no certificate of heirship under s. 4 of Act VII of 1889 would be necessary but if on the contrary the debt was part of the separate property of the deceased the applicant could only execute the decree as heir and must in that case obtain a certificate to enable him to proceed. RAGHAVENDRA MADHAV v BHIMA I. L. R 16 Bom 349

62 ———— *Death of plaintiff—Suit continued by legal representative before representation taken out—Civil Procedure Code (Act XIV of 1882) s 50*—Where the original plaintiff dies the suit since the passing of Act VII of 1889 if not under s 50 of the Civil Procedure Code may be continued by his legal representative although the latter has not taken out administration to the original plaintiff's estate All that the defendant can insist on in such a case is that representation shall be complete before decree TORREGROSA VASQUEZ v PRAGJI HURJI [I. L R 16 Bom 519

63 ———— Where a party applied for leave to sue *in formâ pauperis* to recover assets forming part of the estate of a deceased person and his application was dismissed on the ground that he produced no certificate under Act VII of 1889 —*Held* that the application was wrongly dismissed no certificate being necessary for such a suit KAMMATHI v MANGAPPA [I L R. 16 Mad 454

CERTIFICATE OF ADMINISTRATION
—*continued*

3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

64 ———— *Act coming into force while suit was pending Effect of on suit—Suit for foreclosure or sale—Mortgage by conditional sale*—On 28th March 1871 the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal the instrument also contained a covenant for the repayment in four years of the balance that might then be due by the mortgagor and a stipulation that on default, the mortgagor was to surrender the property to the mortgagee as if it had been sold to him In 1874 the mortgagor resumed possession without discharging the mortgage debt The mortgagee having died his sons on 11th April 1888 filed the present suit on the mortgage and prayed for a decree for foreclosure or sale During the pendency of the suit the Succession Certificate Act of 1889 came into operation but the plaintiffs obtained no certificate under it *Held* that the plaintiffs were not precluded from obtaining a decree by reason of their not having obtained a certificate under the abovementioned Act AMMANNA v GURUMURTHI I L R 16 Mad 64

65 ———— *Mohunt Decree obtained by on behalf of Muth—Endowment Representation*—A decree in favour of a deceased mohunt for costs incurred in proceedings carried on by him on behalf of the muth may be executed by the successor and representative of the mohunt without probate certificate or letters of administration being obtained. JOGENDRONATH BHARATI v RAM CHUNDER BHARATI [I L R. 20 Calc 103

66 ———— *Foreign Court Proceedings of—Probate issued from Native Court in Cutch—Certificate of Political Agent—Suit in British India*—A suit in British India by the executors of the will of a native of Cutch was dismissed on its appearing that the plaintiffs were furnished only with probate issued from a Native Court of which they produced a copy certified by the Political Agent of Cutch and since stamped in accordance with the Court Fees Act 1870 *Held* that the plaintiffs were not entitled to a decree without taking out probate or letters of administration in British India under Act V of 1881 or a certificate under Act VII of 1889 but instead of dismissing the suit the Court should have allowed time for the plaintiffs to have so completed their title to sue MANASINGA v AMAD KUNHI I. L R 17 Mad. 14

67 ———— *Suit by surviving partner and heir of deceased partner—Suit on promissory note by surviving partner of firm—Parties—Right of suit—Contract Act (IX of 1872) s 45*—In a suit on a promissory note made by the defendant in favour of two Hindus carrying on business in partnership it appeared that one of the partners

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3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

was dead and no succession certificate or letters of administration had been obtained The plaintiffs were the surviving partners and the undivided sons of the deceased partner *Held* that a surviving partner can sue alone for the recovery of a partnership debt *Held* further that such a suit may be maintained by a surviving partner jointly with the heir of the deceased partner in which case a certificate of heirship will be necessary unless it appears on the face of the documents sued on that the debt is a coparcenary debt VIDYANATHA AYYAR v CHINNASAMI NAIK I L R. 17 Mad, 108

68 —— *Landlord and tenant—Suit by surviving partners of firm for rent —Right of suit* —A certain firm mortgaged with possession its immoveable property to two other firms trading jointly who let out the property to the mortgagor firm Afterwards some of the partners of the mortgagee firms having died the surviving partners and the sons of the deceased brought a suit against the mortgagor firm to recover rent which accrued due after the deaths of the deceased partners The Judge held that the plaintiffs could not proceed with the suit without a certificate under the Succession Certificate Act (VII of 1889) *Held* reversing the order that as the rent sued upon became due after the deaths of the deceased partners it formed no part of their estates at the time of their respective deaths and no certificate was therefore necessary under the Succession Certificate Act RANCHORDAS NATHUBHAI v BHAGUBHAI PARAMANANDAS I L R. 18 Bom 394

69 —— *Suit on mortgage bond by heir—Suit continued by party substituted for plaintiff who has taken out certificate* —A mortgage bond was executed by the defendant in favour of *H* who died leaving two sons *J* and *S* the elder of whom *J* took out a certificate to collect the debts of his father and instituted a suit on the bond in which he asked both for sale of the mortgaged property and for a personal decree against the defendant Whilst the suit was pending *J* died and *S* was allowed to be substituted in his place as plaintiff A decree was made for sale of the property but the personal relief was not granted as it was held to be barred by lapse of time *Held* that this was not a decree against a debtor for payment of his debt within the meaning of s 4 of the Succession Certificate Act (VII of 1889) *Raghu Nath Saha* v *Poresh Nath Pundari* I L R 15 Calc 54 and *Kanchan Modi* v *Baij Nath Singh* I L R 19 Calc 336 approved. This suit was therefore maintainable notwithstanding that no certificate had been taken out by *S* *Semble*—It is doubtful whether that Act would apply at all to the case of a person who has been substituted as plaintiff for one who having taken out a certificate has died pending the suit BAID NATH DAS v SHAMANAND DAS [I L R 22 Calc 143

70 —— *Debt—Unliquidated claim* —*X* a Hindu left some sheep with *Y* who failed to return them *X* having died his widow applied for a succession certificate to enable her to sue *Y* for damages for wrongful detention of the sheep *Held* that no debt was owing by *Y* to *X* within the meaning of the Succession Certificate Act s 4 sub s (2) and therefore no certificate was necessary to enable his widow to sue *Y* SUBBANNA v MUNEKKA I L R 18 Mad, 457

71 —— *Debt—Price fixed for goods sold* —Where the claim was for the refund of the price alleged to have been paid for goods sold, but not delivered it was held to be not an unliquidated claim for damages but a claim for a liquidated sum of money which in some way or other the defendant could be compelled to pay it was therefore a debt and the suit could not be brought without a certificate under s 4 of the Succession Certificate Act PENTA REDDI v AUKI REDDI [I. L R., 22 Mad 144 note

72 —— *Debt—Suit for account of share of deceased partner—Unliquidated claim* —A Muhammadan being the son of a deceased member of a firm brought a suit as his legal representative against the surviving partners praying for an account of the partnership assets and for payment to him of the amount which might be found due to the share of the deceased The plaintiff had neither letters of administration nor a succession certificate *Held* that the plaintiff's claim being unliquidated was not a debt within the meaning of Succession Certificate Act 1889 s. 4 sub-s. 1 (*a*) *Penta Reddi* v *Auki Reddi* I L R 22 Mad 144 note distinguished. SABJU SAHIB v NOORDIN SAHIB [I. L R 22 Mad., 139

73 —— *Debt' Meaning of—Suit for rent—Certificate of succession*—Rent is not a debt within the meaning of s 4 of the Succession Certificate Act and therefore no certificate of succession is necessary before bringing a suit for rent NAGENDRA NATH BASU v SATADAL BASINI BASU I. L R 26 Calc 538 [3 C W N 294

74 —— *Collection of debt on succession—Certificate of heirship—Act XXVII of 1860 s 2—Right of succeeding trustee to collect* —In a suit brought by a widow who had succeeded her husband as trustee of an endowment for a debt due thereto —*Held* that she was not suing as being entitled to the effects of her deceased husband, or for payment of a debt due to the estate which had been his but that she was suing as representing the endowment in the capacity of a trustee of its money Accordingly neither Act XXVII of 1860 s 2 nor Act VII of 1889 s 4 was applicable to her claim and the fact of her not having obtained a certificate of heirship to her husband's estate did not disentitle her to a decree YARLAGADDA MALLIKARJUN v MAKEBLA SRIDEVAMMA I L R. 20 Mad 162 [L R. 24 I A 73 1 C W N 497

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3 RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued*

75 ———— *Joint family property—Suit for family debt by right of survivorship* Under the Succession Certificate Act (VII of 1889) a plaintiff does not require a certificate where his claim is for family property by right of survivorship JAGMOHANDAS KILABHAI *v* ALLU MARIA DUSKAL
[I L R 19 Bom 338

76 ———— *Joint Hindu family—Suit by survivor for debt due to joint family—Survivorship*—Where a debt is advanced from the funds of a joint Hindu family and is due to that family no certificate under Act VII of 1889 is necessary to enable the survivor of such family to recover the said debt *Jagmohandas Kilabhai v Allu Maria Duskal I L R 19 Bom 338* followed PATESHURI PARTAP NARAIN SINGH *v* BHAGWATI PRASAD
I L R 17 All 578

77 ———— *Survivorship—Letters of administration—Hindu law joint family—Revival of suit—Civil Procedure Code s 372*—On the death of the plaintiff his sons who were members of a joint Hindu family governed by the Mitakshara law of which their father the deceased plaintiff was a managing member applied for the revival of the suit *Held* that it was not necessary that either letters of administration or a certificate under Act VII of 1889 should be obtained in order to entitle the applicants to ask that they may be permitted to proceed with the suit BEEJRAJ *v* BHYROPERSAUD
I. L. R. 23 Calc 912

BISSEN CHAND DHUDHURIA *v* CHATRAPAT SINGH
[1 C W N 33

78 ———— *Suit by person claiming property of undivided family by right of survivorship*—Where a plaintiff claimed by right of survivorship to recover money due on a mortgage bond which had been executed by the defendants in favour of the former managing member of the plaintiff's undivided family—*Held* that the Succession Certificate Act did not apply and that plaintiff need not produce a succession certificate under that Act PALLAMRAJU *v* BAPANNA
[I L R 22 Mad 380

79 ———— *Suit for debt due to Hindu family jointly*—In a suit by the members of a joint Hindu family for a debt due on a document executed in favour of a deceased member of the family the plaintiffs need not produce a certificate under the Succession Certificate Act if they can prove that the debt was due to the family jointly *Quære*—Whether a plaintiff in a suit to recover money by the sale of property mortgaged need produce a certificate under the Succession Certificate Act SUBRAMANIAN CHETTI *v* RAKKU SERVAI
[I L R 20 Mad 232

80 ———— *Curator—Act XIX of 1841*—A curator appointed under the Curator's Act (XIX of 1841) is not a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage and is not required to take out a certificate under s 4 of the Succession Certificate Act (VII of 1889) before he can obtain a decree BABASAB *v* NARSAPPA
[I L R 20 Bom, 437

81 ———— *Debt Meaning of*—The Succession Certificate Act refers only to such debts as the deceased could sue upon So for debts falling due after death an heir may sue without certificate NEMDHARI ROY *v* BISSESSARI KUMARI
2 C W N 591

4. ISSUE OF AND RIGHT TO CERTIFICATE

82 ———— Issue of certificate—*Time for issuing*—A certificate under Act XXVII of 1860 should be issued directly it is granted provided the proper stamp prescribed for such certificate be furnished. DHUNPUT SINGH DOOGUR *v* GOVERNMENT
17 W R., 489

83 ———— *Jurisdiction—Person with no fixed residence—Act XXVII of 1860 s 3*—Where a person had no fixed place of residence at the time of his death the Judge of the district in which his debts are has authority to grant a certificate under Act XXVII of 1860 GHOLAM SOBHAN *alias* SABOO MEAH *v* MAHOMED ROUF
[20 W R 286

84 ———— *Order in recognition of two wills—Act XXVII of 1860*—Under Act XXVII of 1860 an order cannot be obtained from the Court in recognition of two wills BEMOLA MOYEE DEBEA *v* KISHTOMONEE DEBEA
[W R. 1864, Mis 10

85 ———— *Certificate for collection of debts of endowment—Act XXVII of 1860*—A District Judge was held to have rightly refused a certificate under Act XXVII of 1860 for the collection of the debts of an endowment IN THE MATTER OF THE PETITION OF BHYRUB BHARUTTEE
21 W R 340

86 ———— *Act XXVII of 1860—Karnavan of tarwad property—Debt due by karnavan*—A certificate to collect debts under Act XXVII of 1860 may properly be refused to a karnavan of a Malabar tarwad when the bulk of the debt to be collected is found to be due by the karnavan himself under a decree obtained against him by his predecessor MADHAVA PANIKAR *v* GOVINDA PANIKAR
I. L. R 5 Mad. 4

87 ———— Right to certificate—*Heir—Act XXVII of 1860*—As a general rule the heir is the person who should have a certificate to collect the debts and manage the estate of a deceased person under Act XXVII of 1860 If he as heir is entitled to the whole surplus of the estate the fact of his having been hostile to the deceased is immaterial. When there are several heirs and no disputes amongst them he who is entitled to the largest share may in

CERTIFICATE OF ADMINISTRATION —*continued*

4 ISSUE OF AND RIGHT TO CERTIFICATE —*continued*

the absence of other disqualifying circumstances and in the discretion of the Court be entrusted with the duty ABDOOL ALI v ABIDUNNISSA KHATOON [W R. 1864, Mis 41

88 ——— *Heir*—The certificate to collect debts should ordinarily be granted to the person entitled to the inheritance JOANA v BHUGWANEE 3 N W, 320

89 ——— *Heir*—Where the will set up by objectors to an application by the natural heir for a certificate of administration is not sufficiently proved a Court is justified in looking on the natural heir as the party entitled to the certificate DINOBUNDHOO CHOWDRY v RAJMOHINEE CHOWDRAIN 15 W R, 73

90 ——— *Persons primâ facie entitled—Act XXVII of 1860—Order in respect of property of deceased*—When application is made for a certificate under Act XXVII of 1860 a Judge should determine who is entitled and should grant the certificate accordingly *He has no power* to make an order in respect of the property of the deceased. OHEED KHAN v COLLECTOR OF SHAHABAD [9 W R 502

91 ——— *Person primâ facie entitled—Enquiry as to title—Questions to be decided*—In administering the provisions of Act XXVII of 1860 Courts are not bound to enter on the determination of intricate questions of law or fact but are bound to grant a *certificate* to the person who has *primâ facie* the clearest title to the succession as the natural heir SURPOJI v KAMAKSHIAMBA [I. L R 7 Mad 453

92 ——— *Selection where there are several claimants—Act XXVII of 1860*—If there are several applicants for a certificate under Act XXVII of 1860 the heir of the person *or persons* having the largest interest in the estate are entitled to the certificate in preference to others whose interests are less considerable If the Court thinks any small interest not sufficiently protected it *may call* upon the party taking the certificate to give security to the extent requisite for the protection of such interest AZEEM KHAN v AMEERUN 12 W R 38

93 ——— *Heiress*—An heiress was held entitled to a certificate under Act XXVII of 1860 although the owner of the property had died nine years *previously* and the property had been previously managed by a third party PULASH MONEE DOSSEE v ANUND MOYEE DOSSEE [8 W R 398

94 ——— *Daughter in law as heiress—Ground for opposing certificate*—An application by a daughter in law under Act XXVII of 1860 for a certificate as heiress would be properly rejected upon the sole ground that the applicant was not *the heiress* BANDAM SETTAH v BANDAM MAHALAKSHMY 4 Mad 180

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4 ISSUE OF AND RIGHT TO CERTIFICATE —*continued*

95 ——— *Trustee of Government securities—Act XXVII of 1860*—A trustee who had been appointed by will to act in respect of Government securities belonging to an estate having demised and the minor heir having come of age the parties entitled applied for a certificate under Act XXVII of 1860 to enable them to draw interest on the securities Upon this the Judge recorded an order that they might apply for a certificate in respect of the deceased trustee's estate *Held* that the applicants had nothing to do with the trustee's estate and that it was the duty of the Judge to grant the application if no person showed a better right IN THE MATTER OF THE PETITION OF PREONATH SIRCAR 13 W R 325

96 ——— *Executor—Act XXVII of 1860*—The executor under a will if it be not contested has an undoubted right to a certificate under Act XXVII of 1860 though he be not the legal heir If the will be contested the Judge should enquire into its validity and if he consider it proved should give a certificate leaving the parties dissatisfied to set it aside by a regular suit BIDHOO BHOOSHUN MUKERJEE v ISSUR CHUNDER ROY CHOWDHRY W R. 1864 Mis 4

97 ——— *Claimant under will—Failure to prove will*—In an application for a certificate under Act XXVII of 1860 where applicant's title was based upon a will to which the signatures of the witnesses were found to have been affixed previously to that of the testator the Court held that the deed was inoperative as a will but inasmuch as it expressed fully the testator's wishes regarding the management of his affairs and was very distinct as to the confidence reposed in the applicant (the second wife) the Court decided that she was the proper person to have the certificate KHUTTUN KOOER v POONA KOOER 24 W R 323

98 ——— *Executor and legal representative*—A person was trustee of waqf or trust property He had also some other property (how much was not clear) of his own He made a will relating only to the trust property and appointed an executor *Held* that the executor mentioned in the will was entitled to a certificate under Act XXVII of 1860 with regard to the trust property and the legal personal representative of the deceased was entitled to a certificate under the same Act with respect to any other property of which he died possessed DAUD ALI v NADIR HOSSEIN [3 B L R A C, 46 11 W R 383

99 ——— *Member of joint Hindu family*—Certain members (N and A) of a joint Hindu family having commenced a suit to set aside an adoption by one of the family (C) a compromise was effected by which the several parties took separate shares of the family property C having died N and A applied for a certificate to collect the debts due to his estate but were opposed in a joint petition made by the widow and adopted son *Held* that the

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—continued

4 ISSUE OF AND RIGHT TO CERTIFICATE
—continued

applicant could n t be entitled to the certificate which might however be given to the s n with the consent of the wid w MUNDASEE KOOER v NOWBUNGEE LALL 15 W R. 135

100 ———— *Member of joint family—Separate members*—Where a certificate of administrati n was granted to certain applicants who asked it with reference to a particular d bt putting in a bond of the judgment-debtor and showing that they were joint in estate with the deceased the certificate was held to have been rightly granted and t have been properly refused to another member of the family who had separated from the deceased RAM GHOLAM SAHOO v JANKEE PERSHAD SAHOO 25 W R. 31

101 ———— *Member of joint Hindu family—Act XXVII of 1860 ss 2 and 3*—A certificate under Act XXVII of 1860 cannot be refused merely because the d ceased was a member of a joint Hindu family Ordinarily the managing member would be the person best entitled to the certificate but this would not be the case where the members had fallen out CHOWDHRY KRIPPA SINDHOO DASS v RADHA CHURN DASS 23 W R. 234

102. ———— *Minor Rights of in family governed by the Mitakshara law—Act XXVII of 1860—Act XL of 1858*—K B a Hindu governed by the Mitakshara law died leaving two sons *G P* and *K P* a minor and a widow *G K* the mother of *K P* *Held* on applications by *G P* and *G K* respectively to obtain certificates under Act XXVII of 1860 to collect the debts due to the estate of *K B* that *G P* alone was entitled to obtain such a certificate and on the application of *G K* for a certificate to take charge of the estate of her minor son *K P* under Act XL of 1858 that as there was no evidence that *K P* was entitled to any separate estate she was not entitled to such a certificate *Held* also that if occasion should arise a suit might be filed in the name of the minor by his mother as his next friend without her having first obtained a certificate under Act XL of 1858 and without her having previously obtained permission from any Court GOURAH KOERI v GAJADHUR PERSHAD I L R 5 Calc 219 4 C L R. 398

103 ———— *Minor by next friend*—*Semble*—A certificate to collect debts under Act XXVII of 1860 may be granted to a minor by his next friend KALI KOOMAR CHATTERJEE v TARA PROSONO MOOKERJEE 5 C L R. 517

104 ———— *Certificate to collect debts—Certificate granted—Minor—Next friend—Succession Certificate Act (VII of 1889)*—*Held* that a certificate of succession may be granted under Act VII of 1889 to a minor through his next friend *Kali Koomar Chatterjee* v *Tara Prosono Mookerjee 5 C L R 517* referred to RAM KUAR v SARDAR SINGH I L R 20 All 352

105 ———— *Sister's son—Half brother*—*Held* that the certificate in this case was given to the party best entitled to it with reference to the object of Act XXVII of 1860 i e the deceased s full sister's son who was the party in possession in preference to the deceased s half brother LALL MAHOMED v BUZLOOL HOSSEIN [17 W R. 562

106 ———— *Father's brother's daughter's son—Father s father's brother's son—Spiritual benefit—Act XXVII of 1860*—The father's father's brother's son of a deceased person stands nearer to him in right of succession than his father s brother's daughter's son the former is therefore preferentially entitled on the death of the deceased person s widow to a certificate under Act XXVII of 1860 enabling him to collect the debts due to the estate GOPAL CHUNDER NATH COONDOO v HARIDAS CHINI I L R 11 Calc 343

107 ———— *Father's brother's grandson—Spiritual benefit—Proximity of residence and of kinship—Act XXVII of 1860*—Proximity of residence and of kinship are not such considerations as should warrant a Judge in granting a certificate under Act XXVII of 1860 to any person in preference to another who has *primâ facie* the better title to the beneficial ownership of the debts Adopting the principle laid down in the case of *Gobind Pershad Talookdar* v *Mohesh Chunder Surmah Ghuttack 15 B L R 35* a father s brother's grandson has a right to obtain a certificate under Act XXVII of 1860 in preference to a brother's daughter's son IN THE MATTER OF THE PETITION OF OODOY CHURN MITTER I L R 4 Calc 411

108 ———— *Nephew—Spiritual benefit*—A nephew is entitled to a certificate of administration in preference to a deceased son s daughter's son AREE MURDUN BHUGGUT v JAN NATH BHUGGUT 15 W R. 328

109 ———— *Nephew—Act XXVII of 1860—Act XL of 1858*—Where a will appointed the nephews of the testator to manage 4 annas of the property (the subject of the will) in their own right and 12 annas as guardians of a minor son—*Held* that the nephews were entitled to one certificate under Act XXVII of 1860 to collect the debts of the whole estate and to another certificate under Act XL of 1858 to take charge of the minor's 12 annas MAKHUN CHUNDER SHAHA v CHAND MONEE DASSEE [8 W R 105

110 ———— *Nephew—Certificate of uncle s property*—Whether a nephew takes his uncle s share by mere survivorship or by inheritance if he takes on the ground of their having been joint in estate he succeeds to and becomes entitled to the effects of" the deceased within the meaning of Act XXVII of 1860 JUSODA KOONWAR v GOUREE BYJNATH SAHAE SINGH 6 W R. 139

111 ———— *Disciple—Certificate to estate of Hindu devotee—Mental incapacity to succeed*—The pers n entitled to a certificate enabling him to collect the debts due to the estate of

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a deceased ascetic or devotee must be the disciple or spiritual brother or preceptor of the deceased and such person should not be deprived of his right even though mentally incapable of succeeding to the office of the deceased. GUREEB DOSS *v* MUNGUL DOSS [14 W R., 383

112 ——— *Spiritual son—Personal estate of a deceased mohunt—Spiritual brother*—The person entitled to collect the outstanding debts due to the private estate of a deceased mohunt is the spiritual son (the chela) and not the spiritual brother (guru bhai) of the deceased. DUKHARAM BHARTI *v* LUCHMUN BHARTI [I L R., 4 Calc 954 4 C L R. 49

113 ——— *Illegitimate sons*—There being evidence in this case of the deceased having assigned his property to his illegitimate sons and acknowledged them as his sons a certificate under Act XXVII of 1860 to administer to his estate was granted to them in preference to the childless widows of his brother and nephew PRODHAN RAM *v* JERIA KOOER 17 W R. 189

114 ——— *Adopted son—Act XXVII of 1860—Title under adoption*—An adoption *de facto* must be supposed valid until it is set aside and a party so adopted is entitled to object to other parties receiving a certificate under Act XXVII of 1860 in respect of the property he takes under the adoption In granting such a certificate a Judge must look to fitness as well as to propinquity NUNKOO SINGH *v* PURM DHUN SINGH [12 W R 356

115 ——— *Adopted son—Right to certificate of a son adopted after the death of his adoptive father*—A son adopted in pursuance of an unoomoti puttro (power to adopt) some time after the death of his adoptive father does not require and is not entitled to obtain a certificate under Act XXVII of 1860 to enable him to collect debts in respect of the properties left by his adoptive father which accrued due while they were under the management of his adoptive mother The estate of the adoptive father if the adoption is a good one vests immediately on the adoption in the adopted son and debts to it if they accrued due after the death of the adoptive father are debts recoverable by the adopted son in his own right and not as representative of his adoptive father NARAIN MAL *v* KOOER NARAIN MYTEE I L R 5 Calc 251

116 ——— *Grandmother—Act XXVII of 1860—Act XL of 1858*—Where the grandmother of minors applied for certificates under Acts XL of 1858 and XXVII of 1860 the father consenting and approving it was held that there was nothing in the law to prevent the certificates being granted if the applicant was competent and willing to take them OOMRAO DOOLHAEN *v* AGA MEER 12 W R 119

117 ——— *Mother-in-law—Act XXVII of 1860*—The circumstance of a deceased party having on the day of his death informed his debtor that he had given the whole of the moneys due to him to his mother in law was held to be a sufficient indication (whether the gift was valid or not) that she was the proper person to receive the money due to the deceased and the certificate under Act XXVII of 1860 In cases under Act XXVII of 1860 Judges should always certify whether the certificate has been actually granted. ZEEMUTOONISSA KHANUM *v* KHUTOO BEGUM [12 W R. 239

118 ——— *Mother—Husband*—A mother is not entitled to a certificate under Act XXVII of 1860 to collect debts due to her deceased daughter in preference to the husband of the deceased Such certificate however will not authorize the husband's interference with the mother's possession of the landed property which she claims as her own MOHUN SOONDUR KOONWAR *v* RAM ANOOGRO NARAIN 3 W R Mis 3

119 ——— *Mother of adopted son*—The mother of a deceased adopted minor son is his legal representative and entitled to a certificate under Act XXVII of 1860 as his legal heir DEENO MOYEE DOSSEE *v* DOORGA PERSHAD MITTER [3 W R. Mis 6

DEENO MOYEE DOSSEE *v* TARACHURN COONDOO CHOWDHRY [3 W R Mis 7 note Bourke A. O C 48

120 ——— *Widow—Disputed adoption*—When the title of a person claiming as adopted son of the deceased is disputed the certificate may properly be granted to the widow of the deceased DIRG PAUL SINGH *v* GAINDA KOONWAR [1 Agra Mis 13

121 ——— *Widow—Act XXVII of 1860 s 3—Act XL of 1858 s 3*—A as widow of *B* and guardian under a will of his minor son obtained a certificate under s 3 of Act XL of 1858 *C* another widow of *B* subsequently applied for a certificate under s 3 of Act XXVII of 1860 The Judge summarily rejected *C*'s application on the ground that the grant of a certificate to her would lead to confusion *Held* on appeal that the Judge ought to have issued notices and proceeded under s 3 of Act XXVII of 1860 IN THE MATTER OF RAISUNNISSA BEGUM [2 B L R. A C 129 10 W R. 62

122 ——— *Widow—Certificate as guardian after grant of certificate of administration*—Two certificates of administration cannot run together So a widow who fails to appear and contest the grant of a certificate to another party made prior to her own application cannot claim one for herself afterwards but she may be allowed a certificate to act as guardian of her minor (adopted) son SHAM MANNA *v* RAMDYAL GOOHOO [1 W R. Mis., 3

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4. ISSUE OF AND RIGHT TO CERTIFICATE —*continued*

123 ———— *Widow—Widow as guardian of son* —A certificate may be granted to a widow as guardian of her minor son to collect the debts due to her deceased husband, notwithstanding that the adoption of the husband may have been set aside NITTO KALLEE DEBEE *v* OBHOY GOBIND CHOWDHRY 5 W R Mis 10

124 ———— *Widow—Cousin and partner*—A widow is entitled (in preference to a cousin who also claimed as surviving partner) to a certificate to collect the debts joint as well as separate of her late husband. SHIB GOLAM SAHCO *v* GUNGA KOONWAREE 1 W R Mis 32

125 ———— *Widow—Claims of objectors on application for certificate*—The allegation of objectors who claim the property of a deceased person under a tukseemnamah transferring the property from the widow to them should be enquired into and if it is proved to be genuine the objectors are entitled to a certificate instead of the widow as legal heir of the deceased DEB PERSHAD *v* MONGA KOONWAR 4 W R. Mis 19

126 ———— *Widow—Certificate of husband's property*—The petitioner a Hindu widow applied for a certificate under Act XXVII of 1860 of her deceased husband s estate and stated in her petition that her husband possessed, at the time of his death self-acquired property besides the property he had inherited from his brother The opposing parties set up a will of the deceased s father under which a certain share of the testator's estate was given to the petitioner's husband and in the event of his death without children to his mother and after her death to his brother *Held* that it was not necessary for the purpose of the application to decide on the validity or otherwise of the will as the widow was entitled to a certificate in respect of her husband s property and further that the will which purported in certain events to give to the testator's widow that share of the property which he bequeathed to his son (the petitioner's husband) could not affect her claim to the certificate in respect of her husband s self acquired property KHOODOO MONEY DABEE *v* GOLUCKMONEY DABEE [1 Ind Jur O S 36

127 ———— *Widow—Failure of objector to prove title*—Where a Judge holding that the special title put forward by an objector had not been proved decided that the widow of the deceased was best entitled to a certificate under Act XXVII of 1860 the decision was held to be correct inasmuch as the Judge was not deciding upon the general right and title of the parties to the property but under a special law for the collection of debts and for the protection of debtors PROTAP NARAIN DOSS *v* POORNO MASHEE DAYE [14 W R. 415

128 ———— *Widow—Application for certificate to enable widow to receive sale proceeds of estate sold after death of husband*—Where the widow of a deceased applied for a certificate without which she was refused some sale proceeds of an estate of the deceased sold after his death for arrears of revenue and the Judge rejected her application on the ground that the case did not come within the scope of the Act as the sum in deposit was not in any sense a debt due to the deceased at the time of his death —*Held* that as the sale-proceeds were payable to the estate of the deceased there was nothing in the law to prevent the Judge from entertaining the application IN THE MATTER OF THE PETITION OF TRIPOORA SOONDUREE [22 W R 45

129 ———— *Right to guardianship of Hindu widow—Grant of certificate of administration under Act XL of 1858*—The relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations A certificate of administration under Act XI of 1858 was therefore granted to one of the former in preference to the latter KHUDIRAM MOOKERJEE *v* BONWARI LALL ROY [I L R. 16 Calc 584

130 ———— *Representative of a deceased person—Person claiming to be entitled to the effects of the deceased—Purchaser at sale in execution of a decree against a deceased person—Succession Certificate Act (VII of 1889) s 4*—A certain debt due to *P* (deceased) was sold in execution of a decree against him and was purchased by *M* In order to enable him to recover the said debt *M* applied to the District Judge for a certificate under the Succession Certificate Act (VII of 1889) The Judge rejected the application on the ground that the applicant was not a representative of the deceased. *Held* reversing the decree that the applicant having purchased at the auction sale the debt as part of the deceased s effects which was sold as such by the Court was entitled to a certificate under s. 4 (*a*) of the Succession Certificate Act MANCHARAM PRANJIVAN *v* BAI MAHALI I L R. 18 Bom 315

131. ———— *Succession Certificate Act (VII of 1889) s 1 cl 4—Right to certificate under will—Validity of will—Hindu Wills Act XXI of 1870*—Cl 4 of s 1 of the Succession Certificate Act (VII of 1889) does not preclude an applicant from obtaining a certificate under the will of the deceased A will having been held to be genuine in a contest between the parties and there being no suggestion that the will was one to which the Hindu Wills Act (XXI of 1870) applied —*Held* that the Court could not refuse to grant the certificate DAVE LILADHAR KASHIRAM *v* BAI PARVATI [I. L. R. 18 Bom 608

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132 ———— **Certificate for portion of property**—The Act does not authorize the grant of a certificate for a portion of the property or debts,

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whether such portion be separate and defined or not BEYCHAN SAHOO *v* GANESH SAHOO [2 N W 439

133 ———— **Limited certificate** —A certificate under Act XXVII of 1860 cannot be limited to particular debts IN THE MATTER OF THE PETITION OF PRAN KHAN 17 W R 238

134 ———— **Certificate to collect fractional share of debts** —Certificates to collect fractional parts of debts due to a deceased cannot be granted to different heirs according to their respective shares in the inheritance but one certificate to collect debts should be granted to all or such of the heirs as would consent to act in concert AMIRUNISSA BARKAT *v* AFFIATTUNISSA [3 B L R A C, 404 12 W R 307

135 ———— The appellant was the son by the first wife of the deceased the respondent the second wife of the deceased applied for a certificate for herself and on behalf of her minor sons the Judge gave her a certificate for a 12 annas share *Held* on appeal that the certificate should be granted jointly to the appellant and respondent The granting of a certificate does not determine any question of title or decide what property does or does not belong to the estate of the deceased. It merely enables the person to whom it is granted to collect the assets of the deceased and is conclusive of her representative title against all debtors to the deceased. A certificate cannot be granted for the collection of fractions of the debts of the deceased. WASELUN HAK *v* GOWHURUNNISSA BIBI [1 B L R S N, 7; 10 W R 105

136 ———— Act XXVII of 1860 does not contemplate a division of the certificate or a power to collect fractional shares of debt BHOODUN *v* JAN KHAN 13 W R 265

137 ———— *Succession Certificate Act (VII of 1889) s 7—Grant of certificate not to be partial* —A District Court acting under *s 7 of Act VII of 1889 must if there are* several applicants elect to which if any a certificate should be granted It is not competent to such Court to grant separate certificates to different persons for partial collection of the debts in respect of which a certificate is sought SHITAB DEI *v* DEBI PRASAD [I L R 16 All. 21

138 ———— *Succession Certificate Act (VII of 1889) s 6—Certificate not necessarily to collect all the debts of the deceased* —A Court may legally grant to an applicant under Act VII of 1889 a certificate for the collection of a specified debt or specified debts of a deceased person The Court is not bound to grant a certificate only for the collection of the whole of the debts of the deceased IN THE MATTER OF THE PETITION OF INDARMAN [I L R 18 All 45

139 ———— *Succession Certificate Act (VII of 1889) s 4—Application for certificate for collection of part only of a debt* —A certificate for collection of debts under Act VII of 1889 may be given for the collection of any one or more separate debts of the deceased, but not for the collection of part only of a debt Where however a portion of a debt in respect of which a certificate is sought has been discharged it is not necessary for the applicant to pay duty on more than the unsatisfied portion of the debt MUHAMMAD ALI KHAN *v* PUTTAN BIBI I L R 19 All 129

140 ———— **Joint certificate**—*Ground for appeal against order* —It is no ground for appeal against an order granting a certificate that the Judge joined with the appellant another person who had an interest in the debts to be collected IN THE MATTER OF THE PETITION OF PRAN KHAN [17 W R 238

141 ———— *Rival claimants —Discretion of Judge* —Where there are rival claimants for a certificate to collect the debts of a deceased *person the Judge has under s 3 Act XXVII of* 1860 a discretion to present it to such person as under the circumstances of the case shall appear best entitled to it *Quære*—Has he power under the Act to grant them a joint or separate certificate? FAISUNNISSA BEGUM *v* KHUJJUNISSA [4 B L R A.C 149 13 W R 143

142 ———— *Power of Judge* —Act XXVII of 1860 gives a Judge no power to grant a joint certificate to two persons his duty being to determine which of the applicants has the better right to a certificate IN THE GOODS OF SEETARAM GOWRA *v* KEKREE SINGH 4 N W 60

But *see* EAD ALI KHAN *v* WAHAD ALI KHAN [23 W R, 25

143 ———— *Grant to several persons jointly—Act XXVII of 1860* —A certificate under Act XXVII of 1860 should not be granted to several persons jointly but where there are several claimants to the certificate the District Court should determine which of such persons has the best title to the certificate and grant the same accordingly MADAN MOHAN *v* RAMDIAL I L R 5 All 195

ROOKMINEE *v* CHOONEE LAL 1 Agra Mis 6

144 ———— *Succession Certificate Act (VII of 1889)—Grant of a joint certificate* —Under the provisions of the Succession Certificate Act (VII of 1889) a joint certificate to recover debts cannot be granted. *Madan Mohan* v *Ramdial I L R 5 All 195* and *Jamnabai* v *Hastubai I L R 11 Bom 179* referred to LONACHAND GANGARAM MARWADI *v* UTTAMCHAND GANGARAM MARWADI I L R 15 Bom 684

145 ———— *Succession Certificate Act (VII of 1889) s 7—Adverse claimants* —It is not illegal to grant a joint certificate to two persons who claim adversely to each other to be entitled to collect the debts due to the estate of the

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deceased under Succession Certificate Act (VII of 1889) NARAYANASAMI *v* KUPPUSAMI
[I L R. 19 Mad. 497

146 ———— *Widows of deceased* —Where the widows of an intestate applied for administration to the estate of the deceased —*Held* that the District Judge before whom the application was made was right in following the usual practice (which was declared to be a reasonable practice) of his Court in refusing to grant such administration to the widows jointly NITTYE KALI DEBIA *v* KADER NATH CHATTERJEE 5 C L R. 368

147 ———— *Joint certificate to widows of two sons of owner of estate* —*R* and his sons *L* and *S* were members of an undivided family *S* predeceased *R* who subsequently died leaving *L* him surviving and on the death of *L* the widows of *L* and *S* applied for a joint certificate of heirship to the estate of *R* Before their application was heard *L*s widow repudiated the joint application and prayed for the grant of a certificate to her alone The District Judge however ordered a joint certificate to be issued to the two widows On appeal from this order by *L*s widow —*Held* that under Act XXVII of 1860 a joint certificate could not be granted. *S* having predeceased *R* his interest in the family property and sacra reverted to *R* and *L* and after *L*s death the estates vested in *L*s widow who had therefore a better claim to be entrusted with getting in the debts The order of the lower Court was varied by directing the certificate to go to *L*s widow alone on her giving security for half the amount of the outstandings JAMNABAI *v* HASTUBAI I L R. 11 Bom 179

148 ———— **Fresh certificate—Act XXVII of 1860 s 6** —The fresh certificate contemplated by s 6 of Act XXVII of 1860 means a certificate granted to a person other than the person to whom the first certificate was granted NAURANGI KUNWAR *v* RAGHUBANSI KUNWAR
[I L R 9 All 231

See GANGIA *v* PANGI SINGH
[I L R. 9 All. 173

6 PROCEDURE

149 ———— **Evidence improperly taken.**—In an application for a certificate of administration the District Judge having delegated the examination of the witnesses in the case to the Nazir of the Court and having on the evidence so taken made an order granting the certificate —*Held* that the procedure was illegal and that the order so passed must be annulled and further proceedings for the investigation of the title directed in which the witnesses should be examined by the Judge himself LUKSHMIBAI LAXMAN SANSHEDAPPA *v* LUDRAPPA BIN GANGOPPA 2 Bom 2nd Ed 382

150 ———— **Enquiry as to right—***Evidence of right*—Although no question of title is

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6 PROCEDURE—*continued*

judicially determined as the result of an enquiry under Act XXVII of 1860 yet the Court is bound under the Act to give the certificate to the person who makes out a title and for that purpose where parties are not agreed as to the facts to try the issues in the ordinary way by the aid of evidence ANUNDEE KOOER *v* BACHOO SINGH 20 W R 476

151 ———— *Ground for refusal* —A Hindu woman applied for a certificate of administration under Act XXVII of 1860 to the estate of her brother who had died seven years before and whose property had since been in the possession of his so called heir-at law The applicant alleged that at the time of her brother's death she was pregnant and subsequently gave birth to a son who died in infancy As representative of that son who was *deceased s legal heir she asked for the certificate* The lower Court summarily rejected her application on the ground of lapse of time *Held* that this was not a sufficient reason for rejecting the application and that the Judge must proceed to an enquiry under the Act. DURGADASI DABI *v* JUDUNAUTH MOOKERJEE 2 B L R. Ap, 26

152 ———— *Application for succession certificate—Order for costs of adjournment against opposing party—Effect of non compliance with such order—Civil Procedure Code s 158* —A widow applied for a succession certificate to her late husband The application was opposed by his brother who claimed to have been undivided from him The matter came on for hearing but was adjourned on his application he being ordered to pay the costs He failed to pay the costs and the certificate was issued to the widow *Held* that s 158 of the Civil Procedure Code was inapplicable to the case in the absence of a specific order making the payment of costs a condition precedent to the hearing of the evidence of the party in default VIRABHADRAPPA CHETTI *v* CHINNAMMA
[I L R 21 Mad 403

153 ———— *Question of legitimacy* —On an application for a certificate of administration under Act XXVII of 1860 where the applicant claimed as heir of the deceased and impugned his marriage —*Held* that the Judge was bound to enquire summarily into the question of the marriage of the deceased and the consequent legitimacy of his children. TAYLOR *v* KUNDU JAN
[W R 1864 Mis 25

154 ———— *Question of validity of will* —An application having been made by the widow of a deceased proprietor for a certificate under Act XXVII of 1860 on the ground that she was entitled in right of inheritance (her husband having separated himself from his brother the objector) and a will also having been set up which gave her extensive rights over the estate the Judge granted the application without going into the validity of the will *Held* that for the purposes of the Act it was quite sufficient to decide the case upon the question whether the estates of the two brothers were

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whether such portion be separate and defined or not. BEYCHAN SAHOO *v* GANESH SAHOO
[2 N W 439

133 ——— Limited certificate —A certificate under Act XXVII of 1860 cannot be limited to particular debts IN THE MATTER OF THE PETITION OF PRAN KHAN 17 W R, 238

134 ——— Certificate to collect fractional share of debts —Certificates to collect fractional parts of debts due to a deceased cannot be granted to different heirs according to their respective shares in the inheritance but one certificate to collect debts should be granted to all or such of the heirs as would consent to act in concert AMIRUNISSA BARKAT *v* AFFIATTUNISSA
[3 B L R A C, 404 12 W R 307

135 ——— The appellant was the son by the first wife of the deceased the respondent the second wife of the deceased applied for a certificate for herself and on behalf of her minor sons the Judge gave her a certificate for a 12 anna share *Held* on appeal that the certificate should be granted jointly to the appellant and respondent The granting of a certificate does not determine any question of title or decide what property does or does not belong to the estate of the deceased. It merely enables the person to whom it is granted to collect the assets of the deceased and is conclusive of her representative title against all debtors to the deceased A certificate cannot be granted for the collection of fractions of the debts of the deceased. WASELUN HAK *v* GOWHURUNNISSA BIBI
[1 B L R S N 7: 10 W R 105

136 ——— Act XXVII of 1860 does not contemplate a division of the certificate or a power to collect fractional shares of debt BHOODUN *v* JAN KHAN 13 W R 265

137 ——— *Succession Certificate Act (VII of 1889) s 7—Grant of certificate not to be partial*—A District Court acting under s 7 of Act VII of 1889 must if there are several applicants elect to which if any a certificate should be granted It is not competent to such Court to grant separate certificates to different persons for partial collection of the debts in respect of which a certificate is sought SHITAB DEI *v* DEBI PRASAD
[I L R 16 All 21

138 ——— *Succession Certificate Act (VII of 1889) s 6—Certificate not necessarily to collect all the debts of the deceased*—A Court may legally grant to an applicant under Act VII of 1889 a certificate for the collection of a specified debt or specified debts of a deceased person The Court is not bound to grant a certificate only for the collection of the whole of the debts of the deceased IN THE MATTER OF THE PETITION OF INDARMAN
[I L R 18 All 45

139 ——— *Succession Certificate Act (VII of 1889) s 4—Application for certificate for collection of part only of a debt*—A certificate for collection of debts under Act VII of 1889 may be given for the collection of any one or more separate debts of the deceased but not for the collection of part only of a debt Where however a portion of a debt in respect of which a certificate is sought has been discharged it is not necessary for the applicant to pay duty on more than the unsatisfied portion of the debt MUHAMMAD ALI KHAN *v* PUTTAN BIBI I L R, 19 All 129

140 ——— Joint certificate—*Ground for appeal against order*—It is no ground for appeal against an order granting a certificate that the Judge joined with the appellant another person who had an interest in the debts to be collected. IN THE MATTER OF THE PETITION OF PRAN KHAN
[17 W R 238

141 ——— *Rival claimants—Discretion of Judge*—Where there are rival claimants for a certificate to collect the debts of a deceased person the Judge has under s 3 Act XXVII of 1860 a discretion to present it to such person as under the circumstances of the case shall appear best entitled to it *Quære*—Has he power under the Act to grant them a joint or separate certificate? RAISUNNISSA BEGUM *v* KHUJJUNISSA
[4 B L R A C 149 13 W R, 143

142 ——— *Power of Judge*—Act XXVII of 1860 gives a Judge no power to grant a joint certificate to two persons his duty being to determine which of the applicants has the better right to a certificate IN THE GOODS OF SEETARAM GOWRA *v* KEKREE SINGH 4 N W 60

But *see* EAD ALI KHAN *v* WAHAD ALI KHAN
[23 W R 35

143 ——— *Grant to several persons jointly—Act XXVII of 1860*—A certificate under Act XXVII of 1860 should not be granted to several persons jointly but where there are several claimants to the certificate the District Court should determine which of such persons has the best title to the certificate and grant the same accordingly MADAN MOHAN *v* RAMDIAL I L R 5 All 195

POOKMINEE *v* CHOONEE LAL 1 Agra Mi 6

144 ——— *Succession Certificate Act (VII of 1889)—Grant of a joint certificate*—Under the provisions of the Succession Certificate Act (VII of 1889) a joint certificate to recover debts cannot be granted. *Madan Mohan v Ramdial I L R 5 All 195* and *Jamnabai v Hasibai I L R 11 Bom 179* referred to LOVACHAND GANGARAM MARWADI *v* UTTAMCHAND GANGARAM MARWADI I. L R. 15 Bom 684

145 ——— *Succession Certificate Act (VII of 1889) s 7—Adverse claimants*—It is not illegal to grant a joint certificate to two persons who claim adversely to each other to be entitled to collect the debts due to the estate of the

CERTIFICATE OF ADMINISTRATION
—continued

5 NATURE AND FORM OF CERTIFICATE
—concluded

deceased under Succession Certificate Act (VII of 1889) NARAYANASAMI *v* KUPPUSAMI
[I. L. R. 19 Mad 497

146 ——— *Widows of deceased* —Where the widows of an intestate applied for administration to the estate of the deceased —*Held* that the District Judge before whom the application was made was right in following the usual practice (which was declared to be a reasonable practice) of his Court in refusing to grant such administration to the widows jointly NITTYE KALI DEBIA *v* KADER NATH CHATTERJEE 5 C L. R., 368

147 ——— *Joint certificate to widows of two sons of owner of estate* —*R* and his sons *L* and *S* were members of an undivided family *S* predeceased *R* who subsequently died leaving *L* him surviving and on the death of *L* the widows of *L* and *S* applied for a joint certificate of heirship to the estate of *R* Before their application was heard *L*'s widow repudiated the joint application and prayed for the grant of a certificate to her alone The District Judge however ordered a joint certificate to be issued to the two widows On appeal from this order by *L*'s widow —*Held* that under Act XXVII of 1860 a joint certificate could not be granted. *S* having predeceased *R* his interest in the family property and sacra reverted to *R* and *L* and after *L*'s death the estates vested in *L*'s widow who had therefore a better claim to be entrusted with getting in the debts The order of the lower Court was varied by directing the certificate to go to *L*'s widow alone on her giving security for half the amount of the outstandings JAMNABAI *v* HASTUBAI I L R 11 Bom 179

148 ——— **Fresh certificate—Act XXVII of 1860 s 6** —The fresh certificate contemplated by s 6 of Act XXVII of 1860 means a certificate granted to a person other than the person to whom the first certificate was granted NAURANGI KUNWAR *v* LAGHUBANSI KUNWAR
[I L R 9 All. 231

See GANGIA *v* PANGI SINGH
[I L R 9 All 173

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150 ——— **Enq**
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CERTIFICATE OF ADMINISTRATION
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6 PROCEDURE—*continued*

judicially determined as the result of an enquiry under Act XXVII of 1860 yet the Court is bound under the Act to give the certificate to the person who makes out a title and for that purpose where parties are not agreed as to the facts to try the issues in the ordinary way by the aid of evidence ANUNDEE KOOER *v* BACHOO SINGH 20 W R 476

151 ——— *Ground for refusal* —A Hindu woman applied for a certificate of administration under Act XXVII of 1860 to the estate of her brother who had died seven years before and whose property had since been in the possession of his so called heir-at law The applicant alleged that at the time of her brother's death she was pregnant and subsequently gave birth to a son who died in infancy As representative of that son who was *deceased's legal heir she asked for the certificate* The lower Court summarily rejected her application on the ground of lapse of time *Held* that this was not a sufficient reason for rejecting the application and that the Judge must proceed to an enquiry under the Act. DURGADASI DABI *v* JUDUNAUTH MOOKERJEE 2 B L. R. Ap 26

152 ——— *Application for succession certificate—Order for costs of adjournment against opposing party—Effect of non compliance with such order—Civil Procedure Code s 158* —A widow applied for a succession certificate to her late husband The application was opposed by his brother who claimed to have been undivided from him The matter came on for hearing but was adjourned on his application he being ordered to pay the costs He failed to pay the costs, and the certificate was issued to the widow *Held* that s 158 of the Civil Procedure Code was inapplicable to the case in the absence of a specific order making the payment of costs a condition precedent to the hearing of the evidence of the party in default VIRABHADRAPPA CHETTI *v* CHINNAMMA
[I L R 21 Mad 403

153 ——— *Question of legitimacy* —On an application for a certificate of administration under Act XXVII of 1860 where the applicant claimed a heir of the deceased and impugned his marr
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[W R 1864 Mis 25

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CERTIFICATE OF ADMINISTRATION —*continued*

7 EFFECT OF CERTIFICATE—*continued*

CHUNDRO MONEE DEBIA *v* RASH BEHARY CHOWDHRY 21 W R 24

HURRO KISTO DOSS *v* RAMANUNDO DOSS [22 W R 274

RAMPROTAB MISSER *v* ABHILAK MISSER [3 C L R 170

172 ———— Under Act XXVII of 1860 no question of title to any specific property can properly be tried A party seeking to raise such a point should be referred to a regular suit IMAMUN *v* NUNNOO 17 W R 193

173 ———— *Act XX of 1841* —*Held* that a certificate granted under Act XX of 1841 did not establish the right of inheritance of the party to whom it was granted but simply empowered him to collect debts due to the estate of the deceased The title of plaintiff or her father could not under the circumstances be questioned by a co sharer after its public acknowledgment and practical effect given to that acknowledgment during a long period of years SKINNER *v* SKINNER 2 Agra 128

174 ———— *Right to receive certificate—Act XXVII of 1860* —In a proceeding to obtain a certificate under Act XXVII of 1860 for the collection of debts payable to the representatives of deceased persons the Court determines merely that the applicant is entitled to receive a certificate and not his title as heir or legal representative of the deceased The rights as between each other of several persons claiming to be interested in the property of the deceased are not for consideration and determination in such a proceeding BEYCHAN SAHOO *v* GANESH SAHOO 2 N W 439

175 ———— *Act XXVII of 1860* —*Right of succession* —A certificate under Act XXVII of 1860 gives no title to the property in succession to the deceased neither does it authorize the holder to sue for and collect debts which have accrued due at the death of the deceased to persons who have subsequently become owners of his property GOUREE BYJNATH PERSHAD *v* LOCHUN KOOER [22 W R 102

176 ———— *Act XXVII of 1860* — Certificates under Act XXVII of 1860 can only be granted to persons claiming to be representatives of deceased persons to enable them to recover debts and receive interest or dividends but such certificates include only the debtors of the estate and the procedure given by the Act was not intended to apply to the decision of any right to succeed to the estate of a deceased person EX PARTE RAU NARASINGA 2 Mad. 164

177 ———— Effect of certificate in subsequent suit —A certificate under Act XXVII of 1860 obtained on the allegation of being heir of the deceased does not preclude a suitor from showing that the relationship certified to did not exist BUNPHOO BHUGUT *v* MAHOMED HOSSEIN 2 W R 70

CERTIFICATE OF ADMINISTRATION —*continued*

7 EFFECT OF CERTIFICATE—*continued*

178 ———— Decision as to validity of will—*Suit to contest will* —A decision as to the validity of a will under the provisions of Act XXVII of 1860 will not bar a regular suit under Act VIII of 1859 between the same parties to contest the validity of the same will ANUND CHUNDER MITTER *v* BANEY MADHUB MITTER 11 W R 127

KALEE CHUNDER SURMA *v* GOBIND PERSHAD SURMA 12 W R 454

179 ———— *Act XXVII of 1860 Effect of decision under* —A decision under Act XXVII of 1860 does not in any way preclude the unsuccessful party from contesting the validity of the will in a regular suit. AUNUND MOHUN MULLICK *v* INDRO MONEE CHOWDRAIN [16 W R 214

SOOKHO SOONDUREE DABIA *v* WOOMA SOONDUREE DABIA 18 W R 255

180 ———— Decision under Act XXVII of 1860 Effect of—*Subsequent regular suit* —When the question of granting a certificate under Act XXVII of 1860 is dealt with by the Court with all the available evidence before it just as in a regular suit and the matter of the certificate is decided upon after full deliberation the position of the parties becomes very different from what it is at the conclusion of a really summary proceeding Technically there may still be the right to bring a regular suit but the regular suit in such a case is a re hearing and the Court is bound to pay due respect to the judgment already arrived at GREEDHAREE SINGH *v* FOOLJHUREE KOER 24 W R 173

181 ———— Power to negotiate Government securities—*Act XXVII of 1860 ss 8 and 21* —A Judge can under ss 8 and 21 of Act XXVII of 1860 empower the holders of a certificate under that Act to negotiate a Government security mentioned in the will IN THE MATTER OF BHUGOOBUTTY DEBIA 3 W R Mis 18

182 ———— Effect of certificate on title effected by will—*Succession Act s 187* —The grant of a certificate under Act XXVII of 1860 on the title afforded by a will which gives the grantee the estate in respect of which the debts accrued does not establish a right as executor or legatee within the meaning of the words of s 187 of the Succession Act KRISTO CHUNDER MOOKERJEE *v* CHUNDER PERSHAD BANERJEE 23 W R 252

183 ———— *Succession Certificate Act (VII of 1889) ss 17 and 20—Certificate of heirship—Grant of certificate by Political Agent—Irregularities in making grant—Jurisdiction of Civil Court* —A District Judge cannot treat a certificate of heirship granted by the Political Agent in a Native State as invalid because the applicant had not given to him the requisite information as to the other members of the family and no notices had been issued to them These irregularities of procedure may be a reason for the Political Agent to cancel the grant but they do not enable the District

CERTIFICATE OF ADMINISTRATION
—continued

7. EFFECT OF CERTIFICATE—*concluded*

Court to treat it as a nullity A certificate of heirship stamped with the proper stamp and granted by the Political Agent of a Native State must be recognized by the Civil Courts in British India as having the same effect in British India as a certificate granted under this Act as provided by s 17 of Act VII of 1889 and under s 20 precludes the granting of a certificate by a Civil Court ANNAPURNABAI *v* LAKSHMAN BHIKAJI VAKHARKAR

[I L R. 19 Bom 145

8. CANCELMENT AND RECALL OF CERTIFICATE

184. ———— *Act XXVII of 1860 s 6—Grant of certificate by District Court—Petition to High Court by objector for fresh certificate—Supersession of certificate granted by District Court* —S 6 of Act XXVII of 1860 contemplates two different proceedings which may arise under different circumstances One of these proceedings is an appeal which has the effect of suspending the granting i.e the *issuing* of the certificate and the intention of the Legislature was that upon an adverse order being made the person objecting to it might thereupon appeal and the effect of this would be to oblige the District Judge to hold his hand and not to issue the certificate until the decision of the appeal The other proceeding is by way of petition to the High Court after the certificate has been granted by the District Court to grant a fresh certificate in supersession of the first and the latter portion of s 6 shows that the person who obtains the fresh certificate need not be the person who obtained the first and there is nothing to limit the powers of the Court on petition to grant a fresh certificate to any person including the person who opposed the granting of the original certificate who may prove himself entitled thereto or to confine the exercise of such powers to cases where the first certificate was defective in form GANGIA *v* RANGI SINGH

[I. L R. 9 All 173

185 ———— Application for cancelment—*Act XXVII of 1860 s 6—Cancelling certificate* —S 6 of Act XXVII of 1860 contemplates *the application for cancellation being made to the High Court.* SUSMAN GOSSAIN *v* RAM CHURN BHUKUT 5 W R Mis 48

186 ———— Refusal to recall certificate —*Act XXVII of 1860 —Held* that the lower Appellate Court properly exercised its discretion in refusing to recall a certificate under Act XXVII of 1860 because there was an heir in a nearer degree to the deceased than the person to whom the certificate was granted the object of that Act being to give facilities to debtors and not to assist parties in establishing a disputed right or title KUBEER CHUNDER BUNDO *v* RAM KANYE DOSS BISWAS 17 W R. 174

187 ———— Jurisdiction to recall—*Judge sitting on Original Side Power of* —NORMAN J ruled that sitting on the Original Side of the Court he could not grant a certificate of administration in supersession of one which had been granted by the Judge of the 24 Pergunnahs under Act XXVII of 1860 IN THE GOODS OF SHAMLÁL DASS

[5 B L R Ap 21

188 ———— Recall of certificate granted without jurisdiction —The High Court on appeal remanded a case for enquiry as to an allegation that a certificate granted under Act XXVII of 1860 had been granted without jurisdiction and ordered that if found to have been granted without jurisdiction it should be recalled IN RE JAGESWAR DAS

[6 B L R Ap 128

S C JUGGESSUR DHUR *v* BHUGOBUTTY DASSEE [14 W R 464

189 ———— Recall of certificate of administration fraudulently obtained.—A certificate of administration granted under Act XXVII of 1860 may be recalled if it has been obtained by a false and fraudulent statement IN THE MATTER OF THE PETITION OF BHABADA DASI

[8 B L R. Ap 13

190 ———— Where after a certificate has been granted under Act XXVII of 1860 an application is made by a party claiming to be the rightful heir with a distinct allegation of fraud having been committed in obtaining the certificate it is the duty of the Judge to call upon the opposite party to substantiate their allegation that the claimant disqualified from inheriting KHETTER MONEE DABEE *v* MADHUB CHUNDER ROY 13 W R. 160

191 ———— *Power of Judge to recall—Enquiry Extension of* —Whether or not a Judge has power to recall a certificate granted under Act XXVII of 1860 he has power where there are charges made that a certificate has been obtained by fraud to institute an enquiry and if necessary to refuse an extension of the certificate or to refuse to grant a fresh one according to the form of the application BHIKUN *v* ELAHI KHANUM

[8 B L R Ap 14 note 11 W R 153

192. ———— *Succession Certificate Act (VII of 1889) s 18 cls (b) and (c)—Certificate granted under mistake the applicant concealing circumstance which he should have disclosed—District Judge Jurisdiction of* —P died in 1889 leaving behind him his daughter *B* P it was alleged had made a will appointing certain persons his executors The executors applied for a certificate under the Succession Certificate Act (VII of 1889) to recover a debt due to the deceased's estate from one N *B* opposed this application and claimed the certificate for herself by a separate application The District Judge rejected *B's* application and issued a certificate to the executors on 14th September 1892 In the meantime one *M* obtained a decree against *B* as legal representative of *P* and in execution bought *P's* right title and interest in the debt due from N On 12th September 1892 *M* applied for certificate under Act VII of 1889 to recover this

CERTIFICATE OF ADMINISTRATION —*continued*

8 CANCELMENT AND RECALL OF CERTIFICATE—*continued*

debt The District Judge rejected this application *M* appealed to the High Court To this appeal the executors were made parties at their own request The High Court reversed the District Judge s order and remanded the case for disposal on the merits Upon the remand the executors did not appear before the District Judge to contest *M* s application and the District Judge granted him a certificate There upon he applied for revocation of the certificate previously granted to the executors and the executors in their turn applied for a revocation of the certificate granted to him The District Judge revoked *M* s certificate on the ground that he had fraudulently concealed from the Court the previous grant of a certificate to the executors *Held* on appeal by *M* that the District Judge had a right under s 18 cl (*b*) r (*c*) of Act VII of 1889 to revoke the certificate he had granted under a mistake of fact to *M* MANCHHARAM *v* KALIDAS I. L. R 18 Bom. 821

193 ———— **Power to recall certificate obtained by fraud and misrepresentation** — In a case in which a Judge refused on the ground of want of competency to entertain a petition which asked him to recall a certificate granted by him under Act XXVII of 1860 as having been obtained by fraud it was held that it is a power inherent in every Court of Justice on finding that an order has been obtained from it by fraud and misrepresentation and that if the real facts had been known to the Court it would not have acted in the matter to recall the order made in ignorance of the true circumstances by reason of the misrepresentation alleged. HAMEEDA BIBEE *v* NOW BIBEE 8 W R. 394

SHEO PURSHUN CHOBEY *v* COLLECTOR OF SARUN [13 W R., 256

194 ———— **District Court Power of to cancel certificate granted**—*Act XXVII of 1860* —Under Act XXVII of 1860 a District Judge has no power to cancel a certificate granted to collect the debts of a deceased person VENKATAMMA *v* CHENGALRAYAPPA I. L R. 7 Mad. 555

195 ———— **Suspension or recall of certificate**—*Act XXVII of 1860 s 6—Omission to file schedule of debts* —The High Court under s 6 Act XXVII of 1860 suspended a certificate which had been wrongly granted in a case where there was no list of debts due to the estate of the deceased. FAYZ ALI *v* TALEB ALI [18 W R 330

196 ———— **Recall of certificate granted without list of debts being filed** —It is not necessary as a general rule that a list of debts should be filed before a certificate can be granted under the provisions of Act XXVII of 1860 RADHIKA CHURN SEN *v* JUDOONATH GOSSAMEE [20 W R 412

197 ———— **Recalling or cancelling certificate Ground for**—*Non appearance to object to grant* —A certificate under Act XXVII of 1860 having been granted to the widow of a deceased party his sister s son subsequently represented that he was entitled to the estate under a will and prayed that the certificate might be cancelled. *Held* that, as notice had been issued and the petitioner did not appear and object to the widow obtaining the certificate the Judge was right in refusing to cancel the certificate and in referring him to a regular suit. MANICK CHUNDER *alias* PROTAP CHUNDER ROY *v* RAJ LACKHEE DOSSEE 19 W R. 252

198 ———— **Cancelling grant empowering person to deal with securities claimed by another** —If a Civil Court is proceeding under s 8 of Act XXVII of 1860 to grant or has granted a certificate authorizing a person to deal with Government securities which are claimed by a third person as his property that is a ground on which such third person may come into Court to oppose the grant of a certificate or to seek for its cancelment BANDAM SETTAH *v* BANDAM MAHALAKSHMY 4 Mad., 160

9 BOMBAY MINORS ACT (XX OF 1864)

199 ———— **Mother of minor**—*Bombay Minors' Act XX of 1864—Unwillingness to act as guardian—Default in appearance to order for issue of certificate* —An order for the issue of a certificate of administration to a particular individual ought not to be made until it is ascertained whether that individual is willing to take it. A certificate of administration ought not to be forced upon the mother of a minor unwilling to take it Where an order for the issue of such a certificate to the mother of an infant was made on the default of the mother to appear and show cause why it should not be issued to her —*Held* that such default in appearance ought not to have been accepted as her assent to the issuing of the certificate to her Course pointed out where no relative or friend of a minor can be found willing to take such a certificate BABAJI BIN KUSAJI *v* MARUTI 11 Bom 182

200 ———— **Joint Hindu family**—*Minors' Act XX of 1864*.—Where a member of a Hindu family dies leaving to his children only his undivided share in the joint family property administration cannot be granted under Act XX of 1864 nor under such circumstances can a guardian of the persons of the minor children be appointed but if the deceased has left any separate property administration of such property may be granted and a guardian may be properly appointed at the same time GURACHARYA *v* SVAMIRAYACHARYA I L R 3 Bom 431

201 ———— *Minor—Act XX of 1864—Property—Ascertainment of share* —A certificate of administration may be granted under Act XX of 1864 for the share of a minor who is a member of an undivided Hindu family When a certificate is given in such a case the District Court has no jurisdiction to attach the undivided property

CERTIFICATE OF ADMINISTRATION —concluded

0 BOMBAY MINORS ACT (XX OF 1864) —concluded

in which the minor has a share with a view to ascertain and hold off the minor's share. Such ascertainment and division can only be effected by a regular suit. BABAJI *v.* SHESHGIRI [I. L. R. 6 Bom 593

202 ———— Certificate granted to Collector—*Form of certificate—Act XX of 1864 s 11—Effect of certificate—Moveable property.*—Where the Court, under s 11 of Act XX of 1864 directs a certificate of administration to the estate of a minor to be granted to the Collector of a district such certificate should extend to the moveable as well as the immoveable estate of the minor. LAKSHMIBAI *v.* GANESH ANTAJI 4 Bom A C 129

203 ———— Effect of certificate on adoption—*Act XX of 1864—Effect of such certificate—Adoption.*—By a deed of adoption a Hindu widow adopted a minor son the deed stipulating that until such minor attained majority the widow was to manage the property. It subsequently appeared that she was incompetent to manage the property and the natural father of the minor having applied for a certificate of administration the lower Court granted one to him. On appeal by the widow to the High Court against the decision of the lower Court.—*Held* that the order of the District Judge granting the certificate should be confirmed. The certificate did not alter the rights and interests of the minor or of the widow in the property. Any right of property or possession that could properly be asserted against the minor before the certificate was granted could be asserted equally after it was granted. GURUPADVA *v.* PUTAPA I. L. R. 8 Bom 599

CERTIFICATE OF ATTENDANCE AT LECTURES

See FORGERY I. L. R., 15 All., 210

CERTIFICATE OF GUARDIANSHIP

See CASES UNDER ACT XL OF 1858

See EVIDENCE ACT s 35
[I. L. R. 17 Calc. 849
I. L. R. 18 All. 478

See CASES UNDER GUARDIAN—APPOINTMENT

See CASES UNDER HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP

See PROBATE—EFFECT OF PROBATE
[I. L. R. 19 Bom. 832

CERTIFICATE OF SALE

See CIVIL PROCEDURE CODE 1882 s 316
[I L R 13 Bom 670

CERTIFICATE OF SALE—*continued*

See LIMITATION ACT 1877 ART 178
[I L R 5 Bom 202 206
I L R 3 Bom 433
I L R 6 Bom 586
I L R. 4 Mad 172
I L R 8 Bom 257 377
I L R. 17 Bom 228

See POSSESSION—NATURE OF POSSESSION
[I L R 5 Bom 206
I. L R 3 Bom 433

See PRACTICE—CIVIL CASES—CERTIFICATE OF SALE I L R 9 Bom 472 526

See CASES UNDER REGISTRATION ACT 1877 s 17 cl (*c*) (1871 s 17 1866 s 17)

See REGISTRATION ACT 1877 s 49 (1871 s 49) I L R 4 Bom 155
[7 C L R 115
21 W R 349

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF—CERTIFICATES OF SALE

See STAMP ACT 1879 s 24
[I L R 5 Bom 470
I L R 5 Mad 18
I L R 10 Calc 92
I L R 9 Bom 47

See CASES UNDER STAMP ACT 1879 SCH I ART 16 I L R 15 Bom 532

1 ———— Construction—*Misdescription—Intention of parties*—Mere inaccuracy of language or misdescription will not vitiate a sale certificate. The intention of the parties must be looked to. MOULA BUKSH *v.* KURUCK LALL 7 W R 245

MANSON *v.* GOLAM KEBRIA MOONSHEE [15 W R 490

TARANATH CHUCKERBUTTY *v.* JOY SOONDUREE DABEE 21 W R. 93

2 ———— *Misdescription of land*—Where a sale certificate declares the sale of the rights of a particular party in land of which the identity is not in dispute the mere fact that the right thus transferred is called by mistake jote dakhali instead of some other term nearly importing the same thing does not constitute a difficulty in the way of giving the purchaser possession. KULEEMOODDEEN DAROGAH *v.* ASHRUF ALI KHAN 19 W R. 276

3 ———— *Power to go behind certificate*—The Court in construing a sale certificate refused to go into facts lying behind it for the purpose of contradicting its terms. LALLA BISSESSUR DYAL *v.* DOOLAR CHAND SAHOO 22 W R. 181

See PEAREE MOHUN MOOKERJEE *v.* GOSTO BEHARY DEY 26 W R 104

4 ———— Power of Court to amend certificate—*Civil Procedure Code 1859 s 259*—A Court is not legally competent to make an *ex parte* order amending a sale certificate granted under Act VIII of 1859, s 259. RUGHOO NUNDUN SINGH *v.* WILSON 23 W R. 301

CERTIFICATE OF SALE—*concluded*

5 ———— **Inaccuracy in sale certificate** —*Extraneous evidence* —Where a sale certificate though containing errors was accurate as to any part of the description of the subject of sale and could be used to identify it with the assistance of extraneous evidence such evidence could be received to show what was intended to be dealt with MALEE BUN v RASHEEDA 25 W R 401

CERTIFICATE UNDER BENGAL ACT VII OF 1880

See LIMITATION ACT 1877 s 14 [I L R 20 Calc 264

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT

CERTIORARI WRIT OF—

1 ———— **High Court s Criminal Procedure Act X of 1875** —The power of the High Court to issue a writ of certiorari was not taken away by s 147 of the High Court s Criminal Procedure Act X of 1875 REG v RAMDAS SAMALDAS [12 Bom 217

2 ———— **Removal of case from Small Cause Court**—*Letters Patent cl 13—Inability of Small Cause Court to issue commission* —The Bombay Court of Small Causes is subject to the superintendence of the High Court within the meaning of cl 13 of the Letters Patent of the High Court and the latter has therefore power for purposes of justice to remove a case from the Small Cause Court and itself to try and determine such case The inability of the Small Cause Court to issue a commission to examine for the defence witnesses residing outside its jurisdiction though not in general may under peculiar circumstances be a good ground for granting an order to remove a case from the Small Cause Court into the High Court Terms upon which such order will be granted PIRBHAI KHIMJI v BOMBAY BARODA AND CENTRAL INDIA RAILWAY COMPANY [8 Bom O C 59

3 ———— *Act IX of 1850 s 54*—A writ of certiorari lay as of course to remove before judgment all cases commenced in the Calcutta Court of Small Causes subject to the limitation imposed by s 54 of Act IX of 1850 unless such cases fell within the usual exceptions recognized in English practice so far as such exceptions may be applicable to the High Court PILLANS v PENINSULAR AND ORIENTAL STEAMSHIP COMPANY [1 Ind Jur O S 68

4 ———— *Act XXVI of 1864 s 7*—It is no ground for removal of a cause by certiorari from the Court of Small Causes that a difficult point of law is likely to be involved in it The proper course is to apply to the lower Court under s 7 of Act XXVI of 1864 MADHUB KISSEN SETT v GOUR SOONDER SETT Cor 90

5 ———— **Police Act XIII of 1856 s 111**—*Conviction on merits—Error in decision on merits—Affidavits Use of*—S 111 of the Police

CERTIORARI WRIT OF—*concluded*

Act (XIII of 1856) did not give jurisdiction to the High Court when a case was brought before it on certiorari to enquire whether the Magistrate had come to a correct conclusion as to the guilt or innocence of the prisoner The object of that section was to limit the objections to a conviction to some substantial meritorious ground such as want of jurisdiction or the like and to prevent a conviction from being quashed on a mere error of form or of procedure But the section did not give the High Court any right to interfere on the ground that the Magistrate had come to a wrong conclusion on the question of the guilt or innocence of the accused person Though affidavits may be used to show a want of jurisdiction in a Magistrate even though such affidavits contradict for this purpose the finding of the Magistrate they cannot be used as affording materials for reviewing the Magistrate s decision on the merits REG v NATHOBAL PITAMBAR 10 Bom, 102

REG v SAKHARAM ANATOBA [10 Bom 109 note

6 ———— **Rule nisi to quash conviction**—*Practice* —Where a writ of certiorari is granted to bring up a conviction of Justices in order to quash it and a rule *nisi* to quash the conviction moved for the certiorari should be returned into Court before the motion for the rule *nisi* is made REG v JUSTICES OF THE PEACE [1 Ind Jur N S 283

7 ———— **Power of High Court to quash conviction**—*Bengal Act IV of 1876 ss 88 104 and 117—Municipal Commissioners their jurisdiction—Power of the High Court*—The power of the High Court to quash proceedings on certiorari is not affected by the provisions of s 117 of the Municipal Act and if it should appear either on the face of the proceedings or upon affidavits that the Commissioners have acted without or in excess of jurisdiction the Court will interfere NUNDO LAL BOSE v CORPORATION FOR THE TOWN OF CALCUTTA I L R 11 Calc 275

CESS

See APPEAL—ACTS—BENGAL TENANCY ACT I L R 20 Calc 254 [I L R 21 Calc 132

See CASES UNDER BENGAL CESS ACTS

See BOMBAY LOCAL FUNDS ACT 1869 s 8 [I L R 4 Bom 643 I L R 17 Bom 54 422

See CASES UNDER CONTRACT ACT s 23—ILLEGAL CONTRACTS—ILLEGAL CESSES

See CUSTOM I L R 2 All 49 [1 Agra 134 135 I L R 1 All 440

See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CESS

1 ———— **Liability to pay cess**—*Holders under biswadar—Contract to pay* —Held that if the biswadars were not liable to cesses claimed

CESS—*continued*

th se holding under them could not be liable to plaintiff's claim and that the liability f the defendants whether they be lessees or mortgagees under the biswadars must depend firstly on the liability of the biswadars themselves and secondly on the terms of the lease or mortgage under which they are found to be in possession DHUNEE RAM *v* MOORLEE DHUR 2 Agra, 325

2 ———— *Contract to pay*—Where the talukhdar has engaged to pay certain cesses for roads schools etc he cannot recover them from the biswadars unless they are bound to pay them by some positive law or have engaged or have consented to do so nor is any individual biswadar bound to pay merely because his co partners have agreed to pay or have paid them DHUNEE RAM *v* MOORLEE DHUR 2 Agra 326

3 ———— **Cess not sanctioned or taken into account in fixing Government revenue**—*Right of suit*—A suit cannot be maintained for a cess which was not avowed nor sanctioned nor taken into account in fixing the Government revenue at the settlement BISHARUT ALLY *v* SEETUL MISSER 1 N W 40

4 ———— **Alteration of rent by paying in different coinage**—*Extra or illegal cess*—Rent is not altered by being paid in a different coin—*viz* in kuldar instead of sicca rupees; and the apparent addition of one anna per rupee (the difference in value between the two kinds of rupees) is not a real addition to the rent nor is it an extra cess of an arbitrary nature or an illegal character ROOCHA RAM MISSER *v* NAGA DOSS [2 N W 92

5 ———— **Right to levy cess**—*Absence of any contract to pay*—A Government lessee is not entitled to sue for a declaration of his right to levy a cess upon a jotedar who grazes his cattle on his own jote within the precincts of the lessee s mehal there being no contract between them whereby defendant is bound to pay such a cess BHUGEE RUTH SHIKDAR *v* RAMNARAIN MUNDUR [9 W R 299

6 ———— *Consent of raiyat to pay abwab or cess*—If a zamindar demands a cess over and above the original rent and the raiyat consents and contracts to pay it this demand and the old rent form a new rent lawfully claimable under the contract JEEATOOLLAH PARAMANICK *v* JUGODINDRO NARAIN ROY 23 W R 12

7 ———— *Madras Rent Recovery Act s 11—Water cess—Tenants—Cultivation on improved by water taken from landlord s tank*—A landlord has a right to charge water-cess when his tenant cultivates a wet crop on dry land or a second wet crop on wet land by means of water taken from the landlord s tank THAYAMMAL *v* MUTTIA [I. L. R 10 Mad 282

8 ———— **Cesses on debutter lands**—*Owner and holder*—*Beng Act IX of 1880 s. 6*—Bengal Act IX of 1880 contemplates the payment of the cesses by persons beneficially interested in the land in respect of which the cesses are levied The words owner and holder in s 6 of that Act are not limited to any one person nor for the purposes of that section must the owner be in actual possession The plaintiff who was a patnidar of the defendants having paid certain cesses in respect of what he described in his plaint to be debutter lakhiraj lands lying within the ambit of his patni sued the defendant to recover the amount of such cesses The defendant admitted that he was proprietor of the estate in which the lands were situated but denied his liability for the cesses *Held* that the defendant was not liable to pay the amount of the cesses but that the person liable was the idol through its shebait or some person in receipt of the rents and profits of the land or some person in actual possession of the land in occupation of it GOPAL CHUNDER SIRCAR *v* ADHIRAJ AFTAB CHAND MAHTAB I L R. 10 Calc 743

9 ———— **Abwabs paid before Permanent Settlement**—*Beng Reg VIII of 1793 s 54—Beng Reg IV of 1794—Beng Reg V of 1812 s 3—Beng Act VIII of 1869 s 11—Act X of 1859 s 10—Contract Act (IX of 1872) s 23*—Where it is not actually proved that abwabs have been paid or have been payable before the time of the Permanent Settlement a landlord is not legally entitled to recover them as against his raiyats even assuming that by the custom of the estate the raiyats, and their ancestors before them have for a great number of years paid such abwabs *Semble*—That a claim for the recovery of abwabs existing before the time of the Permanent Settlement would not be enforceable CHULTAN MAHTON *v* TILUKDARI SINGH [I L R 11 Calc 175

In the same case in the Privy Council *Held* affirming the High Court decision that payments over and above rent and described as abwabs in the zamindari accounts for which as abwabs the tenant was sued were held to be rightly treated as abwabs and not as forming part of the rent fixed They were held not to be recoverable from the tenant although they had been paid for a period of unknown length and according to a long standing practice not having been if payable at the time of the Permanent Settlement consolidated with the rent as they should have been if then payable under s 54 of Regulation VIII of 1793 Not having been so consolidated they could not be recovered under s 61 If not payable at the time of the Permanent Settlement they came under the term of new abwabs and in that case were illegal under s 55 TILUKDHARI SINGH *v* CHULHAN MAHTON I L R 17 Calc 131 [L. R, 16 I. A 152

10 ———— *Illegal cess—Abwabs—Bengal Tenancy Act (VIII of 1885) ss 74 179—Beng Regs VIII of 1793 s 54 V of 1812 ss 2 and 3; and XVIII of 1812 s 2*—What is or is not an abwab must depend upon the circumstances of each particular case in which the question arises. Where by a kabuliat dated 1869 the defendant as holder of a mokurari tenure agreed to pay a certain fixed sum as rent and also certain items designated tehwari and salami it was held that they

CESS—*continued*

were not illegal cesses within the Full Bench ruling of *Chullan Mahton* v *Tilukdhari Singh I L R 11 Calc 175* not being uncertain and arbitrary in their character but specific sums which the tenants agreed to pay to the landlords and the payment of which no less than the payment of the rent itself formed part of the consideration upon which the tenancy was created and which were in fact part of the rent agreed to be paid although not so described they were recoverable therefore under Reg V of 1812 PUDMANUND SINGH BAHADUR v BAIJ NATH SINGH

[I L. R. 15 Calc 828

11 ——— *Cess Act (Bengal Act IX of 1880)—Public Demands Recovery Act (Bengal Act VII of 1880) s 10—Personal debt—Recovery of cesses—Property belonging to a person not recorded as proprietor*—An amount due on account of cesses under the Bengal Cess Act 1880 is only a personal debt and cannot properly be recovered under the Public Demands Recovery Act 1880 from the property on which it is assessed when such property belongs to a third person who may not have been recorded as proprietor under Bengal Act VII of 1876 SHEKAAT HOSAIN v SASI KAR I L R 19 Calc 783

12. ——— *Construction of Act XIX of 1844 abolishing cesses on trades—Bombay town duties*—On a question whether a cess of two annas per candy on all cotton bought in and exported from Broach paid by the buyer according to usage from time immemorial to a temple in that town was abolished by Act XIX of 1844—*Held* that it was a cess of a mixed kind local and indirect upon the trade of a cotton buyer carried on in Broach attaching when he bought cotton in that town for exportation and that it fell within the meaning of that Act so that the right to claim it had been thereby abolished KALYANRAIJI v MOFUSSIL COMPANY I L R 14 Bom 526

[L R 17 I A 103

13 ——— *Illegal cess—Asul and abwab—Rent—Bengal Tenancy Act (VIII of 1885) ss 3 (5) 74—Beng Reg VIII of 1793 ss 54 55 57 58 61—Beng Reg V of 1812 ss 2 3*—In a suit for rent at the rate of R22 2 per annum the defence was that the yearly rent was not R22 2 but R18 10 6 and that the difference was made up of certain illegal cesses such as sarak neg and khuruch which had been paid for a long time with the rent and without specification in the rent receipts Both the lower Courts found that R18 10 6 was the defendant s asul jama *Held* by the Full Bench upon a review of the history of abwabs that the amounts sued for under the head of sarak neg and khuruch were abwabs and were therefore not recoverable and that all additions to the actual rent under the denomination of abwabs are illegal and any agreement to pay them is void *Pudma Nund Singh* v *Baij Nath Singh I L R 15 Cal 828* dissented from *Per* PETHERAM C J—The law whether under the Regulations or the Bengal Tenancy Act or as laid down by the Privy Council in *Tilukdhari Singh* v *Chullan Mahton I L R 17 Calc 131 L R 16 I A 152* is the same namely that no imposition under any name whatever shall be recovered from the tenant for or on account of the occupation or tenure of the land beyond the sum which has been fixed for rent whether that sum has been paid by agreement or by judicial determination between the landlord and the tenant Any contract whether express or implied to pay anything beyond that sum under any name whatever for or in respect of the occupation of the land cannot be enforced The case of *Pudmanund Singh* v *Baij Nath Singh I L R 15 Calc 828* has been overruled by the Privy Council in *Tilukdhari Singh* v *Chullan Mahton I L R 17 Calc 131 L R 16 I A 152* *Per* GHOSE J—If in any given case the Court finds that any particular sum specified in the lease or agreed to be paid is a lawful consideration for the use and occupation of any land that is to say if it is really part of the rent although not described as such the Court would be justified in holding that it is not an abwab and is recoverable by the landlord *Pudmanund Singh* v *Baij Nath Singh I L R 15 Calc 828* explained. RADHA PROSAD SINGH v BAL KOWAR KOERI

[I. L. R., 17 Calc , 726

14 ——— *Chowkidari tax—Abwab—Village Chowkidars Act (Bengal Act VI of 1870) Suit for arrears of chowkidari tax payable by patnidar under patni settlement—Rent—Bengal Tenancy Act (VIII of 1885) ss 3 (5) and 74—Bengal Regulation VIII of 1793 ss 54 and 55.*—In a suit for arrears of chowkidari tax payable by the patnidar under the patni settlement the defence was that it was an illegal cess and could not be legally recovered. *Held* that as the payment of the chowkidari tax was one of the terms of the patni settlement itself which was entered into between parties competent to contract and was made for valuable consideration and the patni regulation declares that patni talukhs shall be deemed to be valid tenures in perpetuity according to the terms of the engagements under which they are held" and, moreover as the amount which the patnidar agrees to pay as chowkidari tax is paid quite as much on account of the occupation of the property as that which is expressly called the rent and is part of the ground rent quite as much as the latter it is not an abwab and is therefore recoverable *Surnomoyee Dabee* v *Koomar Purresh Narain Roy I L R 4 Calc 576* followed *Tilukdhari Singh* v *Chulton Mahton I L R 17 Calc 131* and *Radha Prosad Singh* v *Balkowar Koer I L R 17 Calc 726* distinguished. *Pudmanund Singh* v *Baij Nath Singh I L R 15 Calc 828* referred to ASSANULLA KHAN BAHADUR v TIRTHABASINI

[I. L. R., 22 Calc. 680

15 ——— *Bengal Tenancy Act (VIII of 1885) ss 74 and 179—Stipulation for payment of abwab—Permanent tenure holder*—The defendant a darpatnidar stipulated in the kabuliat for the annual payment of R4 in lieu of certain quantities of jack fruit bamboos and fish This stipulation was contained in a clause perfectly distinct from that containing the payment of rent which was payable quarterly *Held* (i) such a stipulation is a

CESS—*concluded*

stipulation for the payment of an abwab ( ) a stipulation for the payment of an abwab under a permanent mokurari lease is valid and s 74 of the Bengal Tenancy Act does not control s 179 of the Act *Assanulla Khan* v *Tirthabashini* I L R 22 Calc 680 and *Atulya Charn Bose* v *Tulsi Das Sarkar* 2 C W N 543 referred to and followed *Basanta Kumar Roy Chowdry* v *Promotha Nath Bhattacharjee* I L R 26 Calc 150 distinguished KRISHNA CHANDRA SEN v SUSHILA SOONDURY DASEE I L R 28 Calc 611 [3 C W N 608

16 ———— *Stipulation for payment of cesses—Rent—Bengal Tenancy Act (VIII of 1885) s 3 cl 5 ss 179 195*—Where it was stipulated in a patni lease that the patnidar was to pay on behalf of the zamindar two sums of money one sum as cesses upon the property to the Collector and another sum as expenses for the maintenance of a masjid on the property to the party who had to conduct the expenses of the masjid respectively *Held* that the two items of money are lawfully payable on account of the use and occupation of the land and are therefore rent. *Assanullah Khan Bahadur* v *Tirthabashini* I L R. 22 Calc 680 and *Rutnessur Biswas* v *Hurish Chunder Bose* I L R 11 Calc 221 distinguished MOHEBUT ALI v MAHOMED FAIZULLAH 2 C W N., 455

See BASANTA KUMARI DEBYA v ASHUTOSH CHUCKERBUTTI I L R 27 Calc. 67 [4 C W N., 3

CESS ACT

See BENGAL CESS ACT (BENGAL ACT IX OF 1880)

CESSER PROVISO FOR—

See WILL—CONSTRUCTION [12 B L R 1

CESSION OF BRITISH TERRITORY IN INDIA.

1.———— Evidence of cession—*Transfer or re arrangement of jurisdiction in British territory —Statutes 3 & 4 Will IV c. 85 s 43—Statutes 21 & 25 Vic c 67 s 22—Statutes 24 & 25 Vic. c 104 s 9—Evidence Act s 113—Effect of cession of territorial jurisdiction*—The power to cede territory was not one of the powers to which the Secretary of State for India in Council succeeded under 21 & 22 Vic c 106 when the Government of India was by that statute transferred to Her Majesty inasmuch as such a power was not possessed by the East India Company DAMODAR GORDHAN v GANESH DEORAM 10 Bom. 37

Held on appeal to the Privy Council as follows —*Semble*—That the general and abstract doctrine laid down by the High Court at Bombay that it is beyond the power of the British Crown without the consent of the Imperial Parliament to make a cession of territory within the jurisdiction of any of the British Courts in India in time of peace to a foreign power

CESSION OF BRITISH TERRITORY IN INDIA—*concluded*

is erroneous Where an objection is taken to the territorial jurisdiction of a British Court on the ground that the territory over which the jurisdiction of the Court extended has been ceded to a foreign power such a cession must be regularly proved and cannot be established by uncertain inferences from equivocal acts An agreement on the part of the Government of India purporting to transfer certain villages forming part of a Regulation province within the Bombay Presidency and subject to ordinary British jurisdiction to the extraordinary jurisdiction of the Political Agency of a Native State does not constitute a cession of territory A re-arrangement of jurisdiction within British territory in India by the exclusion of a certain district from the Regulations and Codes there in force and from the jurisdiction of all the High Courts with a view to the establishment therein of a native jurisdiction under British supervision and control cannot be carried out except by legislation under the provisions of the Imperial Statutes 3 & 4 Will IV c 85 s 43; 24 & 25 Vic c 67 s. 22 and 24 & 25 Vic c 104 s 9 The Governor General in Council being precluded by the Act 24 & 25 Vic c. 67 s. 22 from legislating directly as to the sovereignty or dominion of the Crown over any part of its territory in India or as to the allegiance of British subjects cannot by any legislative Act (*e g* by The Evidence Act of 1872 s. 113) purporting to make a notification in the Government Gazette conclusive evidence of a cession of territory exclude judicial enquiry as to the nature and lawfulness of that cession. Where the foundation of the jurisdiction of a British Court over the subject matter of a suit and the parties thereto is territorial and the territory by a valid cession ceases to be British the jurisdiction of the Court can no longer be exercised whatever be the stage or condition of the litigation at the time of such cession DAMODHAR GORDHAN v DEVRAM KANJI I. L R. 1 Bom 367 [25 W R. 261 L. R. 3 I. A 102

2.———— Power of Crown to cede—*Held* that the British Crown has the power without the intervention of the Imperial Parliament to make a cession of territory within British India to a foreign prince or feudatory The opinion expressed by the Privy Council in *Damodar Gordhan* v *Devram Kanji* I L R 1 Bom. 367 followed Question as to what amount to a cession in sovereignty discussed LACHMI NARAIN v PARTAB SINGH [I. L. R., 2 All, 1

CHAIRMAN

See COMPANY—MEETINGS AND VOTING [I L R., 15 Bom 164

———— of Municipality

See BENGAL MUNICIPAL ACT 1884 s 4 [I L R. 20 Calc, 448

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s. 31 [I L R 19 Calc 102 105 note 189 I L R., 22 Calc. 717

CHAIRMAN—*concluded*

See LIMITATION ACT 1877 ART 36
[I L R 22 Mad 342

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I L R 15 Mad 83

See SPECIFIC RELIEF ACT s 46
[I L R, 19 Calc 192 195 note 198

CHAMPERTY

See CONTRACT ACT, s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
[I L R 18 Mad 374

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—GENERALLY
[I L R 5 Calc 4

1 ———— Maintenance—*Void agreement—Alienation by Hindu widow—Waste* —A Hindu widow as the heire s of her husband sued his four surviving brothers who retained the enjoyment of the whole joint estate for the recovery of her share While the suit was pending on the 24th April 1859 she entered into an agreement with the defendant *G* by which, after reciting the nature of her claim and stating that she was too poor to prosecute it she assigned to him all she might be entitled to receive from the joint estate in right of her deceased husband together with all interest and accumulations thereon and all advantage to be derived from the suit about to be instituted by the defendant *G* and she appointed him her attorney to institute and carry on any suit in her name for recovering her right and share in th property it being agreed that he should retain one moiety of what might be recovered absolutely for his own benefit as remuneration and out of the other moiety should repay himself such ums as he might from time to time have advanced or paid for her maintenance with interest at 12 per cent per annum and also all such sums and costs as he might from time to time have advanced or been put to in carrying on the suits with interest at 12 per cent per annum and should pay over the re idue to the widow herself Subsequently that suit was withdrawn In May 1859 the widow by *G* filed a fresh bill against her husband s surviving brothers for recovery of her hu band s share in the estate together w th accumulations and in August 1861 obtained a decree for a large sum of money out of the joint estate— the whole to be enjoyed by her as a Hindu widow in the manner prescribed by Hindu law By a deed dated November 14th 1860 *G* assigned his interest under the assignment of April 1859 to *H S* the defendant In a suit brought on the 22nd February 1866 by the reversionary heirs of the husband in the Court of the Principal Sudder Ameen of Hooghly against the widow *G* and *H S* the last one of whom alone resided in Calcutta which suit was on the 23rd of April 1866 removed into the High Court on the applicat on of *G* and *H S* it was prayed that the agreement of April 18 9 and all sul assignments that might have been made be set aside as void and that the money should be paid into Court and kept

CHAMPERTY—*continued*

there during the life of the widow defendant for the benefit of the reversionary heirs and in order to prevent waste *Held* by PHEAR *J* the suit being one to prevent contemplated waste was not barred by lapse of time The agreement of 4th April 1859 was void as being without definite consideration and being in the nature of a gambling transaction not valid against heirs under Hindu law and it was also void being of a champertous nature and contrary to public policy The law which forbids and avoids all acts contrary to public policy and subversive of the general interests of society is in force in this country Independent of the Charter there is a power inherent in any Court of Justice which receives its authority from the State to make the interests of private persons subordinate to those of the public and to take care that where they are in conflict the latter should prevail *Held* on appeal by PEACOCK *C J* and MACPHERSON *J* that the suit could be maintained for the relief sought and for the protection of the property that the deed of the 4th April 1859 so far as it related to the moiety of the property assigned to the defendant *G* absolutely was not binding on the plaintiffs or on the persons who upon the death of the widow might succeed to the property of her deceased husband Though not void on the ground of champerty it was an unconscionable bargain and a speculative if not a gambling contract, and there was no necessity for such an alienation by the widow But so far as regards the assignment of the moiety as security for the advances and expenses which *G* or his assigns might reasonably and properly make or incur for the maintenance of the widow for carrying on the necessary proceedings to enforce her rights with 12 per cent interest on such advances, it was not void but created a charge upon that moiety, which was binding upon the reversionary heirs of the husband to the extent of such advances and expenses There was legal necessity for such charge and it affected the moiety both of principal and accumulations *Held* by MACPHERSON *J* the agreement of April 1859 was void by English law as being a mere gambling transaction and contrary to public policy and illegal GROSE *v* AMIRTAMAYI DASSEE
[4 B L R., O C, 1 12 W R. O C 13

2 ———— **Assignment of debutter land in consideration of defendant ejecting by suit at his own cost the Brahmins etc.**—A Hindu widow together with the next heir joined in assigning to the defendant a debutter estate in consideration of the defendant conducting at his own cost, proceedings for the ejection of Brahmins and Banias then in occupation as poojaries to conduct the worship of the idols and upon the condition that he should thereafter conduct such worship and out of the proceeds and offerings retain three-fourths for his own purposes and for hospitality and pay the remaining fourth for the maintenance of the widow and the heir *Held* that the assignment was valid the purpose for which the lands were dedicated being provided for and that although the transaction amounted to champerty that was no ground for treating it as invalid. An assignment between Hindus of property the subject matter of litigation on conditions which

CHAMPERTY—*continued*

constitute champerty is not on that ground invalid. JADUBINDU ODHIKAREE v. LOKENATH GEREE [Marsh 303 2 Hay 160

3 ———— Bond given to secure money for litigation.—A suit will lie on a bond given for the purpose of securing money to be expended in carrying on law proceedings NOBEEN CHUNDER GHOSE v RAMGOOBENATH GOPE [W R. 1864 63

4. ———— Transfer of property for purpose of litigation —The Courts will not interfere when a transfer is completed at once—*e g* when a party buys a certain share of a litigant s risk and stands or falls by his purchase having only the right to recover his share from the party suing if the latter wins his case and having no claim at all if the Courts decide against him. *Quære*—Whether in the present state of the law in India (1864) champerty can be pleaded at all PUNCHANUN MUZOOMDAR v DOORGA NATH ROY W R 1864 300

5 ———— Law in Bengal.—*Held* by GLOVER J (MACPHERSON J dissenting) that there is no law against champerty or maintenance in Bengal PANCH COWREE MAHTOON v KALEE CHURN [9 W R. 490

6 ———— Assignment of interest for purpose of litigation —*Quære*—Whether champerty or maintenance according to English law is forbidden by the law of India Where *A* sues in respect of his own interest for the violation of a contract made for him by *B* as agent only the assignment of *B* s interest in the agreement in order to enable *A* to bring his suit is not champerty or maintenance FISCHER v KAMALA NAICKER [3 W R. P C 33 8 Moore s I A 170

JUGMOHUN LAL v BUDDUN KOER [9 W R 243

7 ———— Agreement against public policy—*Void agreement* —*R* entered into an agreement with *G* that if a suit which was then about to be brought by *G* for the recovery of certain lands should be decided in favour of *G* *R* was to pay *G* R50 and *G* was to make over to *R* half the land recovered *R* was to pay R 0 in certain proportions which *R* was to lose if the suit was not decided in favour of *G* *G* recovered the land and *R* then sued him upon the above agreement *Semble*—That the agreement was not void on the ground of champerty at any rate that it was capable of explanation by a consideration of the surrounding circumstances which the plaintiff should have had an opportunity of giving in evidence RAMRAV KHUNDERAV v GOVIND PANDSHET 6 Bom A C 63

8 ———— Maintenance—*Application of law of champerty—Duty of Court—Specific performance of lease savouring of champerty* —The law of England as to the offences of maintenance and champerty does not apply to natives of India In dealing with objections to their contracts on the ground of maintenance and champerty the Court must look to the general principles regarding public policy and the administration of justice upon which that law at present rests To constitute maintenance improper litigation must have been stirred up with a bad motive for purposes contrary to public policy and justice Champerty is a species of maintenance and of the same character but with the additional feature of a condition or bargain providing for a participation in the subject matter of the litigation Specific performance decreed of a lease though the lease formed part of an arrangement whereby as a consideration for the lease the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence proceedings against the then tenant of the subject matter of the intended lease PITCHAKUTTI CHETTI v KAMALA NAYAKKAN [1 Mad 153

9 ———— Agreement to carry on law suit—*Public policy* —One *M H* being apprehensive that (in consequence of an action of trespass in the Supreme Court which *M R* and *A R* had brought against *P P*) he was in danger of being deprived of a piece of land of which he was then possessed entered into an agreement with *K N* that he *K N* should conduct the pending case at his own costs and necessary expenses and that after *M H* should have proved that the piece of land was his sole property *K N* and *M H* should erect a building on it at their joint expense and that the rents and profits of such building should be enjoyed by *K N* and *M H* jointly during the lifetime of *M H* after whose death the property with the building was to be the sole and absolute property of *K N* *Held* that the above agreement (when considered in connection with its surrounding circumstances) did not savour of maintenance or champerty nor was it void as being against public policy The question as to how far the English law relating to maintenance and champerty is applicable to Hindus in the presidency towns considered *Quære*—Whether that law was ever applicable to cases where pecuniary assistance is afforded to defendants DAMODHAR MADHAVJI v KAHANDAS NARANDA [8 Bom O C 1

10 ———— Invalidity of contract on ground of maintenance—*Agreement against public policy* —A commissariat officer named *M* had a butler named *L* who was employed to put forward with the money of *M* or his own various large contracts Two accounts were opened in several houses of agency in the names of *M* and *L* To secure himself *M* caused *L* to execute a will leaving his whole estate to *M* Testator and legatee perished together in the *Persia* steam ship in 1864 The Administrator General of Madras administered to *L* s estate but the personal representatives of *M* contested the right of the Administrator General to pay over the fund to those of *L* The result was that *L* s representatives were recommended by their attorney *C* to apply to one *J* (the present plaintiff) who was also a client of *C* s for the necessary funds *J* consented to advance money for the purpose of the suit and on the 28th July 1869 a so called deed of mortgage drawn up by *C* was executed between the present defendants as mortgagors and the plaintiff *J* as mortgagee whereby in consideration of an

CHAMPERTY—*continued*

advance of the sum of R5 000 (the receipt of R1 800 of which was by the instrument acknowledged) to be made by *J* to such attorney as he should select before the 31st of December 1869 the defendants mortgaged everything which *they* might be entitled to recover by suit the mortgage to be defeasible on payment of 50 per cent of what they might recover by suit and a further 50 per cent upon all to which they might be entitled as the persons entitled to *L*s estate They also covenanted to repay the money lent with interest The present defendants succeeded in their suit against the Administrator General and this suit was brought by *J* to recover a commission of 50 per cent on the sum recovered and the sums advanced, with interest Defendants denied that plaintiff had fulfilled his part of the agreement and alleged that in consequence of his neglecting to supply funds they had been compelled to borrow of a third party They also pleaded that the agreement was void for champerty and maintenance *Held* that by the law of England which prevailed in the present suit this contract was clearly void being contrary to the plain *provision of the common and statute law against* maintenance and that it was also void as being contrary to public policy The Court further found that the plaintiff had failed to fulfil his part of the contract but allowed him to recover the sum really advanced by him *viz* R2,200 with interest MULLA JAFFARJI TYEB ALI *v* YACALI KADAR BI

[7 Mad. 128

11. ——— **Contract with a litigant to supply funds on security of property in dispute**—*Maintenance* —A contract made in good faith by a person with a litigant to supply him with funds to carry on the suit on the security of the property in dispute will be enforced Such a contract is distinguishable from an officious intermeddling in the suits of other persons or acts tending to prevent unnecessary litigation *Quære*—Whether contracts involving maintenance and champerty as those *offences are defined by English law* will be enforced NUTHOO LALL *v* BUDREE PERSHAD 1 N W 1

12. ——— **Purchaser joining in suit to recover property** —Where the purchaser of a *share of land joins his vendor in a suit to recover his* own property his action cannot be termed champerty MUNIBAKHUN SINGH *v* BHODOY SINGH

[12 W R 133

13 ——— **Speculative purchase of right of appeal**.—*Quære*—Ought the speculative purchase of a right of appeal to be recognized by a Court of Justice ? TROYLUCKONATH BANERJEE *v* BRINDABUN CHUNDER SIRKAR CHOWDHRY

[18 W R 438

14. ——— **Suit by assignee against assignor**—*Maintenance* —An assignee of property is not entitled to recover against his assignor on the footing of a champertous contract An assignee of property whose assignor was not in possession when the assignment was made can only recover even from the hands of third persons upon showing that he would have had a right to enforce specific performance of his contract against his assignor if the property were come back to the hands of the assignor BOODHUN SINGH *v* LUTEEFUN

[22 W R 535

15 ——— **Alienation by Hindu widow** —*K D* a Hindu widow having applied to *H S* to aid her in leaving the family dwelling house of her late husband *G C C* where she alleged she was improperly treated and placed under restraint by *the plaintiff her husband's sole surviving brother H S* at his own cost enabled her to do so. She then applied to *H S* to advance funds for the payment of certain debts incurred by her in consequence of the plaintiff's refusal to pay her any portion of the family estate to allow her a monthly sum for maintenance and to manage and conduct for her a suit which she proposed to institute to establish her right to a portion of the joint estate and *H S* consented to do so upon *certain terms which were embodied* in a deed by which *K D* assigned to *H S* all her right share and interest as widow of *G C C* in the joint estate and in the accumulations thereof and in the separate estate of *G C C* and all benefit to be derived from the intended suit on trust first *to repay* all the costs of the suit secondly to retain by way of remuneration for managing the suit one half of what might be recovered therein and thirdly to hold the *residue as security for repayment* with interest at 12 per cent of the sums advanced by *H S* the surplus, after satisfying all such sums to be paid to *K D* Then *K D* with the aid and under the management of *H S* brought a suit against the plaintiff and other members of the joint family of *G C C* for a declaration of her rights under the will of his father *R C* and for the administration of *G C C's* share of the joint estate The result of this suit was that *K D* was (among other things) declared entitled as a Hindu widow to R1 01,302 14 10 in *respect* of the accumulations of the joint property between the dates of *R C's* and *G C C's* deaths The plaintiff paid the R1 01 302 14 10 into Court under an order made in the suit *K D* subsequently obtained an order under which she took this sum out of Court notwithstanding that the plaintiff applied for an injunction to restrain her taking it out Upon her obtaining that order the plaintiff as immediate reversionary heir of *G C C instituted the present suit against K D* and *H S* to restrain *K D* from taking the R1 01,30 14 10 out of Court and to compel her to bring back any portion thereof which she might have already received and for a declaration that the assignment to *H S* created no valid charge thereon *Held* (following the decision in the case of *Grose* v *Amritamayi Dasi* 4 *B L R O C 1* that the assignment to *H S* was not binding on the reversionary heirs of *G C C* except as regards the charge on one moiety for expenses incurred and advances made by *H S* whether by way of maintenance or otherwise with interest thereon at 12 per cent BISWANATH CHUNDER *v* KHANTAMANI DASI 9 B L R 76

16 ——— **Operation of conveyance pendente lite**—*Conditional transfer*—*Maintenance* —N claiming to be entitled to certain real and personal property as heir of one *J* brought a suit under Act XIX of 1841 to obtain possession thereof

CHAMPERTY—*continued*

and in order to provide funds to carry on the litigation executed an ikrarnama whereby he purported to relinquish and convey to one K a moiety of his right title and interest in the property in consideration of the sum of R50 K agreeing to take all proper steps and to defray all expenses necessary for the recovery of the property which was valued in the ikrarnama at R5,000 K accordingly carried on the suit and incurred costs to the extent of R1,700 but the suit was ultimately dismissed The property was afterwards taken possession of by the Court of Wards on behalf of one *S* who claimed under an alleged adoption by one *A* the person last in possession Thereafter K sold his interest under the ikrarnama, which he valued at Rs. 18,000 to the plaintiff for the sum of R1,700 In a suit brought against the Court of Wards as representing *S* for the recovery of a moiety of the property or its value in which N refused to join as plaintiff and was made a defendant —*Held* that the suit was not maintainable the conveyance by N to K did not operate as a present transfer of the property but only as an agreement to transfer it on conditions which were never fulfilled the plaintiff was not entitled to recover as against S who was no party to the deed *Held* also that the transaction was void as being contrary to public policy and one to which effect ought not to be given by the Court TARA SOONDAREE CHOWDHRAIN *v* COLLECTOR OF MYMENSINGH

[13 B L R, 495 20 W R 446

See BHOBOSOONDREE DASSEAH *v* ISSUR CHUNDER DUTT 11 B L R 36 18 W R 140

17 ———— **Suit against public policy** —*Malicious suit by assignee of right to sue—Maintenance* —In the case of a person who having been defeated in a former suit seeks out from vindictive feelings others who he thinks can establish a claim to the property in dispute and prevails upon them to assign to him their supposed rights it would be contrary to public policy to allow such a suit to be maintained. BISHONATH DEY POY *v* CHUNDER MOHUN DUTT BISWAS 23 W R 165

18 ———— **Bond executed by Hindu widows** —*Maintenance—Fraud—Undue influence and threats* —The three childless widows of a zamindar instituted a suit against the rightful heir to their husband s estate in which they unsuccessfully disputed his legitimacy Previously thereto they had obtained advances of money from the present plaintiff and executed in his favour an agreement and a bond whereby they secured to him the payment of large sums in case they recovered their husband s estate and virtually gave to him the entire control of their suit Subsequently they agreed with the rightful heir to compromise the suit which compromise however was never acted upon partly owing it was alleged to the subsequent conduct of the heir At the date of the compromise the heir who had just attained his majority and was without proper counsel or assistance and acted under threats from the plaintiff a powerful and wealthy banker that he would carry on the litigation against him *per fas aut nefas* was induced contrary to his own judgment and sense of right and without any evidence that the sum claimed was really due to the plaintiff to execute a bond in his favour whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows the plaintiff on his part agreeing that he would treat such payment as a satisfaction of his claim against the widows but meanwhile that he would retain the securities which he held from them In a suit brought by the plaintiff against the heir to enforce the last mentioned bond —*Held* that the bond was wholly invalid and fraudulent as against the defendant and that as there was no privity of contract between the plaintiff and defendant independently of the bond it could not stand as a security for anything which might be justly due from the widows *Quære*—Whether the plaintiff could have recovered from the widows if they had been successful against the heir the large sums of money secured by their bond and agreement The law of champerty and maintenance is not the same in India as in England The English statute with regard to champerty is not applicable in the mofussil in India The Indian Courts in every transaction must decide upon the fact whether it is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil or of litigation disturbing the peace of families and carried on from a corrupt or other improper motive CHEDAMBARA CHETTY *v* RENGA KRISHNA MUTHU VIRA PUCHANJA NAIKER

[13 B L R P C, 509 L R 1 I A 241 22 W R 148

Affirming the decision in the High Court

[7 Mad. 85

19 ———— **Agreement against public policy**—*Maintenance—Malicious prosecution—Reasonable and probable cause—Practice—Security for costs by a person not a party to the suit* — In a deed dated 17th July 1867 it was recited that *A* was entitled to certain property then in possession of *D* and *E* and that *A* and *B* her husband having no funds to adopt or to commence legal proceedings for the recovery of the property had applied to *C* to assist them in commencing and conducting the necessary suits and to make all the requisite disbursements connected therewith until their final termination and that *C* had agreed to do so and also as *A* and *B* had no means whatever to pay to them or the survivor R150 a month until the final termination of the litigation Then followed the appointment by *A* and *B* of *C* to be their attorney to institute and prosecute all necessary suits to sign all papers and documents to receive all moneys and take possession of all lands etc to which *A* and *B* might become entitled under any decree or order that might be made and to appoint attorneys and vakils *C* then covenanted to institute and prosecute the necessary suits and to make the necessary advances and payments and to pay R150 a month to *A* and *B* Then it was agreed that out of the moneys or proceeds of lands etc recovered *C* should in the first place retain and reimburse himself all advances and payments made by him with interest thereon at 1° per

CHAMPERTY—*continued*

cent in the second place retain to himself by way of remuneration for his trouble and risk one third of the nett proceeds of the litigation and in the third place make over the remaining two thirds to *A* and *B* *A* and *B* covenanted not to intermeddle with *C* in prosecuting the litigation that they would render him all possible assistance and that the power of attorney given by them to *C* should be irrevocable so long as he prosecuted the litigation and paid the monthly allowance of R150 It was provided however that if *B* wished to devote all his time thereto he might have the management of the litigation but under the control of *C* and that *A* and *B* might revoke the power of attorney on repayment to *C* of all money advanced by him with interest at 12 per cent and the sum of R2 000 by way of liquidated damages A power was also reserved to *A* and *B* to compromise but only with the consent of *C* unless the sum to be received on the compromise should exceed the total amount of *C*'s advances with interest at 12 per cent In pursuance of this agreement a suit was instituted in the names of *A* and *B* against *D* and *E* to recover possession of the property This suit was by the High Court decreed in the plaintiff s favour but was on appeal dismissed by the Privy Council with costs While the suit was in the Court of first instance *D* and *E* applied to have *C* added as a party This application was refused and *D* and *E* did not appeal from that refusal Pending the litigation *A* and *B* brought a suit against *D* and *E* for wasilat and obtained a decree On the 21st September *A* and *B* executed a memorandum of agreement *whereby C purchased all their* rights in the two suits brought by them against *D* and *E* *D* and *E* now brought a suit against *C* alleging that they had suffered loss and damage by the litigation instituted by *A* and *B* that *C* was guilty of champerty and maintenance that the litigation was commenced and continued maliciously by *C* in the names of persons who had no legal or equitable right and without reasonable or probable cause that the agreement of 17th July 1867 was illegal and contrary to public policy that the litigation was carried on by *C* at his own expense and for his own benefit and that *C* was the real mover in the proceedings and illegally used the procedure of the Court to the damage and injury of the plaintiffs *Held* in the Court below and on appeal that there was reasonable and probable cause for the institution of the wasilat suit brought by *A* and *B* against *D* and *E* *Held* by MACPHERSON J *that the agree*ment of July 1867 was illegal and against public policy as also were the subsequent institution and maintaining of the suit against *D* and *E* by *C* and that the plaintiffs were entitled to recover from *C* the loss they had sustained by reason of the suits which he (substantially only for his own benefit) had maintained against them *Held* on appeal (reversing the decision of the Court below) that the suit was not maintainable The English statutes with regard to champerty and maintenance do not apply to India. In England champerty and maintenance were offences punishable by the Common Law and the ground on which an action is allowed in England —*viz* that *C* had been guilty of an offence by which the plaintiff had suffered damage —does not exist in India. The only ground on which agreements which favour of champerty or maintenance are held to be void in this country is that they are contrary to public policy Assuming that the agreement of July 1867 was a valid one and that *C* did thereby acquire an interest in the subject matter of the suit and supplied the means of carrying it on such acts did not entitle the plaintiffs to maintain the present suit or to recover against *C* the costs of the former suit *C* ought to have been made a co plaintiff with *A* and *B* in the former suit or he ought to have been called upon to give security for the costs of that suit CHUNDER KANT MOOKERJEE *v* RAMCOOMAR KOONDOO

[13 B L R., 530 22 W R., 138

In the same case —*Held* on appeal to the Privy Council the English laws of maintenance and champerty are not of force as specific laws in India either in the mofussil or in the presidency towns The ground on which contracts of the nature of champerty and maintenance should be held by the Indian Courts to be invalid is that they are contrary to public policy An agreement to supply funds to carry on a suit in consideration of having a share in the property if recovered is not necessarily opposed to public policy since cases may easily be supposed in which it would be in furtherance of right and justice that a suitor who had a just title to property and no means to support it should be assisted in this way But agreements purporting to be made to meet such cases when found to be extortionate and unconscionable so *as to be inequitable or to be entered* into for improper objects as for the purpose of gambling in litigation or of injuring others by encouraging unrighteous suits are contrary to public policy and ought not to have effect given to them Since by the law of India a champertous agreement does not constitute a punishable offence an action in that country founded on alleged champerty to recover losses and costs incurred in litigation cannot be sustained on the ground that a remedy by action accrues where an indictable offence has been committed No action will lie for improperly putting the law in motion in the name of a third party unless it is alleged and proved that it has been done maliciously and without reasonable or probable cause In the absence of such proof an action for losses and costs incurred in defending a suit will not lie as against a person who is alleged to have been a mover in that suit and to have had an interest in it *but who had not been made a party to the record* since such a state of things creates no legal privity from which a promise can be implied on which an action on contract can be founded nor does it *ex hypothesi* constitute a legal wrong RAMCOOMAR COONDOO *v* CHUNDER KANTO MOOKERJEE

[I L R 2 Calc 233 L R. 4 I. A 23

20 ———————— *Agreement to supply money for another person s suit—Excess of the reward rendering such agreement inequitable*— A fair agreement to supply money to a suitor to carry on a suit in consideration of the lender having share of the property sued for if recovered is not to be regarded as necessarily opposed to public

CHAMPERTY—*continued.*

p l cy or merely cn this gr und void. But in agreements of this kin l the questi ns are (*a*) whether the agreement is extorti nate an l unconsci nable so as to be inequita le against th borrower or (*b*) wheth r the agreem nt has been mad not with the *bond fide* object of as isting a claim believed to be just and of obtaining reas nable compensation theref r but f r improper objects as for the purpose of gambling in litigation or of injuring others so as to be f r these reasons, contrary to public p licy In either of these cases eff ct is n t to be given to the agreement Here upon the facts the above case (*b*) di l n t arise and this agreement was n t contrary to public policy But this agreement fell within case (*a*) and the judgment of the High Court was affirmed that the agreement was so extorti nate and uncon sci nable in regard to the excess of the reward that it was inequitable and, therefore not enforceable against the defendant *Ramcoomer Coondoo* v *Ch nd r Kanto M okerjee I L R 2 Calc 233 L R 4 I A 23* referred to and followed. MOHKAM SINGH v LUP SINGH

[I. L. R. 15 All. 352
L. R., 20 I. A. 127

21. ———— **Suit for specific performance**—*Purchase by Mahomedan mooktear from H du fam ly—Onus probandi* —Where a mooktear of the Court a Mahomedan brought a suit for specific performance of an agreement alleged to have been made by him with the members of a Hindu family which a reement savoured of champerty it was held that the plaintiff must sh w that the claim was certain fair and just in every way The Courts will not countenance suits of such a description ABED HO SEIN v LALLA PAMSARAN

[13 B L. R. 516 note 13 W R. 426

22. ———— **Assignment of a right to sue**—*Ma ntenance*—In 1869 *P* the liquidator of the *N F Co* compromised for R15 000 the claims of the company against the f urth def n lant *M K* which am unted to R1 61,500 *P* was induced to agree to this compromise in consequence of represent ati ns made to him by the friends of *M K* to the effect that *M K* had no available assets and coul l n t meet his liabilities In 1878 the first plaintiff *G J* alleging that the said compromise had been fraudulently eff cted and that the defendant *M K* at the time of the compromise had been and was still possessed of ample property to pay off his liabilities induced the liquidator of the company to assign to him the company's claim against *M K* and from this suit praying that the compromise with *P* might be declared not binding and that *M K* might be ordered to pay the plaintiff as assignee of the *N F Co* the sum of R1 61 500 with interest *Held* that the assignment to the plaintiff *G J* of the claims of the *N F Co* against *M K* was effected with a view to litigation and that under the circumstances the suit was n t maintainable GOCULDAS JAGMOHANDAS v LAKHMIDAS KHIMJI I. L. R. 3 Bom 402

23 ———— **Party having a speculative interest in suit.**—The plaintiffs sued for p ssession of certain immoveable property by avoi lance of a spurious deed of gift executed by one

CHAMPERTY—*continued*

A deceased in favour of the defendant *H*, one of the plaintiffs joined in the suit under an agreement with the other plaintiffs that he should defray the c sts of the suit fr m the C urt of first instance up to the Privy Council and that he should then bec me propriet r of one half of the pr perty in suit and be entitled to half the costs *Held* by the Court that *H* had no right to join in the suit HAZARI LAL v JADAUN SINGH

[I. L. R. 5 All. 76

24 ———— **Sale dependent on success in suit**—*Absolute sale*—*A* sued *V* and *S* to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit In their written statement the defendants alleged that *A* had obtained the decree in question by fraud Shortly bef re the present suit *V* had mortgaged the house to *H* for R33 000 About three weeks after the suit had been filed *H* advanced a further sum of R5 000 to *V* on the same security and on the same day 12th December 1881 entered into an agreement with *V* by which *H* agreed to buy the house for R45 000 the sale to be completed immediately after the decisi n of the present suit The agreement provided that *V* sh uld defend the suit but if the result of the suit sh uld be to establish the plaintiff's right to seize the house in execution then that *H* should be at liberty to cancel the contract of sale *Held* that the agreement of 12th December amounted to an absolute sale by *V* to *H* of the equity of redemption of the h use in question and that it was not champertous AHMEDBHOY HUBIBHOY v VULLEEBHOY CASSUMBHOY I. L. R. 8 Bom 323

25 ———————— *Agreement to share property the subject of suit—Claim for payment for work done and expenses properly incurred—Agreements not opposed to public policy* — The English law of champerty is not in force in India Agreements made by claimants of property in litigati n to share it with others on their obtaining decrees in consideration of funds being suppli d by the latter for carrying on their suits are not in themselves opposed to public policy nor are they necessarily void. But such agreements when extortionate are inequitable and in that case should not receive effect Alth ugh the present suit failed for this last reason still reasonable compensation under the claim for general relief for work done and expense properly incurred could be awarded as it had been by the Appellate Court below RAGHUNATH v NIL KANTH

[I. L. R. 20 Calc. 843

S C KUNWAR RAMLAL v NIL KANTH

[L. R. 20 I. A. 112

26 ———————— *Agreement to divide property after litigation f successful—F rnishing money under such agreement* —An agreement to furnish money for litigati n on the terms of sharing the property to be recovered thereby is not necessarily void in India unless accompanied by circumstances which lead to the conclusion that it was not a *bond fide* one for the acquisiti n of an interest in the subject matter of litigation but an illegitimate transaction got up for the purp se merely

CHAMPERTY—*continued*

of spoil or of litigation disturbing the peace of families and carried on from a corrupt and improper motive TARACHAND v SUKLAL

[I. L. R., 12 Bom. 559

27 ———— *Maintenance—Gambling in litigation—Agreement opposed to public policy—Contract Act (IX of 1872) s 23*—The judgment of the Privy Council in *Ramcoomer Coondoo* v *Chunder Kanto Mookerjee L R 4 I A 23 I L R 2 Calc 233* shows that while the specific English law of maintenance and champerty has not been introduced into India and while fair agreements to supply funds to carry on litigation in consideration of having a share of the property if recovered should not be regarded as *per se* opposed to public policy yet such agreements should be carefully watched and if extortionate and unconscionable or made not with the *bona fide* object of assisting for a reasonable recompense a claim believed to be just, but for the purpose of gambling in litigation or of injuring or oppressing others by encouraging unrighteous suits should be held contrary to public policy and not enforced For the purposes of meeting the expenses of an appeal to the High Court the appellant on the advice of his legal adviser executed a bond for R25 000 in consideration of the obligee agreeing to defray such expenses The obligor agreed to pay the R25 000 within one year from his recovering possession of the property in suit and at the request of the obligor's pleader the obligee advanced R3 700 which was applied to the expenses of the appeal The High Court dismissed the appeal and in a deed executed by the obligor in favour of the obligee and others for the purpose of defraying the expenses of a further appeal to the Privy Council he admitted his liability under the former bond The Privy Council decreed his appeal and he obtained possession of the property in suit but declined to pay the R25 000 upon which the obligee sued upon the bond It was found that apart from the moneys borrowed by the obligor from time to time he was without even the means of subsistence that he executed the bond with his eyes open and perfectly understood his position and the effect of both the instruments executed by him that no fraud or improper pressure appeared to have been applied to him that his legal advisers had acted honestly and to the best of their ability in his interests that there was nothing to show that having regard to the risks of the litigation he could have obtained the assistance necessary for the prosecution of his appeal on better terms than those contained in the bond that without such assistance he could not have appealed to the High Court and that the obligee gave him such assistance upon his application *Held* also that the obligee could not under the circumstances have considered both that the obligor's claim was a just one and reasonably likely to succeed and that the R25 000 was a reasonable recompense in the event of success for the advance of R3 700 and the bond was therefore a gambling in litigation which it would be contrary to public policy to enforce The Court gave the plaintiff a decree for the R3 700 actually advanced with simple interest at 20 per cent per annum from the date of the bond to the date of the decree with costs in proportion and interest at 6 per cent per annum on the R3 700 interests and costs from the date of the decree until payment CHUNNI KUAR v RUP SINGH

[I. L. R. 11 All. 57

See LOKE INDAR SINGH v RUP SINGH

[I. L. R. 11 All. 118

and HUSAIN BAKSH v RAHMAT HUSAIN

[I. L. R., 11 All. 128

28 ———— *Bond fide litigation—Absence of corrupt motive—Inadequacy of price*—In consideration of a loan of R30 made by plaintiff to defendant to enable defendant to recover from strangers certain land defendant sold to plaintiff a portion of the said land the value of which was about R100 The District Court held that the transaction was champertous and dismissed a suit by plaintiff to enforce his rights *Held* that the inadequacy of the price was not of itself sufficient to invalidate the transaction GURUSAMI v SUBBARAYA

[I. L. R., 12 Mad. 118

29 ———— *Purchase for an inadequate consideration—Speculative suit not necessarily champertous*—A suit having been dismissed on the ground that a sale upon which it was based had been made for a consideration so madequate as to support the belief that it was in the nature of champerty—*Held* that the elements required to bring the case within the authorities on the law of champertous transactions in this country were wanting It was not a case in which an improper interest had been acquired in the unrighteous litigation of other people The fact that a suit may be speculative does not render it champertous. SITA RAMAYYA v ELLAMMA I. L. R. 22 Mad. 310

30 ———— *Mortgage—Equity of redemption Assignment of—Suit on such assignment—Public policy Assignment not opposed to*—The plaintiff sued as the assignee of the equity of redemption for account and redemption alleging that the lands in dispute had been mortgaged to the defendant in 1844 by the ancestor of his (the plaintiff's) assignor The defendant admitted the mortgage but set up an unregistered bedsrapatra (release) of the equity of redemption dated 1867 alleged to have been passed to him by the father of the plaintiff's assignor for a consideration of R500 He also contended that the plaintiff's assignment was champertous and made with the view of depriving him of the property The Court of first instance held that the assignment was a gambling transaction and entered into with the object of gaining the spoils of an unrighteous litigation and null and void as opposed to public policy and that the release set up by the defendant could not be given in proof for want of registration and therefore rejected the plaintiff's claim On appeal to the High Court—*Held* reversing the decree of the lower Court that although the transaction might not be a praiseworthy one *in foro conscientiae* it could not be regarded by a Civil Court as one entered into with the object of gaining the spoils of an unrighteous litigation The equity of redemption was an interest in the land

CHAMPERTY—*concluded*

which it was open to any one to purchase however speculative the transaction might be under the special circumstances of the case GOPAL RAMCHANDRA *v* GANGARAM ANANDSHET I. L. R. 14 Bom. 72

CHARACTER.

——— Evidence as to—

See CASES UNDER EVIDENCE—CRIMINAL CASES—CHARACTER

CHARGE.

——— Alternative—

See CASES UNDER FALSE EVIDENCE—CONTRADICTORY STATEMENTS

——— Caption of—

See ARREST OF JUDGMENT [1 B L. R. O Cr 1 15

——— Form of—

See CRIMINAL TRESPASS [I. L. R. 22 Calc 391

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS I. L. R. 18 Bom 377 [I L. R. 17 All 436

See PENAL CODE s 152 [I. L. R. 19 Calc., 105

See PENAL CODE s 475 [I. L. R., 15 Bom 189

See UNLAWFUL ASSEMBLY [I. L. R. 22 Calc 276

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS [I. L. R. 19 Bom. 749

1 FORM OF CHARGE

(*a*) GENERAL CASES

1 ——— Act XIII of 1865 s 3—*Duty of committing Magistrate or Justice of the Peace* —A Justice of the Peace or Magistrate committing a prisoner for trial before the High Court was bound under s. 3 of Act XIII of 1865 to frame and send up with the depositions a specific charge against the prisoner REG *v* JEETARAM SHAW [1 Ind Jur N S 404

2. ——— Discretion of Magistrate—*Charge under Ch XIV Criminal Procedure Code 1861* —The course taken by a Magistrate before preparing a charge under Ch XIV of the Code of

CHARGE—*continued*

1 FORM OF CHARGE—*continued*

Criminal Procedure must depend upon the circumstances of each case and the Magistrate should exercise his discretion in the matter ANONYMOUS CASE [3 Mad. Ap 2

3 ——— Reference to section of Code under which charge is made—*Criminal Procedure Code 1861 ss 234 237* —A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable as required by ss 34 and 237 of the Code of Criminal Procedure QUEEN *v* DURZOOLLA [9 W R. Cr 33

4. ——— Sufficiency of charge —One count charging each specific offence and describing it with a reasonable degree of certainty is sufficient QUEEN *v* BABOOLUN HIJRAH 5 W R. Cr., 7

5 ——— Several offences under same section—*Amendment of charge* —Where several offences are charged under the same section the committing Magistrate should frame the charge so as to contain a separate head for each offence QUEEN *v*. KALARAM SINGH 7 W R Cr 8

6 ——— Indictment—*Penal Code s 161* —An indictment will not be invalidated in consequence of the charge not notifying the specific section Under s 161 it is necessary to show that the offence the instigation of which is the subject of the charge has been committed. QUEEN *v* NOTABUR NUNDY 1 Ind. Jur N S 43

7 ——— Specific allegation in charge of absence of exceptions in Penal Code—*Criminal Procedure Code 1872 s 439* —MARKBY, *J* —Although ss 235 and 237 of Act XXV of 1861 have been repealed it may still be inferred from illus. (*a*) s 439 of the present Criminal Procedure Code that it is unnecessary specifically to allege in a charge the absence of all general and some at least of the other exceptions mentioned in the Penal Code The operation of the illustration however is strictly confined to the statement of the offence in the charge IN THE MATTER OF THE PETITION OF SHIBO PROSAD PANDAH I. L. R. 4 Calc 124 3 C L R. 122

8 ——— Unnecessary allegations in charge —Unnecessary allegations in a charge may be rejected as surplusage REG. *v* CASSIDY [4 Bom Cr 17

9 ——— Want of care in framing charge —Observations by STUART *C J* on the careless manner in which the charge in this case was framed EMPRESS OF INDIA *v* BALDEO [I L R. 3 All. 322

10 ——— Omission to prepare charge —*Held* that the omission to prepare a charge did not vitiate the proceedings; and conviction upheld. REG *v* KABHAI RAVA BHAI 5 Bom. Cr 40

11 ——— Charge prepared after defence —It is an irregularity to prepare the charge against a prisoner after his defence has been recorded QUEEN *v* CHOTEY LAL 3 N W 271

CHARGE—*continued*

1 FORM OF CHARGE—*continued*

12. ——— Penal Code s 75—*Trial of prisoner of offence under Ch XII or XVII after previous conviction* —If a prisoner is to be tried for an offence punishable under s 75 of the Indian Penal Code a separate charge under that section must be framed and recorded. QUEEN EMPRESS v DORASAMI [I. L. R. 9 Mad., 284

13 ——— Form as to time and place of offence —In a case in which the charge did not contain such particulars as to time and place as were reasonably sufficient to give notice to the accused of the matter with which he was charged the accused was acquitted by the High Court QUEEN v UDIT SINGH 25 W R. Cr 46

14 ——— *Criminal Procedure Code 1882 ss 222 223—Particulars to be inserted in charge* —A committing Magistrate is bound under ss 222 and 223 of the Code of Criminal Procedure (Act X of 1882) to insert in the heads of charge sufficient particulars of time place person and circumstance as will give each of the prisoners notice of the matter with which he is charged QUEEN EMPRESS v FAKIRAPA [I. L R 15 Bom., 491

15 ——— Defect in charge—*Omission of word dishonestly in charge and record of conviction.*—The omission of the word dishonestly both in the charge and in the record of the conviction is not a ground for reversal of conviction and sentence where an accused person has fully understood the nature of the offence with which he is charged and had not been prejudiced by the omission Conviction and sentence recorded by a Magistrate and reversed by the Sessions Judge upon this ground restored by the High Court on appeal directed by Government under s 272, Criminal Procedure Code QUEEN v PAKHMA 10 Bom. 373

16 ——— Charge alleging previous conviction—*Former sentence* —A charge alleging a previous conviction need not show the extent of the former punishment Revised form of charge stated ANONYMOUS 4 Mad. Ap 11

17 ——— *Criminal Procedure Code 1872 s 439* —Under s 439 of the Criminal Procedure Code 1872 if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment it is necessary to state the fact of that previous punishment in the charge If it is omitted it may be added to the charge at any time previous to the sentence being passed but not after QUEEN v PAJCOOMAR BOSE 19 W R. Cr 41

18 ——— *Civil Procedure Code 1872 s 439* —The fact of previous convictions should under Act X of 1872 s 439 be stated in the charge when it is intended to prove them for the purpose of enhancing punishment QUEEN v ESAN CHUNDER DEY 21 W R. Cr 40

19 ——— *Criminal Procedure Code 1872 s 439* —Under s. 439 Criminal Procedure Code 1872 a charge of having committed the offence after a previous conviction therefor should contain an allegation that the offence has been committed after a previous conviction. A statement in a Court that at the time when the prisoner committed the offence (no offence being specifically mentioned in the Court) he had been previously convicted of offences punishable under Ch XVII of the Penal Code is not a sufficient compliance with the provisions of s 439 QUEEN v JAKIR 22 W R., Cr, 39

(*b*) SPECIAL CASES

20 ——— Cheating—*Form of indictment* —In an indictment for cheating under the Penal Code it is necessary to state that the property was the property of the party defrauded QUEEN v WILLANS 1 Mad. 31 1 Ind Jur O S 94

21. ——— *Act XVIII of 1862 s 41—Defect in charge* —An indictment defective in not stating that the property obtained was the property of the person defrauded is defective for uncertainty, and must be objected to if at all before the jury is sworn QUEEN v WILLANS [1 Mad. 31 1 Ind Jur O S 94

22 ——— Criminal breach of trust—*Criminal Procedure Code 1869 s 242—Offence under Bom Reg XVII of 1827 s 16* —In order to make an alternative charge of two or more offences regular under s 242 of the Criminal Procedure Code, the offences specified in such alternative charge must all be offences against the Penal Code Therefore a charge against a prisoner either of criminal breach of trust under s 409 of the Penal Code or of undue exaction of money under s 16 of Regulation XVII of 1827 is irregular REG v AGAM DULLA 8 Bom Cr 115

23 ——— *Penal Code (Act XLV of 1860) s 409—Conviction for criminal breach of trust on general deficiency in account* —An accused person may be charged with criminal breach of trust in respect of a general deficiency and it is not necessary in all cases to charge the accused with the embezzlement of a particular sum received on a certain date from some particular person *Reg v Jones 8 C & P 288 Reg v Chapman 1 C & K 119 Reg v Wolstenholme 11 Cox C C 313* and *Queen v Lambert 2 Cox C C 309* referred to. QUEEN EMPRESS v KELLIE [I. L. R. 17 All. 153

24. ——— *Penal Code (Act XLV of 1860) s 409—Conviction for criminal breach of trust on a general deficiency in accounts* —*Held* that a person accused under s 409 of the Indian Penal Code might be legally convicted of the offence defined in the section on proof of a general deficiency in his accounts and that it was not necessary that the receipt of and non accounting for specific items should be charged and proved against him. *Queen Empress v Kellie I L R 17 All 153* approved BUDDHU v BABU LAL [I. L. R., 18 All. 116

CHARGE—*continued*

1 FORM OF CHARGE—*continued*

25 ———————— *Penal Code (Act XLV of 1860) s 408—Form of indictment—Practice* —Where the first two counts of an indictment charged the prisoner under s. 408 of the Penal Code with criminal breach of trust in respect of two sums of money r R23 7 and R5,0 respectively and the third and last count charged him with criminal breach of trust in respect of a sum of R9 168 6 which last mentioned sum as appeared from the depositions represented a general deficiency in the prisoner's account —*Held* the third count must be struck out. QUEEN EMPRESS v PURSOTAM DASS MOBARJEE I. L. R. 24 Calc. 193

26 ———— Criminal misappropriation —*Criminal Procedure Code (Act X of 1882) s 234—Charge and trial for criminal misappropriation in respect of a general deficiency in accounts without proof of individual defalcations* —*Held* that, having regard to s. 234 Criminal Procedure Code an accused person cannot be charged with and tried at the same time for criminal misappropriation of a sum which is not the subject of a single act of misappropriation but represents a general deficiency consisting of a lengthened series of separate defalcations Where there have been separate acts of misappropriation the accused cannot be tried at the same time for more than three of such acts committed within a year but when it may be properly inferred from the evidence that there has been but one act of misappropriation although the sum misappropriated may represent the aggregate of sums received by the accused at different times he may be charged and tried at one trial in respect of the aggregate sum or if there be three such acts occurring within a year then in respect of all of them. *Rex v Grove 1 Moo C C 447 Reg v Lloyd Jones 8 C & P 288 Reg v Chapman 1 C & K., 119 Reg v Lambert 2 Cox 309 Queen v Balls L R., 1 C C R 328* referred to. *In re Chettee 15 W R Cr 5 Queen v Counsell unreported Queen Empress v Shama Churn Sen unreported Queen Empress v Pursotam Das Morarjee I L R 24 Calc., 193 Queen Empress v DeSilva unreported* approved of *Queen Empress v Kellie I L R 17 All., 153* and *Buddhu v Babu Lal I L R 18 All 116* dissented from EKRAM ALI v QUEEN EMPRESS [2 C W N 341

27 ———— Defamation—*Penal Code s 499* —In framing a charge of defamation under Act XXV of 1861 it is not necessary to negative the exceptions contained in s. 499 of the Penal Code REG v KIKABHAI PARBADAS 9 Bom 451

28 ———— False evidence—*Form of charge* —In cases of giving false evidence a separate charge against each prisoner must be framed and separate trial held of each charge ANONYMOUS [3 Mad Ap, 32

QUEEN v BHAIRO MISSER 7 W R Cr 51

QUEEN v KUREEM 11 W R Cr 16

29 ———————— *Trial on charge of perjury* —A person accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person REG v BHAVANISKAR HARIBHAI [5 Bom. Cr 55

QUEEN v KHOOB LALL 9 W R Cr, 66

QUEEN v RUTTEE RAM 3 N W 21

30 ———————— *Several charges* —The Court of Sessions must find judicially whether all or if not all which of the particular charges of perjury where there is more than one charge is made out against each prisoner QUEEN v KHOOB LALL 9 W R. Cr 66

31. ———————— *Penal Code s 193* —Six persons were charged in the same charge as follows That you on or about the — day of June — at Tajpur committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding and that you have thereby committed an offence under s 193 of the Penal Code *Held* the charge was bad and defective first as it charged *a number of persons jointly with giving false evidence* second as it did not show what statement the accused persons made third as it did not mention the day and year when the offence was committed fourth as it did not indicate the Court or officer before whom the false evidence was given QUEEN v MAHARAJ MISSER [7 B L. R. Ap 66
16 W R Cr 47

32 ———————— *Penal Code s 193* —A charge under s. 193 Penal Code should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement but the particular stage of the proceeding in which the statement is made QUEEN v FATIK BISWAS 1 B L R A Cr 13
S C QUEEN v FUTTEALI BISWAS [10 W R Cr 37

33 ———————— *Contradictory statements—Criminal Procedure Code 1861 s 242* —S 242 Act XXV of 1861 pointed out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false QUEEN v LALA KHAN 12 W R. Cr 23

34. ———————— *Penal Code s 193* —In prosecutions for giving false evidence under s 193 of the Penal Code the case of each person accused should be separately enquired into and if committed for trial separately tried It is wholly erroneous to include them in one joint charge EMPRESS OF INDIA v NIAZ ALI [I. L. R. 5 All. 17

35 ———————— *Several false statements—Aggregate charge* —The making of any number of false statements in the same deposition is one aggregate case of giving false evidence Charges of false evidence cannot be multiplied according to *the number of false statements contained in the depositions* ANONYMOUS 6 Mad. Ap 27

36 ———————— *Precise words of statement* —Charges of perjury ought to be based strictly upon the exact words which are used by the

CHARGE—*continued*

1 FORM OF CHARGE—*continued*

person who is charged and no evidence which does not profess to give the exact words can alone be a safe foundation for a conviction. QUEEN v MUNGUL DOSS 23 W R., Cr, 28

37 ———— *False verification of plaint—Separate charges*—A person who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him A charge that he on or about the 15th April 1871 gave false evidence is not sufficiently specific Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence still it is not quite the same thing as giving false evidence Three separate offences should not be lumped together in a single charge but each offence should form a separate head of charge with reference to which there should be a distinct finding and a distinct sentence QUEEN v SHEO CHURUN [3 N W, 314

38 ———— *Substance of evidence—Penal Code s 193*—The alleged false evidence and not its assumed substance and import should be set forth in a charge under s 193 of the Penal Code QUEEN v JAMUSHA 7 N W 137

39 ———— *Penal Code s 193*—In charges of false evidence under s 193 Penal Code the charge should specifically state what words or expressions the accused is charged with having uttered and in what respect they are supposed to be false QUEEN v DOWLUT [8 W R. Cr, 95

40 ———— *Penal Code s 193—Preciseness of charge*—In framing a charge for giving false evidence under s 193 of the Penal Code the charge should be precise and where the accused is charged with giving false evidence on three different occasions each occasion should form the subject of a distinct head in the charge QUEEN v FEOJDAR ROY 9 W R. Cr 14

QUEEN v ADHYA THAKOOR 17 W R. Cr 33

QUEEN v BOODHUN AHIR 17 W R. Cr 32

QUEEN v SOONDER MOHOOREE [9 W R. Cr 25

41 ———— *Several charges—Separate assertion of falseness*—Charges of perjury should contain a distinct assertion with regard to each statement intended to be characterised as perjury that it was made; that it is untrue in fact that the accused knew it to be so when he made it and the investigation of the Court should be directed to each of those points singly QUEEN v KALI CHURN LAHOREE 9 W R. Cr, 54

42 ———— **Falsification of documents**—*Penal Code (Act XLV of 1860) s 477A—Criminal Procedure Code (Act V of 1898) ss 222 (2) 234—Criminal breach of trust by public servant—Acquittal—Framing new charge—General falsification of accounts for a period extending over two years*—The alteration in the law by s 222 (2) of the Criminal Procedure Code (Act V of 1898) does not apply to a charge under s 477A of the Penal Code (falsification of accounts) It applies only to criminal breach of trust or dishonest misappropriation of money QUEEN EMPRESS v MATI LAL LAHIRI [I L R 26 Calc 560 3 C W N 413

43 ———— **Forgery**—*Using false document—Abetment of forgery*—When a Civil Court sends a prisoner before a Magistrate on a charge of forgery it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery or of using as genuine a false document or of abetting forgery QUEEN v MOHESH CHUNDER ACHARJEE [6 W R., Cr 20

44. ———— *Omission to specify precise offence—Penal Code s 467*—The prisoner was charged under s 471 of the Penal Code with fraudulently using as genuine a forged document and having been tried before a Sessions Judge and jury was convicted of that offence The Sessions Judge considering the forged document to be of the nature of those specified in s 467 sentenced the prisoner to ten years transportation On appeal the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s 467, and that that not having been done the trial by jury was illegal The conviction and sentence were therefore annulled and it was directed that the prisoner should be retried REG v GANGARAM MALJI 6 Bom., Cr 43

45 ———— **House trespass**—*Penal Code s 451*—A charge under s 451 must charge the accused with committing house trespass with intent to commit some specific offence punishable with imprisonment QUEEN v MEHAR DOWALIA [16 W R. Cr., 63

46 ———— **Hurt**—*Causing hurt—Penal Code s 324*—The charge and finding in a case of causing hurt under s 324 of the Penal Code need not contain a negation that the hurt was caused on grave and sudden provocation ANONYMOUS [4 Mad. Ap., 5

47 ———— **Illegal gratification**—*Vagueness of charge*—A charge of attempting to obtain a gratification as a reward for influencing a public servant in exercise of his public functions is illegal as disclosing no legal offence when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. QUEEN v SETUL CHUNDER BAGCHEE 3 W R. Cr 69

48 ———— **Information of offence Omission to give**—A charge should distinctly set forth the particular offence in respect of which the accused either omitted to give information or gave information which he knew to be false; and it should appear precisely what his duty was in the matter QUEEN v MOOSUBROO 8 W R., Cr., 37

CHARGE—*continued*

1 FORM OF CHARGE—*continued*

49 ——— Master and servant—*Liability of servant for leaving employer's service without warning* —Where a legislative enactment renders a servant punishable who leaves his employer's service without due warning a charge under such an enactment will not be sustainable unless it aver not only that the accused left his employer's service without giving the required warning but also without lawful excuse VITHOBA MALHARI v CORFIELD [3 Bom., Ap 1

50 ——— Mischief—*Mischief by setting fire to house* —In a case of mischief by fire with intent to cause the destruction of a dwelling house the charge should lay the intent as an intent to cause the destruction not of a house simply but of a house used as a human dwelling QUEEN v DURBARRO LOLLE 8 W R. 30

51 ——— Murder—*Penal Code s 302 —Objection to charge* —A charge under s 302 of the Penal Code need not set out at length all the facts necessary to constitute the offence of murder and negative all the exceptions contained in s 300 which defines the crime of murder Technical objections to criminal charges particularly on the ground of the want of a sufficient specification of details should be taken before the conclusion of the trial when the Judge may if necessary amend the charge and not afterwards unless it appear that some failure of justice has been caused by the irregularity complained of GOVERNMENT v RAMASAWMY [5 W R. Rec Ref 1

52 ——— *Penal Code, s 300* —A prisoner was charged with causing the death of *A* by inflicting a wound on him with a chheni with the intention of causing bodily injury such as was sufficient in the course of nature to cause death or which he knew to be likely to cause death *Held* that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in s 300 of the Penal Code With reference to the second clause it should have run likely to cause the death of *A* the person to whom the harm was caused. With reference to the third clause it should have said ordinary course of nature EMPRESS v SAMIRUDDIN [I L. R. 8 Calc 211 10 C L. R. 11

53 ——— Public safety Offence affecting—*Plying unsafe vessel—Penal Code ss 282 336* —Boatmen who ply an unseaworthy vessel whereby the lives of passengers for hire are endangered should be charged under s 282 and not under s 336 of the Penal Code REG v KHODA JAOTA [1 Bom 137

54. ——— Rioting—*Separate charges against members of rival parties* —Where there is riot and fight between two factions the members of each party should be committed for trial separately and not all together QUEEN v DURZOOLLA [9 W R. Cr 33

QUEEN v BAZU [B L. R. Sup Vol. 750 8 W R. Cr 47

CHARGE—*continued*

1 FORM OF CHARGE—*continued*

55 ——— *Common object not declared in the charge* —A conviction for rioting, based upon a charge which does not specify the common object of the assembly charged with rioting is improper CHUNDER COOMAR SEN v QUEEN EMPRESS 3 C W N 605

TAFAZZAL AHMED CHOWDHRY v QUEEN EMPRESS I L. R., 26 Calc. 630

56 ——— *Defect in charge —Unlawful assembly—Common object Effect of not stating in charge—Penal Code (Act XLV of 1860) s 147* —Where certain accused persons were convicted of rioting and it appeared that the charge did not specify any common object and that neither the judgment of the Original Court nor that of the Sessions Judge in appeal found what was the common object which made the assembly of which the prisoners were members an unlawful one —*Held* that these defects did not vitiate the proceedings there being ample evidence on the record to prove what the common object of the assembly was and to justify the conviction for the offence of which the lower Courts had found the accused guilty BASIR ADDI v QUEEN EMPRESS I L R 21 Calc 827

57 ——— *Alternative charge —Common object—Unlawful assembly—Criminal Procedure Code (1882) s 236* —Fourteen accused were charged with rioting armed with deadly weapons and with murder and causing grievous hurt during such riot The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party Some of the accused who admitted their presence at the scene of the occurrence stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife and that they had merely acted in self defence On the close of the case for the prosecution the Sessions Judge considering that possibly the common object alleged by the prosecution might be considered not to have been proved amended the charge and added an alternative common object to it namely that the object of the assembly was to punish one of the opposite side for enticing away another's wife There was no evidence on the record to prove the alternative common object it being based solely on a portion of the statements of some of the accused *Held* that if the Sessions Judge was of opinion that there were grounds for charging the accused with a common object other than that alleged by the prosecution his proper course was not to amend the charge but to add a separate count or counts to the charge upon which a separate verdict could be taken S 236 of the Code of Criminal Procedure only authorizes a charge in the alternative when it is doubtful which of several offences the facts which can be proved will constitute and not where there may be a doubt as to the facts which constitute one of the elements of the offence WAFADAR KHAN v QUEEN EMPRESS I. L. R. 21 Calc. 955

58 ——— Stolen property Receiving—*Penal Code s 411* —A charge under s 411

CHARGE—*continued*

1 FORM OF CHARGE—*concluded*

of the Penal Code of dishonestly receiving stolen property should state that the articles found in possession of the accused were the property of *A B* the owner thereof REG *v* SIDDU BIN BALNATH [1 Bom 95

59 ———— **Unlawful assembly and theft**—*Cutting and carrying away crops in disputed land—Penal Code ss 143 379*—Observations of the Court as to the proper framing of the charge in cases of unlawful assembly with the object of committing theft by cutting crops JAGAT CHANDRA ROY *v* PAKHAL CHANDRA ROY [4 C W N 190

60 ———— **Whipping Act**—When an accused person is liable to be punished under the Whipping Act 1864 the charge must state the liability and the judgment should set out the grounds thereof when that punishment is imposed BADYA *v* QUEEN I L R., 5 Mad 158

2 ALTERATION OR AMENDMENT OF CHARGE.

61 ———— **Power to alter charge**—*Alteration after verdict*—On a trial by jury the Sessions Judge has no power to alter the charge after the delivery of the verdict REG *v* ALI VALAD FAKEER MUHAMMAD 5 Bom Cr, 9

62 ———— **Altering charge after plea of guilty**—When an accused pleads guilty to a charge already framed the Sessions Judge has no power to alter the charge upon the evidence on the record Upon a charge of murder the accused pleaded guilty the Sessions Judge taking into consideration the circumstances of the case reduced the charge to homicide not amounting to murder *Held* that the proceeding was illegal QUEEN *v* GOBARDHAN BHUTAN [4 B L R Ap 101 13 W R, Cr 55

63 ———— **Indictment Amendment of**—The indictment may be amended at any stage of the trial QUEEN *v* WILLANS [1 Ind Jur O S 94 1 Mad 31

64 ———— **Form of amendments made in charge**—Amendments in a charge ought to be made formally and should appear on the face of the record QUEEN *v* FOJDAR ROY [9 W R Cr 14

65 ———— **Formal defects**—*Act XVIII of 1862 s 41*—*Semble*—The latter part of s 41 of Act XVIII of 1862 only gave power to amend where the defect was formal QUEEN *v* WILLANS [1 Mad 31 1 Ind Jur O S 94

66 ———— **Amendment which may prejudice accused**—*Amendment of charge—Receiving stolen goods—Act XVIII of 1862 s 1*—The Court under s 1 of the Criminal Law Amendment Act (XVIII of 1862) had power to order the amendment of a charge involving a change in the owners ip of stolen property provided such amendment did not prejudice the accused in his defence upon the merits Where it is doubtful whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits the amendment ought not to be made Where the accused was charged with receiving stolen goods from the wife of the prosecutor the property in the goods being laid in the prosecutor and the charges were amended by laying the property in the prosecutor jointly with his mother it was held that such amendment ought not to have been made REG *v* GOVINDAS HARIDAS [6 Bom., Cr 76

CHARGE—*continued*

2 ALTERATION OR AMENDMENT OF CHARGE—*continued*

67 ———— **Omission of count in charge**—*Defect in charge—Power of Appellate Court*—The omission of a count in the charge is simply a defect in the charge and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted provided the prisoner has not been prejudiced or injured by the substitution of one section for another ANONYMOUS [1 Ind. Jur N S, 46

68 ———— **Omission to prove separate charge for separate offence**—The omission of the Magistrate to frame the charge so as to contain a separate head for each offence may be remedied by the Sessions Judge exercising the powers of amendment contained in s 244 of the Code of Criminal Procedure 1861 QUEEN *v* KALABAM SINGH [7 W R., Cr., 8

69 ———— **Evidence not supporting charge**—*Alteration of charge—Order to Magistrate to re commit*—When the Judge finds that the facts proved do not support the charge as laid he should alter the charge and not order the Magistrate to re commit the accused REG *v* BAPU PARBAT [7 Bom Cr, 81

70 ———— **Alteration of proceedings**—*Prejudice to accused—Necessity to try de novo*—When a Magistrate under s 250 of the Criminal Procedure Code 1861 stopped proceedings under Ch XIV and proceeded under Ch XII of the Code it was not necessary for him to make an enquiry *de novo* under Ch XII the amended charges on which the commitment was made not being so materially different from those on which proceedings were commenced as to prejudice the accused. QUEEN *v* AMEERUDDIN 1 N W Ed. 1873 307

71. ———— **Aleration of charge to another cognizable offence**—*Alteration of charge from culpable homicide to s 154 Penal Code*—The prisoner who was charged with culpable homicide not amounting to murder was tried for that offence and there being no sufficient proof to convict on that charge was tried by the Sessions Judge for not having used lawful means in preventing the riot (s 154) and was punished for that offence *Held* that the Sessions Judge was competent to alter the charge and to try the prisoner for any offence coming under any one of the sections of the Code GOVERNMENT *v* THACOOR DOSS 1 Agra, Cr., 13

CHARGE—continued

2 ALTERATION OR AMENDMENT OF CHARGE—continued

——— Adding new charges—Power and amend charge —Although a Sessions ... power to alter or amend a charge he can ... entirely new charge which is not even ... the charge on which an accused person ... committed for trial. QUEEN v WARIS ALI [3 N W 337

——— Omission to give ... charge —Where a person is arrested and charges are entered against him in the police ... should not on the day of trial be called ... other charges without previous intimation given to him of the additional charges. ... MATTER OF THE PETITION OF PADOINATH ... EMPRESS v PADOINATH SHAHA [I. L. R., 8 Calc., 195

——— Conviction on ... charge from that of which notice was ... accused —Where a police officer who had ... called on to answer to a charge of bribery which ... sustained by the evidence was found guilty ... of duty under s. 29 Act V of 1861 of ... since the officer trying the case found sufficient ... evidence in the course of the trial,—Held that ... accused person called on to answer to a specific ... cannot be convicted on an entirely different ... without previous notice of the offence imputed ... and opportunity being afforded him of meeting ... accusation IN THE MATTER OF THE PETITION ... GIRISH CHUNDER NUNDEE [26 W R., Cr., 8

——— Amendment of charge by ... Judge after commitment by Magistrate —Reasons of Magistrate for committing case ... way —Where a Magistrate gives reasons ... putting a case for trial in a certain way the ... Judge must either accept the charges as ... frame others himself he is not authorized ... Criminal Procedure Code to insist on a re... of the charge by the Magistrate unless he ... the charge which he wishes to be sent up ... MATTER OF THE PETITION OF RAMDHONE ... E 25 W R Cr 17

——— Power of Sessions Judge—... Procedure Code 1872 s 446 —Where an ... person is committed to take his trial on specific ... before the Sessions Court the Judge has no ... under s 446 of Act X of 1872 to expunge a ... before calling upon the accused to plead to it ... v FOREBHOLLAH SHEIKH [7 C L R. 143

——— Charge Altera... —On the 8th August 1884 a Magistrate of ... 2nd class began an enquiry in a case in which ... persons were accused of rioting and of voluntarily causing grievous hurt On the 6th September ... powers of a Magistrate of the first class were ... conferred on the Magistrate by an order of Government ... which was communicated to him on the 8th ... On the 9th September the case for the ... prosecution having closed the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code recorded the statements of the accused and the evidence for the defence and on the 10th September convicted the accused on all the charges passing upon each of them in respect of each charge sentences which he could pass as a Magistrate of the first class but could not have passed as a Magistrate of the second class On appeal the Sessions Judge on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code held that the sentences passed by the Magistrate were illegal as being inconsistent with the provisions of s. 71 paragraphs 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 148. *Held* by the Full Bench (PETHERAM C J., and BRODHURST J dissenting) that the sentences passed by the Magistrate were legal *Per* PETHERAM C J that the Judge in this case had no power to alter the charge or to frame a new charge in any way *Per* BRODHURST J that the sentences passed by the Magistrate were as a whole illegal and that a Court of Appeal is not competent to alter the finding of a Magistrate so as to convict an accused person of an offence which the Court of which the order is on appeal was not competent to try QUEEN EMPRESS v PERSHAD I. L. R., 7 All. 414

78 ——— *Addition of charge at trial—Meaning of the word charge in Criminal Procedure Code (X of 1882)—Altering charge—Substitution of charge—Omission to read and explain charge to prisoner—Person committed without a charge' under s 226 of Criminal Procedure Code—Meaning of the word alter in s 227—Meaning of the words return of verdict in s 227—Criminal Procedure Code (Act X of 1882) ss 226 227 228 230 236 237 537—Practice—Procedure—Right to begin* —*A* was tried on a charge (1) of murder (2) of abetting *B* to commit the said murder The jury having considered their verdict were asked by the Clerk of the Crown if they were agreed The foreman replied that they were and that their verdict was guilty and when further asked he said guilty of abetment —of abetment generally On the application of counsel for the prosecution a charge was then added of abetment of murder committed by some person or persons unknown The additional charge was read aloud to the jury but was not specially explained to the prisoner nor was he called upon to plead to it Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended but he declined. The three charges (i.e the two original charges and the additional charge) were then read to the jury who after deliberation returned a verdict of not guilty on charges Nos 1 and 2 and of guilty on charge No 3 viz of abetment of murder by a certain person or persons unknown. On the application of counsel for the prisoner the following points were reserved:

CHARGE—*continued*

2 ALTERATION OR AMENDMENT OF CHARGE—*continued*

(1) whether under the circumstances the Court had power to add a new charge (2) whether the verdict returned on the new charge was valid, the prisoner not having been called on to plead to it *Held* (SCOTT *J dissentiente*) that the Judge was wrong in framing a new charge in addition to the original charges The error however was one of form and not of substance and under s 537 of the Criminal Procedure Code (Act X of 1882) the Court declined to interfere with the conviction *Held* also that having regard to ss 228 229 and 230 of the Criminal Procedure Code the charge of abetment of murder by *B* might have been changed into one of abetment generally *Held* also that in any case the conviction was good under ss 236 and 237 of the Criminal Procedure Code It was doubtful whether the evidence would establish the offence of murder abetment of murder by *B* or abetment of murder by some one unknown Even if there had been no charge properly framed the Judge might under s 237 have accepted the verdict returned by the jury and entered it on the record The fact that the Judge framed a charge which *ex hypothesi* was beyond his authority and accepted a verdict on that charge did not affect the legality of the conviction *Held* that the omission to read and explain the charge to the prisoner did not under the circumstances prejudice the prisoner and was therefore immaterial In the Criminal Procedure Code generally the word charge is used as the statement of a specific offence and not as indicating the entire series of offences of which a prisoner is accused There is nothing in the Code to indicate that the word is to have a different construction in ss 226 and 227 from what it has in other sections The words without a charge in s 236 of the Criminal Procedure Code (Act X of 1882) will properly apply not only to a case in which there is no charge at all but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for If the word alter in s. 227 is to be taken to include addition as it does in s 226, the addition permitted must be an addition to some specific charge in the nature of an alteration and not the addition of a new charge The words return of the verdict in s 227 mean the return of the final verdict which the Judge is bound to record. *Per* SCOTT *J*—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner The word charge is used in the Code both as indicating the whole series of counts or heads of charge and also as indicating a charge of one specific offence In s 227 it is used in the former sense The word alter in s 227 must be taken to be equivalent to the words add to or otherwise alter which are used in s 226 and consequently the addition of a new head of charge is an alteration within the meaning of s 227 QUEEN EMPRESS *v* APPA SUBHANA MENDRE I. L. R. 8 Bom. 200

79 ——— Alteration or amendment of charge—*Addition of charge at trial—Altering charge—Criminal Procedure Code s 227*—*Held* that on a trial upon charges under ss 467 and 471 of the Penal Code the Court had power under s. 227 of the Criminal Procedure Code to add a charge under s. 193 of the Penal Code upon which the prisoner had not been committed for trial *Queen Empress* v *Appa Subhana Mendre I L R 8 Bom 200* dissented from QUEEN EMPRESS *v* GORDON [I. L. R. 9 All. 525

80 ——— Addition of charge triable by any Magistrate—*Power of Sessions Judge to add charge and try it—Criminal Procedure Code ss 226 236 237 537*—Three persons were jointly committed for trial before the Court of Session two of them being charged with culpable homicide not amounting to murder of *J* and the third with abetment of the offence At the trial the Sessions Judge added a charge against all the accused of causing hurt to *C* and convicted them upon both the original charges and the added charge The assault upon *C* took place either at the same time as or immediately after the attack which resulted in the death of *J* *Held* that the case did not come within the terms of s. 226 of the Criminal Procedure Code and the adding of the charge was an irregularity which was not covered by ss 236 and 237 those sections having no application to such a state of things; but that, inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused and heard all the objections raised and witnesses might have been called for the defence upon the added charge the provisions of s 537 were applicable to the case QUEEN EMPRESS *v* KHARGA [I. L. R., 8 All. 665

81 ——— Power of Sessions Judge to withdraw a charge framed by him—*Criminal Procedure Code ss 226 227*—The word alter in s. 227 of the Criminal Procedure Code includes withdrawal by a Sessions Judge of a charge added by him to the charge on which the commitment had been made DWARKA LAL *v* MAHADEO PAI I. L. R., 12 All. 551

82. ——— Vagueness of charge—*Penal Code s 217*—The accused was charged under s 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed and how he disobeyed it. *Held* that when the accused has been convicted on a charge expressed in vague terms the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial EMPRESS *v* BABAN KHAN [I. L. R., 2 Bom. 143

83 ——— Conviction for an offence different from that with which accused is charged—*Extradition—Lex fori—Criminal Procedure Code 1882 ss 227 239—Penal Code ss 335 398 879—Dacoity—Theft*—The accused were subjects of His Highness the Gaekwar of Baroda They were extradited for committing dacoity

CHARGE—*continued*

2. ALTERATION OF AMENDMENT OF CHARGE—*continued*

in British India. The Magistrate who held a preliminary enquiry into the matter committed the accused to the Sessions Court on a charge under s. 3 S of the Penal Code (XLV of 1860). The Sessions Judge amended the charge to one under s. 3 on the ground that, as the accused had been extradited on a charge under s. 379, they could be tried and convicted only under that section and no other. At the end of the trial, the Sessions Judge found that the accused were guilty of theft, but not of dacoity, acquitted them. *Held* reversing the order of acquittal, that it was competent to the Sessions Judge to alter the charge under s. 227 of the Code of Criminal Procedure (Act X of 1882) and under s. 235 to convict the accused of the minor offence which the ... has taken. *Held* also, that the Code of Criminal Procedure was applicable as *lex fori*. QUEEN EMPRESS *v.* KHODA UMA

[I. L. R., 17 Bom., 369

84. ——— Power of Appellate Court to alter charge or finding—*Prejudice to the accused—Necessity for a re-trial on the altered charge—Criminal Procedure Code (Act V of 1898) ss. 226, 227, 232 and 423*.—The accused gave his pleader a copy of a document which had been falsified by an interpolation being made in it for the purpose of its being used in the trial of his suit. *Held* that he was guilty not of an attempt to commit an offence under s. 471 of the penal Code but of the offence itself. If the prosecution establishes certain acts constituting an offence and the Court misapplies the law by charging and convicting an accused person for an offence other than that for which he should have been properly charged, and if notwithstanding such error the accused has by his defence endeavoured to meet the accusation of the commission of those acts, then the Appellate Court may alter the charge or finding and convict him for an offence which those acts properly constitute, provided the accused be not prejudiced by the alteration in the finding. Such an error is one of form rather than of substance and the alteration by an Appellate Court of the charge or finding would not necessitate a retrial expressly on a charge of that offence. LALA OJHA *v.* QUEEN EMPRESS

[I. L. R., 26 Calc., 863
3 C W N., 653

85 ——— *Criminal Procedure Code (Act V of 1898) s. 423 (b)—Alteration of finding under ss. 109, 211 Penal Code to one under s. 193*.—Where an accused was convicted under ss. 109, 211 Penal Code, and the Judge referred the case to the High Court recommending that a conviction under s. 193 Penal Code with an enhanced sentence should be substituted for the conviction and sentence under ss. 109, 211,—*Held* that in proceedings taken on a charge of abetment of an offence under s. 211 it would be improper to convict the accused of intentionally giving false evidence as the two offences are entirely of a different character and in making a defence on a charge of the first named offence, the accused could not be regarded as pleading to a charge of intentionally giving false evidence in regard to some particular statement. To substitute a conviction for the latter offence for one for the former offence would be in effect to alter the charge to one for a different offence without the accused having an opportunity of pleading to it. MONORANJAN CHOWDHRY *v.* QUEEN EMPRESS 3 C W N., 367

86 ——— Conviction of offence of different character Legality of—*Charge of theft—Conviction of being member of unlawful assembly—Code of Criminal Procedure (Act V of 1898) s. 423—Penal Code (Act XLV of 1860) ss. 143 and 379*.—The accused were convicted of theft that was the only charge which they were called upon to answer. In appeal the District Magistrate held that no theft had been committed but he convicted the accused of being members of an unlawful assembly. *Held* that on the trial the accused were called upon to answer only a charge of theft, they were never called upon to answer any other charge and they therefore could not fairly be convicted on their appeal of an offence of an entirely different character. It is on the proceedings taken before the Magistrate that the facts constituting an offence for which a trial is held are made known to the accused, and the law is applied by the Magistrate to the facts established, so as to constitute the charge which the accused is called upon to answer. It therefore cannot be said that sufficient notice was given to the accused, because mention of s. 147 of the Penal Code (rioting) together with theft was made in the final report of the police as the offences considered to have been established and that the accused must have been made acquainted with such report. JATU SING *v.* MAHABIR SINGH

[I. L. R., 27 Calc., 860

87 ——— Conviction of rioting with the common object of theft—*Finding by Appellate Court of different common object—Legality of conviction on such finding—Penal Code (Act XLV of 1860) ss. 147 and 379—Code of Criminal Procedure (Act V of 1898) s. 423*.—The accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcibly taking away of mangoes belonging to the complainant. On appeal the Sessions Judge not only found that the common object was not the taking of the mangoes, but that the dispute between the parties was as to certain land. He, however dismissed the appeal and confirmed the conviction. *Held* that, as the accused were convicted on a different finding of fact from that to which they were called upon to plead and to defend themselves at the trial, they were entitled to an acquittal. RAHIMUDDI *v.* ASGAR ALI

[I. L. R., 27 Calc., 990

3 EXPLANATION OF CHARGE TO ACCUSED

88 ——— Precise nature of charge.—When arraigning an accused, and before receiving his plea the Court should be careful to ensure the

CHARGE—*continued*

2 ALTERATION OR AMENDMENT OF CHARGE—*continued*

(1) whether under the circumstances the Court had power to add a new charge (2) whether the verdict returned on the new charge was valid the prisoner not having been called on to plead to it *Held* (SCOTT *J dissentiente*) that the Judge was wrong in framing a new charge in addition to the original charges The error however was one of form and not of substance and under s 537 of the Criminal Procedure Code (Act X of 1882) the Court declined to interfere with the conviction *Held* also that having regard to ss 228 229 and 230 of the Criminal Procedure Code the charge of abetment of murder by *B* might have been changed into one of abetment generally *Held* also that in any case the conviction was good under ss 236 and 237 of the Criminal Procedure Code It was doubtful whether the evidence would establish the offence of murder abetment of murder by *B* or abetment of murder by some one unknown Even if there had been no charge properly framed the Judge might under s 237 have accepted the verdict returned by the jury and entered it on the record. The fact that the Judge framed a charge which *ex hypothesi* was beyond his authority and accepted a verdict on that charge did not affect the legality of the conviction. *Held* that the omission to read and explain the charge to the prisoner did not under the circumstances prejudice the prisoner and was therefore immaterial In the Criminal Procedure Code generally the word charge is used as the statement of a specific offence and not as indicating the entire series of offences of which a prisoner is accused There is nothing in the Code to indicate that the word is to have a different construction in ss 226 and 227 from what it has in other sections The words without a charge in s 226 of the Criminal Procedure Code (Act X of 1882) will properly apply not only to a case in which there is no charge at all but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for If the word alter in s 227 is to be taken to include addition as it does in s 226 the addition permitted must be an addition to some specific charge in the nature of an alteration and not the addition of a new charge The words return of the verdict in s 227 mean the return of the final verdict which the Judge is bound to record. *Per* SCOTT *J*—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner The word charge is used in the Code both as indicating the whole series of counts or heads of charge and also as indicating a charge of one specific offence In s 227 it is used in the former sense The word "alter in s 227 must be taken to be equivalent to the words add to or otherwise alter which are used in s 226 and consequently the addition of a new head of charge is an alteration within the meaning of s 227 QUEEN EMPRESS *v* APPA SUBHANA MENDRE I. L. R. 8 Bom. 200

79 ——— **Alteration or amendment of charge**—*Addition of charge at trial—Altering charge—Criminal Procedure Code s 227*—*Held* that on a trial upon charges under ss 467 and 471 of the Penal Code the Court had power under s 227 of the Criminal Procedure Code to add a charge under s. 193 of the Penal Code upon which the prisoner had not been committed for trial *Queen Empress* v *Appa Subhana Mendre I L R 8 Bom 200* dissented from QUEEN EMPRESS *v* GORDON

I. L. R. 9 All. 525

80 ——— **Addition of charge triable by any Magistrate**—*Power of Sessions Judge to add charge and try it—Criminal Procedure Code ss 226 236 237 537*—Three persons were jointly committed for trial before the Court of Session two of them being charged with culpable homicide not amounting to murder of *J* and the third with abetment of the offence At the trial the Sessions Judge added a charge against all the accused of causing hurt to *C* and convicted them upon both the original charges and the added charge The assault upon *C* took place either at the same time as or immediately after the attack which resulted in the death of *J* *Held* that the case did not come within the terms of s 226 of the Criminal Procedure Code and the adding of the charge was an irregularity which was not covered by ss 236 and 237 those sections having no application to such a state of things but that inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused and heard all the objections raised and witnesses might have been called for the defence upon the added charge the provisions of s 537 were applicable to the case QUEEN EMPRESS *v* KHARGA

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82. ——— **Vagueness of charge**—*Penal Code s 217*—The accused was charged under s 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed and how he disobeyed it. *Held* that when the accused has been convicted on a charge expressed in vague terms the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial EMPRESS *v* BABAN KHAN

I. L. R., 2 Bom., 142

83 ——— **Conviction for an offence different from that with which accused is charged**—*Extradition—Lex fori—Criminal Procedure Code 1882 ss 227 238—Penal Code ss 395 398 379—Dacoity—Theft*—The accused were subjects of His Highness the Gaekwar of Baroda. They were extradited for committing dacoity

CHARGE—*continued*

2. ALTERATION OR AMENDMENT OF CHARGE—*continued*

in British India. The Magistrate who held a preliminary inquiry into the matter committed the accused to the Sessions Court on a charge under s. 3[illegible] of the Penal Code (XLV of 1860). The Sessions Judge amended the charge to one under s. 3[illegible] on the ground that, as the accused had been extradited on a charge under s. 395, they could be tried and convicted only under that section and no other. At the end of the trial, the Sessions Judge finding that the accused were guilty of theft, but not of dacoity, acquitted them. *Held*, reversing the order of acquittal, that it was competent to the Sessions Judge to alter the charge under s. 227 of the Code of Criminal Procedure (Act X of 1882) and under s. 238 to convict the accused of the minor offence which had been established. *Held* also, that the Code of Criminal Procedure was applicable as *lex fori*. QUEEN EMPRESS *v.* KHOJA UMA

[I. L. R. 17 Bom. 369

84. ——— **Power of Appellate Court to alter charge or finding**—*Prejudice to the accused—Necessity for a re-trial on the altered charge—Criminal Procedure Code (Act V of 1898), ss. 227, 237, 238 and 423*.—The accused gave his pleader a copy of a document which had been falsified by an interpolation being made in it for the purpose of its being used in the trial of his suit. *Held* that he was guilty not of an attempt to commit an offence under s. 471 of the Penal Code, but of the offence itself. If the prosecution establishes certain acts constituting an offence and the Court misapplies the law by charging and convicting an accused person for an offence other than that for which he should have been properly charged, and if notwithstanding such error the accused has by his defence endeavoured to meet the accusation of the commission of these acts, then the Appellate Court may alter the charge or finding and convict him for an offence which those acts properly constitute, provided the accused be not prejudiced by the alteration in the finding. Such an error is one of form rather than of substance, and the alteration by an Appellate Court of the charge or finding would not necessitate a re-trial expressly on a charge of that offence. LALA OJHA *v.* QUEEN EMPRESS

[I. L. R. 26 Calc. 863
3 C. W. N. 653

85. ——— *Criminal Procedure Code (Act V of 1898), s. 423 (b)—Alteration of finding under ss. 109, 211 Penal Code to one under s. 193.*—Where an accused was convicted under ss. 109, 211 Penal Code and the Judge referred the case to the High Court recommending that a conviction under s. 193 Penal Code with an enhanced sentence should be substituted for the conviction and sentence under ss. 109, 211,—*Held* that in proceedings taken on a charge of abetment of an offence under s. 211 it would be improper to convict the accused of intentionally giving false evidence, as the two offences are entirely of a different character, and in making a defence on a charge of the first named offence the accused could not be regarded as pleading to a charge of intentionally giving false evidence in regard to some particular statement. To substitute a conviction for the latter offence for one for the former offence would be in effect to alter the charge to one for a different offence without the accused having an opportunity of pleading to it. MONORANJAN CHOWDHRY *v.* QUEEN EMPRESS 3 C. W. N. 307

86. ——— **Conviction of offence of different character, Legality of**—*Charge of theft—Conviction of being member of unlawful assembly—Code of Criminal Procedure (Act V of 1898), s. 423—Penal Code (Act XLV of 1860), ss. 143 and 379.*—The accused were convicted of theft; that was the only charge which they were called upon to answer. In appeal the District Magistrate held that no theft had been committed, but he convicted the accused of being members of an unlawful assembly. *Held* that on the trial the accused were called upon to answer only a charge of theft; they were never called upon to answer any other charge, and they therefore could not fairly be convicted on their appeal of an offence of an entirely different character. It is on the proceedings taken before the Magistrate that the facts constituting an offence for which a trial is held are made known to the accused, and the law is applied by the Magistrate to the facts established so as to constitute the charge which the accused is called upon to answer. It therefore cannot be said that sufficient notice was given to the accused, because mention of s. 147 of the Penal Code (rioting) together with theft was made in the final report of the police as the offences considered to have been established, and that the accused must have been made acquainted with such report. JATU SINGH *v.* MAHABIR SINGH

[I. L. R. 27 Calc. 660

87. ——— **Conviction of rioting with the common object of theft**—*Finding by Appellate Court of different common object—Legality of conviction on such finding—Penal Code (Act XLV of 1860), ss. 147 and 379—Code of Criminal Procedure (Act V of 1898), s. 423.*—The accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcibly taking away of mangoes belonging to the complainant. On appeal the Sessions Judge not only found that the common object was not the taking of the mangoes, but that the dispute between the parties was as to certain land. He however dismissed the appeal and confirmed the conviction. *Held* that as the accused were convicted on a different finding of fact from that to which they were called upon to plead and to defend themselves at the trial, they were entitled to an acquittal. RAHIMUDDI *v.* ASGAR ALI

[I. L. R. 27 Calc. 990

3. EXPLANATION OF CHARGE TO ACCUSED

88. ——— **Precise nature of charge.**—When arraigning an accused and before receiving his plea, the Court should be careful to ensure the

CHARGE—*concluded*

3 EXPLANATION OF CHARGE TO ACCUSED —*concluded*

explanation of the charge in a manner sufficiently explicit to enable the accused to understand the roughly the nature of the charge to which he is called upon to plead. EMPRESS *v* VAIMBILEE VAIMBILEE *v* EMPRESS I L R., 5 Calc 826

89 ———— **Exact nature of offence charged**—*Contents of charge—Criminal Procedure Code (Act X of 1882) s 221*—An accused is entitled to know with certainty and accuracy the exact nature of the charge brought against him and unless he has this knowledge he must be seriously prejudiced in his defence This is true in all cases but it is more especially true in cases where it is sought to *implicate him for acts not committed by himself but* by others with whom he was in company BEHARI MAHTON *v* QUEEN EMPRESS [I L R., 11 Calc 106

90 ———— **Omission to explain charge**—*Criminal Procedure Code s 271—Murder*—At a trial before a Sessions Court a charge was read out to the prisoners to the effect that they at a certain place on a certain date committed murder by causing the death of *M* and that they had thereby committed an offence punishable under s 302 of the Penal Code and within the cognizance of the Court of Sessions The prisoners pleaded guilty and were *convicted on their plea The charge was not explained* to the prisoners. In answer to questions put by the Court prisoners stated that they had killed *M* and that they made the admissions of their own accord and not on the persuasion of any one *Held* that the conviction must be quashed and a new trial ordered. AIYATU *v* QUEEN EMPRESS [I L R 9 Mad. 61

91. ———— **Omission to explain charge when amended**—*Criminal Procedure Code 1872 s 445*—A prisoner charged with dacoity and riot and acquitted cannot be convicted of house-trespass under s. 452 of the Penal Code unless the charge *was amended by the addition of the charge under* s. 452 and was read out or explained to him and he was called on to plead to it under s. 445 of the Criminal Procedure Code QUEEN *v* SALAMUT ALI [23 W R. Cr 59

CHARGE TO JURY

See JUDGMENT—CRIMINAL CASES [23 W R. Cr, 32

1 SUMMING UP IN GENERAL CASES

1. ———— **Mode of summing up evidence**—*Duty of Judge*—In charging a jury a Judge is not bound to do more than lay carefully and plainly before them the evidence as recorded by him noting discrepancies and inconsistencies and pointing out generally the way in which it is favourable or unfavourable to accused. QUEEN *v* CHUNDER KUMAR MUZOOMDAR 25 W R. Cr 54

CHARGE TO JURY—*continued*

1 SUMMING UP IN GENERAL CASES —*continued*

2 ———————— *Criminal Procedure Code (Act X of 1882) s 298—Duty of Judge when the jury are uncertain as to the offence committed*—A jury after retiring returned to the box and after unanimously finding both prisoners not guilty of the charges framed against them stated to the Judge that they thought an offence had been committed by one of the prisoners but were uncertain as to the section of the Penal Code applicable to his case the Judge thereupon made over to them a copy of the Penal Code leaving them to decide *under what section the offence fell Held* that he had failed in his duty and that he should have asked the jury what doubts they had as to the crime which had been committed, and should have explained to them the law and informed them what offence the facts would prove against the prisoner if they believed those facts JASPATH SINGH *v* QUEEN EMPRESS I L R 14 Calc. 164

3 ———————— *Omission to point out legal bearings—Reading evidence to jury in important cases*—On a trial by jury a Sessions Judge in summing up should give a full and detailed statement of the evidence on both sides he should *point out the legal bearing of it* and *what weight the* jury ought to attach to its several parts His omission to do so if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict No general rule can be laid down as to when a prisoner is prejudiced by a defective summing up but in general if the finding of the jury in such a case is one that an Appeal Court would set aside if the trial had taken place with the aid of assessors the Court will interfere and set the verdict aside In capital cases and all cases of a serious or complicated nature the Judge ought to read over the evidence *in extenso* to the jury REG *v* FATTECHAND VASTACHAND [5 Bom Cr, 85

4. ———————— *Duty of Judge in charging jury*—In delivering a charge to the jury it is the duty of the Sessions Judge to call the attention of the jury to the facts and then to leave it to them to consider whether from the facts they conclude that a particular criminal act was done and if they so conclude then to direct them that the case comes within a particular section of the Code SRI PROSAD MISSER *v* EMPRESS 4 C W N., 193

5 ———————— *Criminal Procedure Code (Act XXV of 1861) s 255*—In this case the Court were of opinion that the Judge's charge to the jury was not a summing up for the prosecution and defence such as is prescribed by s 255 Act XXV of 1861 Principles for guidance of a Judge in charging a jury laid down QUEEN *v* DASCOOMAR BOSE 10 B L R Ap., 36 19 W R., Cr 71

6 ———————— *Explaining the law*—In charging a jury it is incumbent on the Judge to explain the law to them in order to

CHARGE TO JURY—continued

1 SUMMING UP IN GENERAL CASES —continued

assist them in applying the law to the facts of the case. Mere reference to sections of the Penal Code defining the offences is not sufficient ABDAS PEADA v QUEEN EMPRESS I. L. R. 25 Calc., 736 [3 C W N., 484

SRI PRO AD MI. ER v EMPRESS [4 C. W N., 193

7 ———— *Law bearing on case—Presumption of innocence*—A Judge's charge to the jury should consist not only of a summing up of all the evidence and a showing how the law applies to it Where facts are as consistent with a prisoner's innocence as with his guilt innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law QUEEN v NOBOKRISTO GHOSE 8 W R. Cr., 87

8. ———— *Charge when there is no evidence*—Where there is no evidence against a prisoner the Judge ought to charge the jury for an acquittal and not leave the jury to say whether the prisoner is guilty or not. QUEEN v GREEDHARY MANJEE 7 W R. Cr 39

9 ———— Where a summing up of a Judge to a jury points out to the jury the principal features of the evidence as regards both the case of the Crown and the defence of the prisoners, it complies with the requisition of the Code of Criminal Procedure QUEEN v SHEPPARD [13 W R. Cr 23

10 ———— Omission to sum up evidence—*Criminal Procedure Code 1861 s 379*—Where the provisions of s 379 of the Code of Criminal Procedure 1861 were neglected, and the Judge did not sum up the evidence at all a new trial was ordered. *Queen v Elahi Bux B L R Sup Vol., 359 5 W R Cr 80* considered QUEEN v SHAMSHERE BEG 9 W R. Cr 51

11. ———— *Criminal Procedure Code 1861 s 379*—Under s 379 of the Code of Criminal Procedure a Judge should sum up the evidence on both sides before requiring the jury to deliver their verdict Under s 439 however the High Court thought it unnecessary to set aside a conviction in a case in which this was not done QUEEN v SITWA *alias* SITARAM [14 W R. Cr 66

See QUEEN EMPRESS v IMAM ALI KHAN [I. L. R. 23 Calc 252

12. ———— Reasons for Judge's opinion on evidence—It is the duty of a Sessions Judge to give a summing up of the evidence as recorded before him, and to state his own reasons for considering a prisoner guilty QUEEN v NAWAB KHAN [7 W R. Cr 25

13 ———— Statement of Judge's own opinion—A Sessions Judge in summing up is bound to advise a jury on questions of fact and may tell the jury the impression which the evidence has made upon his own mind QUEEN v DWARKA NATH SEN 13 W R. Cr 34

14. ———— A Judge may give the jury his opinion of the guilt or innocence of the prisoner if he shows them clearly that the decision rests with them. QUEEN v ABDOOL JULEEL [W R. 1864 Cr., 5

15 ———— A Judge in directing a jury should confine himself to a general commentary on the evidence and a statement of the legal offence proved should such evidence be credited He should not give a positive opinion as to the guilt or innocence of the accused person QUEEN v BHARUT CHUNDER 1 W R. Cr 2

QUEEN v GUNGA BISHEN 1 W R. Cr 26

16 ———— Judge's opinion as to certain portion of evidence—It is open to a Judge in charging the jury to express his opinion as to the effect of a certain portion of the evidence but he should always be careful to add that it is for the jury to form their own opinion QUEEN EMPRESS v BEPIN BISWAS I. L. R., 10 Calc 970

17 ———— *Expression of opinion by Judge upon questions of fact—Charge to the jury Form of*—Sub-s. (2) of s 298 of the Code of Criminal Procedure allows a Judge to express to the jury his own opinion upon any questions of fact provided that he leaves the decision upon the questions of fact entirely to the jury The tendency of the charge as a whole ought to be to give a correct direction to the mind of the jury *Queen v Gagalu 6 B L R Ap 50 12 W R Cr 80* referred to RAHAMAT ALI v EMPRESS 4 C W N 196

18 ———— Bare statements of prisoners—*Evidence taken before Magistrate*—Bare statements of prisoners are not admissible in and ought not to be alluded to by the Judge as evidence nor is evidence taken before the Magistrate unless contradictory of the evidence of the same witnesses as given before the Sessions Court evidence in the trial or proper to be put to the jury QUEEN v BHEKO SINGH 7 W R. Cr 108

19 ———— Evidence of person not having knowledge from his own observation.—The evidence of a person stating before the jury upon oath facts which he does not know of his own observation facts which constitute the substance of the charge against a prisoner and which the jury themselves have to enquire into and arrive at as their verdict ought not to be allowed to go to the jury and still less so when the person does not orally depose before the jury but his evidence is presented to them in the form of a written deposition QUEEN v RAMGOPAL DHUR [10 W R Cr 57

20 ———— Different trials for same crime—*Fresh charge to jury*—When different trials are held at different times and against different prisoners in respect of the same crime a new charge to each jury should be delivered in each case It is

CHARGE TO JURY—*continued*

1 SUMMING UP IN GENERAL CASES —*concluded*

not sufficient to read over to the second jury the charge delivered to the first QUEEN v MAHADEO [W R, 1864 Cr 15

2 MISDIRECTION

21 ———— *Misdirection* —In giving a warning to a jury not to disbelieve a mass of otherwise consistent evidence because in one or two minor and immaterial points the witnesses made different statements a Judge exercises a wise discretion and affords no ground for the objection of misdirection to the jury QUEEN v BUSTEE KHAN [1 W R Cr, 17

22 ———— *Omission to direct on important point* —In considering whether a Judge has misdirected the jury the tenor and general effect of the whole summing up should be looked at and if upon the whole summing up the Court is of opinion that substantially the proper direction has been given to the jury it will not interfere though the Judge has omitted to direct the jury expressly on some important point REG v PESTANJI DINSHA 10 Bom 75

23 ———— *Omission to aid jury as to facts—Finding on fact by Judge* —A summing up to the jury in which the Sessions Judge gave no aid to the jury in the arrangement of the facts which were spoken to by the witnesses and himself found facts which he should have put to the jury was pronounced defective and a verdict founded thereon was set aside and the prisoner ordered to be released QUEEN v RAM GOPAL DHUR [10 W R, Cr 7

24. ———— *Omission to call attention of jury to evidence of witnesses for defence* —In summing up a case to the jury the Judge omitted to call their attention to the evidence of the witnesses for the defence This evidence appeared to the High Court to be untrustworthy *Held* that the summing up was not defective on account of this omission on the part of the Judge IN THE MATTER OF THE PETITION OF ROCHIA MOHATO EMPRESS v ROCHIA MOHATO [I L R 7 Calc., 42 8 C L R 273

25 ———— *Judge stating that facts are proved—Erroneous view of law—Evidence Act s 103—Onus of proof—Criminal Procedure Code s 537* —It is the province of the jury and not of the Judge to say what facts are or are not proved Where a Judge in giving charge to the jury after stating certain fact said Hence the reasons given (in the deed for its execution) turn out to be false —*Held* that the Judge should have left it to the jury to form their own conclusion When there has been a material misdirection in a charge to a jury it is not covered by s 537 of the Code of Criminal Procedure The Judge in stating to the jury that under s 103 of the Evidence Act the onus may be said to lie on the accused to show that the deed in respect of which he was charged with forgery was genuine took an erroneous view of the law and misdirected the jury *Empress v Dhunno Kazi I L R 8 Calc 121,* followed SADHU SHEIKH v EMPRESS [4 C W N 576

26 ———— *Duty of Judge—Omission to explain law as bearing on the facts—Per* FIELD J —It is the duty of a Judge to give a direction upon the law to the jury so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue it is a misdirection IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON EMPRESS v JHUBBOO MAHTON [I. L R. 8 Calc 739 12 C L. R. 233

27 ———— *Criminal Procedure Code (Act X of 1882) ss 297 423 (d)—Effect of omission to explain the law to jury—Penal Code (Act XLV of 1860) ss 143 147 380 395—Practice* —In a trial by jury the accused were charged with offences under the Penal Code The Judge while charging the jury omitted to explain the law by which they were to be guided The jury returned a verdict of guilty on all counts except one and the Judge agreeing with the verdict convicted the accused *Held* that the omission to explain the law to the jury amounted to a misdirection vitiating the verdict within the meaning of s 423 (*d*) Criminal Procedure Code *Wafadar Khan v Queen Empress I L R 21 Calc 955* relied upon Some statements should appear in the record of a trial by jury to show that the law bearing upon the charges has been explained to the jury BIRU MANDAL v QUEEN EMPRESS I L R. 25 Calc 561

28 ———— *Case under cl 26 Letters Patent 1865—Charge to jury M sunderstanding of* —Mere misunderstanding on the part of bystanders in Court or counsel engaged in a case of expressions used by a Judge in charging a jury (where it appears that the expressions used by the Judge were such as ought to have been understood by any reasonable man having regard to what was proved in the case and what was said to the jury afterwards) will not constitute misdirection. QUEEN EMPRESS v SHIB CHUNDER MITTER [I. L. R. 10 Calc 1079

29 ———— *Omission to point out weakness of evidence for prosecution—Error of law* —The omission of a Judge to point out to the jury the weakness of the evidence against the accused and the possibility of other persons being the guilty parties does not amount to a positive misdirection. In a case where there was some evidence to go to the jury and no error in law was committed the Court cannot interfere QUEEN v CHOOWEE [5 W R. Cr., 13

30 ———— *Omission to call attention to fact in favour of accused* —Three persons who were attacked and wounded in an affray informed the police on the same day that the persons who had attacked them were *A B* and *C* Eighteen

CHARGE TO JURY—*continued*

2. MISDIRECTION—*continued*

days afterwards the same complainants gave to the Magistrate enquiring into the case the names of four other persons who they said, with the three persons first accused, formed the attacking party. The seven accused were tried jointly for the offence before the Additional Recorder of Rangoon and a jury. In his charge to the jury the Additional Recorder omitted to call their attention to the fact that four out of the seven accused had not been mentioned by the prosecutors until after eighteen days had passed over. The prisoners were convicted. *Held* that the Additional Recorder misdirected the jury; that under the circumstances the misdirection prejudiced the four persons last accused; and that the verdict must be set aside as far as they were concerned. LEIC TU *v.* QUEEN EMPRESS

[I. L. R., 11 Calc., 10

31. ——————— *Omission to state the defence of accused whether a misdirection.*—Where the charge to the jury places prominently before the jury all the circumstances that go against the accused, but does not call their attention to any of those that are in their favour and especially when it omits to tell the jury what the defence of the accused is, there has been a misdirection sufficient to vitiate the trial. *Leic Tu v. Queen Empress, I. L. R., 11 Calc. 10* referred to. RAHAMAT ALI *v.* EMPRESS

4 C. W. N., 196

32. ——————— *Admission of inadmissible evidence—Prejudice to prisoner—Retrial.*—Where a Judge in his charge to the jury admitted, as receivable evidence, a hearsay statement against the accused, and also an anonymous letter which was put in without an attempt to show how or by whom it was sent, it was held that the jury had been misdirected and the accused prejudiced. The High Court on this not being able to say positively on a perusal of the evidence that the accused was innocent did not dispose of the case, but ordered a new trial. QUEEN *v.* CHUNDER KOOMAR MOZOOMDAR

24 W. R. Cr. 77

33. ——————— *Erroneous direction as to corroboration of accomplice's evidence.*—*Held* in a case of murder that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplices to point out any independent evidence proving facts showing that the prisoners were or must have been present at or cognizant of the murder. QUEEN *v.* KAROO

6 W. R. Cr. 44

QUEEN *v.* KHOTUB SHEIKH 6 W. R. Cr. 17

34. ——————— *Erroneous direction where evidence of accomplice is uncorroborated.*—*Held* that where the evidence of an accomplice is uncorroborated the correct practice requires a Sessions Judge not merely to tell the jury that it is unusual to convict on such evidence, but that he should also tell them that it is unsafe and contrary both to prudence and practice to do so; yet that his omission to state this does not amount to an error in law. *Reg v. Imam, 3 Bom. Cr. 57* commented on. REG. *v.* GANU BIN DHAROJI

6 Bom. Cr., 57

35. ——————— *Erroneous direction where evidence of approver is uncorroborated.*—Conviction and sentence set aside (GLOVER, J., dissenting) as to two of the prisoners on the ground that there was a misdirection to the jury, because the Judge in summing up omitted to advise the jury not to convict upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in law. QUEEN *v.* NAWAB JAN

8 W. R., Cr. 19

36. ——————— *Criminal Procedure Code, s. 297—Evidence of accomplice—Corroboration.*—A Judge should caution a jury not to accept the evidence of an approver unless it is corroborated; the omission to do so amounts to misdirection. QUEEN EMPRESS *v.* ARUMUGA

[I. L. R. 12 Mad. 196

37. ——————— *Corroboration—Improper reception of evidence—Accomplice—Evidence Act (I of 1872), ss. 114, ill. (b), 133—Criminal Procedure Code (X of 1882), ss. 337, 361—Letters Patent of 1865, s. 26—Review.*—Case in which upon review a certificate having been granted by the Advocate General under s. 26 of the Letters Patent, a conviction was quashed on the ground of improper reception of evidence and misdirection. The accused being upon his trial at the Sessions for murder, the two principal witnesses for the prosecution were *G* and *M*, to whom pardons were tendered by the committing Magistrate under s. 337 of the Criminal Procedure Code, and who had accepted the pardons. The Judge read to the jury statements (which had not been admitted in evidence) by *G* and *M* purporting to have been taken under s. 364. *Held* that the improper reception of such evidence constituted a decision erroneous in point of law calculated to prejudice the prisoner. The Judge further charged the jury that they were not to convict upon the evidence of *G* if satisfied that he was an accomplice and uncorroborated, but coupled the direction with a strong expression of opinion that *G* was not an accomplice. *Held* that this constituted a misdirection in fact, though not in form, calculated seriously to prejudice the prisoner's case. QUEEN EMPRESS *v.* O'HARA

I. L. R. 17 Calc., 642

38. ——————— *Omission to tell jury that evidence is inadmissible—Material error.*—*Held* (WARDEN, J., *dissentiente*) that the omission of the Sessions Judge to tell the jury that the statement of one prisoner is not evidence against his fellow prisoner is a material error and one fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. REG. *v.* MIYA VALAD DAUD

[6 Bom., Cr., 10

CHARGE TO JURY—*continued*

2 MISDIRECTION—*continued*

39 ——————— *Confession of accused—Subsequently retracted—Criminal Procedure Code s 103—Search by police of stolen property*—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence A jury should be asked with reference to such confessions not whether they were corroborated by independent evidence but whether having regard to the circumstances under which they were made and retracted and all the circumstances connected with them it was more probable that the original confessions or the statements retracting them were true Criminal Procedure Code s 103 does not justify the view that the persons called upon to witness a search are to be selected by any person other than the officer conducting the search If the Sessions Judge considers that the evidence of an Inspector of Police is necessary he ought not to animadvert on his absence in charging the jury but he should intimate his opinion to the Public Prosecutor and give him the opportunity of calling that official It is wrong for a Judge in charging the jury to say that a head constable committed a breach of the police regulations in conducting a search with a loose shirt on without examining him on the matter and taking evidence as to whether or not his body was examined before he began the search QUEEN EMPRESS *v* RAMAN

[I. L. R. 21 Mad. 83

40 ——————— *Retracted confessions—Misdirection as to admissibility of such confessions without corroborative evidence—Error in mode of treating evidence*—The accused were tried for murder The Sessions Judge in his charge to the jury discussed the evidence generally describing it as very poor evidence which standing alone amounted to nothing He also told the jury that as regards retracted confessions the law is that you are to look for corroboration in independent evidence If that supplies such corroboration that you can confidently say the confessions must be absolutely true you can act upon them otherwise not *Held* that the charge was defective The Sessions Judge ought to have summed up the evidence to the jury calling their attention to the material parts of it and leaving them to form their own opinion on it in tead treating it generally *Held* also that the l ad mis lirected the jury as there is n law that a retracted confession cannot l e iden e unless it is corroborated in mat lars by ind pen lent reliable evi I EMPRESS *v* GANGIA I. L. R

41 ———————
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CHARGE TO JURY—*continued*

2 MISDIRECTION—*concluded*

document purporting to be proved by such a statement as evidence against the accused BASANTA KUMAR GHATTAK *v* QUEEN EMPRESS

[I. L. R., 28 Calc 49

3 SPECIAL CASES

42. ——— Alibi Proof of—*Erroneous direction as to admissibility of document*—Upon a plea of alibi by the prisoners that they had left Patna on the 12th April 1869 and reached Port Canning on the 20th of the same month and were not at Patna on the 30th May the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper one bearing the endorsement of a stamp vendor as sold on the 13th and the other on the 18th April filed on the 20th April and alleged to bear the verification of the prisoners No evidence was adduced to prove that the prisoners had signed it The Judge drew the attention of the jurors to this document and adverted to it in these terms If the written statement was drawn up on an earlier date than the date it bears it could not have been prepared earlier than the day on which the principal stamp was bought—i e 18th *Held* that the document should not have been received in evidence and that there was a misdirection which contributed materially towards the jury finding the prisoner guilty QUEEN *v* GAJRAJ

[3 B L. R., A Cr, 43

43 ——— Belonging to gang of thieves—*Penal Code s 401—Proof of association*—In the trial of prisoners for the offences of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (s 401 Penal Code) the Judge should in his charge put clearly to the jury—(1) the necessity of the proof of association; (2) the need of proving that that association was for the purpose of habitual theft and that habit is to be proved by an aggregate of acts SUBIRAM VENKATASAMI *v* QUEEN

[6 Mad., 120

See MANKURA PASI *v* QUEEN EMPRESS

[I. L. R. 27 Calc. 139

44. ——— Culpable homicide—*Provocation*—In charging a jury on the point of provocation in a case of culpable homicide a Judge should tell the jury that to bring the case within the exception to s 300 Penal Code the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control; and that the provocation was not wilfully occasioned by the prisoner as an excuse for doing harm QUEEN *v* GUNESH DUSHKAR 9 W R. Cr 72

45 ——————— *Penal Code s 304*—In his charge to the jury the Judge should draw a between the two classes of culpable l r s 304 of the Penal Code and specially under which if either

CHARGE TO JURY—*continued*

3 SPECIAL CASES—*continued*

the prisoner was guilty QUEEN v KALICHARAN DASS 6 B. L. R., Ap 86 15 W R. Cr, 17

QUEEN v AMIR KHAN [6 B. L. R., Ap 87 note 13 W R Cr 35

46 ——— Dacoity—*Criminal Procedure Code (Act X of 1882) s 423—Setting aside verdict of the jury—Power of Appellate Court to deal with the case—Charge under Penal Code ss 395 412*—It is the duty of the Judge to call the attention of the jury to the different elements constituting the offence and to deal with the evidence by which it is proposed to make the accused liable Failure to do so amounts to misdirection. *Queen Empress* v *Balya Bomya I L R., 15 Bom 369* followed Statements by some of the accused persons which do not amount to a confession and which do not in any way incriminate them are not admissible in evidence against any persons other than those making them Omission to direct the jury that in dealing with the evidence against the accused other than those making the statements they are not to take into consideration such statements also amounts to misdirection *If* the verdict of the jury is set aside on any of the grounds mentioned in cl (*d*) of s 423 of the Criminal Procedure Code (Act X of 1882) then there is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seizin in any of the manners provided in that section The law nowhere lays down that when the verdict of the jury is set aside the Court must necessarily direct a new trial *Wafadar Khan* v *Queen Empress I L R 21 Calc 955* dissented from The course adopted in *Queen Empress* v *O Hara I L R 17 Calc 642 Regina* v *Naoroji Dadabhai 9 Bom H C 358* and *Queen Empress* v *Haribole Chunder Ghose I L R 1 Calc 207* followed. TAJU PRAMANIK v QUEEN EMPRESS [I. L. R. 25 Calc. 711 2 C W N 369

47 ——— False charge—*Penal Code s 211—Code of Criminal Procedure (Act X of 1882) ss 418 423 437—Misdirection to the jury*—The accused was convicted by the Sessions Judge of Nadia and a jury under s 211 Penal Code for having brought a false charge of dacoity The charge concluded with these words —"I now leave the case in your hands If you believe the charge of dacoity to be false then you should find the prisoner guilty under s. 211 Penal Code otherwise you should acquit him *Held* that the charge was erroneous and defective *Held* further that the Judge was in error in not putting before the jury all the elements which constitute the offence under s 211 of the Indian Penal Code *Held* also that the Judge should in the operative part of the charge instead of directing as he did have prominently placed before the jury one of the most essential elements of the charge under s 211 namely that in instituting the false charge of dacoity there was no just or lawful ground for the charge and the jury should have been asked to say whether the charge was false and whether in instituting that charge there was no just or lawful ground FOMIJ PRAMANICK v EMPRESS 1 C W N, 301

48 ——— False evidence—*Misdirection*—Where O deposed that he and R were four days in company at M and the Judge charged the jury that if they found that P was not in company with O during these four days at M but was at S it did not matter where O was because it was clear that he could not have been in company with R at M and must therefore have given false evidence when he said that he was during these four days in such company at M —*Held* by the majority of the Court (SETON KARR J dissenting) that there had been no misdirection QUEEN v RAM MONI SEIN [7 W R., Cr 105

49 ——— *Misdirection*—There is no misdirection in a case of false evidence in a Judge pointing out to the jury the contrast between the evidence for the prosecution and the course followed by the prisoner (namely a simple denial of the charge coupled with a refusal to examine the witnesses in attendance) so long as the Judge leaves it to the jury to decide between the opposing statements and to credit whichever they thought most worthy of belief QUEEN v SEETANATH GHOSAL [2 W R Cr 60

50 ——— *Duty of Judge*—Duty of Judge in charging a jury in a case of giving false evidence and abetment of false evidence discussed. JUGUT MOHINEE DASSEE v MADHU SUDAN DUTT 10 C L R. 4

51 ——— Forgery—*Misdirection*—Where accused was charged under s 471 of the Penal Code with having in a suit brought against them by the vendee of their sister to recover possession of certain property acquired by her by right of inheritance from her father fraudulently and dishonestly used a forged document as genuine knowing or having reason to believe it to be a forged document it appeared that the accused were in possession of the property and that the document in question purported to be a deed of gift from their father It was proved that the endorsement of registration which appeared on the document was a forgery In his charge to the jury the Sessions Judge omitted to deal with the fact of the accused being in possession of the property He also directed that the registration endorsement having been proved to be a forgery it was for the accused persons to establish the genuineness of the document *Held* that the Sessions Judge in omitting to deal with the fact of the possession of the accused and in throwing the onus of proving the genuineness of the document upon them had misdirected the jury KHOORSHED KAZI v EMPRESS [8 C L R 542

52 ——— Kidnapping—*Judge aiding jury with his own opinion*—Where a Sessions Judge left the jury to decide upon the age of a girl who had been kidnapped merely aiding them with his own opinion in which they expressed their concurrence—*Held* that there was no misdirection to the jury QUEEN v SHAMA KHANKEE 7 W R Cr 22

53 ——— *What amounts to misdirection—Penal Code s 466—Question of*

CHARGE TO JURY—*continued*

3. SPECIAL CASES—*continued*

intention —In a trial with a jury under s 366 of the Penal Code the Judge on the question of intent charged the jury in the following words — It re *mains only to consider the question of intent* The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit inter course As to this it is sufficient to say that no other inference is possible under the circumstances When a man carries off a young girl at night from her father's house the presumption is that he did so with the intent indicated above. It would be open to him if he had admitted the kidnapping to prove that he had some other object but no other object is apparent on the face of the facts' *Held* that this amounted to a misdirection of the jury The question of intent was a pure question of fact but the way in which it had been put to the jury left them no option but adopt the view taken by the Judge QUEEN EMPRESS *v* HUGHES

[I. L. R, 14 All., 25

54. ———— Murder—*Distinction between murder and culpable homicide* —When a prisoner is on his trial by a jury upon a charge of murder it is the duty of the Judge to point out to the jury ac curately the difference between murder and cul pable homicide not amounting to murder and to direct the attention of the jury to the evidence and to leave them to find the facts and say (under the direc tion of the Judge as regards the law) of what offence the prisoner is guilty QUEEN *v* SHAMSHERE BEG

[9 W R. Cr 51

55 ———— Possession of forged docu ment—*Penal Code ss 474 475—Possession of forged documents bearing counterfeit marks—Ingredients of the offence* —To support a charge under s 474 of the Penal Code it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged (2) that the accused knew them to be forged (3) that he was in possession of them (4) that he intended that they should be fraudulently or dis honestly used as genuine and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code To support a charge under the latter part of s 475 of the Penal Code it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents an offence punishable under ss. 474 and 475 of the Penal Code In his summing up the Sessions Judge after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused and whether the nature of one at all events of the documents was such as to connect them with the accused being the kind of document he would be likely to have in his house and he alone and that if they found this issue in the affirmative they must return a verdict of guilty *Held* that the charge to the jury was defective and misleading and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure QUEEN EMPRESS *v* ABAJI RAM-CHANDRA

I. L. R. 16 Bom., 165

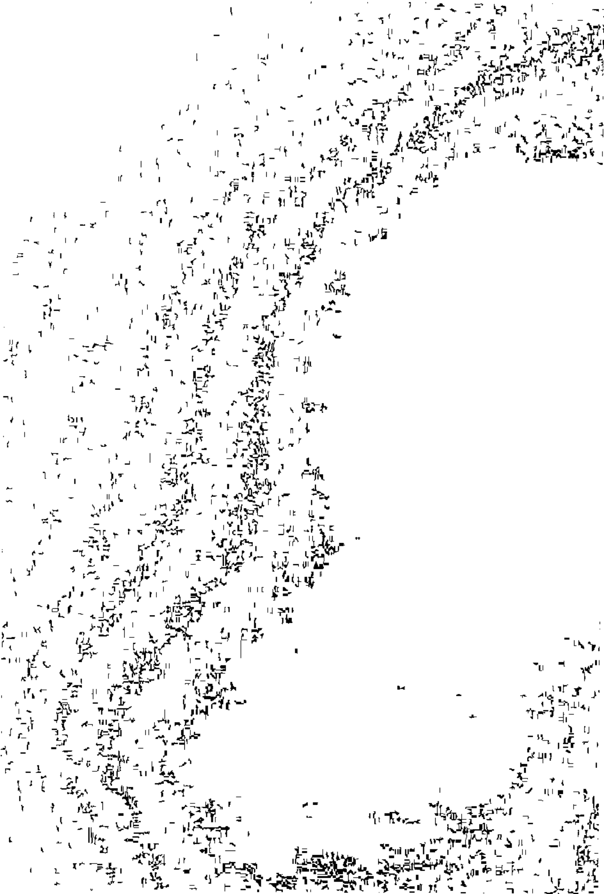
56 ———— Private defence Right of—*Penal Code s 100 cls 1 2 and 6—Misdirection* —*Held* that it was no misdirection on the part of the Judge in not calling the attention of the jury to cls. 1 and 2 of s 100 of the Penal Code when he particularly called their attention to cl 6 of that section. QUEEN *v* MOOKHTARAM MUNDLE

[17 W. R., Cr 45

57 ———— Rape—*Erroneous verdict owing to misdirection—Failure of justice—Criminal Procedure Code (Act X of 1882) ss 418 423 (d) and 537* —On a charge of rape the Judge in his charge to the jury said You will observe that this sexual intercourse was against the girl's will and without her consent etc instead of saying as he ought to have done you will have to determine upon the evidence in this case whether the intercourse was against the girl's will etc and the charge went on in the same style of stating to the jury what had been proved instead of leaving it to them to decide what in their opinion was proved In the concluding sentence of the charge the Judge said You have seen the witnesses and I have no doubt that you will return a just verdict *Held* that such a charge amount l to a clear misdirection and that the verdict was erroneous owing to such misdirection Even the concluding sentence did not satisfy the requirements of a proper charge The provisions in s. 423 (*d*) and s. 537 of the Criminal Procedure Code do not require that the Court is to go through the facts and find for itself whether the verdict is actually erroneous upon the facts. ALI FAKIR *v* QUEEN EMPRESS

[I. L. R. 25 Calc., 230

58 ———— Rioting—*Unlawful assembly—Common object—Verdict of jury—Alternative common object—Criminal Procedure Code (1882) s 503* —Fourteen accused were charged with rioting armed with deadly weapons and with murder and causing grievous hurt during such riot. The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party Some of the accused who admit ted their presence at the scene of the occurrence stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife and that they had merely acted in self-defence The case was tried before a jury and on the close of the case for the prosecution the Sessions Judge considering that possibly the common object alleged by the prosecu tion might be considered not to have been proved amended the charge and added an alternative common object to it *viz* that the object of the assembly was



CHARGE TO JURY—*continued*

3. SPECIAL CASES—*continued*

intention —In a trial with a jury under s 366 of the Penal Code the Judge on the question of intent charged the jury in the following words — It remains only to consider the question of intent The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse As to this it is sufficient to say that no other inference is possible under the circumstances When a man carries off a young girl at night from her father's house the presumption is that he did so with the intent indicated above It would be open to him if he had admitted the kidnapping to prove that he had some other object but no other object is apparent on the face of the facts *Held* that this amounted to a misdirection of the jury The question of intent was a pure question of fact but the way in which it had been put to the jury left them no option but adopt the view taken by the Judge QUEEN EMPRESS v HUGHES

[I. L. R 14 All., 25

54. ———— **Murder**—*Distinction between murder and culpable homicide* —When a prisoner is on his trial by a jury upon a charge of murder it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder and to direct the attention of the jury to the evidence and to leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty QUEEN v SHAMSHERE BEG

[9 W R. Cr 51

55 ———— **Possession of forged document**—*Penal Code ss 474 475—Possession of forged documents bearing counterfeit marks—Ingredients of the offence* —To support a charge under s 474 of the Penal Code it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged (2) that the accused knew them to be forged (3) that he was in possession of them (4) that he intended that they should be fraudulently or dishonestly used as genuine and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code To support a charge under the latter part of s 475 of the Penal Code it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents an offence punishable under ss. 474 and 475 of the Penal Code In his summing up the Sessions Judge after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one at all events of the documents was such as to connect them with the accused being the kind of document he would be likely to have in his house and he alone and that if they found this issue in the affirmative they must return a verdict of guilty *Held* that the charge to the jury was defective and misleading and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure QUEEN EMPRESS v ABAJI RAMCHANDRA

I. L. R. 16 Bom., 165

56 ———— **Private defence Right of**—*Penal Code s 100 cls 1 2 and 6—Misdirection* —*Held* that it was no misdirection on the part of the Judge in not calling the attention of the jury to cls. 1 and 2 of s 100 of the Penal Code when he particularly called their attention to cl 6 of that section. QUEEN v MOOKHTARAM MUNDLE

[17 W. R., Cr 45

57 ———— **Rape**—*Erroneous verdict owing to misdirection—Failure of justice—Criminal Procedure Code (Act X of 1882) ss 418 423 (d) and 537* —On a charge of rape the Judge in his charge to the jury said You will observe that this sexual intercourse was against the girl's will and without her consent etc instead of saying as he ought to have done you will have to determine upon the evidence in this case whether the intercourse was against the girl's will etc and the charge went on in the same style of stating to the jury what had been proved instead of leaving it to them to decide what in their opinion was proved In the concluding sentence of the charge the Judge said You have seen the witnesses and I have no doubt that you will return a just verdict *Held* that such a charge amounted to a clear misdirection and that the verdict was *erroneous owing to such misdirection Even the* concluding sentence did not satisfy the requirements of a proper charge The provisions in s 423 (*d*) and s. 537 of the Criminal Procedure Code do not require that the Court is to go through the facts and find for itself whether the verdict is actually erroneous upon the facts ALI FAKIR v QUEEN EMPRESS

[I. L. R., 25 Calc. 230

58 ———— **Rioting**—*Unlawful assembly —Common object—Verdict of jury—Alternative common object—Criminal Procedure Code (1882) s 303* —Fourteen accused were charged with rioting armed with deadly weapons and with murder and causing grievous hurt during such riot The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party Some of the accused who admitted their presence at the scene of the occurrence stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife and that they had merely acted in self-defence The case was tried before a jury and on the close of the case for the prosecution the Sessions Judge considering that possibly the common object alleged by the prosecution might be considered not to have been proved, amended the charge and added an alternative common object to it viz that the object of the assembly was

CHARGE TO JURY—*continued*

3 SPECIAL CASES—*continued*

to punish one of the opposite party for enticing away another's wife There was no evidence on the record to prove the alternative common object it being based solely on a portion of the statements of some of the accused and the Sessions Judge put it to the jury that it was an inference that could possibly be drawn from the evidence but it was for them to draw that inference or not The jury convicted all the accused without specifying which common object they relied on and were not asked under s 303 of the Code of Criminal Procedure any questions for the purpose of ascertaining what their verdict was based on *Held* that the Judge had misdirected the jury and that the verdict of the jury leaving it uncertain what was the common object which actuated the accused, was bad in law and that the conviction must be set aside and the case re tried. *Held* further that it was unfair to use a part of the statements of some of the accused put forward in their defence as justifying the use of force by them in repelling the attack of the opposite party for the purpose of showing a common object as against them and that the statements should have been taken in their entirety and could not in any event be used as against the rest of the accused. WAFADAR KHAN v QUEEN EMPRESS [I. L. R 21 Calc. 955

59 ———— **Stolen property retaining of**—*Penal Code s 411*—The accused were charged with retaining stolen property under s 411 of the Penal Code (Act XLV of 1860) The Sessions Judge in his charge to the jury merely directed them to find whether the property was stolen and whether it was retained by the accused. *Held* that the charge was defective and amounted to a misdirection. The Sessions Judge should have directed the jury to find (1) whether the property was stolen; (2) whether it was dishonestly retained and (3) whether the accused knew or had reason to believe the same to be stolen property Unless these questions were found by the jury in the affirmative the accused could not legally be convicted of an offence under s 411 of the Penal Code QUEEN EMPRESS v BALYA SOMYA [I. L. R. 15 Bom 369

60 ———— **Unlawful assembly**—*Code of Criminal Procedure (Act V of 1898) ss 225 537—Omission to state correctly common object of unlawful assembly—Prejudice to accused*—Regard being had to the provisions of s. 225 of the Code of Criminal Procedure the omission by a Judge to correctly state the common object of an unlawful assembly in the charge to a jury does not vitiate the trial if such omission has not in any way prejudiced the accused in their defence. *Sabir v Queen-Empress I L. R 22 Calc 276* and *Behari Mahton v Queen Empress I L. R., 11 Calc., 106* distinguished. RAHAMAT ALI v EMPRESS [4 C. W N., 193

61 ———— **Unsoundness of mind**—*Misdirection—Criminal Procedure Code 1882, s 425*—A Sessions Judge in his charge to the jury told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind and he directed them to find whether the accused was insane at the time he committed the offence *Held* that the issue as to whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence was a preliminary issue to that put by the Sessions Judge and should under s. 425 of the Code of Criminal Procedure have been first submitted to the jury QUEEN v DOORJODHUN SHAMONTO *alias* DEEJO BOR 19 W R Cr 26

CHARGE TO JURY—*concluded*

3 SPECIAL CASES—*concluded*

62 ———— **Question of fact**—*Proof of previous conviction*—The question of proof of previous conviction is one of fact which ought to go to the jury and must be determined by a jury QUEEN v ESAN CHUNDER DEY 21 W R. Cr 40

63 ———— **Questions of law and fact**—*Competency of child to give evidence—Evidence Act II of 1855 s 14*—Whether or not a child was competent to give evidence within the meaning of s 14 Act II of 1855 was a question for the Judge to decide and not for the jury the amount of credit to be given to the statement being all that fell within the province of the jury The error however in leaving the first question to the jury held to be no misdirection QUEEN v HOSSEINEE [8 W R, Cr 60

64 ———— **Recommendation to mercy**—A Judge ought not to introduce into his direction to the jury any question as to recommending a prisoner to mercy but should leave that entirely to the jury QUEEN v DASSEE MOSULMANY [14 W R. Cr., 46

CHARGE-SHEET COPY OF

See ACCUSED PERSON RIGHT OF [I. L. R., 18 Mad., 1[illegible]

CHARITABLE BEQUEST

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILL—BEQUESTS FOR CHARITABLE PURPOSES.

See CASES UNDER WILL—CONSTRUCTION.

CHARITABLE INSTITUTION.

———— Suit relating to—

See COSTS—TAXATION OF COSTS [I. L. R., 20 Bom. 301

See EXTENT OF SUIT—SUBSCRIPTIONS, SUITS FOR 10 C L. R. 197

See TRUSTS ACT, s. 24. [I. L. R., 18 Mad., 44[illegible]

CHARITABLE TRUST

See LIMITATION ACT 18[illegible] ART. 134) I. L. R. [illegible]

CHARITABLE TRUST—*concluded*

See MAHOMEDAN LAW—ENDOWMENT

See RELIGIOUS COMMUNITY [12 Bom , 323

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT 6 C L R., 58

See TRUST I. L R , 18 Bom , 551

CHARITIES

See ADVOCATE GENERAL. [4 Moore's I A 190

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS

See SUPREME COURT MADRAS [4 Moore's I A , 190

CHARTER PARTY

See BILL OF LADING [Bourke O C 171 309
Bourke O C 100
I L R 5 Bom , 313

See DAMAGES—REMOTENESS OF DAMAGE [8 B L R. Ap 20

See GUARANTEE 1 Ind Jur N S 412

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT I L R. 6 Bom. 5

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS L L R. 5 Calc 71
[I. L R., 5 Bom , 584

1 ———— Nomination of ship's agents by freighters—*Right of agents to sue on charter-party—Ships going seeking Meaning of*—A charter party made between the defendants (the owners of the *Seaforth*) and *H & Co* (the freighters) provided that the owners should employ at the ports of discharge the consignee nominated by the freighters to transact the ship business there inwards and outwards on the customary terms, not exceeding 2½ per cent. on amount of freight payable inwards and 5 per cent outwards *H & Co* nominated the plaintiffs *to transact the ship's business in Bombay* (a port of discharge) with the knowledge and consent of the master of the *Seaforth* and the plaintiffs accepted and acted under such nomination. The defendants refused to pay the plaintiffs commission on the outward freight of the *Seaforth on the ground that* under the circumstances under which such freight was procured the plaintiffs were not under the charter party entitled to receive commission on it *Held* that the plaintiffs were sufficiently within the contemplation of the charter party to maintain a suit for the breach of such clauses of it as were inserted for their benefit Meaning of the mercantile expression of ship going seeking discussed. BLACKWALL & Co *v* JONES & Co 7 Bom O C 144

2 ———— Right to retain cargo for amount of bill for freight dishonoured — *M* chartered a ship to load a cargo at Cardiff and proceed therewith to Madras the freight to be paid in London

CHARTER-PARTY—*continued*

on unloading and right delivery of the cargo; one third by *M*'s acceptance at three months from the sailing of the ship (the same to be returned if the cargo were not duly delivered) and the remainder by like bill at three months from the date of delivery in London of the certificate of right delivery of the cargo The charter party provided for payment of a commission on the contract ship lost or not lost that the £150 should be advanced in cash at the port of discharge on account of the freight against the captain's draft on *M* *The cargo was loaded accordingly* a bill of lading was given for the same and the ship sailed from Cardiff on the 8th October 1863 *M* having consigned the cargo to *A & Co* who carried on business at Madras On the same day the owners *drew a bill on M at three months for £261 1s 10d*, being one-third of the freight On the 10th October 1863 the general agents in London of *A & Co* advanced to *M* on *A & Co's* account and out of their funds £700 received as security for such advance *the bill of lading blank and endorsed and forwarded* the bill to *A & Co* On the 29th October 1863 *M* accepted the bill for £261 1s 10d and in the following December he suspended payment and the bill was protested On the 14th January 1864 the ship *arrived at Madras and thereupon A & Co as holders* of the bill of lading applied for the delivery of the cargo and offered to advance the £150 in cash pursuant to the charter-party but the captain claimed to retain the cargo for the value of the dishonoured bill and the balance *of freight due Held* that the terms of the contract were at variance with the right of lien so claimed and that it was not suspended by the bill nor revived by the freighters insolvency ARBUTHNOT *v* DAIGRE 2 Mad., 88

See also BJORCK *v* MADRAS RAILWAY COMPANY [2 Mad. 102 note

3 ———— Freight—*Bill of lading—Liability of master where quantity signed for is more than cargo shipped*—The plaintiff chartered a ship of which he was master to one *C H C* of Calcutta, under a charter party by which it was agreed that the ship (which was then at Melbourne) should proceed to certain ports and there load a cargo for Calcutta, the cargo to be delivered to the charterer at Calcutta on being paid freight at and after the rate of the lump sum of £1 150 *for the full reach of the ship*; the said freight to be paid on the unloading and right delivery of the cargo as customary less any advances that may have been made On the arrival of the ship at Calcutta *C H C* requested the plaintiff to deliver the cargo to the defendants as his agents, which the plaintiff agreed to do on having payment of the freight guaranteed by the defendants. The defendants were *bonâ fide* holders of the bills of lading *which had been signed by the plaintiff in respect of* the cargo They sent to the agents of the plaintiff in Calcutta the following letter: As it will be necessary *for us for the protection of our interests to* get delivery of the cargo, and as we do not care about further trouble in the matter we agree to guarantee payment of the balance of freight due on the charter party less any claims for short delivery etc On unlading there was found to be a deficiency in quantity

CHARTER PARTY—*continued*

between the goods mentioned in the bills of lading and those actually shipped and delivered *Held* that notwithstanding this the plaintiff was entitled to the whole of the freight specified in the charter party and was justified in keeping the cargo until the freight was paid. DODS v STEWART

[8 B L R. 340 17 W R 49

4 ———— Conditions precedent— *Now on her passage —Breach of warranty—Principal and agent — Undisclosed principal* — The plaintiffs entered into a contract of charter party with the defendants whereby it was agreed between them and the defendants acting for the owners that the steamer *Atholl* now on her passage to Calcutta being tight staunch and strong etc. shall receive on board from the charterers a complete cargo of merchandise to consist of 700 tons dead weight and being so laden shall therewith proceed to London with liberty to call for any legal purpose at any intermediate port or ports freight to be paid on the above cargo on right delivery of the same at and after the rate of £4 7-6 per ton; charterers to have the option of cancelling the charter party if the steamer has not arrived in Calcutta on 15th April 1871 The defendants signed the charter party as agents of steamer *Atholl* The steamer was not at the time the charter party was entered into on her way to Calcutta being then in the port of London and she did not start for some days after the date of the charter paty She touched at Madras and Colombo on her way and did not arrive in Calcutta until 11th April Rates of freight having declined since the middle of March at which time it was alleged the steamer ought to have arrived the plaintiff sued the defendants for damages. *Held* the defendants were liable The statement in the charter party that the steamer was on her passage to Calcutta was a condition precedent SCHILLER v FINLAY

[8 B L R, 544

5 ———— Ship unable to enter port or lie there without previous lightening — *Safe port or as near thereunto as she may safely get always afloat —Rights of parties* — Where a vessel is chartered to load a full and complete cargo and being so loaded to proceed therewith to a safe port or so near thereunto as she may safely get and deliver the same always afloat the master is not bound to sign bills of lading for or to sail to a port where the vessel cannot by reason of her draught of water lie and discharge always afloat without being previously lightened even if the cost of the requisite lightening would by the charter party fall on the charterers. By the terms of a charter party a vessel was to take in a full cargo at Bombay and therewith proceed to a " safe port in the Mediterranean (Spanish ports excluded) as ordered on signing bills of lading or so near thereunto as she may safely get and deliver the same to the said charterers or their assignees always afloat. Marseilles was at first named as the port of discharge but subsequently the vessel was ordered to Cette a French port a little to the west of Marseilles and bills of lading made out for Cette were tendered to the master for signature The master refused to sign the bills of lading or sail for Cette The vessel s draught of water when loaded was such that she could not have entered or lain afloat in Cette harbour without discharging a portion of her cargo The cost of lightening the vessel by lighters outside the harbour would under the charter-party fall on the charterers and they were willing to incur the expenses necessary for that purpose *Held* that it was no breach of the charter party by the master to refuse to sail to Cette or to sign bills of lading for that port GRAHAM & CO v MERVANJI NUSSERVANJI

I L R. 5 Bom 539

6 ———— Principal and agent—*Charter party signed by agents for master and owner —Parties to suit—Liability of master—Liability of Agents—Master of ship the agent of charterer to sign bill of lading — Right of master to recover from charterers sums paid by master as damages for short delivery of cargo—Appropriation of payments—Contract Act (IX of 1872) ss 69 230 235* —By a charter party dated 20th September 1880 *F M & Co* as agents for master and owner let the steam-ship *Hutton* to *E* for a term of not less than three and not more than four months for the sum of R15 000 per month payable in advance By subsequent agreement the term was extended to 30th March 1881 and the charterer was to pay at the rate of R18 000 a month for the extended time On 24th February 1881 the ship being about to proceed on her last voyage to Calcutta and thence to Bombay *E* finding himself unable to pay more than R6 000 out of the sum of R18 000 which was then due as hire for the month ending 9th March 1881 requested the plaintiff to pay *F M & Co* on his behalf the remaining R12 000 The plaintiffs did so in consideration of an agreement whereby *E* assigned to them all the freight payable to *E* and all benefits under the said charter-party in respect of the then intended voyage of the *Hutton* It was also agreed between the plaintiffs and *F* that the said ship should be consigned to the plaintiffs at Calcutta and also to them at Bombay and that the plaintiffs should receive all the freight passage money etc., to be recovered for the said voyage the plaintiffs charging two per cent commission on the gross value of the freight shipped in Calcutta and two per cent on the amount of freight collected by them in Bombay and interest on the said sum of R12 000 at the rate of nine per cent. per annum Due notice of this agreement was given to *F M & Co* On the 11th March *E* being unable to pay the R6 000 requested the plaintiffs to pay that sum to *F M & Co* on his behalf which the plaintiffs did —*E* agreeing that the said payment should be on the same terms as those on which the R12 000 had been paid. The ship having proceeded to Calcutta returned with cargo to Bombay where she arrived on 2nd April 1881. *F M & Co.*, as agents for master and owner refused to allow the plaintiffs to collect the freight payable in Bombay and collected it themselves. The plaintiffs brought his suit in the first instance against the owner and the master of the *Hutton* (first and second defendants) praying for an account of the moneys received by the

CHARTER PARTY—*continued*

defendants or their agents in respect of the freight and for payment of the balance found due after deducting the sums properly payable to the defendants for hire of the ship and for R400 damages sustained by the plaintiffs by reason of the wrongful act of the defendants whereby the plaintiffs had been deprived of the two per cent commission The plaintiffs alleged that the balance due to them would be about R9 500 The first defendant did not appear The second defendant (the master) contended that he was not liable that *F M & Co* had been especially appointed as agents of the owner; that they were not his (the master's) agents, and that they had no authority to sign the charter party for him He admitted that the sum of R12 000 had been paid to *F M & Co* by the plaintiffs as agents for the owner but as to the R6 000 he denied that it had been paid to *F M & Co* on his account or on account of the owner He further alleged that there was a large sum due by *E* in respect of hire of the ship and other proper claims against him under the charter party and that the defendants were therefore justified in refusing the demands of the plaintiffs as assignees of *E* until the whole of their claims against *E* were liquidated. He alleged that *F M & Co* had received the freight of the ship amounting to R20 426 and he claimed a lien on this sum in respect of the sum of R19,282 due for hire and other charges on the said ship and R605 for money paid for short delivery of goods The plaintiffs subsequently made *F M & Co* defendants to the suit In their written statement *F M & Co* stated that they had signed the charter party as agents only and not as principals and they contended that the plaintiffs could not proceed simultaneously against the first defendant and the second defendant but must elect to proceed separately against either and further that the plaintiffs could not proceed simultaneously against themselves (*F M & Co*) and the second defendant but should elect to proceed separately against either They admitted the receipt of the R1? 000 as agents for the first defendant and not as agents of the second defendant As to the R6 000 they alleged that it had been paid to them not on account of the *Hutton* but in respect of claims which they had against *E* in connection with the *Clan Gordon*, another ship which had been chartered by *E* They admitted the receipt of the freight of the *Hutton* amounting to R20,426 but claimed a lien on this sum in respect of hire and other proper charges due under the charter party *Held* that the second defendant (the master) was not liable on the charter party He had given no authority to *F M & Co* to sign it as his agents and his conduct in acting under the charter party being referable to his character of and duty as master did not amount to ratification But inasmuch as he claimed to deduct from the freight received in Bombay sums which were paid either by him or to *F M & Co* for him he was so far a proper party to the suit *Held* also that under s ?30 of the Contract Act (IX of 1872) *F M & Co* were not liable as principals on the charter party as they appeared on the face of the charter party to have signed merely as agents But they were liable under s 235 of the Contract Act for having untruly represented themselves to be the authorized agents of the master to enter on his behalf into the contract therein contained. Their liability was limited to the amount which could have been recovered from the master if he had really been their principal. No difference was made in their liability by the fact that the owner was also liable As to the R6 000 —*Held* on the evidence that the plaintiffs at the time of the payment had specifically appropriated this sum to the hire then due for the *Hutton* *Held* further that the charter party was one of the class known as *locatio navis et operarum magistri*; that under such a charter party the master would as between owner and charterer sign bills of lading as agent of the charterer; that as between the owner and the charterer the latter was liable to defray the damages for non performance of the contracts contained in the bills of lading including damages for short delivery of cargo; and that such being the liability of *E* as charterer the plaintiffs as his assignees were bound by all the equities affecting him so that the defendants might set off as against the plaintiffs whatever the owner of the *Hutton* might have set off against *E* if he had been the plaintiff The second defendant (the master) alleged that he had paid in Bombay certain sums of money to consignees as damages for short delivery of cargo and he claimed credit for such payments as against the plaintiffs. *Held* that he had no power to bind *E* by making such payments on his behalf in Bombay where both *E* and the plaintiffs were resident without the consent either of *E* or of the plaintiffs In order to establish these charges against *E* and his assignees (the plaintiffs) it was necessary for the defendants to prove either that they were in fact due in which case the master would be justified in paying them under s. 69 of the Contract Act or that their correctness had been admitted by *E* or his agents The defendants having failed to produce the required proof the claim of the second defendant was disallowed. HASONBHOY VISRAM *v* CLAPHAM

[I. L. R. 7 Bom. 51

7 ———— *Misdescription of tonnage of ship—Misrepresentation in contract—Contract Act (XI of 1872) ss 10 13 14 18 19—Condition precedent*—The defendants in Bombay chartered a ship from the plaintiffs which was described in the charter party as of the measurement of about 2 700—2 800 tons nett register The ship had never been in Bombay and was wholly unknown to the defendants. Evidence was given that in the negotiations for the charter party the plaintiffs stated to the defendants that the ship was certainly not more than 2 800 tonnage register She however turned out to be of the registered tonnage of 3 045 tons and the defendants refused to accept her in fulfilment of the charter party *Held* by PARSONS J that the defendants were entitled to treat the contract as void by reason of the erroneous statement of the plaintiffs with regard to the size of the ship (Contract Act IX of 1872 ss 10 13 14 18 19) *Held* on appeal by SARGENT C.J and FARRAN J (1) that the representation in the charter party as to

CHARTER PARTY—*continued*

the tonnage of the vessel was intended to be a substantive part of the contract between the parties (2) that the statement in the contract was a condition precedent of which the defendants were entitled to avail themselves whether or no they would have suffered loss had they accepted the ship (3) that the facts justified the defendants in repudiating the contract OCEANIC STEAM NAVIGATION COMPANY v SOONDERDAS DHURUMSEY

[I. L. R. 15 Bom. 389

Affirming the decision in S C

[I. L. R. 14 Bom 241

8 ——————— *Optional clause—Choice of ports to load cargo—Election of port* — The plaintiff chartered the defendants ship to proceed from Bombay to Jedda and thence carry a cargo of pilgrims to Calcutta The charter party contained the following clause — Owners to have the option of requiring the charterer to ship salt at Ras Rawaya or at Aden to fill up the lower holds of the steamer at a lump sum of R12 000 payable before delivery at the port of discharge R2 000 to be deposited by the charterer on account of the above freight, out of which R1 500 to be paid here (Bombay) 48 hours before sailing and R500 before departure of the steamer from Jedda Before the ship left Bombay the plaintiff was called upon to pay and paid the R1 500 advance freight On the ship s arrival at Jedda the plaintiff was required by the defendants agent to name the port where he intended to load the salt and pay the R500 named in the charter party The plaintiff in reply named Aden and paid the R500 which the defendants agent acknowledged as received for filling up salt to go to Aden This was on the 22nd July The captain however believing that the plaintiff would not find salt at Aden for Calcutta refused to sail to Aden to load the salt unless the expense of going there and returning to Jedda for the pilgrims was guaranteed by the plaintiff which the plaintiff refused to do. Subsequently on the 30th July the captain on the instructions of the defendants, informed the plaintiff that the choice of the port to load salt was with the defendants and that they named Ras Rawaya as the port where the plaintiff was required to load his salt and refused to go to Aden The plaintiff refused to go to Ras Rawaya. There was to the defendants' knowledge no salt at Ras Rawaya. There was plenty of salt at Aden though none offering for Calcutta owing to the prices ruling at the latter port The captain refusing to load the pilgrims unless the balance of the R12 000 salt freight was paid in advance the plaintiff paid it and brought this suit to recover the whole of the said sum *Held* that the plaintiff was entitled to succeed (i) because by the true construction of the contract the choice of the port must be taken to be with the plaintiff who had to do all that was necessary to provide the salt the option given by the contract to the owners being as to whether they should require salt to be loaded or not; and (ii) because if the election of the port was with the defendants they through their agent at Jedda, conclusively determined their election in favour of Aden at latest on the 22nd July when they accepted the R500 for filling up salt to go to Aden. ABDUL RAHMAN ALLARAKHIA v HASANBHOY VISRAM

[I L R 16 Bom 501

9 ——————— *Mistake in date—Mistake mutual or unilateral—Rectification or rescission of contract* —The plaintiffs required a steamer to sail from Jedda fifteen days after the Haj in order to convey pilgrims returning to Bombay They chartered a steamer from the defendants in June 1891 for that purpose The defendants chartered their steamers by English dates The date inserted in the charter party was the 10th August 1892 (fifteen days after the Haj) The 10th August 1892 was given or accepted by the plaintiffs in the belief that it corresponded with the fifteenth day after the Haj The defendants had no belief on the subject and contracted only with respect to the English date The 19th July 1892 and not the 10th August 1892 in fact corresponded with the fifteenth day after the Haj On finding out the mistake in March 1892 the plaintiff brought this suit for rectification of the charter party by the insertion of the correct date the 19th July 1892 instead of the erroneous date the 10th August 1892 Meanwhile the defendants had let all their steamers and could not give the plaintiff one for the 19th July 1892 *Held* that the agreement was one for the 10th August 1892 and that as that date was a matter materially inducing the agreement there could be no rectification but only cancellation even if both parties were under a mistake *Held* further that the mistake was not mutual but on the plaintiffs part only and therefore there could be no rectification A plaintiff seeking rectification must show that there was an actual concluded contract antecedent to the instrument sought to be rectified, and that such contract is inaccurately represented in the instrument. ABDUL RAHMAN ALLARAKHIA v BOMBAY AND PERSIA STEAM NAVIGATION COMPANY

[I. L. R. 16 Bom., 561

10 ——————— *Bill of lading—Freight—Rate of freight in charter party—Contract by sub-charterer with shipper for freight at lower rate—Refusal by captain to sign bills of lading at lower rate than rate in charter-party—Payment by shipper of difference under protest* —On 3rd March 1898 A D & Co. a firm of freight jobbers in Bombay contracted to provide the plaintiffs with freight for 3 000 tons of cargo to Liverpool at 16s 6d per ton in a steamer to be subsequently named and on the same day handed to the plaintiffs three shipping orders addressed to the captain of the ship the name of which was to be afterwards inserted. In these shipping orders the higher and lower rate clause was as follows —"Bill of lading if required at lower or higher rate difference payable here as customary This clause the plaintiffs struck out from each of the shipping orders according to their usual practice On 11th May 1898, the defendants chartered the steamship *Paddington* of which they were also the owners'

CHARTER PARTY—*concluded*

agents in Bombay and on the 12th May assigned a half share of their interest under the charter party to *K D & Co* By the charter party a full and complete cargo was to be loaded and the freight was to be £1 10 per ton. The captain however was authorized to sign clean bills of lading at any rate of freight required by the charterers without prejudice to the charter-party but at not less than the chartered rate unless the difference was paid in cash before sailing *K D & Co* having thus sub-chartered the *Paddington* declared that steamer to the plaintiffs for 2 747 tons of cargo under their contract of the 3rd March 1898 and the name of the steamer was then entered in the shipping orders for that amount of cargo The plaintiffs thereupon commenced to load a cargo of wheat. By the 21st June 2 100 tons had been put on board; mate s receipts were given to the plaintiffs and bills of lading were prepared by them stating the rate of freight to be 16*s* 6*d* per ton as per the shipping orders and were presented for signature to the captain He refused to sign them unless the difference between 16*s* 6*d* and the chartered rate of £1 10 was paid to him as provided in the charter party The plaintiffs thereupon refused to ship any more cargo and demanded the return of the cargo already shipped on board the *Paddington*. On the 24th June the *Paddington* sailed from Bombay the captain having previously authorized the defendants to sign bills of lading for him after his departure provided they were in accordance with the charter party After some delay the plaintiffs on the 29th June accepted bills of lading for the 2 100 tons at £1 10 and paid under protest the difference between that rate and their contract rate (16*s* 6*d*) and certain other sums for which the defendants as agents for the owners claimed a lien The plaintiffs now sued to recover from the defendants the amount so paid under protest The defendants contended that as agents for owners they were justified in refusing to give bills of lading until the sums due and for which they claimed a lien were paid. *Held* that the defendants had no lien for the sums paid and that the plaintiffs were entitled to recover the amount claimed. *Per* CANDY *J* —The plaintiffs were entitled upon demand to have the said 2 100 tons re-delivered to them by the captain On 29th June the plaintiffs were entitled to clean bills of lading at 30*s* and the sum paid by them under protest in order to obtain such bills of lading was recoverable by them. Under the circumstances the defendants had no lien for freight and demurrage. *Per* STARLING *J* —The captain was justified in refusing to re deliver the said 2 100 tons. The plaintiffs were entitled to clean bills of lading at 30*s* and there was no lien for freight and demurrage in respect of which the plaintiffs had paid under protest the sum claimed by defendants RALLI BROTHERS *v* CHABILDAS LALLUBHAI I L R. 23 Bom 551

CHEATING

See BANKERS I. L. R 16 All. 88

See CHARGE—FORM OF CHARGE—SPECIAL CASES [1 Mad. 31 1 Ind. Jur O S 94

CHEATING—*continued*

See FORGERY 21 W R., Cr 41
[I. L. R., 19 Calc., 380
I. L. R. 13 Mad. 27
I. L. R. 15 All., 210

1. ———— Want of dishonest intention —*Penal Code s 415* —To induce a son to pay his father s debts by acting merely on his fear of consequences to his father is not cheating To describe these consequences as more serious than they were likely to be may be to deceive but is not cheating if done without any fraudulent or dishonest intention. QUEEN *v* RAJCOOMAR BANERJEE [W R. 1864 Cr 25

2. ———— Dishonest intention at time of taking money —The mere taking money one day, and dishonestly running away without paying the next day is not necessarily cheating There must be an intention to deceive and defraud at the time of taking the money and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention QUEEN *v* HEERAMUN HULWYE [5 W R., Cr 5 1 Ind. Jur, N S. 97

3 ———— Giving false information—*Penal Code s 415* —A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police *Held* that he had not committed the offence of cheating within the meaning of s 415 of the Penal Code. EMPRESS *v* DWARKA PRASAD [I. L. R. 6 All. 97

4 ———— Passenger by railway—*Penal Code s 417—Railway Act 1854* —A passenger by railway travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under s 417 of the Indian Penal Code but is indictable under the Railway Act XVIII of 1854. REG *v* DAYABHAI PARJARAM [1 Bom. 140

5 ———— Unlawful entry to exhibition—*Penal Code s 415* —Where the accused secretly entered an exhibition building without having purchased a ticket and was there apprehended it was held that such act did not amount to the offence of cheating under s 415 of the Penal Code REG *v* MAHERVANJI BEJANJI 6 Bom. Cr., 6

6 ———— Intention to cheat—*Penal Code s 417* —To justify a conviction for the offence of cheating there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made REG *v* HARGOVANDAS [9 Bom. 448

7 ———— False representation in application to Collector —The defendant was convicted of cheating He applied to the tahsildar for a specified quantity of land on cowle tenure free of tax for five years and falsely represented that the land was waste land. *Held* a good conviction ANONYMOUS [6 Mad. Ap, 12

CHEATING—*continued*

8 ———— **Attempting to commit breach of trust**—*Criminal Procedure Code 1872 ss 405 406—Framing incorrect document*—Where a person was charged by an Assistant Sessions Judge with (1) attempting to commit criminal breach of trust as a public servant (2) framing as a public servant an incorrect document to cause an injury (3) framing as a public servant an incorrect document to save a person from punishment and was acquitted on the ground that he was not a public servant though the Judge found that he framed the document with a fraudulent intent —The High Court held that the Judge ought to have convicted him of attempting to cheat under ss. 455 and 456 of the Code of Criminal Procedure and as the facts which he would have had to meet on that charge were the same as he had to meet on the charge of criminal breach of trust allowed the objection urged at the hearing though not distinctly taken in their appeal by the Government and ordered a re trial of the accused REG v RAMAJIRAV JIVBAJIRAV 12 Bom. 1

9 ———— **Proof necessary for offence of cheating**—A contractor in the Public Works Department who was charged with cheating in respect of a sum of money which he received on account for work which it was alleged he had not then finished was acquitted on the evidence because it was not proved (1) that there was a false pretence made use of by accused (2) that he knew he was making use of a false pretence or that he intended to defraud (3) that the Public Works Department were deceived by the pretence on account of their belief in its truth and (4) that the accused received the money with the intention of causing wrongful loss to the Government QUEEN v KALIPUDDO PORAMANICK [23 W R. Cr 43

10 ———— **Obtaining property on false pretence**—*Penal Code s 415*—A person hiring certain property for use at a wedding paying a portion of the hire and giving a written promise to pay the balance of the hire and to restore the property after the wedding he being well aware that there was to be no wedding and intending when he got the property to apply for its attachment in a civil suit in respect of an alleged claim is guilty of cheating QUEEN v KADIR BUX 3 N W 16

11 ———— **Obtaining money on false pretences**—*Taking money on promise to return jewels*—The prisoners received a Government promissory note promising to return certain jewels pledged to them but not intending to do so and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender *Held* that they were guilty of cheating QUEEN v SHEODURSHUN DASS 3 N W., 17

12 ———— **Wrongful gain or loss**—*Penal Code s 415 and ss 23 and 24*—A person who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee) on condition that he should sell it at a seer the rupee less was convicted of cheating under s. 420 of the Penal Code because he did not sell it at the rate agreed on, but at 13 seers to the rupee *Held* that as within the meaning of ss. 23 and 24 of the Penal Code there had been no wrongful gain or wrongful loss to any one no offence had been committed under s 415 of the Penal Code QUEEN v LAL MAHOMED 22 W R. Cr, 82

13 ———— *Criminal Procedure Code ss 269 417 and 420—Communicating syphilis by the act of sexual intercourse*—A prostitute who while suffering from syphilis communicates the disease to a person who has sexual intercourse with her is not liable to punishment under s 269 of the Indian Penal Code (Act XLV of 1860) for a negligent act and one likely to spread infection of any disease dangerous to life *Semble*—She may be charged with cheating under s 417 or 420 if the intercourse was induced by any misrepresentation on her part QUEEN EMPRESS v RAKHMA I L R., 11 Bom. 59

14 ———— *Attempt to cheat—Penal Code ss 417 463 464 465 511—Forgery—False document—Fraudulent entry in a book of account*—Prisoner was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s 465 of the Penal Code *Held* that the offence was not forgery but an attempt to cheat QUEEN EMPRESS v KUNJU NAYAR [I. L. R., 12 Mad. 114

CHEATING BY PERSONATION

1. ———— **Passing off girl for marriage as of high caste**—*Penal Code ss 3 3 415 416 419*—Where two girls were brought by the prisoners on speculation taken to a foreign and distant district palmed off as women of much higher caste than they really were and married to two Rajputs after receiving the usual bonus,—*Held* that the prisoners could not be convicted under s 373 of the Penal Code but of cheating and false personation under ss. 415 and 416. QUEEN v DABEE SINGH [7 W R., Cr 55

2 ———— *Penal Code s 416*—Where the accused represented to the prosecutor that a girl was a Brahmin and thereby induced him to part with his money in consideration of the marriage of the girl to his brother when the girl really was of the Sudra caste it was held that he was guilty of cheating by false personation under s. 416 of the Penal Code QUEEN v MOHIM CHUNDER SIL [16 W R., Cr., 42

3. ———— **False representation as to personality**—*Penal Code s 416*—Where a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman —*Held* that he was guilty of cheating by personation under s. 416 of the Penal Code and that it was unnecessary to bring in s. 109 relating to abetment. QUEEN v DHUNPUT OJHAH [7 W R., Cr., 51

CHEATING BY PERSONATION —*concluded*

4. ———— *Penal Code ss 415 419 463—Forgery —A* falsely represented him self to be *B* at a University examination got a hall ticket under *B* s name and headed and signed answer papers to questions with *B* s name *Held* that *A* committed the offences of forgery and cheating by personation QUEEN EMPRESS *v* APPASAMI [I. L. R. 12 Mad 151

5 ———— *Cheating by personation—Penal Code (Act XLV of 1860) ss 415 419—Registration of false divorce—Bengal Act I of 1876* —To constitute the offence of cheating under s 415 of the Penal Code the damage or harm caused or likely to be caused to the person deceived in mind body reputation or property must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom Where therefore certain persons were charged under s 419 of the Penal Code one with personating another person before a Registrar and the others with abetting such personation and causing the Registrar to register a divorce under the provisions of Bengal Act I of 1876 with the wife of the personated person and where the lower Courts convicted the accused under that section holding that as such registrations were voluntary and a source of gain to the Registrar harm was caused to the Registrar in mind and reputation by registering false divorces as well as by losing his fees in the future through persons being less likely to avail themselves of his services and that therefore an offence under the section had been committed —*Held* that the possibilities contemplated by the lower Courts were too remote that the facts did not constitute an offence under the section and that the conviction must therefore be set aside MOJEY *v* QUEEN EMPRESS. SABYA NASHYO *v* QUEEN EMPRESS [I L R, 17 Calc. 606

CHEMICAL EXAMINER REPORT OF—

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER 6 B L. R. Ap 122 [6 Bom. Cr 75 6 Mad. Ap 11 I. L R. 10 Calc 1023

CHEQUE

See STAMP ACT 1879 SCH I ART 11 [I. L. R. 16 Calc. 432

———— Payment of—

See BANKER AND CUSTOMER. [L. R. 18 I. A. 111

———— taken in payment dishonour of—

See BILL OF EXCHANGE 7 B L. R 431

———— taken in payment of rent.

See TENDER I. L. R. 4 Calc 572

CHERRA POONJEE RAJ

See FOREIGN STATE [I. L. R. 11 Calc 17

CHIEF JUDGE OF SMALL CAUSE COURT BOMBAY

———— Decision of, as to compensation for land.

See APPEAL—BOMBAY ACTS—BOMBAY MUNICIPAL ACT I. L. R. 18 Bom., 184

CHIEF JUSTICE, POWER OF—

———— Refusal by Bench of Judges to hear affidavits in support of application for transfer of trial to another district—*Application to the Chief Justice to appoint another Bench to hear and determine case—Interlocutory order in criminal matters Finality of—High Court Charter Act (24 & 25 Vic c. 104) s 14* —Where a rule had been obtained on behalf of a prisoner calling on the prosecution to show cause why the case should not be transferred for trial to some other Court of Session than that in which it was then pending on the ground that such strong feeling and prejudice existed in the district against the accused as to render it unlikely that he would get a fair trial a Division Bench of the High Court duly constituted consisting of two Judges refused to allow the affidavits in support of the application to be read and discharged the rule Subsequently an application was made to the Chief Justice to appoint another Bench of the High Court to hear and determine the rule on the ground that it had not been heard and that consequently the order passed by the Bench discharging it was null and void *Held* that the Chief Justice having once appointed a Bench under s. 14 of the Charter Act (24 & 25 Vic. c 104) to hear any particular case has no power to interfere when the case has been disposed of by that Bench *Held* also that the refusal of the Bench to hear the affidavits read if an error at all was simply one of law in the course of dealing with a matter clearly within their jurisdiction; and that therefore the decision could not be treated as a nullity or its legality questioned by the Chief Justice *Held* further that whether the judgment had been signed or not previous to the application being made to the Chief Justice an interlocutory order of such a nature in a criminal matter is not final but may be reviewed or reconsidered or a similar application may be entertained as often as the Court in its discretion may think proper IN THE MATTER OF THE PETITION OF ABDOOL SOBAN [I. L R 8 Calc 63

CHILD

See CUSTODY OF CHILDREN

See MARRIAGE ACT s 68 [I. L. R. 18 Mad. 230

———— Detention of female for unlawful purpose

See CRIMINAL PROCEDURE CODE 1898 s 551 I. L. R. 16 Calc. 487

———— Evidence of—

See OATHS ACT s 13 [I. L. R., 16 Bom. 359 I. L. R. 16 Mad. 105

CHILD-WIFE.

See HURT—GRIEVOUS HURT [I. L. R., 18 Calc. 49

CHILDREN

See ABANDONMENT OF CHILDREN [16 W R., Cr 12
I. L. R. 18 All. 364

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—GIFTS TO A CLASS [I. L. R., 20 Bom., 571

———— Access to—

See DIVORCE ACT s 41 5 B. L. R., 71

———— Custody of—

See CRIMINAL PROCEDURE CODE 1882 s 551 I. L. R., 16 Calc 487

See CASES UNDER CUSTODY OF CHILDREN

See DIVORCE ACT s 41 6 B L. R., 318

See CASES UNDER HINDU LAW—GUARDIAN

See MAHOMEDAN LAW—DIVORCE [I. L. R. 2 All. 71

See CASES UNDER MAHOMEDAN LAW—GUARDIAN

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I. L. R., 19 Mad. 461

See MAJORITY ACT 1875 [I. L. R. 9 Mad. 391

See CASES UNDER MINOR—CUSTODY OF MINORS

———— Proof of age and order of birth of—

See EVIDENCE ACT s 32 [I. L. R. 24 Calc. 265

CHITTAGONG HILL TRACTS ACT (XXII OF 1860)

See HIGH COURT JURISDICTION OF—CALCUTTA—CRIMINAL [I. L. R., 27 Calc. 654

CHOSE IN ACTION

See ASSIGNMENT OF CHOSE IN ACTION

CHOTA NAGPORE

See SALE FOR ARREARS OF RENT—UNDER TENURES SALE OF 10 C L R. 76

CHOTA NAGPORE RAJ

See HINDU LAW—ALIENATION—RESTRAINT ON ALIENATION [I. L R 7 Calc., 461

CHOTA NAGPORE ENCUMBERED ESTATES ACTS (VI OF 1876 AND V OF 1884)

See SPECIFIC PERFORMANCE—SPECIAL CASES [I. L R. 17 Calc 223
L R 16 I A 221

See STATUTES CONSTRUCTION OF [I. L R 20 Calc 609

———— ss 2 3 (c) 4 12—*Meaning of the words holder and heir —Capacity to mortgage* —The words holder and his heir are used throughout the Chota Nagpore Encumbered Estates Act in the sense of the holder of the property at the time of the determination of the debts and liabilities under s 8 of the Act and his heir The word heir in the Act always applies to the person who is the holder's heir at the time of such determination of the debts and liabilities and to no other heir nor to the heir's heir The estate of *F* came under management under the Chota Nagpore Encumbered Estates Act in 1880 He had several sons of whom *B* was the eldest and *J* the next in age *F* died in 1884 and according to the custom of the family *B* succeeded him to the estate and on *B* dying in 1892 without leaving a male issue *J* succeeded him On the 8th June 1894 *J* mortgaged a village which had been granted to him by his father for his maintenance and which never came under the management of the Encumbered Estates *Held* that there was nothing in s 3 cl (c) of the said Act to incapacitate *J* from mortgaging the property The object of Act VI of 1876 explained. KOKA MAHTON *v* MANKI JAGAR NATH SAHI I L R. 27 Calc 462
[4 C W N 158

———— ss 3 7 and Act V of 1884—*Deo Estate Act IX of 1886 s 1 cl 4— Debts and liabilities Meaning of—Process including summons* —The Chota Nagpore Encumbered Estates Act VI of 1876 as amended by Act V of 1884 (which by Act IX of 1886 is applied to the Deo estate in the district of Gaya subject to certain modifications) is intended to afford relief to holders of land in Chota Nagpore (and in the Deo estate) in respect of all debts and liabilities to which they were (immediately before the publication of the vesting order) subject or with which their property was (at the time of the publication of the vesting order) charged other than debts due or liabilities incurred to Government The effect of the second portion of s. 3 is to bar all suits instituted after the vesting order is made and whilst it is in force S 7 of the Act applies *mutatis mutandis* to create a bar in respect of the debts dealt with in s 1 cl 4 of the Deo Estate Act 1886 The result of ss 3 and 7 of Act VI of 1876 when read with regard to the whole scope of the Act, is that suits or proceedings to enforce such debts or liabilities as are contemplated by the Act that is other than debts due or liabilities incurred to Government are if pending at the time of the vesting order barred if instituted after it in respect of such debts and liabilities, null and void in their inception. KAMESHAR PRASAD *v* BHIKHAN NARAIN SINGH BHIKHAN NARAIN SINGH *v* KAMESHAR PRASAD I L R., 20 Calc 609

CHOTA NAGPORE LANDLORD AND TENANT ACT (I OF 1879)

See LANDLORD AND TENANT—EJECTMENT —NOTICE TO QUIT 4 C W N, 793

——— Beng Act I of 1879 s 37—*Appeal in ejectment suits* —There is no prohibition in s. 37 of Act I of 1879 against an appeal in ejectment suits in Chota Nagpore RAMJAN KHAN *v* RAMAN CHAMAR 11 C L R 480

PIRAJ NATH SAH DEO *v* MURA MUNDA [I. L R 24 Calc 249 1 C W N, 181

Contra KHEDA MAHTO *v* BUDDUN MAHTO [I L R, 27 Calc 508

——— s 39

See APPEAL—BENGAL ACTS—CHOTA NAGPORE LANDLORD AND TENANT PROCEDURE ACT I L R. 24 Calc 249 [I L R., 27 Calc 508

——— s 88

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW [I L R 22 Calc 467

1 ——— s 124—Jaghir tenure—*Sale in execution of a decree for rent—Right title and interest of registered ilakadar —Joint holders*— Where a suit was brought for the recovery of arrears of rent due in respect of a jaghir tenure the joint property of four brothers governed by the Mitakshara law the arrears having accrued during the lifetime of their father and a decree was obtained against the eldest brother who was the sole registered ilakadar, or person held responsible in the zamindar's book it was *held* that the decree related to the arrears due in respect of the whole tenure and not merely of the judgment debtor's individual interest and that a sale of his right title and interest under s 124 of Bengal Act I of 1879 would under the circumstances of the case and by the incidents attaching to such tenure include the right title and interest of any person claiming jointly with him and whose interest was inseparably united with his MODHUSUDUN NATH TEWARI *v* HIRU RAM PANDEY

[I. L R 25 Calc 396 2 C W N 94

2 ——— *Jaghir and under-tenures—Decree for arrears of rent* —No decree for arrears of rent can be made against any person other than the actual tenant or some one who may be security for him and consequently there can be no decree for rent against persons holding subordinate interest in a jaghir tenure which have been created by the jaghirdar PERTAB UDAI NATH SAHI DEV *v* PARDHAN MOKAND SING I. L R. 25 Calc 399 [2 C W N 96

——— ss 137 and 144

See APPEAL—BENGAL ACTS—CHOTA NAGPORE LANDLORD AND TENANT PROCEDURE ACT 1 C W N 341

CHOTA NAGPORE LANDLORD AND TENANT ACT (I OF 1879)—*concluded*

——— s 146

See BENGAL ACT VI OF 1862 s 20 [I L R. 20 Calc., 425

CHOTA NAGPORE TENURES ACT (BENGAL ACT II OF 1869)

See EVIDENCE—CIVIL CASES —MISCELLANEOUS DOCUMENTS—REGISTERS [I L R 19 Calc., 91 I. L. R. 22 Calc 112

——— Powers of Special Commissioner —The scope and object of Bengal Act II of 1869 is to determine the quantity of lands of certain specified descriptions within villages to which the Special Commissioner named under the Act may have been appointed Nothing in the Act empowers an officer so appointed to determine a question of disputed boundary between two villages and to oust the Civil Courts of their ordinary jurisdiction in determining the rights of parties under conflicting titles as proprietors of such villages SHAM CHUNDER ADHIKARY *v* SOBIN BHOOPAL SING

[I. L R. 8 Calc, 397 10 C L. R. 419

CHOWKIDAR.

See CONFESSION—CONFESSION TO POLICE OFFICERS 2 C W N 71

See LIMITATION ACT 1877 ART 7 (1859 s 1, CL 2) 18 W R., 293

——— Village—

See BENGAL REGULATION XX OF 1817 s 21 [18 W R. 298

See CASES UNDER VILLAGE CHOWKIDARS ACT

CHOWKIDARI TAX.

See CESS I. L. R., 23 Calc. 680

CHRISTIANS

——— in Salsette

See SALSETTE LAW APPLICABLE IN [I. L. R., 19 Bom. 680

——— Native—

See CONVERTS I. L. R. 20 Bom., 53

CHUR LANDS

See CASES UNDER ACCRETION—CHUR OR ISLAND IN NAVIGABLE RIVER

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION [I. L. R 5 Calc 36

1. ——— Possession of chur lands—*Title—Evidence* —The cultivation of chur lands like that of waste or jungle lands carries no *primâ*

CHUR LANDS—*concluded*

facie character of usurpation or wrong; and the claimant against a purchaser *bonâ fide* and without notice in possession must strictly prove his title EKOWRI SING *v* HIRALAL SEAL
[3 B. L. R. P C 4 11 W R. P C 2
12 Moore's I. A. 136

2. ———————— *Suit for chur lands —Survey—Possession—Title* —In a suit regarding a chur claimed by defendant as having formed on the bank of the river adjacent to his village and by plaintiff on the ground that the bed of the river belonged to his village the Court upheld the state of matters existing at the time when a survey had been made on the ground that the survey had been made at the time when neither of the present parties held any right in the land but when both villages belonged to the same proprietor and that it was some evidence of possession at that time not only of the julkur but of the right of property in the river and possession under these circumstances was some evidence of title MOHINEE MOHUN DASS *v* ASSANOOLLAH 17 W R. 73

3 ———— Evidence as to position of—*Local investigation—Maps* —In a dispute as to the position of chur lands where the change in the course of a river threw doubt upon their position the judgment of the Court of first instance given after local investigation was upheld against the decision of the High Court founded on inspection of the maps and on the arguments adduced before it SARAT SUNDARI DEBI *v* PROSONNO COOMAR TAGORE 6 B L. R, 677 15 W R., P C 20
[13 Moore's I. A 607

CHURCH.

———— Roman Catholic Church—*Powers of dharmakartas or headmen—Closing church—Appointment of priest* —The appointment of a committee of headmen or dharmakartas in a Roman Catholic Church by the Bishop to assist the Vicar in the secular affairs of the church gives the members of such committee no right to close the church or oust the Vicar and still less to appoint a priest not under the discipline of and obedience to the Church of Rome MARIAN PILLAI *v* BISHOP OF MYLAPORE
[I. L R. 17 Mad. 447

CIRCULAR ORDER 41 OF 1866

See LOCAL INVESTIGATION
[I. L. R 4 Calc. 718

———————— 25 of 1870

See LOCAL INVESTIGATION
[I. L. R. 4 Calc. 718

———————— 10th July 1874.

See BENGAL RENT ACT 1869 s 58
[I L. R. 3 Calc 547 1 C L. R. 149

CIRCULAR ORDER BY JUDICIAL COMMISSIONER OF PUNJAB.

See INDIAN COUNCILS ACT
[12 B L. R, 167 18 W R 389

CIRCULAR ORDER OF HIGH COURT (CRIMINAL)

———— No 9 of 6th September 1869

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I L R 24 Calc 429

CITATION

See LETTERS OF ADMINISTRATION
[I L R 4 Calc 87
I L R 12 Bom 164

CIVIL COURT

See JURISDICTION OF CIVIL COURT

See MADRAS FOREST ACT s 4
[I L. R. 17 Mad 193

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)

See BHOOTAN DUARS ACT
[4 C W N 287

———— s 2 (Civil Procedure Code 1859 s 356)

See CASES UNDER APPEAL—DECREES

See CASES UNDER APPEAL—ORDERS

1 ———— Decree Definition of—*Orders in a suit or in execution of decree —Per* JACKSON J —The word decree as defined in Act X of 1877 does not include orders either original or appellate upon matters arising in the course of a suit or in execution of a decree RUNJIT SINGH *v* MEHERBAN KOER
[I. L. R. 3 Calc 662 2 C L. R 391

2. ———————— The definition of decree in s 2 of the Civil Procedure Code means that where the proceeding of the Court finally disposes of the suit so long as it remains upon the record it is a decree WILLIAMS *v* BROWN
[I L R. 8 All. 108

3 ———— Judicial proceeding—*Civil Procedure Code 1877 ss 333 522 526 531* —The term judicial proceeding as used in s 2 of the Code of Civil Procedure (Act X of 1877) must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss 333 522 526 and 531 of the Code. The definition given in the Code of Criminal Procedure (Act X of 1872) is not applicable DALPATBHAI BHAGUBHAI *v* AMARSANG KHEMABHAI
[I L R 2 Bom., 553

4. ———— and ss. 53 54—*Reject on of plaint* —The words rejecting the plaint in s 2 are not limited to the cases provided for in ss. 53 54. BENI RAM BHUTT *v* RAM LAL DHUBEI
[I L R 13 Calc., 189

5 ———— Signed—Stamped.—The expression "person referred to in s 2 of Act X of 1877 means person referred to in the subsequent sections of the Code as being required to sign or verify certain documents, and it is not a condition precedent

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

to such person being able to use a stamp that he should be unable to write his name MAHARAJA OF BENARES v DEBI DAYAL NOMA

[I. L. R. 3 All. 575

6 ———— Public officer—Official trustee —The official trustee is a public officer within the definition given in s 2 Act X of 1877 *SHAHUNSHAH BEGUM v FERGUSSON*

[I. L. R., 7 Calc 499

7 ———— Subordinate Court—Collector's Court—*Bengal Civil Courts Act 1871 s 15* —A Collector's Court although it exercises certain powers under the Civil Procedure Code is not a Civil Court within the meaning of s 15 of Act VI of 1871 nor is it subordinate to a District Court within *the meaning of Act X of 1877 s 2* IN THE MATTER OF BODRU ROHMAN 3 C L. R. 508

———— s 3

See CASES UNDER APPEAL—RIGHT OF APPEAL EFFECT OF REPEAL ON

See CASES UNDER EXECUTION OF DECREE —EFFECT OF CHANGE OF LAW PENDING EXECUTION

1 ———— Effect of repeal of Civil Procedure Code 1859—*General Clauses Consolidation Act I of 1868 s 6— Proceedings — Procedure* —In all suits instituted before Act X of 1877 came into force in which an appeal lay to the High Court under Act VIII of 1859 an appeal still lies notwithstanding the repeal of that Act by Act X of 1877 *Per* GARTH C J —A suit *is a judicial proceeding and the words* any proceedings in s 6 of Act I of 1868 include all proceedings in a suit from the date of its institution to its final disposal and therefore include proceedings in appeal The word procedure in s 3 Act X of 1877 has not the same meaning as the word proceedings in the above mentioned section The proceedings in a suit instituted before Act X of 1877 came into force including a special appeal if the old Code allowed *one go on to the end of the suit not* withstanding the repeal of the old Code The procedure —that is to say the machinery by which those proceedings are conducted—is after decree to be that provided by the new Code RUNJIT SINGH v MEHERBAN KOER

[I. L. R., 3 Calc, 662

BURKUT HOSSEIN v MAJIDOONNISSA

[3 C L. R 208

NADIR HOSSEIN v BISSEN CHAND BASSARAT

[3 C L. R 437

2 ———— *Suit instituted before but appeal brought after repeal of Act VIII of 1859—Effect of repeal—Civil Procedure Code 1877 ss 556 558 and 588—Appeal* —Where a suit had been instituted under Act VIII of 1859 but decided at a time when Act X of 1877 had come into operation and an appeal was *presented against such* decision s 3 of Act X of 1877 distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal Where therefore an appeal presented when Act X of 1877 was in force has been dismissed under s 556 of that Act the appellant may apply for its re admission under s 558 and if such re admission is refused he is entitled to an appeal under s 588 (v) ELAHI BUKSH v MARACHOW

[I. L. R 4 Calc 825
3 C L. R 593

3 ———— *Decree Meaning of* —The effect of the proviso to s 3 of the Civil Procedure Code of 1877 taken in connection with the definition of the word decree in s 2 is that in all suits pending when that Code came into force the practice and procedure to be followed down to the final result of such suits (i e when nothing remains to be done but *to execute the decree or to appeal from it*) are the same as previously existed but that in all subsequent proceedings in execution of the decree or in appeal from it the practice and procedure provided by the Civil Procedure Code of 1877 are to be observed. The word decree in s 3 of the Civil Procedure Code 1877 means an order final in its nature and does not include an interlocutory order such as an order of reference to take accounts although such order may in general be properly termed a decree and therefore a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage prior to decree within the meaning of s 3 of the Civil Procedure Code of 1877 RUSTOMJI BURJORJI v KESSOWJI NAIK

[I. L. R., 3 Bom 161

4 ———— *Effect of change of law on proceedings already commenced—Attachment —Enforcement of decree—Political pension* —On the 28th of September 1877 —i e three days before the new Code of Civil Procedure (Act X of 1877) came into operation —an application was made for the enforcement of a money decree by attachment (*inter alia*) of a political pension enjoyed by the defendants Under s 216 of the former Code (Act VIII of 1859) a notice was issued on the same day to the defendants calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed at which date the new Code had come into force and contended that under s 266 cl (g) of the new Code the pension was no longer attachable. *Held* that all proceedings commenced and pending when Act X of 1877 became law were under the General Clauses Act *(I of 1868) s 6 to be governed* by the Code theretofore in force the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877; and that a *bonâ fide* application for enforcement of a decree in a particular way coupled with an order of the Court in furtherance of that object as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attach*ment* VIDYARAM v CHANDRASHEKHARRAM

[I. L. R., 4 Bom 163

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

5 ———————— *Effect of repeal of Civil Procedure Code 18—Proceedings commenced before repeal* —Cl. 3 of s. 3 of the Civil Procedure Code (XIV of 1882) provides that nothing in that Code shall apply to any proceedings after decree that had been commenced and were still pending on the 1st June 1882 In case of any question connected with proceedings commenced prior to that date the applicability of the Code of 1882 depends on whether the new proceeding subsequent to that date out of which the question has immediately arisen is so intimately connected with the proceedings prior to that date as to be regarded as part of them A *decree was passed in 18 0 by which the suit was* referred to the Commissioner to take accounts On the 21st June 1882 the Commissioner in the course of taking the said accounts issued a warrant ordering the defendants to show cause why they should not give inspection of certain books. *Held* that the question as to inspection was so intimately connected with the taking of the accounts that it should be regarded as part of the same proceedings and as these had commenced and were still pending on the 1st June 1882 the question whether the order refusing inspection was appealable or not was (under s 3 of Act XIV of 1882) to be determined by the Civil Procedure Code (Act VIII) of 1859 and not by the Code of 1882 RUSTOMJI BURJORJI *v* KESSOWJI NAIK I. L. R. 8 Bom. 287

———— s 5

See LOCAL GOVERNMENT POWER OF
I. L. R 9 Mad. 112

See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES I. L. R. 2 Bom. 641

———— s 6 (1859 s 383)

See DEPUTY COMMISSIONER OF AKYAB
I. L. R., 4 Calc. 94

———— s 11 (1859 s 1)

See CASES UNDER JURISDICTION OF CIVIL COURT

See CASES UNDER RIGHT OF SUIT

———— s. 12

See RES JUDICATA—MATTERS IN ISSUE
I. L. R. 8 Calc 602
I. L. R. 22 Mad. 256
I. L. R. 11 All. 148

———————— Necessity of instituting suit within proper time —S 12 of the Civil Procedure Code (Act XIV of 1882) only provides that no suit shall be tried if the same issues are involved in a previously instituted suit It does not dispense with the institution of a suit within the proper time when the law requires such institution. KEMAGAUDA *v* PARESHA I. L. R. 22 Bom. 640

———— s 13 (1859 s 2)

See ESTOPPEL—ESTOPPEL BY JUDGMENT
7 B L. R. 673
I. L. R., 14 All., 64

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See CASES UNDER RES JUDICATA

———— s 15 (1859 s 6 first paragraph)

See SUBORDINATE JUDGE JURISDICTION OF I. L. R. 7 All. 230
I. L. R. 17 Calc. 155
I. L R 23 Mad. 367

———— s 16 (1859 s 5)

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING CARRYING ON BUSINESS ETC.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING CARRYING ON BUSINESS ETC

See CASES UNDER JURISDICTION—SUITS FOR LAND

———— s 16A.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS
I. L. R. 24 Calc 449

———— s 17

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DWELLING OR CARRYING ON BUSINESS 6 Bom. A C 131 258
3 Mad. 374
18 W R. 312

———— s 19 (1859 parts of ss 11 and 12).

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO *EXECUTION OUT OF ITS* JURISDICTION I. L. R. 14 Calc. 661
I L R 21 Calc 639
I L. R 22 Calc 871

———— s 24 (1859 s 13)

See TRANSFER OF CIVIL CASE—GENERAL CASES I. L. R. 5 All 60
I. L. R. 2 All 241
I. L R., 3 All. 568

———— s 25 (1859 s 6 latter part)

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION ETC.
Marsh., 195
I. L. R. 1 All. 180
I. L. R. 5 Bom 680
I. L. R. 17 Mad. 309
I. L. R. 18 Bom 61

See CASES UNDER TRANSFER OF CIVIL CASE

———— s 26

See MISJOINDER I. L. R. 8 Mad. 361
I. L. R. 16 Bom., 119
I L. R. 22 Calc. 833

———— ss 26-41 ch. III (1859 s 73)

See CASES UNDER PARTIES

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 27

See LIMITATION ACT 1877 s 22
[I L R 14 Calc 400
I L R, 17 Bom 413

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS I L R 6 Calc 370
[I L R 14 Calc, 400
I L R 17 Bom 413
I L R 20 Bom 677

——— s 28

See CASES UNDER MULTIFARIOUSNESS

——— s 30

See CASES UNDER PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS

See RIGHT OF SUIT—CHARITIES
[I L R 8 Calc 32
I L R 7 All 178
I L R 8 Bom 432
I L R 11 Calc. 33
I L R 11 All, 18

——— s 31.

See MISJOINDER I L R 14 Calc 435
[I L R, 16 Bom 119

See MULTIFARIOUSNESS
[I L R 4 Calc 949
I L R 14 Mad. 103
I L R, 16 All 279
I L R 18 All 131 219

——— s 32

See APPEAL—ORDERS
[I L R 13 Calc 100
I L R 12 Mad 489

See LIMITATION ACT 1877 s 22
[I L R 14 Calc 400
I L R 17 Mad. 12

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS

——— s 36 (1859 s 16)

See ADVOCATE I L R 9 All 617

See LUNATIC I L R 7 Calc 242

See PLEADER—APPOINTMENT AND APPEARANCE I L R 8 Bom 105
[I L R 9 All 613
I L R 16 All 240

——— s 37 (1859 s 17)

See LEGAL PRACTITIONERS ACT s 32
[I L R 14 Calc 556

See CASES UNDER SUMMONS SERVICE OF

——— ss 37 38 417 432 (1859 s 17 cl 2)

1 ——— Recognized agent—*Gomastah* —A recognized agent under cl 2 s. 17 Act VIII of 1859 cannot prosecute or defend a suit in his own name A gomastah of a firm ceases to be a recognized agent under cl 2 s 17 Act VIII of 1859 when the business of the firm ceased before the institution of the suit MOKHA HARAKRAJ JOSHI v BISESWAR DOSS 5 B L R Ap 11
[13 W R 344

2. ——— *Filing and verification of plaint* —*Held* that an agent of a party residing within the jurisdiction of the Court not being an authorized agent as contemplated by cl 1 s 17 Act VIII of 1859 was not competent to appear as plaintiff on behalf of his principal and to file and verify the plaint as required by s 27 of that enactment THORNHILL v TAYLOR 1 Agra 115

3 ——— *Presentation of plaint—Munim of firm—Partner* —The munim of a firm is not for the purpose of presenting a plaint the recognized agent (under s. 17 of the Civil Procedure Code) of a partner who is present within the jurisdiction The munim and such partner should join in presenting the plaint or appointing a pleader The partner's not so joining is not a ground on which an Appellate Court should reverse the decree of a lower Court unless the irregularity affects the merits of the case or the jurisdiction of the Court BISANDAS VALAD MAGNIRAM v LAKHMICHAND KISANCHAND 6 Bom A C 150

4 ——— *Ground for dismissing suit* —Where a lower Appellate Court threw out a case on the ground that the plaint had not been filed by a recognized agent within the meaning of s 17 Act VIII of 1859 though that point had been disposed of by the Court of first instance —*Held* that the case should not have been thrown out on such a technical objection not affecting the merits of the case MANNOO DOSSEE v ISHAN CHUNDER BONNERJEA 15 W R 245

5 ——— *Munim of firm being wound up* —The munim of a firm which has ceased to carry on business who is engaged in collecting the assets of such firm and otherwise winding up its affairs is a recognized agent of the owner of such firm within the meaning of s. 17 cl 2 of the Civil Procedure Code and can on behalf of his absent principal maintain or defend a suit brought in respect of the business of the firm whose affairs he is engaged in winding up TUKAJI MAHARAJ HALKAR v PITAMBARDAS NARANGI 9 Bom 427

6 ——— *Mooktear* —A mere mooktear unless specially authorized is not the recognized agent of the judgment-debtor on whom notice can be rightly served within the meaning of the Civil Procedure Code KRISTO CHUNDER GOOPTO v FUZUL ALI KHAN 17 W R, 399

7 ——— *Authority of the Political Agent appointed by Government as manager of the estate of a minor Chief to sue in respect of the Chief's property in British territory* —A suit was brought by the Political Agent Southern Maratha Country as administrator of the estate of the Chief of Mudhol who was described in the plaint as being nineteen years of age to eject the defendants from certain lands belonging to the Chief situated

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

in the Satara District The defendants raised a preliminary objection to the institution of the suit by the Political Agent on the ground (among others) that he was not a recognized agent within the meaning of s. 37 of the Civil Procedure Code *Held* that the Political Agent was not a recognized agent of the Chief of Mudhol within the meaning of s. 37, cl. (*c*) of the Code of Civil Procedure VENKATRAV RAJE GHORPADE *v* MADHARAV RAMCHANDRA

[I. L. R. 11 Bom., 53

8. ———————— *Agent's right to execute decree obtained by him as agent—Waiver—Execution of decree*—*P* filed a suit in the second class Subordinate Judge's Court at Mahad. As *P* resided at Thana outside the jurisdiction of the Mahad Court she authorized her agent under a general power of-attorney to conduct the suit on her behalf. The agent carried on the litigation up to a final decree passed by the High Court on appeal in *P's* favour The agent then sought to execute the decree. The Court at Mahad passed an order upon his darkhast granting only partial execution Against this order the agent filed an appeal in the District Court at Thana. Then for the first time the judgment debtors challenged the agent's right to represent *P* who was residing within the District Court's jurisdiction. This objection prevailed and the appeal was dismissed. *Held* that the agent could not be prevented from executing the decree which he had obtained as agent No objection had been taken to the agent's right to represent *P* at any stage of the litigation prior to the final decree That objection must therefore be deemed to have been virtually waived and could not be raised after the defendants had had their chance of success in the litigations. PARVATIBAI *v* VINAYEK PANDURANG

[I. L. R. 12 Bom. 68

9 ———— ss 38 and 35 (1859 s 17 and s 115)—*Application by representatives for execution of decree—Authority to appear*—*Held* that where one of several representatives of a deceased judgment creditor applies for the execution of a decree the general powers-of attorney contemplated by s 17 cl 1 of Act VIII of 1859 are not necessary but it is sufficient if the applicant is authorized under s 115 to act for the other representatives AMBARAM HARIVALLABHDAS *v* HIMAT SING KALIANJI 2 Bom, 109 2nd Ed 103

———— s 39

See ADVOCATE I. L. R. 9 All 617

See PLEADER—APPOINTMENT AND APPEARANCE 8 W R. 92
[I L R 9 All. 613
I L R. 15 Mad 135
I L R 16 All. 240
I L R 20 Bom 198 203

———— s 43 (1859 s 7)

See ONUS OF PROOF—RELINQUISHMENT OF PORTION OF CLAIM 19 W R., 420

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See CASES UNDER RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

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———— s 45

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———— ss 49 54 (1859 ss 26-32)

See CASES UNDER PLAINT

———— s 50—*Suit by person claiming under Will—Probate—Mofussil of Bombay Presidency*—There is no law at present in force in the mofussil which obliges a person claiming under a will to obtain probate of the will or otherwise establish his right as executor administrator or legatee before he can sue in respect to any property which he claims under the will In any suit or proceeding instituted by him it is for the Court in which the suit or proceeding is pending to determine for the purposes of such suit or proceeding whether the will is genuine and valid and confers upon the plaintiff or applicant the right which he claims BHAGVANSANG *v* BECHARDAS I L R. 6 Bom. 73

But *see* now Probate and Administration Act (V of 1881)

———— s 53 (1859 ss 29 and 32)

See CASES UNDER PLAINT—AMENDMENT OF PLAINT

———— s 54 (1859 ss 31 32)

See LIMITATION ACT 1877 s 4
[I L R 15 All. 65
I L R 20 Calc. 41
I. L R 20 Mad. 319

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1 ———— **Plaint insufficiently stamped**—*Power of Court to grant time for making good the deficiency—Limitation*—When a Court fixes a time under cl (*a*) or cl (*b*) of s. 54 of the Code of Civil Procedure it must be a time within limitation S 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits *Moti Sahu* v *Chhatri Das I L R 19 Calc 780* and *Yakut-un-nissa Bibi* v *Kishoree Mohon Roy I L R 19 Calc 747* discussed. JAINTI PRASAD *v* BACHU SINGH

[I. L. R. 15 All. 65

2. ———— **cls (a) and (b) and ss. 582 and 683**—*Original and Appellate jurisdiction of High Court*—Cls (*a*) and (*b*) of s. 54 of the Civil Procedure Code which are declared by s. 638 to be inapplicable to the original civil jurisdiction of the High Court are also inapplicable to its appellate jurisdiction notwithstanding the provisions of s. 582. BALKARAN RAI *v* GOBIND NATH TIWARI

[I. L. R., 12 All., 129

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I. L. R. 20 Bom 198 293

———— s 43 (1859 s 7)

See ONUS OF PROOF—RELINQUISHMENT OF PORTION OF CLAIM 10 W. R. 429

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See CASES UNDER RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

———— s 44

See CASES UNDER JOINDER OF CAUSES OF ACTION

———— s 45

See CASES UNDER MULTIFARIOUSNESS

———— ss 49-54 (1859 ss 26-32)

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[I. L. R. 15 All. 65

I. L. R. 20 Calc. 41

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2 ———— cls. (a) and (b) and ss 582 and 633—*Original and Appellate jurisdiction of High Court*—Cls (a) and (b) of s. 54 of the Civil Procedure Code which are declared by s 633 to be inapplicable to the original civil jurisdiction of the High Court are also inapplicable to its appellate jurisdiction notwithstanding the provisions of s. 582. BALKARAN RAI v GOBIND NATH TIWARI

[I. L. R., 12 All. 129

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 56 (1859 s 36).

See APPEAL—ACTS—ACT XXVI OF 1867
[6 B. L. R. Ap 11 12
7 B. L. R. 663 664 note

——— s 57 (1859, s 30 Act XXIII of 1861 s 3)

See CASES UNDER PLAINT—RETURN OF PLAINT

——— s 59 (1859, s 39).

See CASES UNDER PRODUCTION OF DOCUMENTS.

——— s 63 (1859 s 39, para. 4).

See PRODUCTION OF DOCUMENTS.
[I. L. R., 8 Bom. 377
I. L. R. 8 Mad., 373
I. L. R. 22 Bom. 971

——— ss 66 and 67 (1859 s 42)—*Order for personal appearance—Hearing ex parte*—An order may be made for an *ex parte* hearing on proof of service of summons issued under s. 42 Act VIII of 1859 KISTODHONE DUTT *v* NILMONEY SINGH
[Cor., 3

——— s 69 (1859 s 45)—*Allowance of time for appearing and answering*—Under s. 45 of the Code of Civil Procedure a defendant in a suit is entitled to sufficient time to enable him to appear and answer in person or by pleader What may be sufficient time in a particular case can only be determined by considering the peculiar circumstances of the case Where the time allowed is manifestly insufficient an Appellate Court will interfere KHADAR BHI *v* RAHIMAN BHI 3 Mad 167

——— ss 74 and 76—*Effect on those sections of s 443 of Code of Civil Procedure—Service of summons on minors*—Ss 74 and 76 of the Code of Civil Procedure are controlled by s. 443 of the said Code JATINDRA MOHAN PODDAR *v* SRINATH ROY
[I. L. R 28 Calc., 267

——— ss 75 89

See PROCESS SERVICE OF

See CASES UNDER SUMMONS SERVICE OF

——— s. 87—Prisoners Testimony Act (XV of 1869) ss 15 and 16—*Act XV of 1869 s 16—Signature of jailor—Judicial notice*—The Court will take judicial notice of the signature of the jailor under s 16 Act XV of 1869 Prisoners Testimony Act TAMOR SING *v* KALIDAS ROY
[4 B L. R. O C., 51

1. ——— s 97 (Act XXIII of 1861 s 5)—Default in depositing allowance for notice to defendant—*Dismissal of suit*—Where the Court of first instance ordered a co-defendant to be joined in the suit but the plaintiff failed to pay the allowance necessary for the purpose of causing a notice to be served on such co-defendant who accordingly did not appear at the hearing—*Held* that the proper course for the Court to have adopted was to dismiss the suit under s 5 of Act XXIII of 1861 *Semble*—The provisions contained in the first portion of s 5 of Act XXIII of 1861 are imperative AB A S *v* IBRAHIMJI 5 Bom. A. C 118

2. ——— *Default in depositing allowance for notice to respondent*—A notice to a respondent having been returned unserved owing to the omission on the part of the appellant to deposit the requisite talabana in the proper Court the default under ss 5 and 6 Act XXIII of 1861 was held to be in no way excused by the fact of its having been committed by an ignorant karpardaz or man of business whom appellant chose to employ rather than a vakil PRAN CHUNDER ROY *v* JUGGESSUR MOOKERJEE
[11 W. R. 417

——— ss 97, 98.

See APPEAL—DEFAULT IN APPEARANCE
[I. L. R. 10 Mad., 270

——— Default in appearance of parties.—A District Munsif struck a case off the file of his Court on neither party appearing *Held* that the order to strike off the case was illegal ALWAR *v* SESHAMMAL I L R., 10 Mad., 270

1. ——— ss 98 99 (1859 s 110)—Restoration of case struck off by mistake as being compromised.—It is incidental to every Court of Justice to be able in its discretion to restore to its files any case which it has itself removed therefrom undetermined DEEN DYAL PARAMANICK *v* RAM COOMAR CHOWDHRY 9 W R. 283

2 ——— Default in appearance—*Inability to attend*—The affidavit of a party alleging inability to attend from illness is not enough to satisfy the Court but for this purpose there must be a medical certificate or the affidavits of third parties DHUNSOOK DOSS *v*. HURRY BABOO
[Bourke O C 115

3 ——— *Case struck out for default in appearance*—Where a case had been struck out for non-attendance of the parties, an order was made for its restoration on an affidavit that the absence of the parties was owing to an understanding between them for an adjournment and that the plaintiff had a case on the merits The order was made apparently under s 119 DAMOODUR DOSS *v* CHOONEE BIBEE Cor 120 123 2 Hyde 218

4. ——— *Practice*—When a case has been struck out in consequence of the non-appearance of the plaintiff, the Court will grant a fresh summons PEARY MOHUN DOSS *v* PARBUTTY CHURN MOOKERJEE 1 Ind. Jur., N S 40

5 ——— *Dismissal for default in appearance—Non-appearance of plaintiff—Fresh suit*—When a suit is dismissed for default of the plaintiff and no appearance has been entered by the defendant the plaintiff can under s 110 Act VIII of 1859 bring a fresh suit after a lapse of thirty days if it be not otherwise barred by lapse of time NABADWIP CHANDRA SIRKAR *v* KALINATH PAL 3 B L. R. Ap. 130

See POGHA MAHTON *v* GOOROO BABOO
[24 W R., 114.

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877) *continued*

6 ——————— Default in appearance —*Act VIII of 1861 s 35—Proceedings in execution of decree*—The provisions of s 110 of Act VIII of 1859 are properly applicable under s 33 of Act XXIII of 1861 to proceedings in execution of decree RAJPAL *v* CHOORAMUN 4 N W 10

See SEETUL PERSHAD *v* MAHOMED KUREEM KHAN 5 N W 164

1 ——— s. 99 (1859 s. 110 Act XXIII of 1861, s. 7)—*Failure of plaintiff to pay Court fee for issue of summons—Non appearance of defendant—Act VIII of 1859 s 110—Act XXIII of 1861 ss 5 7—Fresh suit*—Where the plaintiff in a suit failed to deposit talabana required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under s. 110 of Act VIII of 1859 on a day previous to that fixed for the hearing of such suit —*Held* that such order of dismissal did not preclude the plaintiff from instituting a fresh suit GULAB DAI *v* JIWAN RAM I. L. R., 2 All. 318

2. ——————— and s 97 (Act XXIII of 1861 s 7 and s 5)—*Neglect to deposit talabana for application to execute decree*—A decree holder having allowed the term of three years to run within a very few days of expiry before applying for execution and then though allowed five days to pay talabana having neglected to do so his application was found to be not *bonâ fide* *Held* that s 7 Act XXIII of 1861 did not apply to the case that section applying only to suits dismissed under the provisions of s 5 of that Act TARUCK CHUNDER CHUCKERBUTTY *v* HURO CHUNDER CHUCKERBUTTY 15 W R 473

3 ——————— and s 98—*Application that appellant be required to give security—Order directing appellant to show cause—Absence of counsel to support application—Dismissal of application—Application to restore case to register—Civil Procedure Code s 647*—A petition was made under s 549 of the Civil Procedure Code praying that an appellant might be required to give security for the costs of the appeal The ground upon which the petition was based was that the appellant was not pecuniarily in a position to pay the costs of the appeal if it should be dismissed An order was passed directing the appellant to show cause why the prayer of the petitioner should not be granted When the petition came on for hearing no one appeared to support it or to show cause against it and it was accordingly rejected An application was subsequently made on behalf of the petitioner praying that the case might be restored to the register on the ground that counsel for the petitioner was absent on the occasion of the hearing for fifteen minutes only and that as no one on behalf of the appellant had appeared to show cause the petition should have been granted and the absence of petitioner's counsel was immaterial *Held* that the matter was [illegible] by s 98 of the Civil Procedure Code and that [illegible] of the Code prescribing that the [illegible] down for suits should be followed as far as it could be made applicable in proceedings other than suits made s. 99 the rule by which the Court was to be guided *Held* also that although no general rule could be laid down that the absence of counsel when a case has been called on should be treated as by itself a sufficient reason for restoring to the register either a regular suit or an appeal or a miscellaneous application but each case of the kind must be dealt with according to its own particular circumstances in the present case taking the circumstances into consideration an absence of counsel for fifteen minutes was not enough to preclude the Court from restoring the petition to the register LACKMI CHAND *v* GUTTO BAI I. L. R. 7 All. 542

——— s 99A

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY I. L. R. 14 Bom 287

See SUMMONS SERVICE OF [I. L. R. 13 Bom., 500

1 ——— s 100—*Procedure where plaintiff appears but defendant does not—Hearing ex parte*—When the plaintiff in a suit appears at the hearing and the defendant does not appear the proper procedure to follow is that prescribed by s 100 of Act X of 1877 whether the defendant has been summoned only to appear and answer the claim or has in addition been summoned to attend and give evidence It is not necessary before proceeding to hear and determine a suit *ex parte* under s 100 that all the process prescribed by law for compelling the attendance of the defendant as witness should be exhausted It is sufficient that due service of the summons upon the defendant is proved If such proof is not given the courses to be adopted are one or other of those mentioned in cls (*b*) and (*c*) of s. 100 according to the circumstances of the case. TARUCK NATH MULLICK *v* JEAMAT NOSYA [I. L. R. 5 Calc., 353

2. ——————— Dismissal of suit for default—*Application to restore suit—Failure to serve notice of application—Second application for issue of notice—Practice—Procedure—Civil Procedure Code 1882 s 6[illegible]—Costs*—A suit having been dismissed for plaintiff's default, he applied for the restoration of the suit to the file, and a notice was issued to the defendant to show cause why the suit should not be restored. The notice was returned unserved owing to plaintiff's [illegible] defendant to the [illegible] The plaintiff having applied for a fresh notice, the Subordinate Judge rejected th[illegible] *Held* that the Subordinate Judge [illegible] plaintiff's application for a fresh notice. S. 103 of the Civil Procedure Code (Act XIV of 1882) which [illegible] s. 647 [illegible] a proceeding, [illegible] a fresh notice to issue, and [illegible] [illegible] [I. L. R. 18 [illegible]

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

3 ——— **s 100 para 2 and s 101 (1859, s 111)**—*Non appearance of defendant—Adjourned hearing—Costs*—A case had been placed on the undefended board in consequence of the non appearance of the defendant and the hearing had been adjourned at the instance of the plaintiff to a subsequent day On that day the defendant appeared, and it was contended that he could not be heard until he had shown good cause for his previous non appearance or at least that the Court would put him on terms The Court held that the defendant was entitled to appear as a right and an application that he should pay the costs of a post ponement was refused The costs were ordered to be costs in the cause NEWTON *v* KURNEEDHONE [9 B L R. Ap, 15

4. ——— **s 100 para 3 (1859 s 113)**—*Adjournment for defendant to produce evidence where he appears although proper notice not given*—Where if defendant had not appeared the Court would have been bound, under s 113 Act VIII of 1859 to adjourn the hearing to a future day on the ground that sufficient time had not been given to him to appear and answer to the suit it was held that his appearing ought not to put him in a worse position and that it was a reasonable request made on his be half by his vakil that time should be given to him to produce such evidence as he could in support of his case ABDOOL KUREEM *v* AWLAD [18 W R. 141

——— **s 102**

See APPEAL—DEFAULT IN APPEARANCE [I. L R. 8 All 20
I. L R. 20 Bom 738

ss 102 103 (1859 s 114)

See APPEAL—DEFAULT IN APPEARANCE [I L R. 3 All. 292
I. L R. 9 All. 427

1. ——— **Dismissal of former suit for default**—The plaintiff bought from *L* an estate which *L* had purchased from *G* *L* sued *G* for confirmation of possession, and that suit was dismissed for default The plaintiff's purchase was made pending that suit In a suit for possession on the allegation of dispossession—*Held* that the plain tiff's suit was not under s 114 of Act VIII of 1859 barred by the former decision against *L* MA HABIR PRASAD *v* LALA RAM [5 B L R. 327 note 11 W R. 193

2. ——— **First hearing of suit**—*Non appearance—Civil Procedure Code 1859 ss 110 111 and 114*—*Semble*—S 114 as well as ss 110 and 111 of the Code have reference only to the first hearing of the suit which may be either on the day named in the summons or on a subsequent day to which such hearing may have been adjourned. COMALAMMAL *v* RUNGASWAMY IYENGAR [4 Mad. 56

3 ——— **Abandonment of proceedings under s. 260 Act VIII of 1859**—The abandonment of proceedings taken under s. 260 Civil Procedure Code 1859 does not amount to dis missal in default under s 114 and is no bar to plain tiff's bringing a fresh suit FUTTEH ALI *v* KUREEM ALI 10 W R. 61

4 ——— **Case in execution of decree**—The judgment debtors having appeared and raised objections to the execution of a decree the Court after investigation proceeded to pass judgment in the absence of the decree holder *Held* that the action of the Court was taken under s 114 Code of Civil Procedure and that the decree holder had no right of appeal but if aggrieved might apply for a re hearing KALEE KRISTO THAKOOR *v* MAHOMED KADAR 12 W R., 428

5 ——— **Dismissal for default**—*Party interested refused relief*—*S* sued to estab lish his claim to certain property as the next heir of its former owner on the death of whose grand mother the property had been taken possession of by defen dant *P* and obtained a decree Upon this *P* appealed and while the case was under appeal *S* sold his rights to *H* who on application to the Court was made a party to the suit The case was then remanded for further enquiry to the first Court which dismissed the claim on account of default of both plaintiff and defendant *H* then applied for opportunity to show that he had not been in default but his application was rejected on the ground that he was no party to the suit He then appealed but the Judge also ruled that he was no party *Held* that when the case was remanded for re trial some date should have been fixed for the re-hearing which would have given the parties opportunity to appear and take measures to carry on the suit and that the Judge's decision must be set aside *H* having been in reality a party to the suit HARADHUN CHUCKERBUTTY *v* PROTAB NARAIN CHOWDRY 14 W R. 401

6 ——— **Non attendance of plaintiff**—The dismissal of a suit for the plaintiff's non attendance is a highly penal matter and the punishment ought not to be inflicted unless after a dis tinct order to attend and upon proof that the plaintiff has deliberately disobeyed the Court's order PEAREE MOHUN BOSE *v* HURISH CHUNDER GHOSE [17 W R. 141

7 ——— **Order striking off suit**—An order made in a suit number kharij or struck off is not a passing of judgment against the plaintiff by default under s 114 Act VIII of 1859 precluding him from bringing a fresh suit in respect of the same cause of action KHOOB LALL SINGH *v* TOOLSEE SINGH 17 W R. 219

8 ——— **Suit struck off for default**—*Appeal—Civil Procedure Code 1859 ss 114 119*—In a case struck off for default if the order has been properly made under Act VIII of 1859 s 114 the remedy is by motion under s 119 If im properly made it is open to appeal ULUCK MONEE CHOWDHRAIN *v* PANCH COOMAR CHUNDER CHOW DHRY 21 W R. 124

9 ——— **Identity of causes of action in two suits notwithstanding**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

difference of relief claimed —To a suit brought in 1883 for redemption of a m rtgage made in 1853 of villages in Oudh subsequently includ d in the mortgagor's talukhdari estate and sanad the defence was that the mortgagor having brought a suit in 1864 to redeem and not having appeared at the hear ing in pers n or by pleader judgment was passed the mortgagee having appeared to defend against the plaintiff under s 114 of Act VIII of 1859 *Held* that although the plaintiff who had claimed in the prior suit the under proprietary right in virtue of a sub-settlement, claimed in the present suit the superior proprietary right, the difference in the mode of relief claimed did not affect the identity of the cause of action which was in both cases the refusal of the right to redeem; and that under s 114 of the Act the judgment of 1864 was final SHANKAR BAKSH v DAYA SHANKAR I. L. R. 15 Calc. 422 [L. R. 15 I A., 66

10 ———— Dismissal of suit for default—*Difference in causes of act on—Civil Procedure Code ss 13 102 103*.—The dismissal of a suit in terms of s. 102 Civil Procedure Code is not intended to operate in favour of the defendant as *res ju d ata* When read with s. 103 it precludes a fresh suit in respect of the same cause of action referring irrespectively of the defence or the relief prayed entirely to the grounds or alleged *media* on which the plaintiff asks the Court to decide in his favour Brother's sons as nearest agnates of a deceased proprietor sued for a decree declaring that a gift before then made by the widow in favour of her daughter's son of the estate of her late husband would not operate against their right of succession on her death A prior suit before the date of the gift brought by two of the plaintiffs for a declaratory decree and an injunction restraining the widow from alienating the same estate had been dismissed under the provisions of ss 102 and 103 (Act X of 1877) Civil Procedure Code *Held* that the causes of action in the two suits were not identical and the fresh suit was not precluded by s. 103 the gift having afforded the new ground of claim which also had subsequently arisen CHAND KOUR v PARTAB SINGH I. L. R. 16 Calc 98 [L. R. 15 I. A. 156

11 ———— Dismissal of suit for non appearance of plaintiff—*Application under s 103 to set aside order of dismissal—Appearance What amounts to—Ex parte decree* —When the plaintiff's suit came on for hearing his counsel applied for a postponement This application was refused and the plaintiff's counsel not being further instructed, left the Court The suit was then dismissed for want of prosecution. Subsequently the plaintiff made an application under s 103 of the Civil Procedure Code (Act XIV of 1882) for an order to set the dismissal aside *Held* refusing the application that the above circumstances amounted to an appearance on the part of the plaintiff PAMPEETAB MULL v JAKEERAM AGURWALLAH I. L. R. 23 Calc 991

12 ———— Suit brought by next friend of minor and struck off for default of appearance—*Gross negligence on the part of next friend—English rule of law—Law of equity and good conscience—Civil Procedure Code s 103*—Gross negligence on the part of a next friend in the conduct of a suit brought on behalf of a person under disability prevents the effect of the bar contained in s 103 of the Civil Procedure Code to the institution of a fresh suit by such person when the disability has ceased. Where a suit for certain property was brought on behalf of two minors by their next friend and owing to the gross want of care and diligence on the part of the next friend the suit was struck off under s 102 for default of appearance —*Held* in a suit afterwards brought by the same plaintiffs on attaining their majority that the suit was not barred by s. 103 of the Code The English rule of law on this point as being the law of equity and good conscience was applied by the Court to this case in the absence of any statutory provision LALLA SHEO CHURN LAL v RAMNANDAN DOBEY [I L R 22 Calc 8

See HANMANTAPPA v JIVUBAI [I L R 24 Bom 547

13 ———— Appearance of party—*Appearance by pleader or recognised agent—Appearance only for purpose of applying for adjournment—Civil Procedure Code (Act XIV of 1882) s 100—Presidency Small Cause Court Act (XV of 1882) s 38—Dismissal for default—Remedy of plaintiff*—A suit and cross-suit between the same parties were on the board of a Judge of the Small Cause Court for hearing on the 23rd April 1898 On that day *A* the counsel who was instructed for the defendants in the first suit and for the plaintiffs in the second was unable to attend and *B* another counsel held his brief and appeared on his behalf and applied for two months adjournment of both suits The munim of his clients was then in Court *B* was unable to state what was the defence if any to the claim of the plaintiffs in the first suit. The adjournment was refused and *B* said he withdrew from the case Both suits were then and there disposed of the claim of the plaintiffs in the first suit being decreed the second suit being dismissed for non appearance On the 7th May following an application was made for a re hearing of both suits The Court regarding the decrees as *ex-parte* decrees granted a rule for a new trial which was made absolute On appeal to the Full Court the matter was referred to the High Court *Held* that under the circumstances the suits were to be considered as having been disposed of under ss 100 and 102 of the Civil Procedure Code respectively and that whether or not they or either of them fell within the category of contested suits as defined by s 38 of the Presidency Small Cause Courts Act the remedy under s. 103 of the Civil Procedure Code was open to the plaintiffs in the cross suit Where on the day fixed for hearing a party is present in person merely for the purpose of applying for an adjournment which is refused he must be taken to have appeared within the meaning of Chap VII of the Civil Procedure Code The party has appeared in person The purpose for which

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

he appeared or the action which he took on appearance are immaterial But where the party is absent and an application for adjournment is made on his behalf by a pleader who has no other instructions and whose functions are at an end when the adjournment is refused in that case the party has not appeared within the meaning of the chapter Where the pleader who applies for an adjournment is accompanied by a recognized agent of the party but the latter neither makes any application nor does any act the question is whether he intends to appear and in fact does appear for the party in the exercise of his powers under s 36 of the Civil Procedure Code That section is merely permissive and enabling If the recognized agent although able to do so does not think proper to conduct the case on behalf of his principal his mere presence in Court is not an appearance in the suit An appearance may be made by a pleader or a recognized agent but the concurrence of the pleader or agent is essential As soon as he ceases to intend to represent the principal the latter is unrepresented S 38 of the Presidency Small Cause Courts Act does not preclude a plaintiff whose suit has been dismissed for default from applying under s 103 of the Civil Procedure Code to have the order of dismissal set aside There is no inconsistency between the two sections A plaintiff whose suit has been dismissed for default has two separate remedies under different enactments If he chooses to apply for a new trial under s 38 he must do so within eight days If he professes to apply for an order setting aside the dismissal under s 103 of the Civil Procedure Code he can do so within thirty days (Limitation Act XV of 1877 sch II art 163) SOONDERLAL *v* GOORPRASAD

[I. L. R., 23 Bom., 414

14. ———— Dismissal of the suit for non appearance of plaintiff or of the Official Assignee—*Insolvency Act (11 & 12 Vic c 21) s 7—Whether s 370 of the Civil Procedure Code applies to a case where there has not been a completed bankruptcy or insolvency—Civil Procedure Code ss 102 103 157 370*—S 370 of the Code of Civil Procedure does not apply to a case where there has been only an application to declare the plaintiff to a suit an insolvent and a vesting order made but the proceedings are subsequently annulled and the party is not declared either a bankrupt or an insolvent therefore in such a case where a suit has been dismissed for the non appearance of the plaintiff or the official assignee on the date fixed for hearing s 103 of the Civil Procedure Code applies AMRITA LAL MUKERJEE *v* RAKHALI DASSI DEBI

[I L R 27 Calc 217
4 C W N 294

15 ———— Order dismissing a suit for default of appearance—*Civil Procedure Code s 157—Application for restoration of suit—What constitutes an Appearance* —In construing an order alleged by one side and denied by the other to be an order under s 103 of the Code of Civil Procedure the order will be considered as an order under s 102 if apart from the mere description which the Court gives of its action and apart from the actual fact of the plaintiff's appearance or non-appearance the real meaning and substance of the Court's action is that it dismisses the suit on the view whether right or wrong that the plaintiff appears and the defendant does not appear Where his suit having been dismissed for default of appearance under s 102 of the Code the plaintiff applies for its restoration the defendant cannot contest the application *in limine* as one which cannot be entertained at all under s 103 by showing that at the time of the dismissal there was an appearance by the plaintiff in fact or in law but as an answer to the application on the merits the defendant can raise the contention that the plaintiff was not prevented from appearing because in fact he did appear It is not an appearance within the meaning of s 102 of the Code when the plaintiff is represented only by a pleader who is without instructions enabling him to proceed with the case and who is merely instructed to apply for an adjournment *Shankar Dat Dube* v *Radha Krishna I L R 20 All 193* and *Soonderlal* v *Goorprasad I L R 23 Bom 414* approved. *Mahomed Azeem ool lah* v *Ali Buksh 5 N W 74 Kashi Parshad* v *Devi Das 7 N W 77* and *Kanahi Lal* v *Nanbat Rai I L R 3 All 519* referred to LALTA PRASAD *v* NAND KISHORE I L R 22 All 66

———— s 103 (1859 ss 114 119)

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS I L R 9 Calc 426

See SPECIFIC RELIEF ACT s 9

[I. L. R., 4 Mad. 217

1 ———— Suit by purchaser of mortgaged land against mortgagee for redemption—*Subsequent suit by purchaser against vendor and mortgagee for possession—Cause of action* —In 18 9 the plaintiff purchased from one *B* (defendant No 1) the land in question in the suit which was then in the possession of one *R* (defendant No 2) as mortgagee *B* undertook to pay off the mortgage but failed to do so. In 1881 the plaintiff brought a suit for redemption against *R* which was dismissed for non appearance of the plaintiff under s 102 of the Civil Procedure Code (X of 1877) He subsequently filed the present suit against *B* and *R* to recover possession of the land. The defendant pleaded that the suit was barred under the provisions of s 103 of the Civil Procedure Code *Held* that the cause of action in the two suits was different and that the present suit was not barred. RAMCHANDRA JIVAJI TILVE *v* KHATAL MAMOMED GOBI

[I. L. R. 10 Bom. 28

2 ———— Sufficient cause for non-appearance of plaintiff when suit called on for hearing—*Application to set aside order of dismissal made under s 102* —The plaintiff duly attended the Court on the day fixed for the hearing of his case and waited for some time as the Judge happened to be sitting on that day at first in the Appeal Court Believing that when the Judge took his seat in his own Court a part heard case would be proceeded with and would occupy some time the plaintiff left the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

Court house and went to assist his employer who had sent for him to explain some matters connected with a mercantile transaction The plaintiff returned to the Court in about half an hour and found that in his absence his suit had been called on for hearing and dismissed under s. 102 of the Civil Procedure Code On application under s. 103 to set aside the order of dismissal —*Held* refusing the application that the above circumstances did not amount to "sufficient cause for his non appearance when his suit was called on for hearing He was not taken unawares He was under no compulsion to leave the Court, nor was his absence due to any weighty cause. He accepted the risk of the case being called in his absence MUNILAL DHUNJI *v* GULAM HUSEIN VAZEER

[I. L. R. 13 Bom. 13

3 ———— Adjournment for defendant—*Default by plaintiff—Dismissal of suit—Application to restore suit—Civil Procedure Code s 158* —Where a suit was adjourned on the application of the defendant and on the day to which the case was adjourned the plaintiff was absent and the suit was dismissed for default by an order purporting to be passed under s. 158 of the Code of Civil Procedure, 1882.—*Held* that s. 158 was not applicable to the circumstances and that the plaintiff was entitled to apply under s. 103 to have the dismissal set aside VENKATA RAMAYA APPARAU *v* ANUMUKONDA RANGAYA NAYUDU I. L. R 7 Mad. 41

———— s. 108 (1859 s 119)

See CASES UNDER APPEAL—EX PARTE CASES

See CASES UNDER LIMITATION ACT 1877 ART 164 (1871 ART 157; ACT VIII OF 1859 s. 119)

1 ———— Cases in appeal.—S 119 Act VIII of 1859 did not apply to cases in appeal ANONYMOUS CASE 1 Ind. Jur O S 68

RAM LAL CHOWDHRY *v* SURDAREE JAH [W R. 1864 Mis 21

OMDA BEBEE *v* ACOWRIE SINGH 7 W R. 425

2. ———— A party to a suit against whom a judgment *ex parte* has been passed in regular appeal cannot prefer a special appeal from that judgment He must first proceed under s 119 of the Civil Procedure Code to get rid of the *ex parte* judgment against him. DEVAPPA SETTI *v* RAMANADHA BHATT 3 Mad 109

But *see* CHINNAPPA CHETTI *v* NADARAJA PILLAI [6 Mad., 1

3 ———— Suits for rent—*Beng Act VIII of 1869 s 34* —S 119 of the Civil Procedure Code (Act VIII of 1859) was made applicable to rent suits under Bengal Act VIII of 1869 by the provisions of s 34 of the latter Act DHARAMAYI GUPTIA *v* TARRACHARAN SEN

[7 B. L. R. 207 16 W R. 17

4. ———— Decree under s 148 Civil Procedure Code —S 119 of Act VIII of 1859 did not empower a Judge to set aside a decree passed under s. 148 of the same Act COMALAMAL *v* RAMASAWMY IYENGAR 4 Mad. 56

5 ———— Validity of attachment. —The effect of granting an application under s. 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. LALA JAGAT NARAYAN *v* TULSIRAM

[I B. L. R. A. C 17

6 ———— Effect of order under s 101 against a defendant and not appealed from on his right to apply to set aside ex parte decree —The fact that an order under s 101 has been made against a defendant and has not been applied against is no objection to an application being made by him under s 108 SANKARALINGA MUDALI *v* RATNASABHAPATI MUDALI

[I. L. R 21 Mad 324

7 ———— Ex parte decree—*Satisfaction of the decree—Application by defendant to set aside decree after satisfaction of decree* — The fact that an *ex parte* decree had been satisfied does not disentitle a defendant from applying to the Court to set it aside under s 108 of the Civil Procedure Code. ZENDOOLAL NANDLAL *v* KISHORILAL MEHTEHAI I. L. R 23 Bom. 716

8 ———— Ground for setting aside decree—*Property wrongly attached* —In an application to have an *ex parte* decree set aside a judgment-debtor is entitled to say the property attached is not his SOOKH MOYEE DOSSEE *v* NURMOODA DOSSEE 15 W R. 210

See RADHA BENODE CHOWDHRY *v* DEGUMBUREE DOSSEE B L. R. Sup Vol. 947

SHIB CHUNDER BHADOORY *v* LUKHEE DEBIA CHOWDHRAIN 6 W R Mis 51

But he must prove the allegation KALEE PROSAD *v* DIGUMBER CHATTERJEE 25 W R 73

in which case the proof was held to be insufficient

9 ———— *Fraudulent personation* —Where a party applies under s 119 Code of Civil Procedure to have an *ex parte* decree set aside on the allegation that the decree was obtained upon a petition of confession of judgment put in by a person fraudulently employed to personate him the Court is bound to enquire into the truth of the allegation and if it be established the decree may be set aside. KOROONAMOYEE DASSEE *v* NOBO KISHORE SEIN

[6 W R., Mis. 36

10 ———— *Ex parte decree —Setting aside ex parte decree on condition of finding surety* —An *ex parte* decree was set aside on condition that the defendant should find a surety who would be responsible for any amount that might be found due from the defendant by any decree to be subsequently made in the suit *Held* that under s 108 of the Code of Civil Procedure a Court has jurisdiction to set aside an *ex parte* decree on these terms SONATUN SHAHA *v* DINO NATH SHAHA

[I. L. R 28 Calc 222
3 C W N 228

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

11 ——————— Appearance—*Appearance by pleader—Ex parte decision*—An appearance in person or by pleader without putting in any answer or written statement is an appearance within the meaning of s 119 of Act VIII of 18 9 and the judgment pronounced thereafter is not an *ex-parte* judgment and therefore an appeal will lie GOLUCKBUR *v* BISHONATH GEEREE Marsh. 32

JANKEE RAM DOSS *v* CHUNDRABUTTY DEBIA [7 W R 295

12 ——————— *Appearance by pleader—Ex parte hearing*—*Held* that the hearing of a suit in which a pleader was duly appointed on behalf of the defendant but not instructed to answer or instructed not to answer at all was an *ex parte* hearing and that no appeal lay from a judgment passed in such suit BHIMACHARYA BIN VYANACHARYA *v* FAKIRAPPA BIN ANNANDAPPA [4 Bom., A C 206

13 ——————— *Appearance by pleader*—Where a defendant appears in person or by pleader the fact that the defendant is not prepared to put in a written statement does not warrant the trial of a suit *ex-parte* SIVARAJADHANI NILAKANTHAM PILLAI *v* CUPPA GANTULU RAMIAH PANTULU 2 Mad. 311

14 ——————— *Appearance by pleader*—When a duly authorized vakil of the defendant under a vakalatnamah filed in Court appears for his client on the day fixed and the case comes on for hearing the decree passed on such hearing is not an *ex-parte* decree even though the pleader be not sufficiently instructed to proceed with the case DHAN BHAGUT *v* RAMESSUR DUTT SINGH [20 W R 53

15 ——————— *Decree ex parte—Pleader retained in suit but not instructed*—A party defendant retained a pleader to defend the suit against him and the pleader filed a vakalatnamah and did certain acts for the defendant However when the suit came on for hearing the pleader came into Court and stated that he had no instructions and could not go on with the case practically that he had retired from the case The Court proceeded with the suit and made a decree in favour of the plaintiff *Held* that this decree was a decree *ex parte* within the meaning of s. 108 of the Code of Civil Procedure *Bhagwan Das* v *Hira I L R 19 All 355* and *Jonardan Dobey* v *Ramdhone Singh I L R 23 Calc 738* referred to *Zain ul Abdin Khan* v *Ahmad Raza Khan I L R 2 All 67 L R 5 I A 233* distinguished. SHANKAR DAT DUBE *v* RADHA KRISHNA I. L. R 20 All. 195

16 ——————— Sufficient cause for non appearance—*Absence of counsel or attorney*—On an application made under s. 119 of Act VIII of 1859 to set aside a judgment by default—*Held* that the words prevented by any sufficient cause from appearing should be read so as to include the case of the absence of the plaintiff s counsel or attorney when such absence has been caused by a *bond fide* mistake Under such circumstances a judgment by default under s 114 was set aside upon payment by the attorney of the plaintiff of the costs of the hearing ORIENTAL FINANCE CORPORATION *v* MERCANTILE CREDIT AND FINANCE CORPORATION [2 Bom 282 2nd Ed. 267

17 ——————— Absence of pleader—Where in the absence of a plaintiff s pleader the case was decided it was held to have been decided *ex parte* and his proper course was held to be an application for review not a special appeal BEEJOY GOBIND SIRCAR *v* RADHA BENODE MISSER [10 W R. 348

18 ——————— Filing written statement—*Ex-parte case*—Where a defendant entered appearance and filed a written statement the case can not be *ex-parte* though the defendant does not appear in person at the hearing and the defendant s vakil is entitled to cross examine the plaintiff s witnesses PAKAKTAR *v* JAKBIRAM BHOKATH [11 W R. 5

19 ——————— Written statement Tender of—*Ex-parte decree—Appeal—Appearance of defendant*—The Court of first instance refused to receive the defendant s written statement because it had been tendered after the day on which the Court had ordered it to be filed and the delay had not been satisfactorily explained The Court however framed the issues in the presence of the defendant s pleader who was also allowed to cross examine the plaintiff s witnesses The Court made a decree in favour of the plaintiff In appeal the District Judge held that the decree of the first Court was *ex parte* under s. 119 of the Civil Procedure Code and that therefore no appeal lay *Held* by the High Court in special appeal that the decree of the first Court was not *ex parte* under the circumstances RAGHAPA BIN HANMAPA *v* PARAPA BIN SHIVAPA I. L. R. 1 Bom. 217

20 ——————— Non appearance at adjourned hearing after former appearance—*Ex parte judgment—Appeal*—The provision in s 119 of Act VIII of 1859 that no appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared must be understood to apply to the case of a defendant who has not appeared at all and not to the case of a defendant who having once appeared fails to appear on a subsequent day to which the hearing of the cause has been adjourned. ZAIN UL ABDIN KHAN *v* AHMAD RAZA KHAN [I. L. R. 2 All. 67 L. R, 5 I. A., 233

KALEE CHURN DUTT *v* MODHOO SOODUN GHOSE [6 W R. 86

21 ——————— *Ex parte decree—Defendant not appearing at an adjourned hearing—Act VIII of 1859 ss 119 and 147—Civil Procedure Code 1882 ss 108 and 157*—S 108 of the Code of Civil Procedure (Act XIV of 1882) applies to every case in which a decree is passed *ex parte* against a defendant either under s 100 by reason of his non appearance at the first hearing or under s. 157 by reason of his non appearance at an adjourned hearing *Zain ul Abdin Khan* v *Ahmad Raza Khan*

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—continued

I L R 2 All 6" *L R 5 I A* 233 distinguished. *Sital Hari Banerjee v Heera Lal Chatterjee I L R 21 Calc* " overruled. JONAN DAS DOBEY v RAMDHONE SINGH

[I. L. R. 23 Calc. 738

22. ———————— *Presidency Court of Small Causes—Adjourned hearing—Ex parte decree—Civil Procedure Code s 157*—A defendant is entitled to avail himself of s. 108 of the Civil Procedure Code (Act XIV of 1882) where an *ex parte* decree is passed against him at an adjourned hearing HILDRETH v SAYAJI LIRAJI

[I. L. R. 20 Bom., 380

23 ———————— *Ex parte decree—Presidency Small Cause Court Act (XV of 1882) s 37—New trial—Parties Non appearance of—Civil Procedure Code s 157*—There is a distinction made by the Code of Civil Procedure between cases decided *ex parte* in the absence of one of the parties after first hearing and cases decided in the absence of one of the parties at an adjourned hearing Ch. VII of the Code relates to the appearance of parties and the consequence of their non appearance at first hearings, whereas Ch XIII of which s 157 forms a part contains the procedure for the trial of a suit on an adjournment after the first hearing Where therefore a defendant put in an appearance in the Small Cause Court at the first hearing and the case was adjourned to a later date for hearing on which date the case was heard in his absence and a decree given against him —*Held* that such a decree was not made *ex parte* so as to enable the defendant to obtain benefit of s. 108 of the Code but that his only remedy was under s 37 of Act XV of 188? SITAL HARI BANERJEE v HEERA LAL CHATTERJEE

[I. L. R. 21 Calc. 269

24. ———————— *Revival of suit after dismissal under s 157—Provincial Small Cause Courts Act (IX of 1887) s 17*—Where a suit has been dismissed under s 157 Civil Procedure Code s. 108 will apply and the suit may be revived. The expression "a decree passed *ex parte* in s 17 of the Provincial Small Cause Courts Act must be read with s 108 of the Civil Procedure Code and does not include cases dismissed for default *Sital Hari Banerjee v Heera Lal Chatterjee I L R 21 Calc 269* referred to *Tonuda Dobey v Ramdhone Singh I L R 23 Calc 738* followed. JAMINA BIBI v SERI CHAND BHAGAT 2 C W N 693

25 ———————— *Appeal from ex parte decree*— A suit was postponed on the application of the defendant's pleader but on his applying for further adjournment at the time fixed for hearing the application was refused the Court tried the case the defendant not appearing and not being represented and gave a decree for the plaintiff An appeal was allowed and the case was sent back for re trial AMBITNATH JHA v ROY DHUNPUT SINGH

[8 B L. R. 44 15 W R 503

26 ———————— *Rehearing granted after expiration of time limited for application—Ex parte decree*—The plaintiff obtained an *ex parte* decree on the 5th July 1873 of which he took out execution on the 9th August On the 11th of November the defendant applied for and obtained a re hearing under s 119 Act VIII of 1859 On the re hearing his suit was dismissed by both the lower Courts on the merits. *Held* on a special appeal to the High Court that although s 119 provides that an order for re hearing shall be final it *is final only in the sense that it is not by itself open* to appeal and that the plaintiff was not precluded by that section from raising the objection that the order for re hearing was made after the time limited therein and therefore ought to be set aside as made without jurisdiction RUNGLALL MISSER v TOKHUN MISSER

[I L. R. 2 Calc 114 25 W R. 304

27 ———————— Suit Adjournment of hearing of— *Appearance of defendant—Civil Procedure Code ss 108 157*—A Munsif before whom a suit was pending fixed by way of adjournment a particular date for its disposal Upon the date so fixed it was necessary to take evidence upon issues of fact which had previously been settled. The plaintiffs appeared on that day The defendants did not appear but there was in Court a pleader who had been instructed by the two principal defendants at the outset and who had filed his vakalatnama There was nothing to show that he had ever received any other instructions whatever either as to the facts of the case or the conduct of the defence or that the defendants had done anything beyond giving the pleader the instructions above referred to Under these circumstances the plaintiffs gave their evidence and the Munsif decreed the claim *Held* that under the circumstances stated the defendant's pleader must be taken not to have been in Court on the date fixed for the purpose of defending the suit on behalf of the defendants inasmuch as upon that part of the case he had not been instructed that it was therefore a fair inference that the defendants did not appear and the case was disposed of under s 157 of the Civil Procedure Code; and that under these circumstances the provisions of s 108 were applicable and the decree was an *ex parte* decision which it was open to the Munsif to reconsider *Hira Das v Hira Lal I L R 7 All 538* followed. RAMTAHAL RAM v RAMESHAR RAM I. L. R. 8 All. 140

28 ———————— *Ex parte decree—Appearance What constitutes—Civil Procedure Code s 100*—A summons was issued to a defendant in a civil suit The serving officer being unable to find either the defendant or any person empowered to accept service for him at the address given affixed a copy of the summons to the outer door of the defendant's house and returned the original to Court On the day notified in the summons the case was called on and upon its being called on a pleader presented himself in Court with a power-of attorney executed not by the defendant himself but by a third person on his behalf and stated that the defendant had no notice of the time fixed for the hearing of the case and prayed for an adjournment to a date upon which a proper answer to the claim could be filed. The application was refused but the case

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

was adjourned to the day following On that date no one appeared for the defendant and a decree was passed against him *Held* that there was no appearance on behalf of the defendant within the meaning of s 100 of the Code of Civil Procedure and that the decree passed on the adjourned date was therefore an *ex parte* decree *Hira Dai* v *Hira Lal I L R 7 All 538* and *Ram Tahal Ram* v *Rameshar Ram I L R 8 All 140* referred to *Fazal Ahmad* v *Bahadur Singh Weekly Notes All (1893) 25 Ganga Dass* v *Indarman Weekly Notes (1893) 208* and *Zain ul Abdin Khan* v *Ahmad Raza Khan I L R 2 All 67 L R 5 I A 233* distinguished CHAUDHRI RAJ KUMAR v JUGAL KISHORE I L R. 18 All. 241

29 ——— **Absence of defendant on adjourned hearing**—*Non appearance*—S 119 Act VIII of 1859 does not apply to a defendant who is only absent on an adjourned hearing It relates only to one who has never appeared GORACHAND GOSWAMI v RAGHU MANDAL [3 B L R. Ap 121 12 W R. 169

30 ——— **Non appearance of defendant after filing written statement.**—A defendant filed a written statement in a suit and when the case was called on for final disposal an application was made by counsel on his behalf for an adjournment but the application was refused and no one appearing for him the case was proceeded with and a judgment was obtained by the plaintiff The defendant afterwards applied for an order setting aside the judgment on the ground that he was prevented from appearing when the suit was called on *Held* that the application was within s 119 of Act VIII of 1859 and the Court had no power in granting the order to impose terms as under s 111 ADMINISTRATOR GENERAL OF BENGAL v LALA DYARAM DOSS 6 B L R. 688

DOYAL MISTREE v KUPOOR CHAND [I L R. 4 Calc 316 3 C L R. 482

31. ——— **Default in appearance after adjournment.**—The parties to a suit appeared on the day fixed for the first hearing On the application of defendant's vakil the hearing of the suit was adjourned in order to enable them to obtain certain documents from the Collector's office and afterwards put in written statements This they failed to do on the day to which the hearing was adjourned and when the suit came on for final hearing they were still in default and also failed to appear in person or by vakil A decree was given for the plaintiff *Held* that the decree of the original Court was not an *ex parte* decree under s 147 of the Code of Civil Procedure for non appearance but a decree under s. 148 and was therefore appealable. RANGASAMY MUDELLIAR v SIRANGAN THANDRAYA GOUNDEN v SITHAIYAN 4 Mad. 254

32 ——— **Absence at adjourned hearing** *Putting in written statement*—A mere formal appearance in Court with no further action than the putting in a written statement does not prevent a decision in the absence of the defendant from being regarded as an *ex parte* decision under the Civil Procedure Code PURUS RAM v JULUNTEE PERSHAD 1 N W Ed. 1873 154

33 ——— **Failure of defendant to file affidavit of documents defence struck out in consequence and decree made ex parte**—*Application to set aside the decree under s 108—Civil Procedure Code 1882 s 136*—Where the defendants had entered appearance and filed their written statements but their defence had been struck out under s 136 of the Civil Procedure Code for failure to file their affidavit of documents and the suit had been placed in the undefended list of cases and a decree made therein and the defendants subsequently sought to set aside that decree under s 108 Civil Procedure Code—*Held* that the wording of s 108 Civil Procedure Code as well as its position in the Act shows that its operation is limited to decrees made *ex parte* under the provisions of Ch VII and does not govern other decrees made *ex parte* unless where it has been extended to those decrees by other provisions of the Code *Held* also that whatever may be the effect of the words and to be placed in the same position as if he had not appeared and answered in s 136 it does not intend to introduce into the class of cases dealt with by s. 108 a new class of cases of an entirely different character and the decree in the suit was not an *ex parte* decree within the meaning of s 108 *Choonee Lal* v *Chaman Lall I L R 7 Mad 139 Mullins* v *Howell 11 Ch D 767* referred to. *Assanulla Joo* v *Abdul Aziz I L R 9 Calc 923* distinguished. KESHABIA ACCOMAR SEREESUNGJEE v POTOOAH SETT [2 C W N 676

34 ——— **Ex parte decree against one defendant**—*Right to re open the whole case*—*Act X of 1859 s 58*—When a suit has been decreed against several defendants and one of them who was not present at the hearing obtains a re hearing and files a written statement in which for the first time the objection is taken that the suit could not have been proceeded with inasmuch as plaintiff had improperly joined two distinct causes of action against two different individuals the Court is not justified in re opening the whole case S 119 Act VIII of 1859 does not contemplate the setting aside of that portion of the decree in such a case which refers to the other defendants. S 58 Act X of 1859 treated as an authority by analogy in such a case; and s 119 Act VIII of 1859 interpreted. HURO KRISHNO DASS v MOTEECHAND BABOO [8 W R. 260

See however NISTARINEE DOSSEE v DEBNATH BOSE 20 W R. 236

and BROJONATH SURMAH CHUCKERBUTTY v ANUND MOYEE DEBIA CHOWDHRAIN 7 W R. 237

35 ——— **Effect of a decree set aside at the instance of some only of several defendants against whom the decree passed was ex parte**—*Meaning of the words the decree*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

The words "the decree" in s. 108 of the Code of Civil Procedure mean the whole decree made in the suit. Therefore in a case where a decree has been passed *ex-parte* against some only of several defendants, the effect of its being set aside on their application under s. 108 of the Code of Civil Procedure is that the whole decree made in the suit is set aside notwithstanding that some of the defendants had entered appearance at the original hearing. MAHOMED HAMIDULLA *v.* TOHURENNISSA BIBI [I. L. R., 25 Calc., 155 1 C. W. N., 652

DOYAMOYI DASI *v.* SARAT CHUNDER MOJUMDAR [I. L. R., 25 Calc., 175 1 C. W. N., 656

36 ———— Effect of setting aside ex parte decree and re-opening the case—*Ex parte decree against one defendant—Application by co-defendant to set aside decree—Civil Procedure Code, s. 108.*—Where a decree is set aside on the application of a defendant against whom it was passed *ex parte*, the case is not re-opened as against a co-defendant who had appeared and defended the suit. MANAKU *v.* SITARAM ATMARAM VAGH [I. L. R., 18 Bom. 142

37 ———— Sufficient cause for non appearance—*Mistake.*—On appeal from the rejection of an application made under s. 119 of Act VIII of 1859 to set aside a judgment by default—*Held* that in order to satisfy the Court "that the plaintiff was prevented by any sufficient cause from appearing," it was enough to show that there had been a *bonâ fide* mistake which was not unreasonable. HARDATRAI SHRIKISANDAS *v.* VICTORIA FINANCE AND BULLION ASSOCIATION [3 Bom. O. C., 60

38 ————Non appearance of one of several defendants—*Ex parte decree.*—In a case in which one of many defendants who was made a party to the suit did not appear and a decree for possession was passed without any such special orders regarding that defendant as might have been passed under s. 116, Act VIII of 1859—*Held* that no *ex parte* judgment was passed against her and she could not re-open the suit under s. 119, Code of Civil Procedure. SHEELABUTTY DEBIA *v.* TARINEE CHURN CHUCKERBUTTY 9 W. R. 597

39 ———— Right of party who has not come in to take benefit of order of dismissal of suit.—A suit having been decreed against a number of defendants some of whom did not appear, one (*R*) of the latter applied for a new trial under s. 119, Act VIII of 1859, and the case was remanded by the Judge to the Sudder Ameen. On the last day of the new trial another (*K*) of the defendants against whom judgment had been given *ex parte* tendered a written statement in which it was alleged that summons had not been duly served upon her. The statement was received and the suit was dismissed *in toto*. In appeal the Principal Sudder Ameen reversed that part of the decree which related to *K* on the ground that she had presented no petition in conformity with s. 119 of the Code. *Held* that *K* was properly before the Sudder Ameen's Court and was entitled to the benefit of the order of dismissal and that the Principal Sudder Ameen went on too narrow a ground and should have tried the case on its merits. KOOROONAMOYEE DEBIA *v.* NUBOKISHEN MOOKERJEE 11 W. R. 18

40 ———— Effect of a decree set aside at the instance of some only of several defendants against whom the decree was ex parte—*Decree upheld on appeal by the other defendants by District Court and High Court.*—Where a decree had been made by a Munsif against several defendants only two of whom appeared and these two appealed from the decree both to the Subordinate Judge and to the High Court, the decree being upheld in both Courts; and the defendants who had not appeared nor been parties to the appeals applied to the Munsif and got the decree (*ex parte* as against them) set aside altogether and the Munsif made an order allowing the two defendants who had appeared to defend the suit *de novo*:—It was *held* that the Munsif had no jurisdiction to set aside the decree as against the two defendants who had appeared; it was not an *ex parte* decree as against them, nor was it a decree of the Munsif's Court, but of a superior Court. S. 108 of the Civil Procedure Code contemplates the case of a Court setting aside its own decree and not that of another and a higher tribunal. *Mahomed Hamidulla v. Tohurennissa Bibee, I. L. R. 25 Calc., 155* distinguished. MONOMOHINI CHOWDHRAIN *v.* NARA NARAYAN ROY CHOWDHRY 4 C. W. N. 456

41. ———— Decree obtained on document afterwards alleged to be forged—*Ex parte decree.*—*W* obtained a decree against *D* and others founded upon a solehnamah said to have been put in by them. Certain property belonging to *D* was attached in execution and a notice of sale proclaimed. Thereupon *D* came into Court alleging that she had never had notice of the original suit and that the solehnamah put in, as far as she was concerned, was a cheat and a forgery, and asked for an enquiry and to be relieved from the execution. *Held* that the decree was not an *ex parte* decree and could not therefore be disturbed by a resort to the provisions of s. 119, Act VIII of 1859. HEMMOMOYEE DAYEE *v.* WATSON & Co. 14 W. R. 297

42. ———— Insufficient reason for non appearance—*Ex parte decision.*—Where defendants summoned under s. 41 of Act VIII of 1859 did not appear on the day fixed for them to appear and answer and their reasons for non attendance not being considered sufficient they were not allowed to appear in the case—*Held* that the lower Appellate Court was right in refusing to hear an appeal from that decision. JOY PROKASH SINGH *v.* MEGHRAJ SINGH 12 W. R., 207

43 ———— Ground for setting aside ex parte decree—*Order for review.*—Where after an *ex parte* decree defendant appeared

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

earlier than fifteen days after service of process and swore that no summons had been served on him in the case which led to the *ex parte* decree and that the contract under which the case had been decreed against him had been broken by the plaintiff himself it was held that good and sufficient cause was shown for defendant s previous non appearance and a *primâ facie* case had been made out to lead to the conclusion that there had been failure of justice *Held that as this evidence was given in the presence* of the mooktears on both sid s the Court s order that the case should be entered on the register of cases was a proper order admitting the review ANUND MOYEE DASSEE v ANUND SOONDUR MOZOOMDAR

[13 W R 237

44 ———————— **Defendant showing no sufficient cause for non appearance**—*Appearance by vakil—Ex parte case* —One of several defendants in a suit did not enter appearance until nearly a month after the date fixed for the first hearing when he applied by a vakil for leave to be heard in answer under the last part of *s* 111 Code of Civil Procedure In the absence of good and sufficient cause for previous non appearance his application was rejected and an *ex parte* judgment given against him After this he applied at the instance of the Appellate Court for a re hearing on the ground that the summons had not been duly served upon him This application was rejected and the order of rejection was upheld on appeal In special appeal he contended that the case did not fall within s 119 and that he was entitled to have the regular appeal previously preferred determined upon the record as it stood notwithstanding his prayer had been rejected under s 113 *Held* that the mere fact of the special appellant having appeared by a vakil in the way mentioned above could not be taken as an appearance within the meaning of s 119 and was not sufficient to prevent the Court from passing a judgment *ex parte* against him. MAHOMED HOSSEIN v MUNTOZUL HUQ

[18 W R 400

45 ———————— **Cause for non appearance at adjourned hearing**—*Appearance at first hearing* —Where a defendant was prevented by the fraud of the plaintiff from appearing on the last day of hearing the suit was held to have been decided *ex parte* notwithstanding that the defendant had been represented on the first day of hearing and the first Court was held to have done right in restoring the case to the file under Act VIII of 18 9 s 119 DENOO LAROYE v CHINTA MONEE CHOWDHRY

[18 W R, 457

46 ———————— **Prevention from appearing by sufficient cause**—*Ex parte decree against minors* —An *ex parte* decree having been granted in a suit against *A* personally and as guardian of her infant sons the infants subsequently applied under s 119 of Act VIII of 1859 to set aside the decree on the ground that the summons had not been duly served upon *A* and the application was dismissed. On appeal to the High Court —*Held* that although so far as the decrees made *A* personally liable the Court had no power to interfere yet as the infants were not responsible for their non appearances it might be said that they had been prevented by sufficient cause from appearing' and that the decrees might be set aside under s 119 of Act VIII of 1859 (Act X of 1877 s 108) as against them. KESHO PERSHAD v HIRDOY NARAIN

[6 C L R 69

47 ———————— **Dismissal for default of prosecution**—*Absence of witnesses* —The plaintiff s witnesses not being present on the day fixed for the hearing of the plaintiff s suit it was dismissed for default of prosecution under s 114 of the Code of Civil Procedure and was afterwards re-admitted under s 119 *Held* that the default not being of the nature described in s 114 the suit was wrongly dismissed under that section and for the same reason that the suit was improperly dismissed under that section it was also improperly re admitted under s 119 MAHOMED AZEEMOOLLA v ALI BUKSH

5 N W 75

See also RAM SUNDAR SINGH v RAM BANDHAN SINGH

7 N W 126

48 ———————— **Dismissal for default of case in execution of decree**—*Appeal* —The remedy when a case in execution of a decree is disposed of in the absence of the judgment debtor is that provided by s 119 of Act VIII of 1859 and not an appeal SHEETUL PERSHAD v MAHOMED KUREEM KHAN

5 N W 164

RAJPAL v CHOORAMUN

4 N W, 10

49 ———————— **Decree ex parte—Death of judgment debtor—Application by legal representative to have the decree set aside** —*Held* that where a defendant against whom a decree has been passed *ex parte* for default of appearance dies his legal representative is not competent to apply under s 108 of the Code of Civil Procedure for an order to set the *ex parte* decree aside JANKI PRASAD v SUKHRANI

[I L R. 21 All. 274

50 ———————— **Procedure on grant of new trial of ex parte case** —Where the lower Appellate Court admitted an application under s. 119 for re trial of a case which had been decided *ex parte* by the Munsif it was held to have done right in sending for the record in order that the case as a suit should be heard and tried by the Appellate Court; the object of the law being that a suit should assume a complete form and go to a full trial and not be divided between different Courts KHOOB LALL SAHOO v KADIR BUKSH

15 W R. 431

51 ———————— ***Ex parte decree passed on appeal***—*Procedure* —*M* sued *A* and others on a bond debt and obtained a decree against *A* alone He appealed to the District Judge who passed a decree declaring all parties to be liable jointly On the decree holder taking out execution two of the defendants applied to the Subordinate Judge under Act

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

VIII of 1859 s. 119 and their application being rejected, they applied to the District Judge who referred them to the High Court. *Held* that the Subordinate Judge had no jurisdiction but the proper course for the parties was to apply to the District Judge under s. 119 ZIMUTUNNISSA BIBEE v. MULDEN MOHUN LAL 22 W R. 537

52. ——— Appearance of defendant under Civil Procedure Code ss 100 101—*Ex parte decree* —The first hearing of a suit was fixed for the 17th December 1883 on which day the defendant did not appear and the case was adjourned to the 18th December and as the defendant did not then appear a decree was passed in favour of the plaintiff A vakalatnama had been previously filed on the defendant's part and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held* that these acts on the defendant's part did not constitute an appearance by him *within the meaning of s. 100 of the Civil Procedure Code* which referred to an appearance in answer to a summons to appear and answer the claim on a day specified issued under s. 64 that the decree was therefore *ex parte* within the meaning of ss 100 and 108 and an appeal consequently lay to the High Court under s. 588 cl (9) from an order rejecting an application to set the decree aside *Zain ul Abdin Khan* v *Ahmad Raza Khan I L R 2 All 67 L R 5 I A 233* distinguished. *Administrator General of Bengal* v *Dyaram Das 6 B L R 688 Bhimacharya* v *Fakirappa 4 Bom., 206* and *Bhee Haloo* v *Alwaro 7 W R 81* referred to. *Per* MAHMOOD J —That the Court on the 18th December seemed to have acted under s. 157 of the Civil Procedure Code and choosing the *first of the alternative courses allowed by that section* acted under Ch. VII of the Code and passed an *ex parte* decree under the provisions s 100 of that chapter HIRA DAI v HIRA LAL [I L R 7 All 538

53 ——— Reversal of Judge's order by High Court—*Appeal* —A suit having been decreed *ex parte* defendant applied for a revival thereof under s. 119 Code of Civil Procedure The application having been rejected defendant appealed, and the first Court was directed to enquire whether there was sufficient cause for the non appearance of the defendant This was done and the defendant was allowed to defend the suit The plaintiff then appealed to the Judge who reversed the last order Both parties then went back to the Munsif who on 26th April 1867 recorded a proceeding that the original *ex parte* order was to stand In the meantime the defendant appealed to the High Court which reversed the Judge's order *Held* that the effect of the High Court's order was to render valid the Munsif's order admitting the defendant to defend the suit and that no application for review was necessary on the part of the defendant *Held* that the High Court's order being a final decision by way of appeal on a question which arose in the suit could not be interfered with except by the Privy Council NOBO KRISTO MOOKERJEE v NADIAR CHUND HATTEE [12 W R. 374

54. ——— Whether an auction purchaser is a necessary party to an application to set aside an ex parte decree —An auction purchaser of property sold in execution of an *ex-parte* decree is not a necessary party to an application made by the judgment debtor to set aside the said decree inasmuch as the auction purchaser does not come under the description of opposite party in s 109 of the Code of Civil Procedure JATINDRA MOHAN PODDAR v SRINATH ROY [I. L. R. 26 Calc 267

——— ss 110-116

See CASES UNDER WRITTEN STATEMENT

——— s 111 (1859 s 121)

See CASES UNDER SET OFF

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—SET-OFF [I. L. R. 21 Calc. 419

——— ss 118 119 (1859 s 125)—*Non appearance of defendant—Appearance by pleader* —Where defendants summoned under s 41 Act VIII of 1859 did not appear on the day fixed for them to appear and answer and their reasons for non attendance not having been considered sufficient they were not allowed to appear in the case —*Held* that the Court of first instance was justified in disposing of the case in their absence and that s 125 Act VIII of 1859 contemplates a case in which a party who has appeared at the proper time afterwards appears by pleader JOY PROKASH SINGH v MEGHRAJ SINGH [12 W R. 207

1. ——— s 120—Dismissal of suit on inability to answer material questions —The plaintiff's mooktear being unable to answer certain questions necessary for the statement of the proper issues the plaintiff was called upon either to appear personally and reply to the Court's queries or to send some one who could reply Having done neither —*Held* that the lower Court was competent to dismiss the suit under s 127 Act VIII of 1859 NILMONEE SINGH DEO v RAM HUREE MISSER 2 W R. 161

2 ——— Inability of pleader to answer material questions—*Materiality of absent witnesses* —Instead of dismissing plaintiff's suit on account of his pleader's inability on the day of trial to prove which of his absent witnesses against whom he had applied for further processes to be issued were material the proper course for the Judge was to allow the plaintiff a certain time to produce evidence upon this point upon payment by him of all the costs of adjournment PEAREE MOHUN BOSE v HURISH CHUNDER GHOSE 17 W R. 141

3 ——— Refusal of a plaintiff to attend as a witness —A plaintiff who was represented by a pleader was summoned at the instance of a defendant to attend the Court and to give evidence on his behalf on the day fixed for final hearing The plaintiff refused to attend on the ground that he

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

was a person of rank and was exempted from personal appearance in the Courts of a Native State. The first Court considering the personal appearance of the plaintiff necessary issued an order under s 120 of the Civil Procedure Code that he should attend and on his failure to do so passed a decree against him. On appeal the Judge reversed the decree and remanded the case for trial. *Held* confirming the order of remand that the order and decree of the first Court were alike illegal as the plaintiff having appeared by a pleader the Court had no power to issue an order under s 120 unless the pleader had refused or was unable to answer a material question. SATU *v* HANMANTRAO GOPALRAV NIMBALKAR [I. L. R., 23 Bom., 318

——— ss. 121 127

See CASES UNDER INTERROGATORIES [I. L. R., 17 Calc. 840
I. L. R. 18 Calc. 420
I. L. R. 23 Calc. 117

See CASES UNDER PRACTICE—CIVIL CASES —INTERROGATORIES.

——— ss. 129 136

See CASES UNDER INSPECTION OF DOCUMENTS

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS

——— s 136

See APPEAL—EX PARTE CASES [I. L. R., 7 All., 159

See CONTEMPT OF COURT [I. L. R. 7 Bom. 1 5

See INTERROGATORIES [I. L. R. 18 Calc., 420

——— Exercise of powers given by section.—The powers given to the Court by s. 136 of Act X of 1877 should not be exercised except in extreme cases. SHAM KISHORE MUNDLE *v* SHOSHI BHOOSAN BISWAS [I. L. R. 5 Calc 707 5 C L. R., 509

1. ——— s 137 (1859, s. 138)—*Application for production of documents in another case—Discretion of Court*.—*Per* NORMAN C.J.—When a proper application was made to a Judge under s 138 Act VIII of 1859 to send for from the records of his own Court papers which would be evidence in the case before the Court the Judge had no discretion in the matter but the section must be treated as giving a power which the Judge was bound to exercise.—the principle being that where a statute conferred an authority to do a judicial act in a certain case it was imperative on those authorized to exercise the authority when the case arose. *Per* KEMP J.—It was in the discretion of the Court to send for them or not. *Per* STEER J.—Though the Judge was not bound to send for them it would be unfair not to do so. PROSONONATH BOSE *v* OOMED ALI W. R. F. B., 177

2. ——— Papers specially mentioned—*Production of record*.—Under s 138 a Court was not bound to send for the whole record but only for such papers as might be specially mentioned in the application. JANOKEE BEEBEE *v* HABEEBUL HOSSEIN W. R., 1864 272

3. ——— Decision on document sent for from record of another case.—A Judge may send for and inspect any document filed with any record in his Court and there is nothing in the Code of Procedure to prevent his basing his decision wholly or mainly on such document. BUNWAREE LALL *v* KISTO BEHARY ROY [1 W. R. 63

4. ——— Admissibility of documents from record of another case.—*Held* that a Civil Court which inspects the records of another case under s 138 of Act VIII of 1859 can only use as evidence such documents as are otherwise unobjectionable and admissible for or against either of the parties to the suit. NARAPPA BIN APPA HEGDI *v* GAPAYA BIN KAPAYA [2 Bom., 361 2nd Ed. 341

5. ——— Objection of Judge to send for record in another case.—A Judge was not bound under s 138 Act VIII of 1859 upon the application of any of the parties to a suit to send for the record of any other suit. HEERAMUN ROY *v* TAHOOUR ENAM 7 W. R. 109

CORAAH *v* GOOROO CHURN GHOSE [18 W. R., 13

6. ——— Omission to summon Registrar.—*In a suit on a registered bond* in which defendant asked the Court to send for the registration books with a view to prove the non existence of the bond at the time it purported to be certified.—*Held* that as defendant had failed to summon the Deputy Registrar it was not necessary for the Judge to use the discretion given in s 138 Act VIII of 1859. MONMOHINEE DABEE *v* SREEDHAMA CHURN PANNA [14 W. R. 302

7. ——— Records from Court of Wards.—Where records from a Government office are required as evidence it is for the Court to send for them; but papers required from a Court of Wards, which is not a Government office must be obtained by the party who needs them by means of a summons on the proper officer. SOBHEE JHA *v* SHOSHEENAUTH JHA 15 W. R. 150

8. ——— Public record—*Cases book*.—A cases book is not strictly an official record. Before a document could be inspected under the provisions of s. 138 Code of Civil Procedure which applied to Appellate as well as Original Courts, the Court was bound to see whether it came under the description of a public record. JUGGERNATH SAHOO *v* MAHOMED HOSSEIN 15 W. R., 173

9. ——— Sending records sent for by another Court—*Discretion of Court*.—A Court had no discretion to refuse to send records which had been sent for by another Civil Court

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—continued

under s. 138 of Act VIII of 1859 IN THE MATTER OF GOLAP COOMARY DA EE v SOONDUR NARAIN DEO 4 C. L. R. 36

——— ss. 138 and 139 (1859 s 128)

1. ——— Documentary evidence.—Parties are required to have with them in Court, at the first hearing of the suit, all their documentary evidence but need not file it then unless it is called for MAHEUB HOSSEIN v PATASU KUMARI [1 B. L. R., A. C., 120 10 W R. 179

2. ——— Filing documents with plaint—*Translation of document*—By s 128 of Act VIII of 1859 it was not necessary to file with the plaint all the documents that the plaintiff intended to give in evidence A document which is to be given in evidence need not be translated previous to the hearing of the case KAMEENEE DOSSEE v HURROMONEY DOSSEE [Bourke O C. 91 Cor 151

3 ——— Documents produced but not filed.—This section applies to documents which have been produced at the filing of the plaint but not filed, and in this way is not incompatible with s. 39 IREMSOOKH CHUNDER v RAJKISTO MITTER 1 Hyde 145

4. ——— Exhibits—Documents produced in Court under s 128 Act VIII of 18 9 become upon and by reason of their production exhibits in the case LAOJEE GUNESH v RAO TALEE PERSHAD 8 W R. 91

5 ——— Right to adduce fresh documentary evidence after issues settled—*Ground for rejecting or adm tting*—Under s. 128 Act VIII of 1859 the parties though not entitled as of right to adduce fresh documentary evidence after the issues in the case are settled may yet tender such evidence stating the grounds upon which it was not tendered at an earlier stage and the Judge may receive or reject such evidence but the grounds on which he acts should be stated on the record. WATSON & Co v KUNHYA BAHADOOR 9 W R. 294

6 ——— Documents not filed with record owing to mistake of Court's officers—A Civil Court is bound to receive as evidence authenticated documents named in the plaint and filed by the plaintiff's pleader on the day appointed for fixing issues even though through inadvertence of the amlah they were not made part of the record. RAM RUNJUN CHUCKERBUTTY v ANUND COOMAR MOOKERJEE 15 W R. 323

7 ——— Documentary evidence Production of.—A party is bound under Act VIII of 18 9 s 128 to be prepared at all points with his documentary evidence and as soon as the Court has framed the issues which it thinks proper to lay down at once to tender (if called upon) the documentary evidence bearing thereon The words first hearing in the suit are defined by s. 139 and do not mean the first hearing on the issue GOUR HURPE CHOWDHRY v IRAN HUREE LAHA 21 W R. 42

8 ——— The main object of s 128 was to prevent parties from manufacturing evidence pending the trial to meet unexpected exigencies and not to shut out true good and valuable evidence merely because the party had without good and assignable cause abstained from bringing it before the Court at the first hearing IKRAM HOSSEIN v RAM LOCHUN DUTT 23 W R. 29

9 ——— *Production of documents*—S 138 of the Civil Procedure Code was enacted to prevent fraud by the late production of suspicious documents and not to shut out formal evidence beyond suspicion such as certified copies of public documents like records of Government. *Ikram v Ram Lochun 23 W R., 29* followed RANCHHOD HIRABHAI v SECRETARY OF STATE FOR INDIA [I. L. R. 22 Bom 173

——— s 140 (1859 s. 129).

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15 18 W R. 511

1. ——— Opportunity for Court to inspect evidence—A Court cannot be said to have received documents as admissible in evidence when for want of time to inspect and consider them it orders them to be filed nor would it be wrong in law in rejecting or returning them after proper inspection the object of s 129 Act VIII of 1859 being that papers should be produced in a regular manner and inspected by a Court at its convenience SOODUKHINA CHOWDHRY v RAJ MOHUN BOSE [11 W R. 350

2. ——— Reception on record of irrelevant and inadmissible documents—Attention drawn to the neglected provision of the Code of Civil Procedure 1859 (s 1 9) which prohibits Courts from receiving on the record of a case without restriction and without discrimination documents which are either irrelevant or inadmissible ISSUR CHUNDER GHOSE v RUSSEEK LAL MUNDUL [11 W R. 576

3 ——— Admission and rejection of documents—At the stage of a suit referred to in Act VIII of 18 9 ss 128 129 and 132 the Court ought to sort the documents tendered into two classes those relevant and admissible and those irrelevant and inadmissible and to reject *in limine* all documents which are evidently such as cannot be used as evidence in the suit The admission of a document at this stage does not imply that it is evidence but merely declares that it may if properly treated be used as evidence in the suit and filing it as a part of the record does not confer any authority on such document or operate to dispense with any proof of genuineness Courts of first instance ought to specify what portions of the documentary evidence on the record they have accepted and what portions they have refused to listen to All the proceedings of the parties in respect of the use of documentary evidence are matters to be recorded on the proceedings of the Court by the Judge's own note TUMEEZODDY v BUSARUT 21 W R. 76

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 141 (1859 s 132)—*Production of documents—Endorsement* —Exhibits produced in Court ought to be endorsed with the name of the person who produces them as required by s 132 of Act VIII of 1859 BISRAM SINGH *alias* BISHEY SINGH *v* INDURJEET KOONWAR 6 W R 1

——— s 142A

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL

I. L. R., 14 All 356

——— ss 146 153 (1859 ss 139, 144)

See CASES UNDER ISSUES

——— ss 154 155 (1859 s 145)

1 ——— Power of Sitting Judge —*Practice* —When the issues are framed and the plaintiff and defendant are ready and willing to proceed the sitting Judge has power under s 145 to proceed to the hearing and final disposal of the case ANONYMOUS 1 Ind Jur, O S 14

2 ——— Procedure where day is fixed for settlement of issues —When a day is fixed for the settlement of issues in a case the Court ought not to proceed to dispose finally of the case except with reference to the specific circumstances detailed in s 145 Act VIII of 1859 JEEAWAN *v* GOOLAB KHAN

1 N W 97 Ed 1873 147

3 ——— Adjournment of case —*Necessity of further evidence* —Although a case may have been set down for final disposal if it be a case in which further evidence is required the Judge is bound under s. 145 Act VIII of 1859 to adjourn the case unless he is satisfied that the plaintiff has without sufficient cause failed to produce his evidence AMEER ALI *v* RAM BAHADOOR SINGH

7 W R., 84

4 ——— *Disposal of suit at first hearing* —A Judge cannot dispose of a suit at the first hearing if a party appears and objects to the adoption of that procedure KRISNADHUPATI *v* RAMAMURTI I L R. 16 Mad. 198

5 ——— Non production of evidence at proper time —The great object of the Procedure Code in requiring a day to be fixed for the hearing of a case and all the evidence to be adduced on that day is that parties may thus be confronted with each other and the whole evidence on either side be at one and the same time before the Court Where a party fails to produce his documents at the proper time a Court commits no error in law in refusing to send for them subsequently if not satisfied that they are necessary for the ends of justice BOBBEE JHA *v* SHOSHEENATH JHA

15 W R. 150

1. ——— s. 156 (1859 s. 148)—Adjournment of case—*Sufficient cause—Suit not fixed for hearing* —Without defining what is the right mode of exercising the discretion vested in the Judge with regard to adjournments the High Court held that the Judge ought under s. 146 of the Code, to have granted an adjournment in this case when it was applied for on the first day after the Judge's return to the district that the applicant really had an opportunity of appearing before the Judge in order to enable the applicant to file his documents and produce his witnesses s 147 Act VIII of 1859 not applying to a case where no day has been fixed for the hearing of the case SEETA RAM SAHOO *v* GOLAM SAHOO BAHADUR

18 W R. 325

2 ——— *Ground for adjournment—Medical certificate* —Where defendant had known for some time previously that his case was coming on and what evidence was necessary a medical certificate to the effect that he was confined to his bed by lumbago was held to be no sufficient ground for adjournment ELIAS *v* JORAWAR MULL

24 W R. 202

3 ——— and s 157—*Application for restoration of suit—Adjournment—Civil Procedure Code (Act XIV of 1882) ss 156 157 102 103—Semble*—Ss 156 and 157 of the Civil Procedure Code do not apply to an adjournment which is not made at the instance of the parties but which is necessitated by the rules of Court which regulate the disposition of its own business TOOLSY MONEY DASSEE *v* PROSAD MONEY DASSEE 2 C W N, 490

——— s 157

See 108 I. L. R., 21 Calc 269
I L R. 23 Calc. 738
I. L. R. 20 Bom, 380
2 C W N 693

——— ss 157 158

See APPEAL—DEFAULT IN APPEARANCE
I L R. 10 Mad. 270
I. L. R. 20 Bom 736
I. L. R. 19 All. 355

——— s 158 (1859, s 148)

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS
I. L. R. 13 Mad. 510
I. L. R. 15 All. 49
I. L. R. 18 Mad. 131 466

1. ——— Remand by Appellate Court.—The terms of s. 148 Act VIII of 1859 do not prevent an Appellate Court on good and sufficient cause shown from remanding a case disposed of thereunder in order that justice may be done between the parties. LOCHUN MUNDUL *v* WUZEER PARAMANICK 13 W R. 464

2. ——— *Fresh evidence* —When a case is remanded by an Appellate Court under s. 148 Act VIII of 1859 with a direction that it shall be proceeded with the Court of first instance has no authority to receive new evidence nor the lower Appellate Court to decide thereupon PADMA LOCHUN *v* SIRDAR KHAN 3 B. L. R. Ap. 91

S C PUDDO LOCHUN *v* SIRDAR KHAN

12 W R., 23

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

3. ———————— *Dismissal of suit for insufficient Court fee on plaint*—The Court of first instance being of opinion that the plaint bore an insufficient Court fee and the plaintiff not making good the deficiency dismissed the suit after recording evidence but without entering into the merits. On appeal the lower Appellate Court held that the Court fee was sufficient and remanded the case for trial on the merits. *Held* that s. 158 of the Civil Procedure Code was not applicable to the case MUHAMMAD SADIK *v* MUHAMMAD JAN

[I. L. R. 11 All. 91

4. ———————— Adjournment for final disposal—*Dismissal of suit after adjournment—Non-appearance of plaintiff*—In a suit issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal On that date plaintiff did not appear and the suit was dismissed under s. 148 of Act VIII of 1859 *Held* that, as this was not a case which had been adjourned in favour of either party to enable him to produce his proofs or cause the attendance of his witnesses the order was not one which could properly be made IYALL *v* SHERMAN I. L. R. 1 Mad 287

5 ———————— Dismissal of suit after adjournment.—The first hearing of a suit took place on the 16th November when issues were settled and the final hearing of the suit was fixed for the 22nd January following On the 22nd of January the plaintiff changed her vakil and applied by the new vakil for a summons for a witness and on the 23rd, the new vakil stating that owing to the absence of his witnesses he was not prepared to go on with the case the Judge dismissed the suit *Held* that under s. 148 of the Civil Procedure Code the Judge was justified in dismissing the suit COMALAMMAL *v* RANGASAWMY IYENGAR

[4 Mad. 56

6 ———————— The first hearing of a suit was fixed for the 10th July 1867 Neither of the parties nor their vakils appeared. Thereupon the Court dismissed the suit under s 148 of the Civil Procedure Code but afterwards upon the application of the plaintiff's vakil restored it to the file for hearing under s 119 Plaintiff obtained further adjournments to produce witnesses the last being an adjournment to the 28th September On that day the vakils of both parties appeared but no witnesses and the Court again dismissed the suit under s 148 for failure to produce witnesses On the 22nd of October the suit was again under s 119 restored to the file on the application of the plaintiff's vakil and a decision was afterwards come to for the plaintiff upon the merits On appeal the last mentioned decree was reversed and the decree passed under s 148 (whether the first or second decree was not specified) upheld upon the ground that as s 119 was inapplicable to a decree passed under s 148 the Court of first instance had acted without jurisdiction in restoring the suit to the file *Held* on special appeal reversing the decision of the lower Appellate Court that the first decree of dismissal being a decree which might have been made under s. 147 was one to which s 119 might be applied That the second decree of dismissal was one to which s 148 alone applied consequently one subject only to review or to an appeal and the proceeding had in October 1867 being substantially an application for review was one which the Court had power to grant AMBALAVANA PADEIYATCHI *v* SABRAMANIA PADEIYATCHI 6 Mad. 262

7 ———————— *Application for succession certificate—Order for costs of adjournment against opposing party—Effect of non compliance with such order*—A widow applied for a succession certificate to her late husband The application was opposed by his brother who claimed to have been undivided from him The matter came on for hearing but was adjourned on his application he being ordered to pay the costs He failed to pay the costs and the certificate was issued to the widow *Held* that s 158 of the Civil Procedure Code was inapplicable to the case in the absence of a specific order making the payment of costs a condition precedent to the hearing of the evidence of the party in default VIRABHADRAPPA CHETTI *v* CHINNAMMA I. L. R. 21 Mad. 403

8 ———————— Refusal to allow examination of defendant as a witness—*Dismissal in default of other evidence*—The Court of first instance refused to grant plaintiff's application to be allowed to examine second defendant as a witness on her behalf thinking the grounds of such application insufficient for the exercise of its discretion under s. 162 of the Civil Procedure Code On the adjourned date of hearing plaintiff failed to produce any other witness and the suit was dismissed under s 148 On regular appeal the Civil Judge considered that the Court of first instance ought not to have refused plaintiff's application but held that the refusal was a final order not open to question in appeal On special appeal—*Held* that the Civil Judge was wrong on the latter point; that if the plaintiff had been prevented from examining the second defendant on sufficient grounds she had not committed default under s 148; that the decree on the finding of the Civil Court was not maintainable without enabling plaintiff to examine second defendant and that that finding was conclusive in the special appeal The decrees of both the lower Courts were consequently set aside and the case remanded LATCHMANA RAU SAIB *v* ROGUNATHA RAU

[6 Mad. 299

9 ———————— Dismissal of suit for non attendance of witnesses—The plaintiff upon whose application the Court of first instance adjourned the hearing of the suit failed to cause the attendance of his witnesses on the day fixed for the further hearing and the Court of first instance threw out the suit stating that it did so under s. 110 Act VIII of 1859 Both parties to the suit were represented on that day by their pleaders The Court of first instance subsequently entertained and rejected an application under s 119 for a re hearing The lower Appellate Court admitted and allowed an appeal against the order of the Court of first instance

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

Both the orders of the lower Courts were reversed it being held that the Court of first instance must be regarded as having acted under s 148 of the Code KASHEE PERSHAD v DEBI DAS 7 N W, 77

10 ———— Adjournment for process to enforce attendance of witnesses — Where adjournments are made by a Court in order to give effect to its processes for compelling the attendance of the witnesses being thus made as much on its own motion at the instance of the defendant as at the instance of the plaintiff the case cannot be said to come under Act VIII of 1859 s 148 which contemplates a case where a party has obtained time to produce his witnesses and has failed to do so PEAREE MOHUN BERA v SHAMA CHURN MITTEE [19 W R 34

———— s 159 (1859, s 149)

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES

[3 C L R 569
I L R 9 Bom 308
I L R 15 Bom 86
I L R 16 All 218

———— s 168 (1859 s 159)

See CASES UNDER WITNESS—CIVIL CASES—DEFAULTING WITNESSES

———— ss. 174 175 (1859 s 168)

See CASES UNDER WITNESS—CIVIL CASES—DEFAULTING WITNESSES

1 ———— s 177 (1859 ss 126 170)—Order of Court requiring party to attend Disobedience to—*Subsequent decree in his favour* —The plaintiff was ordered to attend and give evidence under s. 170 Act VIII of 1859 but failed to do so The Court however being satisfied with the evidence in support of his case gave a decree in his favour *Held* that the decree was valid. BISSONAUTH MOJOOMDHUR v KHETTUR CHUNDER SEN Marsh. 467

2 ———— Defendant bonâ fide requiring evidence of plaintiff—*Non attendance of plaintiff* —A defendant who *bonâ fide* and for a substantial reason requires the evidence of the plaintiff to be taken ought not in ordinary circumstances to have a decree made against him until that evidence has been given ROY DHUNPUT SINGH v PREM BIBEE 24 W R, 72

3 ———— Appearance of some of several plaintiffs —S 170 Act VIII of 1859 authorized dismissal for default only against the plaintiff who failed or refused to attend not against the plaintiffs who appeared. PROSUNNO COOMAR SHAHA v GOORCO PERSHAD ROY 1 W R 25
BINODE RAM SEIN v BROHMO MOYEE DEBIA [1 W R 168

4 ———— Claim barred by limitation—*Defendant not appearing* —S 170 Act VIII of 1859 was not intended to empower a Court to decree a claim which on the face of it is barred by limitation simply because the defendants had been summoned and did not appear DOORGA DUTT SINGH v KALIKA SOOKUL GIREEDHAREE SINGH v KALIKA SOOKUL 7 W R 46

5 ———— Non attendance of witness —The discretion which a Court had under s 170 of Act VIII of 1859 of passing judgment against a party for non compliance with the Court's order to attend and give evidence or produce documents in a suit was not confined to cases where the party summoning him could not prove his case otherwise than by the evidence of such other party or where the fact to be proved was solely and exclusively within the knowledge of such other party KASHINATH SHAHA v DWARKANATH SIRKAR 9 B L R 215 17 W R 550

ISHAN CHANDRA GHOSE v HARISH CHANDRA BANERJEE [9 B L R 218 note 12 W R 369

6 ———— In a suit for contribution in respect of Government revenue the defendants co sharers were on the application of the plaintiff ordered to attend to give evidence but they failed to appear The Principal Sudder Ameen thereupon dismissed the suit on the ground that as the plaintiff's case had not been established he was not entitled to a decree simply by reason of the defendants failure to enter appearance *Held* the suit should not have been dismissed. In a case where a party summoned to attend as a witness refuses to attend and give evidence and the party who requires the evidence is unable to make out his case without it his suit should not be dismissed for want of proof when the points on which he fails depend upon matters of fact which may reasonably be presumed to be peculiarly in the knowledge of the defaulting parties as for instance in the present case the extent of their own shares and the amount they had paid on account of revenue HEMANGINI DASI v PAMNIDHI KUNDU [1 B L R, S N 10 10 W R, 158

7 ———— Default of defendant to attend—*Examination of parties to the suit* —When a plaintiff alleges that the defendant has a personal knowledge of the matters in dispute and the defendant denies that he has such knowledge the Court before exercising the discretion of decreeing the suit as upon default should be satisfied on evidence as to the existence of such knowledge on the part of the defendant. LALIT NARAIN DEO v BOLAKEE CHOWDHRY W R, 1864, 24

8 ———— Dismissal of suit on plaintiff s non appearance when summoned as witness by defendant.—A Court is not bound to dismiss a case on account of the non appearance of a plaintiff summoned by the defendant to attend as a witness when the defendant did not petition for attachment or other legal process to be made by the Court to compel the plaintiff's appearance BUSTEE NARAIN ROY v SHAM SOONDER NUNDEE 2 W R, Act X 43

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

9 ———— **Applicability to rent suits.**—S 170 was applicable to the procedure in suits under the Bengal Rent Act CHUNDER MOHUN MOJOOMDAR *v* KETOORAM BOSE [4 W R. Act X, 18

SOORUN KHAN *v* HURO PERSHAD PAUL [4 W R., Act X, 50

Also s. 160 SOORUN KHAN *v* HURO PERSHAD PAUL 4 W R., Act X, 50

10 ———— **Failure of defendant to appear**—*Discretion of Court* —S 170 was discretionary Under it the first Court might decide against a defendant, on the ground of his failure to appear even without going into the plaintiff's evidence and the lower Appellate Court was equally within the law in going into the whole case on its merits. GOPAL LAL BOSE *v* KALEENATH MOOKERJEE 5 W R. 89

PAUCHUNDER GHOSE *v* KOYLASH CHUNDER BANERJEE 6 W R., Act X, 86

11 ———— **Wilful default.**—The stringent provisions of s 170 Act VIII of 1859 ought to be applied only in the case of contumacious litigants. DATA HURRUKMAN PYNE *v* OODOY CHAND PYNE 6 W R 247

THAKOOR LALL MISSER *v* BROMOMOYEE DABEE [15 W R 253

But not to plaintiffs on whose part there is no proof of cognizance of the issue of a commission for their examination or no proof of wilful default DATA HURRUKMAN PYNE *v* OODOY CHAND PYNE [6 W R. 247

12 ———— **Defendant as witness for plaintiff refusing to produce documents** —In a suit to recover the balance due on a partnership transaction the first defendant who was examined as a witness for the plaintiff refused to produce certain accounts relating to the partnership which he was directed to produce by the Civil Judge Thereupon judgment was given against the defendant under s 170 of the Code of Civil Procedure On appeal the High Court holding that the accounts were relevant and material evidence in the suit and that the Civil Judge was justified in requiring the first defendant to produce them and being satisfied that the accounts were in possession or control of the first defendant affirmed the judgment of the Civil Judge KATAKAM VENKAIYA *v* BHUPALAM PEDDA MULLABAPPAH 4 Mad 142

13 ———— **Waiver of default by Court** —The provisions of s 170 of the Code of Civil Procedure ought to be exercised with the most temperate discretion Where the Court might have treated one of the defendants as in default and passed judgment against him under the above section but instead of doing so passed over the default and made an order adjourning the further hearing of the suit and on the day to which the hearing was adjourned disposed of the suit under s 170 —*Held* that the Court by its own act was not in a position to treat the defendant as in default UDITAR VASUDAVAN NAMBUDRIPAD *v* KAYAKA KOVILAGATHA VALIA RANY 4 Mad. 231

14 ———— **Order to one plaintiff in suit to attend and give evidence** —The Civil Judge on appeal reversing the decree of the District Munsif dismissed a suit brought by two plaintiffs under s 170 of the Code of Civil Procedure on the ground that the first plaintiff had without lawful excuse failed to comply with the order of the Court requiring his attendance to give evidence There was no order or summons to the first plaintiff to attend to give evidence in this suit but a summons was issued to the plaintiff to attend to give evidence in another suit to which the second plaintiff was no party and which was heard together with this appeal *Held* (reversing the decision of the Sessions Judge) that non compliance with the summons to give evidence in the other appeal was not enough to warrant the exercise of the power in this case S 170 requires that there should be a failure to comply with an order to attend to give evidence in the particular suit ARUNACHELLA MUDALY *v* VENCATACHELLA MUDALY 5 Mad 269

15 ———— **Discretion in enforcing penalty under the section** —In a case which Act VIII of 1859 s 170 is provided to meet the Court ought not to take everything for granted against the party in fault but to require the other party to prove his case so far as he can without the desired evidence to consider well the effect of the default or refusal with reference to the rules of evidence and to hear what evidence the defaulting party adduces before imposing upon him the penalty of default MAHOMED AMIDOOLLA *v* DURBESH SHAIKH 24 W R 314

16 ———— **Non attendance of defendant when cited as a witness** —The non attendance of defendant when cited as a witness to give evidence is not alone sufficient to justify the decision of the suit against him under s 170 of the Civil Procedure Code His absence may be an unfavourable circumstance but the Court will not always be disposed to attach to it such weight as to regard it as justifying a decree in the plaintiff's favour ROOP NARAIN MISSER *v* KASHEE RAM SING TIMBIRAM 2 N W 67

BHALLY MAHOMED BUKSHEE *v* NOBIN CHUNDER ROY CHOWDHRY 15 W R 269

17 ———— **Proceedings in execution of decree** —A Court may avail itself in an execution case of the power given by s 170 Act VIII of 1859 to summon a party to give evidence; and on his failing to comply with that order to pass judgment against him DESHAN HOSEIN *v* KHODIJA [8 W R. 64

18 ———— **Notice to attend Failure to comply with.**—To render a person liable to the penalty prescribed by s 170 Act VIII of 1859 it must be shown that notice had been duly served on him and that he had failed to comply with

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

the requisition contained in that notice GOOROODASS POY *v* GREEDHUR SEIN 11 W R. 110

19 ——————Default of defendant to give evidence —Where a plaintiff has not given any evidence in support of his case he is not entitled to a decree merely on the default of the defendant to give evidence DAMOODUR BHOOSHUN *v* RUGHO NATH PANJA 12 W R. 242

THAKOOR LALL MISSER *v* BROHMO MOYEE DABEE [15 W R 253

20 ——————Default of plaintiff to appear—*Reasons for summoning witness*—In a suit for the right of pre emption on the ground that plaintiff was a shafee khalit defendant who alleged that plaintiff was only a benami shareholder offered to establish his case on the deposition of the plaintiff alone The latter not appearing on summons the suit was decreed against him under s 170 Code of Civil Procedure On this he appealed and the Judge ordered the Munsif to give him further time to appear This was granted and then extended again and again by the Munsif who on the plaintiff failing to appear again gave a decree against him under the same law as before The case was then appealed to the Judge who ordered the case to be tried on its merits remarking that the presence of the plaintiff was not necessary *Held* that as the plaintiff's liability to appear and give evidence had been already determined by a competent Court and never denied by himself he could not take advantage of a technical objection to show that he was not bound to come because the formalities of the law had not been observed or his evidence shown to be necessary JHOOMUCK SINGH *v* JEETUN LALL 12 W R. 359

21. ——————Failure to produce evidence —In a suit by the patnidar for rent due under a dar patni defendant was summoned to produce the dar patni pottah and a bynamah which he had produced on a former occasion in a different suit On his representing that they were lost plaintiff put in a certified copy of the bynamah obtained from the office of the Registrar of Deeds *Held* that as the defendant failed to produce the bynamah or to prove that it was out of his power to do so the Judge might have passed judgment against him at once under s 170 Act VIII of 1859 TARA CHAND BANERJEE *v* BOISTUB CHURN BHUDRO [16 W R. 196

22 ——————Defendant not appearing when summoned by plaintiff —Where the plaintiff gave no evidence at all in support of her case it was held not just to put in force against the defendant who when summoned to appear and give evidence deliberately declined to do so the stringent provisions of s 170 Act VIII of 1859 The exercise of the discretion conferred by that section must be reasonable and judicial ALEH AHMED SAJJADANUSHEEN *v* NUSSEBUN 17 W R. 563

23 ——————Refusal to answer material questions—*Dismissal of suit*—A judgment passed against a plaintiff under s 170 of Act VIII of 1859 was reversed by the High Court in special appeal as there was nothing on the record to show that the party refused to answer any material question relating to the suit KRISHNAJI NIMKAR *v* VISHNU NIMKAR 2 Bom., 360 2nd Ed. 340

24. ——————Discretion of Court to summon party as witness —Where the law allows a discretion to any Court it presumes that such discretion will be soundly and properly exercised and where it is shown that the discretion was not so exercised the omission will be a ground for interference by the superior Court Accordingly the Subordinate Judge's order under s 170 was set aside on the ground that he had not exercised his discretion at all inasmuch as he had ignored the fact that plaintiff had given very substantial reasons for his inability to attend and give evidence when summoned to do so and as the Subordinate Judge had held substantially that there was sufficient evidence to prove plaintiff's claim plaintiff was entitled to a decree his failure to give evidence notwithstanding ISHAN CHUNDER SEN *v* ONATH NATH DEB COWELL *v* ISHAN CHUNDER SEN 18 W R. 16

25 ——————Default of party to appear when summoned as witness—*Willingness to attend—Lawful excuse* —A defendant's saying that he was willing to attend when he did not attend and showed no reason why he could not is no lawful excuse for his non attendance when summoned to attend What is or is not a lawful excuse must depend on the circumstances of each case DOORGA DUTT SINGH *v* JHEENGOOR JHA 18 W R. 63

26 ——————Refusal of applicant for certificate to attend —The appellant having applied to the Judge for a certificate to collect the *debts of one R whose adopted son* he claimed to be referred in evidence to an ikrarnamah of adoption of which he filed a copy procured from the kazi's book alleging that the original had been made away with by an agent who had been bought over by his opponent In the course of re trial of the case on remand *the Judge required the petitioner* to attend for the purpose of examination and as after being warned he did not do so and assigned no good cause for his absence upheld his former decision and rejected the application *Held* that the Judge exercised the powers conferred by s 170 Civil Procedure Code and that it was a proper exercise of discretion to take the course which he did take at that stage of the proceedings. SEETARAM SAHOO *v* SHEO GOLAM SAHOO 19 W R. 183

27 ——————Receipt of order to attend—*Non attendance—Materiality of evidence* —A Court is not justified under either s 1 , or s 170 of Act VIII of 1859 in imposing penal consequences upon a party who fails to appear by passing a verdict against him unless it is clearly made manifest first that he had been ordered or directed to attend and wilfully refused to obey the order or direction ; and secondly that the evidence which he was required to give was really material to the matter in suit *Quære*—Whether the party must be proved by other evidence to have personally received notice of

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

the order before the penal provisions are applied. LAL CHOOKUN DOSWANDI v. BUSJEET TEWAREE [30 W R. 165

See OBHOY CHURN MOOKERJEE v. PEAREE DOSSIA 23 W R. 270

——— s. 179

See RIGHT TO BEGIN 7 C. L R 274
[9 C L R 1
I. L. R. 8 Bom 287
I. L R 9 All. 61
I L. R 12 Bom 454

——— s 191.

See JUDGE—POWER OF JUDGE.
[I. L. R. 8 All. 35 576

——— and s. 198—*Hearing of suit—Power of Judge to deal with evidence taken down by his predecessor*.—A Subordinate Judge having taken all the evidence in a suit before him and having completed the hearing of the suit except for the arguments of counsel on both sides was removed and the case came on for hearing before his successor The new Subordinate Judge took up the case from the point at which it had been left by his predecessor and proceeded to judgment and decree *Held* that the only power given by the Civil Procedure Code in such cases is to allow the evidence taken at the first trial to be used as evidence at the second trial and not to allow the two hearings to be linked together and virtually made one; that the Subordinate Judge should have fixed a day for the entire hearing of the suit before himself and should first have heard the opening statement on behalf of the plaintiff the evidence produced by both sides and the arguments on behalf of both and then finally decided the case which he had himself heard and tried that he might in accordance with the provisions of s 191 of the Civil Procedure Code have allowed the depositions which had been taken before his predecessor to be put in and that in neglecting to take this course and in deciding the case upon materials which were never before him his action was illegal and the judgment and decree were nullities. JAGRAM DAS v. NARAIN LAL I. L. R 7 All., 857

——— s 206

See APPEAL—ORDERS
[I. L. R. 6 Calc 22
I. L. R 7 All 276 411 606
I. L. R., 11 All. 314

See CASES UNDER DECREE—ALTERATION OR AMENDMENT OF DECREE

See LIMITATION ACT 1877 ART 178
[I L. R 4 All. 23
I L. R. 10 Mad. 51
I L. R. 11 Bom. 284
I. L. R. 9 All. 364
I L. R 21 Calc. 259
I. L. R., 17 All., 39

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622
[I L. R. 2 All 276
I L. R., 7 All. 411 875 876
I. L. R. 8 All. 519
I. L. R. 10 Mad. 51
I. L. R. 16 Mad. 424

——— s 209 (XXIII of 1861 s 10)

See CASES UNDER INTEREST OMISSION TO STIPULATE FOR ETC
[I. L R 3 Mad 125
I. L. R 12 Calc. 560

——— s 210 (1859 s 194)

See DECREE—ALTERATION OR AMENDMENT OF DECREE 2 Hay 68 95
[4 Bom A C 77
I L R 2 All. 129 320 649
[I L R 7 Mad 152
I L R 11 Calc 143
I L R 14 Calc 348

See INTEREST OMISSION TO STIPULATE FOR ETC.—CONTRACTS 1 Agra 270
[I L R 3 Bom 202
I. L R 4 Bom 98

See LIMITATION ACT 1877 ART 179—ORDER FOR PAYMENT AT SPECIFIED DATES
[I L R 7 Mad 152
I L R 11 Calc 143
I. L R 14 Calc 348

——— s 212 (1859 s 197)—*Suit and decree for possession—Assessment of mesne profits—Execution of decree*.—Where a decree is made under s 197 of Act VIII of 1859 proceedings taken after the original decree for possession for the purpose of determining the amount of mesne profits are in effect proceedings in continuation of the original suit and until those proceedings are brought to a close and an assessment of the mesne profits come to it cannot be said that a decree for any specific amount of money exists The wording of s 197 is quite consistent with the view that where a decree for possession is given and an enquiry as to the amount of mesne profits is reserved the decree for possession of the land is only a partial decree in the suit and that there is to be a further enquiry and a further decree in respect of mesne profits The words for the execution of the decree refer only to the execution of the decree for the land and cannot refer to execution of that which has not then taken the form of a decree DILDAR HOSSEIN v. MUJEEDUNNISSA
[I. L R 4 Calc 629

See KRISHNAN v. NILAKANDAN
[I. L. R 8 Mad 137

——— s 214.

See CASES UNDER PRE EMPTION

——— s 215A

See APPEAL—DECREES
[I L. R., 18 Mad 73

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— ss 219 220 221 222 (1859 s 187)

See Cases under Costs—Special Cases

——— s 223 (1859 ss 285 286)

See Cases under Execution of Decree—Transfer of Decree for Execution etc

——— s 224 (1859 s 285) cl (c)—*Meaning of the words a copy of any order for the execution of the decree* —The words a copy of any order for the execution of the decree in s 224 cl (c) of the Code of Civil Procedure (Act XIV of 188-) mean a copy of any subsisting order HATHIBHAI NAHANSA v PATEL BECHAR IRAOJI

[I L R, 13 Bom 371

——— s 229 (1859, s 284)

See Cases under Execution of Decree—Transfer of Decree for Execution etc

——— Cooch Behar—*Court of the Dewan Ahilkar—Jurisdiction* —It not being shown that the Court of Dewan Ahilkar of Cooch Behar is a Court within the British territories or a Court established by the Governor General in a foreign State—*Held* the Judge of Rajshahye had no jurisdiction under s 284 Act VIII of 1859 to execute a decree of that Court JADAB CHANDRA TOI PARAMANIK v DINANATH DAS

[4 B L R A C, 134 13 W R 154

——— ss 229A 229B

See Execution of Decree—Decrees of Courts of Native States

[I L R 15 Bom 218

——— ss 230 and 231 (1859 s 207)

See Execution of Decree—Application for Execution and Powers of Courts

[I L R, 12 Bom 400
I L R 17 Calc 631

See Cases under Execution of Decree—Joint Decrees, Execution of and Liability under

See Cases under Limitation Act 1877 art 179 (1871 s 167 1859 s. 20)—Joint Decrees

See Limitation Act 1877 art 180

[I L R 6 Calc 504
I L R 6 Bom., 258
I L R 7 Mad. 540
I L R 20 Calc 551
I L R., 22 Calc 921
I L R., 24 Calc 244

1 ——— Application of section. S 230 does not apply to decrees made by the High Court. MAYABHAI v TRIBHUVANDAS

[I L R, 6 Bom., 258

2 ——— Effect of section—*Decree of High Court—Revivor—Limitation Act 1877 art 179*—S 230 of the Code of Civil Procedure 188- does not affect the period of limitation prescribed by art 180 of sch II of the Limitation Act 1877 GANAPATHI v BALASUNDARA

[I L R 7 Mad., 540

3 ——— Date of the passing of the Code—*Date of its coming into force* —The date referred to in the last paragraph of s 230 of the Civil Procedure Code (Act X of 1877) as the date of the passing of that Act held to be the 30th March 1877 the date when that Act received the assent of the Governor General and not the 1st October 1877 the date of the coming into force of that Act. DAMODAR DAS HARI DAS v UTTAMCHAND SATIACHAND

I L R 7 Bom, 214

4 ——— Law in force immediately before passing of the Code—*Civil Procedure Code, 1877, as amended by Act XII of 1879—Execution of decree—Limitation* —In the last paragraph of s 230 of the Code of Civil Procedure Act XIV of 1882 the words the law in force immediately before the passing of this Code refer to and include Act X of 1877 as amended by Act XII of 1879 *Musharraf Begam v Ghalib Ali I L R 6 All 189* dissented from GOLUCK CHANDRA MITTER v HARAPRIAH DEBI

I L R. 12 Calc 559

5 ——— *Limitation—Twelve years rule prior to that Code—Civil Procedure Code (Act X of 1877)* —In s 230 of the Code of Civil Procedure 188- the words law in force include the Civil Procedure Code 1877 as well as the Limitation Act then in force *Held* therefore where an application for execution of a decree of 187- had been made and granted in January 1882 and under s 230 of the Code of Civil Procedure 1877 further execution became barred before the date on which the Civil Procedure Code 1882 came into force that no application within three years from such date could be granted under s 230 of that Code KOLLU SHETTATI v MANJAYA

[I L R, 9 Mad 454

6 ——— *Execution of decree—Act X of 1877 (Civil Procedure Code) s 230* —The holder of a decree applied for execution under s 230 of Act X of 1877 and the application was granted Within three years after the passing of Act XIV of 1882 by which Act X of 1877 was repealed he applied for the first time under s 230 of the former Act for execution of the decree At the time this application was made more than twelve years had elapsed from the date of the decree *Held* by STRAIGHT BRODHURST and TYRRELL JJ, that the application might be granted it being the first made under s 230 of Act XIV of 1882 and the first made after the expiration of twelve years from the date of the decree and not being barred by the last paragraph of s. 230 of that Act read in conjunction with the third paragraph of s 230 of Act X of 1877 the law in force mentioned in the last paragraph of s. 230 of Act XIV of 1882 referring to the law of limitation in force at the time the Act was passed and not to the third paragraph of s. 230 of Act X of 1877 *Held* by STUART C J and OLDFIELD J, that the application should not be granted the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

effect of the last paragraph of s. 230 of Act XIV of 1882 being to bar any proceedings to enforce a decree under that Act which would have been barred under s. 230 of Act X of 1877 if taken thereunder on the ground that the period of twelve years had elapsed from the dates specified in that section MUSHARRAF BEGUM v. GHALIB ALI I. L. R. 6 All 189

7 ———————— *Revival of barred decrees—Twelve years' old decree—Act X of 1877 (Civil Procedure Code) s. 230*—Where an application was made under s. 230 of the Civil Procedure Code 1877 as amended by Act XII of 1879 for execution of a decree more than twelve years old and the application was granted,—*Held* that a subsequent application for execution of the decree under s. 230 of the Civil Procedure Code 1882 should have been refused since the decree had been once allowed the benefit of the three years' grace under the last paragraph of s. 230 of the Code of 1877 and then became dead or unexecutable *Held* that there is nothing in the Code of 1882 to justify the conclusion that it was intended to revive decrees which had become dead before it became law and that here the decree-holders' right having already become dead before the enactment of the present Code the passing of that Code could not bring that right into existence again *Musharraf Begum* v *Ghalib Ali I L R 6 All 189* distinguished. BHAWANI DAS v. DAULAT RAM [I L R. 6 All, 388

8 ———————— Former application for execution under Act VIII of 1859—An application under Act VIII of 1859 for execution of a decree was rejected by the District Judge on the ground that the judgment creditor had withdrawn from the former application This order was reversed on appeal and the case was sent back for disposal on its merits The Judge then held that Act X of 1877 which had just come into force applied and on the ground that the decree-holder had failed to get execution upon his former application dismissed the petition The Judge referred the case to the High Court upon the question whether he was under the circumstances at liberty to grant the application *Held* that he was The application should have been dealt with under the law which was in force at the time execution was sought The effect of the provisions of s. 230 of Act X of 1877 considered BYRADDI SUBBAREDDI v. DASSUPPA RAJU [I L R 1 Mad., 403

9 ———————— *Effect of striking off execution proceedings—Procedure*—A decree was obtained on the 10th July 1858 and applications to execute it were made in June 1862 and January 1866 The last application prior to the coming into operation of the Civil Procedure Code of 1877 was on the 10th January 1876 This proceeding was struck off The decree holder on the 13th June 1879 again applied for execution the decree was transferred to S for execution where on objection that it was more than twelve years old and therefore barred by s 230 of Act X of 1877 the execution proceedings were again struck off on the 17th January 1880 This order was appealed against and eventually on the 25th April 1881 the application was re admitted In June 1881 an application was made to the S Court for transfer of the case for execution to D which was granted and the case transferred but no steps having been taken by the decree holder in the D Court it was struck off by that Court on the 19th August 1881 On the 4th March 1882 (the judgment debtor having died meanwhile) an application was made to the D Court to restore the proceedings for execution against his representative Notices were issued and the 2nd June was eventually fixed for the hearing On that day no one was present on behalf of the decree-holder (whose pleader had died in the meantime) and the case was again struck off On the 11th July 188 application was made to restore the proceedings, notices were issued and a day fixed for hearing and after numerous adjournments the objections of the judgment-debtor were overruled on the th March 1883 and execution of the decree granted. On appeal the Judge found that the execution proceedings had been continuous throughout and that there had been no unreasonable delay in the prosecution of the execution proceedings. *Held* that execution of the decree was not barred by s 230 of the Code of Civil Procedure BISWA SONAN CHUNDER GOSSYAMY v. BINANDA CHUNDER DIBINGAR ADHIKAR GOSSYAMY I. L. R. 10 Calc 416

10 ———————— The clause of s 230 of Act X of 1877 which prohibits a subsequent application for execution only applies where the previous application has been made under that section and not where such previous application has been made under Act VIII of 1859 ASHOOTOSH DUTT v DOORGA CHURN CHATTERJEE [I. L. R. 6 Calc 504 8 C L. R. 23

11 ———————— *Execution of decree*—*Held* that the words the last preceding application in the third clause of s 230 of Act X of 1877 mean an application under that section and not an application under Act VIII of 1859 RAM KISHEN v. SEDHU I. L. R. 2 All. 275

12 ———————— Former application for execution under Act X of 1877—*Execution of decree—Twelve years old decree—Statutes Construction of—General words—Retrospective effect*—The holder of a decree bearing date the 15th June 1872 applied for execution thereof on the 9th February 1885 the previous application being dated the 27th November 1883 *Held* that the application for execution was not barred by s 230 of the Civil Procedure Code *Musharraf Begum v. Ghalib Ali I L R 6 All 189* followed *Goluck Chandra Mytee* v *Harapriah Debi I L R 12 Calc 509* *Bhawani Das* v *Daulat Ram I L R 6 All 388* and *Sreenath Gooho* v *Yusoof Khan I L R 7 Calc 556* referred to *Tufail Ahmad* v *Sadhu Saran Singh Weekly Notes All 1885 p 193* discussed and dissented from by MAHMOOD J *Per* MAHMOOD J—The rule of construction being that a limited meaning can only be given to general words in a statute where the statute itself justifies such limitation the words any decree in the proviso to s 230 of the Civil Procedure Code must not be

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— ss 219 220 221 222 (1859 s 187)

See CASES UNDER COSTS—SPECIAL CASES

——— s 223 (1859 ss 285 286)

See CASES UNDER EXECUTION OF DECREE —TRANSFER OF DECREE FOR EXECUTION ETC

——— s 224 (1859 s 285) cl (c)—*Meaning of the words a copy of any order for the execution of the decree* —The words a copy of any order for the execution of the decree in s 224 cl (c) of the Code of Civil Procedure (Act XIV of 1882) mean a copy of any subsisting order HATHIBHAI NAHANSA v PATEL BECHAR PRAGJI

[I L R 13 Bom 371

——— s 229 (1859 s 284)

See CASES UNDER EXECUTION OF DECREE —TRANSFER OF DECREE FOR EXECUTION ETC

——— Cooch Behar—*Court of the Dewan Ahilkar—Jurisdiction* —It not being shown that the Court of Dewan Ahilkar of Cooch Behar is a Court within the British territories or a Court established by the Governor General in a foreign State —*Held* the Judge of Rajshahye had no jurisdiction under s 284 Act VIII of 1859 to execute a decree of that Court JADAB CHANDRA TOI PARAMANIK v DINANATH DAS

[4 B L R A C 134 13 W R 154

——— ss 229A 229B

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES

[I L R 15 Bom 216

——— ss 230 and 231 (1859 s 207)

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURTS

[I L R, 12 Bom 400
I L R 17 Calc 631

See CASES UNDER EXECUTION OF DECREE —JOINT DECREES EXECUTION OF AND LIABILITY UNDER

See CASES UNDER LIMITATION ACT 1877, ART 179 (1871 s 167; 1859 s. 20)—JOINT DECREES

See LIMITATION ACT 1877 ART 180

[I L R 6 Calc. 504
I L R 6 Bom., 258
I L R 7 Mad. 540
I L R., 20 Calc 551
I L R., 22 Calc., 921
I L R 24 Calc 244

1. ——— Application of section S 230 does not apply to decrees made by the High Court MAYABHAI v TRIBHUVANDAS

[I L R 6 Bom 258

2. ——— Effect of section—*Decree of High Court—Period—Limitation Act 1877 art 180* —S 230 of the Code of Civil Procedure 1882 does not affect the period of limitation prescribed by art 180 of sch. II of the Limitation Act 1877 GANAPATHI v BALASUNDARA

[I L R, 7 Mad. 540

3. ——— Date of the passing of the Code—*Date of its coming into force* —The date referred to in the last paragraph of s 230 of the Civil Procedure Code (Act X of 1877) as the date of the passing of that Act held to be the 30th March 1877 the date when that Act received the assent of the Governor General and not the 1st October 1877 the date of the coming into force of that Act. DAMODAR DAS HARI DAS v UTTAMCHAND SATIACHAND

I L R 7 Bom, 214

4. ——— Law in force immediately before passing of the Code—*Civil Procedure Code 1877 as amended by Act XII of 1879—Execution of decree—Limitation* —In the last paragraph of s 230 of the Code of Civil Procedure Act XIV of 1882 the words the law in force immediately before the passing of this Code' refer to and include Act X of 1877 as amended by Act XII of 1879 *Musharraf Begum v Ghalib Ali I L R 6 All 189* dissented from GOLUCK CHANDRA MYTEE v HARAPRIAH DEBI

I L R 12 Calc 559

5. ——— *Limitation—Twelve years rule prior to that Code—Civil Procedure Code (Act X of 1877)* —In s 230 of the Code of Civil Procedure 1882 the words law in force include the Civil Procedure Code 1877 as well as the Limitation Act then in force *Held* therefore where an application for execution of a decree of 1872 had been made and granted in January 1882 and under s 230 of the Code of Civil Procedure 1877 further execution became barred before the date on which the Civil Procedure Code 1882 came into force that no application within three years from such date could be granted under s 230 of that Code KOLLU SHETTAII v MANJAYA

[I L R 9 Mad 454

6. ——— *Execution of decree—Act X of 1877 (Civil Procedure Code) s 230* —The holder of a decree applied for execution under s 230 of Act X of 1877 and the application was granted Within three years after the passing of Act XIV of 1882 by which Act X of 1877 was repealed he applied for the first time under s. 230 of the former Act for execution of the decree At the time this application was made more than twelve years had elapsed from the date of the decree *Held* by STRAIGHT BRODHURST and TYRRELL JJ., that the application might be granted it being the first made under s. 230 of Act XIV of 1882 and the first made after the expiration of twelve years from the date of the decree and not being barred by the last paragraph of s. 230 of that Act read in conjunction with the third paragraph of s 230 of Act X of 1877 the law in force mentioned in the last paragraph of s. 230 of Act XIV of 1882 referring to the law of limitation in force at the time the Act was passed and not to the third paragraph of s. 230 of Act X of 1877 *Held* by STUART C.J and OLDFIELD J that the application should not be granted the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

effect of the last paragraph of s. 230 of Act XIV of 1882 being to bar any proceedings to enforce a decree under that Act which would have been barred under s. 230 of Act X of 1877 if taken thereunder on the ground that the period of twelve years had elapsed from the dates specified in that section MUSHARRAF BEGUM v GHALIB ALI I. L. R. 6 All 189

7 ——————— *Revival of barred decrees—Twelve years' old decree—Act X of 1877 (Civil Procedure Code) s 230*—Where an application was made under s 230 of the Civil Procedure Code 1877 as amended by Act XII of 1879 for execution of a decree more than twelve years old and the application was granted—*Held* that a subsequent application for execution of the decree under s. 230 of the Civil Procedure Code 1882 should have been refused since the decree had been once allowed the benefit of the three years' grace under the last paragraph of s 230 of the Code of 1877 and then became dead or unexecutable *Held* that there is nothing in the Code of 1882 to justify the conclusion that it was intended to revive decrees which had become dead before it became law and that here the decree-holders right having already become dead before the enactment of the present Code the passing of that Code could not bring that right into existence again *Musharraf Begum* v *Ghalib Ali I L R 6 All 189* distinguished. BHAWANI DAS v DAULAT RAM [I L R. 6 All, 388

8 ——————— Former application for execution under Act VIII of 1859—An application under Act VIII of 1859 for execution of a decree was rejected by the District Judge on the ground that the judgment creditor had withdrawn from the former application This order was reversed on appeal and the case was sent back for disposal on its merits The Judge then held that Act X of 1877 which had just come into force applied and on the ground that the decree-holder had failed to get execution upon his former application dismissed the petition The Judge referred the case to the High Court upon the question whether he was under the circumstances at liberty to grant the application *Held* that he was The application should have been dealt with under the law which was in force at the time execution was sought The effect of the provisions of s 230 of Act X of 1877 considered BYRADDI SUBBAREDDI v DASSUPPA RAJU [I. L. R 1 Mad. 403

9 ——————— *Effect of striking off execution proceedings—Procedure*—A decree was obtained on the 10th July 1858 and applications to execute it were made in June 1862 and January 1866 The last application prior to the coming into operation of the Civil Procedure Code of 1877 was on the 10th January 1876 This proceeding was struck off The decree holder on the 13th June 1879 again applied for execution the decree was transferred to S for execution where on objection that it was more than twelve years old and therefore barred by s 230 of Act X of 1877 the execution proceedings were again struck off on the 17th January 1880 This order was appealed against and eventually on the 2 th April 1881 the application was re admitted In June 1881 an application was made to the *S* Court for transfer of the case for execution to *D* which was granted and the case transferred but no steps having been taken by the decree holder in the *D* Court it was struck off by that Court on the 19th August 1881 On the 4th March 1882 (the judgment debtor having died meanwhile) an application was made to the *D* Court to restore the proceedings for execution against his representative Notices were issued and the 2nd June was eventually fixed for the hearing On that day no one was present on behalf of the decree-holder (whose pleader had died in the meantime) and the case was again struck off. On the 11th July 1882 application was made to restore the proceedings, notices were issued and a day fixed for hearing and after numerous adjournments the objections of the judgment debtor were overruled on the 5th March 1883 and execution of the decree granted. On appeal the Judge found that the execution proceedings had been continuous throughout and that there had been no unreasonable delay in the prosecution of the execution proceedings. *Held* that execution of the decree was not barred by s 230 of the Code of Civil Procedure BISWA SONAN CHUNDER GOSSYAMY v BINANDA CHUNDER DIBINGAR ADHIKAR GOSYAMY I. L. R. 10 Calc 416

10 ——————— The clause of s 230 of Act X of 1877 which prohibits a subsequent application for execution only applies where the previous application has been made under that section and not where such previous application has been made under Act VIII of 1859 ASHOOTOSH DUTT v DOORGA CHURN CHATTERJEE [I. L. R. 6 Calc. 504 8 C L R 23

11. ——————— *Execution of decree*—*Held* that the words the last preceding application in the third clause of s 230 of Act X of 1877 mean an application under that section and not an application under Act VIII of 1859 RAM KISHEN v SEDHU I. L. R. 2 All. 275

12 ——————— Former application for execution under Act X of 1877—*Execution of decree—Twelve years old decree—Statutes Construction of—General words—Retrospective effect*—The holder of a decree bearing date the 15th June 1872 applied for execution thereof on the 9th February 1885 the previous application being dated the 27th November 1883 *Held* that the application for execution was not barred by s 230 of the Civil Procedure Code *Musharraf Begum* v *Ghalib Ali I L R 6 All 189* followed *Goluck Chandra Mytee* v *Harapriah Debi I L R 12 Calc 509 Bhawani Das* v *Daulat Ram I L R 6 All 388* and *Sreenath Gooho* v *Yusoof Khan I L R 7 Calc 556* referred to *Tufail Ahmad* v *Sadhu Saran Singh Weekly Notes All 1885 p 193* discussed and dissented from by MAHMOOD J *Per* MAHMOOD J—The rule of construction being that a limited meaning can only be given to general words in a statute where the statute itself justifies such limitation the words any decree in the proviso to s 230 of the Civil Procedure Code must not be

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construed as confined to such decrees as would be barred on the date of the Code coming into force inasmuch as no reason for so restricting the meaning of those words can be found in the Code or is suggested by the legislative policy upon which clauses such as the proviso in question are based This policy is to prevent a sudden disturbance of existing rights in consequence of new legislation but it is beyond its object and scope to revive rights or remedies which have already expired before the new Act comes into operation, and although the Legislature may *revive such rights or remedies* it can only do so by express words to that effect JOKHU RAM v RAM DIN I. L. R. 8 All. 419

13 ——— Decree for payment of money —*Decree for sale of hypothecated property in a suit on a mortgage*—A decree for sale of hypothecated property made in a suit for sale upon a mortgage bond is not a decree for the payment of money within the meaning of s 230 of Act XIV of 1882 *Fateh Chand* v *Muhammad Bakhsh I L R 16 All 259* distinguished RAM CHARAN BHAGAT v SHEOBARAT RAI [I. L. R., 16 All., 416

14. ——— *Decree for sale of hypothecated property which also made the defendant personally liable in case of insufficiency —Mortgage decree*—A decree which directs the realization of the decretal amount from the hypothecated property and if insufficient makes the defendant remain personally liable is a mortgage decree and not a decree for the payment of money within the meaning of s 230 of the Code of Civil Procedure *Ram Charan Bhagat* v *Sheobarat Rai I L R 16 All 418* followed. *Hart* v *Tara Prasanna Mukherjee I L R 11 Calc 718* distinguished *Jogemaya Dasi* v *Thackomoni Dasi I L R 24 Calc 473* referred to FAZIL HOWLADAR v KRISHNA BUNDHOO ROY I. L. R. 25 Calc. 580 [2 C W N 118

15 ——— *Decree for sale of mortgaged property making the defendant personally liable in case of insufficiency—Mortgage decree—Limitation Act (XV of 1877) sch II art 179 cl 4—Step in aid of execution—Application for time—Application to review the order striking off the execution case and to restore it to file*—A decree which directs the realization of the decretal amount by sale in the first instance of the mortgaged properties and afterwards from the persons and other properties of the defendants, is a mortgage decree and not a decree for the payment of money" within the meaning of s 230 of the Civil Procedure Code *Ram Charan Bhagat* v *Sheobarat Rai I L R 16 All 418* and *Fazil Howladar* v *Krishna Bundhoo Roy I L R 25 Calc 580* referred to and followed *Kommach Kather* v *Pakki I L R 20 Mad 107* dissented from. *Futee Bibi* v *Chutterdharee Chowdhry 14 W R 209 1 B L R 315 note* and *Purmessree Dosee* v *Sab Chunder Tarua 21 W R 303* distinguished KARTICK NATH PANDEY v JUGGERNATH RAM MARWARI I. L. R., 27 Calc., 285

16 ——— *Hypothecation decree—Construction of document*—A decree was passed on the 5th March 1881 based on a compromise between the parties The decree was for the payment of certain sums of money by instalments and further went on to declare that The property in the bond remains *hypothecated as before* The defendant have no power to transfer it If any other person brings to sale the hypothecated property in satisfaction of the debt due by the defendants the plaintiff shall have power to take out execution of the decree without waiting for the instalments and to cause the hypothecated property to be sold by auction *Held* that this was not a simple decree for the payment of money such as would come within the purview of s 230 of the Code of Civil Procedure *Janki Prasad* v *Baldeo Narain I L R 3 All 216* distinguished *Chandra Nath Dey* v *Burroda Shoondury Ghose I L R 22 Calc 813* and *Lal Behary Singh* v *Habibur Rahman I L R 26 Calc 166* referred to PAHALWAN SINGH v NARAIN DAS I. L. R. 22 All., 401

17 ——— Due diligence in execution—*Execution of decree—Limitation*—The concluding clause of s 230 of Act X of 1877 refers to the question of limitation not that of due diligence Where therefore the decree-holder had not on the last preceding application under s. 230 of Act X of 1877 used due diligence to procure complete satisfaction of the decree and Act X of 1877 had not been in *force three years*—*Held* that the *provisions of the* third clause of s 230 of Act X of 1877 were applicable to a subsequent application under that section SOHAN LAL v KARIM BAKHSH [I. L. R 2 All. 281

18 ——— Application for execution not made under the Civil Procedure Code 1882—*Decree—Application for execution —Limitation*—On the 1st June 1880 several decree holders applied to the Subordinate Civil Court of Tarner for execution of their decrees They had taken out execution several times previously the date of their last preceding applications being 1st June 1877 The Subordinate Judge was of opinion that the applications were barred under the last clause of s. 230 of the Civil Procedure Code Act X of 1877 On his referring the cases to the High Court —*Held* that the applications were not barred inasmuch as the previous applications for execution had not been made under s. 230 of Act X of 1877 that Act not being then in force ANANDRAV CHIMUJI v THAKAR CHAND I. L. R. 5 Bom., 245

19 ——— On the 3rd June 1879 an application was made for execution of a decree passed in 1866 and upon that application certain property was attached On the 23rd October following the proceedings were struck off an order however being made at the same time that the attachment should continue On the 31st December 1880 *the decree holder* applied that the property under attachment should be sold The last preceding application for execution previous to the 3rd

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June 1874 was made on the 8th August 1877 It was objected that the proceedings upon the applications of the 31st December 1880 and 3rd June 1879 were barred under s 230 of the Code of Civil Procedure *Held* that these proceedings were not barred inasmuch as the previous application had not been made under s 230 of the Code *Anandrav Chimnaji Arat v. Thaker Chand I L R 5 Bom 245* followed. *Held* also that the application of 3rd December 1880 could not be treated as a fresh application for execution within the meaning of the third paragraph of the section referred to. LANAEL HUQ v. KISHEN MUN DABEE 9 C L R 397

20 ———— Application for execution of decree—*Limitation*—R N and others obtained a simple money decree against R S and another on the 24th of February 1881 On the 2nd of May 1892 previous applications for execution having been unsuccessful the decree-holders made an application for execution in consequence of which certain property of the judgment-debtors was attached. That application was subsequently struck off by the Court the attachment being maintained On the 7th of March 1893 a further application for execution was made *Held* that whether the application of the 7th of March 1893 was or was not merely a continuation of the former application of the 2nd of May 1892 execution of the decree was barred by the rule prescribed by s 230 of the Code of Civil Procedure RAM NEWAZ v. RAM CHARAN [I. L. R. 18 All. 49

21. ———— Granting of application for execution of decree —An application for execution of a decree which was more than twelve years old having been made on the 14th August 1880 under s 230 of the Code of Civil Procedure an order was made for the attachment of the moveable property of the judgment debtor No moveable property having been found the Court was asked to attach his immoveable property but refusing to do so struck off the proceedings The application for execution having been renewed on the 13th September 1880 it was held that the former application for execution must be treated as having been granted within the meaning of s 230 of the Code and consequently that the further application was barred under that section the decree being more than twelve years old AFRANNESSA CHOWDHRANI v. SHAHAFUTULLAH CHOWDHRY 9 C L R. 321

22 ———— *Issue of notice to debtor* —Where an application to execute a decree of 1862 was made under s 230 of the Code of Civil Procedure 1877 on the 14th of December 1877 and a notice was issued to the judgment debtor under s 248 but no further steps were taken —*Held* that a subsequent application made within three years from that date was not affected by the twelve years rule as the last preceding application had not been granted within the meaning of s 230 CHENGAYA v. APPASAMI AYYAR I. L. R. 6 Mad. 172

23 ———— *Transfer of decree—Due diligence* —The transferee of a decree applied while an application by the original holder of such decree to execute it was pending to be allowed to execute it The Court in accordance with s. 232 of Act X of 1877 directed notice of the transferee's application to be given to the transferor and the judgment debtor The transferee failed to pay the Court fee leviable for the issue of such notice and the Court dismissed his application The transferee subsequently made a second application to be allowed to execute the decree *Held* that such application could not be rejected with reference to s 230 of Act X of 1877 on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree because such application had not been granted and therefore the question whether on the last preceding application due diligence was used to procure such satisfaction did not arise SADIK ALI KHAN v. MUHAMMAD HUSAIN KHAN [I. L. R. 2 All 384

24 ———— *Passing of the Act—Meaning of the expression "granted" in s 230* —Under s 230 of Act X of 1877 an application for execution is said to be "granted" when it is made regularly and formally The expression "granted" is equivalent to the expression "admitted" as used in s 245 Where therefore an application for execution under s 230 of Act X of 1877 is not "granted" a subsequent regular and formal application under the same section may be allowed if made within time DEWAN ALI v. SOROSIBALA DABEE I. L. R 8 Calc 297 10 C L R 111

25 ———— *Meaning of granted* —Under s 230 of the Civil Procedure Code after a decree is twelve years old there is a prohibition against its being executed more than once —*i e* an application for execution should not be granted if a previous application has been allowed under the provisions of that section The mere filing of a petition with the result that the application contained in it is subsequently struck off is not granting an application within the meaning of s 230 of the Code and ss 245 248 and 249 show that there is a broad distinction between admitting an application for the purpose of issuing notice to the other side and of hearing the objections that may be urged and a decision of the Court as provided in s 249 In 1865 a decree was passed for a sum of money payable by yearly instalments for a period of sixteen years Down to March 1877 various amounts were paid on account of the decree In that month an application was made for execution of the decree the result being an arrangement for liquidation of the amount then due which was confirmed by the Court A second application for execution was made on the 9th March 1881 the decree then being more than twelve years old All that was done with reference to this application was that notice to appear was issued to the judgment debtor's representatives and subsequently a petition was filed notifying that an arrangement had been effected under which a certain sum had been paid by one of the said representatives in satisfaction of the claim against him and that the other had agreed to pay the balance by

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yearly instalments Upon this the application for execution was struck off On the 5th March 1883 another application for execution was made notice to appear was issued and after this notice a petition was put in intimating that an arrangement had been come to and praying that execution might be postponed whereupon the application was struck off Again on the 31st March 1884 the decree-holder applied once more for execution of the decree *Held* that neither the previous application of the 9th March 1881 nor that of the 5th March 1883 could properly be said to have been granted within the meaning of s 230 of the Civil Procedure Code and, under these circumstances the decree though twelve years old and upwards was not barred by that section and the application for execution should be allowed. PARAGA KUAR *v* BHAGWAN DIN

I. L. R. 8 All. 301

26 ——— *Twelve years old decree—Meaning of granted* —A decree passed in April 1872 was kept alive by various applications for execution up to 1883 In February and December of that year two such applications were made but the proceedings on both occasions terminated in the applications being struck off without any money being realized under the decree In November 1884 the decree-holder again applied for execution the application being the first made after the decree had become twelve years old and being made within three years from the passing of the Civil Procedure Code 1882 *Held* that the application must be entertained in accordance with the ruling of the Full Bench in *Musharraf Begum v Ghalib Ali I L R 6 All 189 Tafazul Ahmad v Sadho Saran Singh Weekly Notes All 1885 p 193* dissented from *Jokhu Ram v Ram Din I L R 8 All 419* referred to *Per* MAHMOOD J that the previous execution-proceedings initiated by the applications of February and December 1883 having terminated in those applications being struck off it could not be said that the applications were granted within the meaning of s 230 of the Civil Procedure Code *Paraga Kuar v Bhagwan Din I L R 8 All 301* referred to RAMADHAR *v* RAM DAYAL

I. L. R. 8 All. 536

27 ——— Application for execution of decree—Limitation—*Subsequent application to execute the same decree— Granted, Meaning of—Civil Procedure Code s 235* —The subsequent application to execute the same decree mentioned in s. 230 of the Code of Civil Procedure means a substantive application for execution in the form prescribed by s. 235 of the Code Hence where an application for execution in accordance with s 235 of the Code has been made within the period of limitation prescribed by s 230 and has been granted that is execution has been ordered in accordance with the prayer of the decree holder's application the right of the decree-holder to obtain execution will not necessarily be defeated if by reason of objections on the part of the judgment debtor or action taken by the Court or other cause for which the decree-holder is not responsible final completion of the proceedings in execution initiated by the application under s 235 above referred to cannot be obtained within the period limited by s 230 Further applications of the decree holder to the Court executing the decree to go on from the point where the execution proceedings had been arrested and complete execution of his decree would be applications merely ancillary to the substantive application under s 235 and would not be obnoxious to the bar of s 230. *Delhi and London Bank v Reilly Weekly Notes All (1893) p 124* overruled RAHIM ALI KHAN *v* PHUL CHAND

I. L. R. 18 All 482

28 ——— *Application to transfer decree for execution—'Granting' application Meaning of—Issue of process* —An application to the Court which passed a decree for a certificate to allow execution to be taken out in another Court is not an application for the execution of the decree within the terms of s 230 of the Code of Civil Procedure The 'granting' of an application under that section includes the issue of process for execution of the decree. NILMONEY SINGH DEO *v* BIRESSUR BANERJEE

I. L. R., 16 Calc. 744

29 ——— *Execution of decree —Limitation.*—The term "application to execute a decree" in the third paragraph of s 230 of the Code of Civil Procedure means any application to execute a decree It is not confined to the last application preceding the expiry of the period of twelve years from either of the points of time mentioned in cl (a) or cl (b) of the same paragraph of the section above mentioned *Paraga Kuar v Bhagwan Din I L R 8 All 301* distinguished *Ramadhar v Ram Dayal I L R 8 All 536* referred to TILESHAR RAI *v.* PARBATI

I. L. R. 15 All 198

30 ——— *Order passed more than twelve years from decree on application passed within time* —The terms of s 230 of the Code of Civil Procedure which provide that no subsequent application to execute the same decree shall be granted after the expiry of twelve years from the date of the decree do not render invalid an order passed after twelve years from the date of a decree granting an application for execution made before the twelve years term had expired SENBA DISAI VENBA JAGATH VIRARAMA DIKKER VIJAYA SETHARAYAR *v* ANNASAMI AYYAR

I. L. R. 6 Mad. 359

31. ——— Second application for execution of decree—*Failure to satisfy decree on first application* —In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X of 1877) certain judgment creditors applied for the attachment and sale of certain specified property belonging to their judgment debtor previous to the date on which the three years allowed for such execution under s. 230 would have expired. Subsequently after the three years had elapsed they filed a fresh application praying that certain other property of their judgment debtor might be attached and sold in lieu of that specified in their former application and that the latter might be released. *Held* that execution of the decree was

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barred by limitation *Per* PRINSEP J—Under s 230 of the Civil Procedure Code it was intended by the Legislature that a decree-holder seeking to execute a decree passed more than twelve years before should have one opportunity to execute that decree and that if he failed to satisfy it on that application any further application becomes barred SREENATH GOOHO *v* YUSOOF KHAN

[I. L. R., 7 Calc., 556 9 C L. R. 334

32. ———— *Decree—Execution—Decree more than twelve years old—Limitation.*—An application for execution of a decree obtained against the judgment-debtor in 1870 was presented by the applicant on the 26th January 1885 Several previous applications for execution had been made and the last two viz. on the 29th July 1881 and 29th June 1882 had been granted. The judgment-debtor was arrested and brought before the Court. He contended that execution of the decree was barred. Both the lower Courts were of opinion that the decree was not barred and allowed execution to issue On appeal by the judgment-debtor to the High Court —*Held* that the application for execution was too late As there had been an application made and granted on the 29th July 1881 under the Code of 1877 and twelve years from the date of the decree would have elapsed before June 1885 the application in question was barred and was not saved by the concluding clause of s 230 of the Code (Act XIV of 1882) MOTICHAND *v* KRISHNARAV GANESH I. L. R. 11 Bom. 524

33 ———— *Execution proceedings—Limitation.*—An application was made in 1886 for execution of a decree dated 1873 In the interval *viz* in October 1879 the judgment debtor was arrested on an application in execution by the decree-holder but execution was not proceeded with further *Held* that an application made in 1886 was time barred under s. 230 of the Code of Civil Procedure PATUMMA *v* MUSE BEARI

[I. L. R. 11 Mad. 132

34. ———— **Finality of order made in execution proceedings**—*Decree payable by instalments*—In 1868 a decree was obtained for R1 100 which provided that the amount should be paid in instalments the first instalment being R200 to be paid at the end of the first year and that the other instalments should be R100 at the end of each subsequent year and that in the event of failure to carry this out and 2½ months after the falling due of the instalment the whole amount should be exigible in a lump sum with interest at 8 annas per cent per mensem In 1877 the decree holder applied for execution of the decree asserting that R600 had been paid up to that time by five instalments one of R200 and four of R100 each and that default had been made in payment of the fifth instalment of R100 and he asked to recover the whole amount due on the decree No order was passed on this application and eventually the case was struck off In 1880 the decree-holder again applied for execution of the decree upon the same grounds as those upon which the previous application was based Notice was issued and served and a warrant issued for the arrest of the judgment debtor but eventually the case was struck off In 1883 the decree holder on the same grounds made another application for execution It was contended by the judgment debtor that execution was barred by s. 230 of the Civil Procedure Code inasmuch as no instalments had been paid and even if they had been paid they could not be recognized not having been certified *Held* that the proper time from which to reckon the limitation of twelve years was the fifth year from the date of the bond the whole claim from the beginning and the order passed in 1880 having gone upon that basis that the Court could not go behind that order and that consequently the decree holder was within time and might take out execution KANJI MAL *v* KANHIA LAL

[I. L. R. 7 All 373

35 ———— *Interlocutory decree*—A decree for possession and wasilat having been made in 1854 it was by an order in January 1881 directed upon the report of an Ameen that the decree-holder should recover a particular sum for wasilat On the 14th March 1881 the decree holder filed a petition praying that certain properties of the debtor might be attached and sold and the proceeds applied in payment of the wasilat *Held* that under s 230 of Act X of 1877 the application of 14th March 1881 was not barred The decree of 1854 so far as the wasilat was concerned might be taken to be merely interlocutory and did not become final until January 1881 BARODA SUNDARI DABIA *v* FERGUSSON

[11 C L R. 17

36 ———— **Order directing payment of money at a certain date**—*Decree payable by instalments—Execution of decree*—The parties to a decree presented a petition to the Court executing the decree stating that it had been agreed between them that the amount of the decree should be paid by ten monthly instalments of R500 each The Court made an order directing that such petition should be filed *Held* that this order did not amount to one directing payment of money to be made at a certain date which would give a fresh period of limitation under s 230 (*b*) of the Civil Procedure Code BAL CHAND *v* RAGHUNATH DAS

[I. L. R. 4 All 155

37 ———— *Limitation—Execution of decree*—A judgment debtor on being arrested in execution of a decree presented a petition asking for fifteen days time to pay the amount of the decree and the decree holders consenting the Court made an order in the terms Let the petition be filed *Held* that this order did not amount to one directing payment of money to be made at a certain date within the meaning of s 230 cl (*b*) of the Civil Procedure Code *Bal Chand* v *Raghunath Das I L R 4 All 155* followed JOGOBUNDHOO DAS *v* HORI RAWOOT I. L. R. 16 Calc 16

38 ———— **Obstruction to execution of decree**—*Fraud*—The respondent as plaintiff in a small cause suit in 1867 obtained a decree

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against the husband of the petitioner since deceased The decree was kept alive till 13th December 1876 when the decree holder brought a suit to set aside certain alienations made by the judgment debtor and alleged to be fictitious and fraudulent Having succeeded in the suit and in rendering the property alienated available for attachment under his decree, the respondent again applied for execution in 1879 but not against the property fictitiously alienated Lastly the respondent applied on September 28th 1880—more than twelve years after decree—for execution against certain immoveable property of the judgment debtor other than the property fictitiously alienated in the petitioner's possession *Held* that having regard to the fraud of the judgment debtor the application was not barred by s 230 of the Code of Civil Procedure VISALATCHI AMMAL *v* SIVA SANKARA FAKER I. L. R. 4 Mad. 292

39 ———— Evading service of warrants—*Staying execution—Fraud*—A judgment debtor who though able to pay his judgment debt dishonestly evades payment for more than twelve years by eluding service of warrants and making applications to the Court (which had the effect for the time of staying execution) is guilty of fraud within the meaning of s 230 of the Code of Civil Procedure PATTAKARA ANNAMALAI GOUNDAN *v* RANGASAMI CHETTI I. L. R. 6 Mad 365

40 ———— *Decree Prevention of execution of by fraud*—A judgment debtor on seeing the Court's bailiff approach his house to attach his property left the verandah went inside the house chained the door and refused to open it when called on to do so by the bailiff *Held* that the conduct of the judgment debtor amounted to a prevention by fraud of the execution of the decree within the meaning of s. 230 of the Civil Procedure Code, 1882 BHAGU JATHA *v* MALEK BAWASAHEB [I. L. R. 9 Bom. 318

41. ———— *Execution of decree prevented by fraud or force of judgment debtor—Period of limitation*—Where a judgment debtor knowing that a warrant of attachment had been issued against his moveable property locked up his house and so prevented the moveable property therein from being attached —*Held* that his action amounted to fraud within the meaning of s. 230 of the Code of Civil Procedure In order to obtain the benefit of the provision in that section it is not necessary that a judgment creditor should prove that the fraud of the judgment-debtor continued so as to prevent execution of the decree at any time Fraud or force on the part of a judgment debtor gives a new start for the period of limitation and an application for the execution of a decree may be granted at any time within twelve years after the date on which a judgment-debtor has by fraud or force prevented execution of a decree VENKAYYA *v* RAGHA A CHARLU [I. L. R. 22 Mad., 230

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———— s 232 (1859, s 208)

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
[I. L. R. 2 Calc 327
I. L. R 3 Calc 371
20 W R. 51
I L R. 15 Calc 371

See TRANSFER OF PROPERTY ACT s 131
[I. L. R 24 Bom, 502

1 ———— Assignment of decree—S 208 Act VIII of 1859 put a party to whom a decree is transferred into the position of the original decree holder and entitled him to have the decree executed as if application were made by the original decree holder SHAMANUND SURMA *v* SHUMBHOO CHUNDER DASS 7 W R. 205

2 ———— *Certificate Necessity of*—Under s 208 Act VIII of 1859 it was not essential that a certificate should in every instance be obtained by a representative before he can be allowed to apply for execution GOPAL SINGH DEB *v* GOPALCHUNDER CHUCKERBUTTY 7 W R., 393

3 ———— *Power of Court to which decree has been transmitted*—The assignee of a decree should apply to the Court which passed the decree and not to the Court to which the decree had been forwarded under s 285 Act VIII of 1859 for execution for the purpose of being substituted in the place of the original decree holder The word Court in s. 208 Act VIII of 1859 did not include the Court to which a decree has been transferred for execution SHEO NARAYAN SINGH *v* HARBANS LAL 5 B L. R. 497 14 W R. 65

4 ———— *Right of assignee*—A person claiming to be the assignee of a decree should apply for recognition of his title to the Court which pronounced the decree and for leave under s 208 of the Civil Procedure Code to have his name substituted in lieu of that of the plaintiff ISMAIL VALAD AHMED BARUCHA *v* KASSAM VALAD AZAM DUPLI 9 Bom., 48

FRAMJI RUSTAMJI *v* PATANSHA PESTANJI [9 Bom. 49

BALKISHOON *v* MAHOMED TAZAM ALLEE [4 N W., 80

KADIR BUKSH *v* ELAHI BUKSH [I. L. R., 2 All. 283

See AMAR CHUNDRA BANERJEE *v* GURU PROSUNNO MUKERJEE I. L. R. 27 Calc., 488

5 ———— *Appeal—Assignee of decree*—Under s 11 Act XXIII of 1861 no appeal lay from an order passed under s 208 Act VIII of 1859 substituting the assignee of a decree in place of the original decree-holder MEGH NARAYAN SINGH *v* RADHA PRASAD SINGH [4 B L. R., A C 200 13 W R., 224

See contra FRAMJI RUSTAMJI *v* PATANSHA PESTANJI 9 Bom., 49

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

6 ———— *Right of assignee* —Where S obtained a decree for possession against D P the person in possession and subsequently in a suit brought by J P claiming the property against S a decree was passed in the terms of a compromise whereby S consented that J P should execute his decree —*Held* that J P was entitled under s. 208 Civil Procedure Code to recover possession in execution of S's decree from D P although D P had not been made a party to the second suit DOOPOA PERSHAD SINGH v LALLA JUGGURNATH PERSHAD

[1 N W., 34 Ed. 1873 31

7 ———— *Cross decrees* —Where a party who assigned over a decree was liable under a cross decree for a considerable sum to the judgment-debtor —*Held* that until the respective liabilities of the two parties had been settled the Court was justified in refusing to allow one of them to assign the decree to a third party JODOONATH Roy v RAM BUKSH CHUCKUNGEE 8 W R. 202

8 ———— *Recognition of transfer by Court* —A Court charged with the execution of a decree has no other discretion with regard to noticing a transfer thereof than that which is given to it by s. 208 which only applies to cases where the transferee can and does come forward to claim execution for himself instead of the original decree holder BHAGUT CHUNDER ROY v NAZIR ALY KHAN 10 W R. 354

9 ———— *Recognition of transfer by Court* —A party to a suit can enforce any decree he may get as a matter of right but an assignee of such decree can only do so after obtaining the Court's permission which depends entirely on the Court's discretion An assignee therefore is not in the same position as the original decree holder and is not entitled to have the same privileges SHAMA SUDDO DUTT v NOBIN CHUNDER BOSE

[15 W R. 283

10 ———— *Right of assignee to execute it—Omission to make formal application to execute it—Error not affecting the merits of case* —Where there has been an assignment of a decree pending proceedings in execution taken by the decree holder there is nothing in the Code which debars the Court from recognizing the transferee as the person to go on with the execution even if he has omitted to make a formal application for execution such omission being merely an error of procedure and not an error affecting the merits of the case DWAR BAKSH SIRKAR v FATIK JAH

[I. L. R. 26 Calc 250

11 ———— *Purchasers of share in decree* —*Quære*—Can the purchasers of a share in a decree be added upon the record under Act VIII of 1859 s. 208 as co decree holders? SEETAPUT ROY v ALI HOSSEIN 24 W R. 11

12 ———— *Transfer of portion of decree—Execution of decree by transferee of portion of decree* —No legislative prohibition exists to the transfer of a portion of a decree; and provided that the whole decree is executed, and the rights of all parties interested are cared for there is no objection to the transferee being allowed to carry on the execution proceedings *Seetaput Roy v Ali Hossein 24 W R 11* dissented from KISHORE CHAND BHAKAT v GISBORNE & CO

[I. L. R. 17 Calc 341

13 ———— *Assignment of decree by one of two decree holders valid* —There is no prohibition in law against one of several decree holders assigning his interest under the decree *Held* that the assignee is entitled to execute under s 232 unless the judgment debtor can show that such a proceeding is prejudicial to his interest MUTHUNARAYANA REDDI v BALAKRISHNA REDDI

[I. L. R 19 Mad 306

14 ———— *Execution of decree by assignee of decree holder—Execution of mortgage decree by purchaser of part of mortgaged property* —A decree having been obtained upon a mortgage against two judgment debtors the joint owners of a certain mehal which was subject to the mortgage and which was declared by the Court to be subject to the decree in the event of default being made in payment of the mortgage money the 8-anna share of one of the debtors was before execution had been taken out sold at auction under Bengal Act VII of 1868 and purchased by the appellant Subsequently the decree holder having attempted to execute the decree against the share so purchased the appellant in order to protect the share which he had bought purchased the decree himself and proceeded to execute it against the remaining share in the hands of the judgment debtors *Held* that the appellant as the transferee of the original decree holder was entitled to execute the decree personally against the judgment debtors and also in the event of their making default in paying the amount due under the decree to proceed against the share of the mehal still in their hands and further that if by reason of it being necessary to sell the remaining share of the judgment debtors any equity should arise between them and the appellant to have the decretal money distributed over the whole property mentioned by the decree that equity must be enforced by an independent suit NAFER CHUNDER MUNDUL v BAIKANTO NATH ROY 4 C L R. 156

15 ———— *Execution of mortgage decree by assignee—Separate suit* —By a deed dated 2nd July 1876 Y mortgaged properties Nos 1 and 2 to A and subsequently by separate deeds he again mortgaged the same properties respectively to B and C C afterwards purchased Y's equity of redemption in property No 2 and on the 15th November 1880 A obtained a mortgage decree against Y which he sold to B who now sought to execute it C was merely benamidar for B *Held* that on B consenting to allow property No 2 to be first sold free of all incumbrances it was necessary for B to proceed by regular suit YAKOOB ALI CHOWDHRY v RAM DOOLAL 13 C L R. 272

16 ———— *Application of transferee of decree for execution disallowed*—

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

Omission to give notice of application for substitution of names—Title of assignee.—The holder of a decree for the sale of mortgaged property having transferred the same to *M* by registered instrument *M* transferred the decree to other persons and the co-transferees applied under s 232 of the Civil Procedure Code to have their names substituted for those of the original decree holders The judgment debtor opposed the application on the ground that *M*'s name had not been substituted for the names of the original decree-holders who had transferred to him It appeared that no notice had been issued to *M* under s 232 of the Code that he was dead and that his legal representative had not been cited as required by law The application was allowed by the Courts below *Held* that even assuming that the judgment debtor had a *locus standi* to raise the objection that notice had not been issued to the applicants' transferor he had no possible interest in the question and could not be prejudiced by the passing of the order that it was not necessary to cite the representatives of the transferor and that the order not being one upon which execution of the decree could issue but merely for a transfer of names the objection that the transferor had not been cited under s 232 was not a substantial one *Held* that it could not be said that where a decree has been assigned by one assignor to another the substitution of his name on the record in lieu of that of the original decree holder was a condition precedent to the assignor's passing title under the assignment GULZARI LAL *v* DAYA RAM

[I. L. R., 9 All. 46

29 ——————— *Transfer of decree for execution by operation of law—Civil Procedure Code Act XIV of 1882 s 232—Right of procedure—Execution under Bengal Act VIII of 1869 and Act VIII of 1885*—Upon the death of the full owner the mother took out probate of a will in which she was appointed executrix The will was afterwards disputed by the minor son of the testator and probate was revoked but while the mother was in possession of the estate as executrix she sued and obtained a decree for rent under Bengal Act VIII of 1869 Upon the application of the minor for the execution of the decree —*Held* that the minor was in a position to execute the decree his succession to the estate of his father being a succession or transfer by operation of law within the meaning of s. 232 of the Code of Civil Procedure *Held* also that the mode in which the decree was executed under the old Rent Act Bengal Act VIII of 1869 was in so far as it was a right at all that belonged to the judgment creditor not a private right but a mere right of procedure and the execution was therefore, to be governed by Act VIII of 188 UMASOONDURY DASSY *v* BROJONATH BHUTTACHARJEE

[I. L. R. 16 Calc., 847

S SATHURAYAR *v* SHANMUGAM PILLAI

[I. L. R. 21 Mad. 353

30 ——————— *Transfer of decree—Benamidar for the actual purchaser* - If a decree is transferred to one a benamidar for the actual purchaser the latter is entitled to execute the decree and his right course is to apply under Civil Procedure Code, s 232 MANIKKAM *v* TATAYYA I. L. R. 21 Mad. 388

31 ——————— *Insolvency—Composition with creditors—Assignment of insolvent's estate to surety—Adjudication set aside effect of on previous decree*.—Suit by official assignee on a debt due to *O B S* pending the latter's insolvency Plea by defendant that he has paid to the insolvent overruled on the ground that payment to insolvent pending insolvency cannot bind the official assignee and decree made Subsequently the insolvent entered into a composition with his creditors and executed an assignment of his estate effects and assets in favour of *B* in consideration of *B*'s becoming surety to the creditors for the payment of the composition Accordingly an order was made setting aside the adjudication and giving liberty to the official assignee to make over to the insolvent his estate and effects. *B* now applied for execution of the decree in this suit against the defendant *Held* that the order setting aside the adjudication did not have the effect of annulling the decree in any way It operated in passing the benefit under the decree from the official assignee as representing the creditors to the present applicant and made the latter by operation of law an assignee under s 232 Civil Procedure Code It was held to be unnecessary to consider whether there was in fact pending the insolvency a payment to the insolvent in discharge of the claim MILLER *v* ADINASH CHUNDER DUTT 4 C W N 785

32 ——————— *Sale of decree holder's interest under a decree—Right of vendee when execution is refused—Right of suit*—The assignee for value of a decree obtained by two persons of whom one was a minor applied for execution of the decree but his application was refused under Civil Procedure Code s 23 He now sued to recover from his assignor the sum paid by him for the assignment *Held* that the plaintiff was entitled to recover RAMASAMI *v* BASAVAYYA

[I. L. R. 16 Mad. 325

——————— s 234 (1859 s 210)

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON

See CASES UNDER SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES

1 ——————— **Execution of decree against representative**—*Claim by personal representative of judgment-debtor*—Where it was sought to execute a decree obtained against a person who had died since the date of the decree by attaching certain immoveable property in the possession of the personal representative of the deceased judgment debtor and such personal representative claimed to hold the property not in her representative character but in her own right —*Held* that her claim was not a claim under s. 246 Act VIII of 1859, but that the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

case came under ss. 210 and 211. AMEERUNNISSA KHATOON *v.* MOZUFFER HOSSEIN CHOWDHRY [12 B. L. R. 65

MAHOMED MOZUFFER HOSSEIN CHOWDHRY *v.* AMEERUNNISSA KHATOON 20 W. R. 280

2. ———— Where during proceedings in execution of a decree the judgment-debtor dies, the transferee of his property should be put on the record in place of the deceased, or a regular suit should be brought against him. He should not be treated as a claimant under s. 246, Act VIII of 1859. SHURFUN BIBEE *v.* COLLECTOR OF SARUN [12 B. L. R. 66 note: 10 W. R. 199

3. ———— *Execution of decree passed against deceased person.*—When a decree has been passed against a deceased person, execution of such decree cannot be had under the Civil Procedure Code against his legal representative. IN THE MATTER OF THE PETITION OF GIRENDRONATH TAGORE 14 B. L. R. 334 note

S. C. GIRENDRONATH TAGORE *v.* HURONATH ROY [10 W. R. 455

4. ———— *Property of deceased debtor claimed by heir as self-acquired.*—Where an application is made and granted under s. 210, Act VIII of 1859, and property is attached which is claimed by the heir as his self-acquired property, the Court should proceed under s. 203 without requiring any fresh application to be made under that section. RAM CHAND CHUCKERBUTTY *v.* MADHUB NARAIN ROY 1 C. L. R. 359

5. ———— *Liability of son as representative of father for his debts.*—As the entire interest in an impartible zamindari passes upon the death of the father to the son, there is nothing in the estate itself which can be attached as assets of the father under a decree against him, or which can be made available in execution of the decree against his son as his representative. Though a son is bound under Hindu law to pay his father's just debts from any property he may possess, yet when he is made a party to a decree as representative of his deceased father for the purpose of executing it, his liability is limited to the amount of assets of the deceased which may have come to his hands and have not been duly disposed of. ZAMINDAR OF SIVAGIRI *v.* ALWAR AYYANGAR. SANGILI VIRAPANDIA CHUNNIA THAMBIAR *v.* ALWAR AYYANGAR I. L. R., 3 Mad. 42

6. ———— *Decree against karnavan—Tarwad property in hands of successors—Share of deceased father of joint family—Assets.*—In a suit by the trustees to remove the defendant from the management of certain temples a decree for mesne profits was passed against the defendant who was the karnavan of a Malabar tarwad. *Held*, that the tarwad property in the hands of the deceased defendant's successor was not assets of the deceased in the hands of his successor liable to satisfy the decree under s. 234 of the Code of Civil Procedure 1877. The share of a deceased father in an undivided Hindu family passes by survivorship to the sons and is not assets in their hands to satisfy a decree against the father under s. 234 of the Code of Civil Procedure, 1877. RAVI VARMA *v.* KOMAN [I. L. R. 5 Mad. 223

7. ———— *Decree obtained against father executed against his sons as his representatives.*—In an undivided Hindu family, although the interests of the sons in the ancestral estate are liable to satisfy the father's debt, the holder of a money decree against the father who has not attached the ancestral estate before the death of the father cannot execute the decree against the ancestral property as assets in the hands of the representatives of the judgment-debtor under s. 234 of the Code of Civil Procedure, 1877. *Zamindar of Sivagiri v. Alwar Ayyangar, I. L. R. 3 Mad. 42*, followed. HANUMANTHA *v.* HANUMAYYA [I. L. R. 5 Mad. 232

8. ———— *Decree for maintenance obtained against father.*—A decree for maintenance against a Hindu directing an annual payment to be made by him to the decree-holder during her lifetime can be executed after the death of the judgment-debtor against his sons to the extent of the assets of the deceased taken by them, but such assets do not include the share of the father in the family property. KARPAKAMBAL *v.* SUBBAYYAN [I. L. R. 5 Mad. 234

9. ———— *Liability of son for father's debt—Decree against zamindari directing sale of land—Execution against son of zamindar.*—A suit having been brought against the holder of an impartible zamindari upon a promissory note, a decree was passed by consent, whereby certain land was directed to be sold in the event of the debt not being paid in a certain way. After the death of the zamindar, execution proceedings were taken against his son to obtain a sale of the said land. *Held*, that the decree could be executed against the son. ZAMINDAR OF SIVAGIRI *v.* TIRUVENGADA [I. L. R. 7 Mad. 339

———— s. 235 (1859, s. 212).

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[4 C. L. R. 97
I. L. R. 12 Bom. 400
I. L. R. 17 Calc. 631

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATIONS—IRREGULAR AND DEFECTIVE APPLICATIONS.
[I. L. R. 6 Mad. 250
I. L. R. 16 Mad. 142
I. L. R. 23 Calc. 217
I. L. R. 25 Calc. 594
2 C. W. N. 536
I. L. R. 21 Calc. 818
I. L. R. 17 Mad. 76
I. L. R. 19 Bom. 34

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See PRACTICE—CIVIL CASES—EXECUTION OF DECREE APPLICATION FOR
[9 W R. 362
11 W R. 271
16 W R., 25

——— Application for execution of decree—*Adjustment of decree*—Under s 235 of the Code of Civil Procedure 1882 the decree-holder of the party who applies for execution is bound to state in his application any adjustment between the parties after decree whether such adjustment has or has not been previously certified to the Court *Panpayya v Narasannah I L R 2 Mad 216* followed. QUEEN EMPRESS v BAPUJI DAYARAM I. L. R. 10 Bom 288

——— s 236 (1859 s 214)—*Investigation of title—Execution of decree*—Neither s 214 Act VIII of 1859 nor s 15 Act XXIII of 1861 contemplated any enquiry before the Court whether the property belongs to the judgment debtor or not SUBJAN BIBEE v SARIUTULLA
[3 B L R. A C 413 12 W R. 329

——— s 239 (1859 s 290)

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION ETC
[I. L. R. 5 Calc. 736
21 W R., 141 219
I. L. R. 8 Calc. 916 11 C L R. 348
I. L. R. 10 Bom 65
I. L. R. 21 Bom. 456

——— s 243 (1859 s 290)

See APPEAL—ORDERS 11 Bom., 151
[I. L. R. 9 Calc. 214 12 C L R. 53
I. L. R. 10 All, 389

See EXECUTION OF DECREE—STAY OF EXECUTION 8 W R. 203
[I. L. R. 7 All. 73
8 N W 181
I. L. R. 10 All. 389

——— s. 244 (Act XXIII of 1861 s 11)

See APPEAL—DECREES
[I. L. R. 3 All 74 91
I. L. R. 14 All. 310 520
I. L. R. 12 Calc 610
I. L. R. 9 All., 46 64
I. L. R., 12 All., 61
I. L. R. 16 All. 129
I. L. R. 18 Mad. 26
I. L. R. 19 Bom 34
I. L. R. 24 Calc 725
1 C W N 374

See CASES UNDER APPEAL—EXECUTION OF DECREE.

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See CIVIL PROCEDURE CODE 1882 s. 258.
[3 Mad., 188
I. L. R. 1 Mad. 203
8 W R., 449
9 W R. 210
I. L. R 4 Bom 295
22 W R. 293
4 Bom. A. C, 76
1 N W 155
I. L. R. 8 Mad. 277
I. L. R. 15 Calc. 187

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
[I. L. R. 2 Calc., 327
I. L. R. 3 Calc 371
I. L. R. 15 Calc. 371
I. L. R., 17 Mad. 58

See CASES UNDER INTEREST—MISCELLANEOUS CASES—MESNE PROFITS

See CASES UNDER MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR—MESNE PROFITS.

1 QUESTIONS IN EXECUTION OF DECREE

1 ——— Meaning of section—S 244 of the Civil Procedure Code contemplates that there must be some question in controversy and conflict in execution which has been brought to a final determination and conclusion so as to be binding upon the parties to the proceedings and which must relate in terms to the execution discharge or satisfaction of the decree HULAS RAI v PIRTHI SINGH I. L. R. 9 All. 500

2 ———Proceeding in execution—*Suit—Civil Procedure Code 1882 s 12—Semble*—That a proceeding under s 244 is not a suit within the meaning of s 12 of the Code of Civil Procedure VENKATA CHANDRAPPA NAYANIVARU v VENKATARAMA REDDI
[I. L. R. 22 Mad. 256

3 ——— Question raised for first time in execution—*Held* that a question raised for the first time between the parties to a decree at the time of its execution although not expressly reserved in that decree for determination at the time of its execution may be enquired into and determined by the Court executing the decree under s. 11 of Act XXIII of 1861 JANOJI BAVAJI v VYANKATESH SHRINIVAS
[2 Bom 393 2nd Ed. 371

4 ——— Decree subsequently modified Question as to execution of—Where it is contended that the decree that has been executed is not the decree that was passed between the parties but a decree modified by a subsequent decretal order s 11 Act XXIII of 1861 does not apply the question not being one relating to the execution of the decree and between the parties to the suit UMBIKA CHURN CHUCKERBUTTY v DWARKA NATH GHOSE 8 W R. 506

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE—*continued*

5 ——————— **Suit to enforce liability imposed by decree of Civil Court in mofussil.**—A suit does not lie to enforce a liability specifically imposed by the decree of a Civil Court in the mofussil the right of suit in such case being taken away by s 11 of Act XXIII of 1861 SANJEEVIYAH *v* NANJIYAH 4 Mad., 453

6 ——————— **Transfer of decree for execution**—*Procedure of Court passing and Court executing transferred decree—Civil Procedure Code ss 243 545*—The provisions of s 244 of the Civil Procedure Code govern equally the procedure of the Court which passed the decree when executing such decree and the Court to which the decree is sent for execution *Cooke* v *Huseeba Beebee* 6 W R 181 referred to. GHAZIDIN *v* FAKIR BAKSH I. L R. 7 All 73

7 ——————— **Question after Court has executed decree and become functus officio**—*Review*—Where a judgment debtor pending the execution proceedings was granted permission to examine the state of the accounts but failed to do so and then made a fresh application to the Court for *the same purpose after the execution proceedings* had been struck off and the decree declared to be satisfied—*Held* that the question must be determined with reference to the provisions of s 647 of the Civil Procedure Code and the only course open to the judgment-debtor would have been to apply for a review of the order which declared the decree to be satisfied and struck off the execution proceedings *Held* also that the words the following question shall be determined by order of the Court executing the decree of s 244 of the Code of Civil Procedure must be interpreted to mean the Court executing the decree at the time when the application is made and that they do not include the Court which has executed the decree and has therefore become *functus officio* FAKARUDDIN MAHOMED AHSAN *v* OFFICIAL TRUSTEE OF BENGAL [I L R, 10 Calc 538

8 ——————— **Suit brought under circumstances where the proper remedy was by application under s 244**—*Discretion of Court to treat the plaint as an application under s 244*—Where certain judgment debtors whose property had been sold in execution of a decree brought a suit to have the sale in execution set aside under circumstances in which their proper remedy in law if any was by means of an application under s 244 of the Code of Civil Procedure it was *held* that it was not an improper exercise of the discretion of the Court in which such suit was brought to treat the plaint as an application under s 244 of the Code *Biru Mahata* v *Shyama Churn Khawas I L R 22 Calc 483* followed. *Majan Pathuk* v *Pakuran I L R 22 Mad 347* referred to JHAMMAN LAL *v* KEWAL RAM I. L R. 22 All. 121

9 ——————— **Applications made by judgment-debtor**—*Applicability of section*—The provision in s 244 of the Code of Civil Procedure that questions arising between the parties to the suit and relating to the execution discharge or satisfaction of a decree shall be determined by order of the Court executing the decree relates not only to proceedings initiated by the decree holder but also to applications made by the judgment debtor ERUSAPPA MUDALIAR *v* COMMERCIAL AND LAND MORTGAGE BANK I. L. R. 23 Mad. 377

10 ——————— **Loss or destruction of decree**—*Regular suit*—A decree passed for money was lost or destroyed the decree-holder on suing out execution was referred to a regular suit *Held* that the existence of the decree and of its terms might have been enquired into in the execution department and that the order of the Court to which application for execution was made could not confer jurisdiction on a Court to entertain such a suit PANJEET CHOONEE LALL 1 Agra 78

11. ——————— **Suit to remove buildings found on land for which decree is given**—Where in execution of a decree for land the plaintiff found that buildings had been erected by the defendant on the land alleged by him to be comprised in the decree and an application to the Court executing the decree was refused on the ground that the decree was silent as to the demolition of the buildings—*Held* that his remedy was an appeal against that order and not a fresh suit to get the buildings removed. RADHA GOBIND SHAHA *v* BROJENDER COOMAR ROY CHOWDHRY 7 W R 372

12 ——————— **Question of title between decree holder and third person**—*Separate suit*—The plaintiffs in a suit for money obtained a decree against all the defendants except *P* and among them *K* On appeal the Court of first appeal gave them a decree against *P* In execution of this decree they attached and were paid as belonging to *P* certain money deposited in the Government Treasury in *K s name* On appeal by *P* the Court of second appeal reversed this decree and restored the decree of the first Court dismissing the suit as regards *P* *P* thereupon applied in execution of his decree for a refund of the money The plaintiffs objected on the ground that the money belonged to *K* *Held* that the Court executing *P's* decree was not competent to decide the question whether the money belonged to *P* or to *K* such question not being one between *P* and them only but involving and raising a question of title between him and *K* as to their conflicting claims *inter se* to the money PRSAI *v* MAHADEO PRASAD I. L. R 6 All. 1..

13 ——————— **Alleged fraudulent execution of decree**—*Separate suit*—Certain property in the 24 Pergunnahs having been seized and sold in execution of a decree of the High Court application was successfully made to the District Judge

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—continued

1 QUESTIONS IN EXECUTION OF DECREE—continued

to set aside the proceedings on the ground that the execution was fraudulent and not warranted by the decree *Held* that the Judge had no right to entertain such an application or to reopen at the instance of a third party execution proceedings which had come to an end. The question could only be determined in a regular suit LUCHMEEPUT SINGH v ADOITO CHURN MULLICK 24 W R, 453

See JOGNARAIN SINGH v BHOOBAND [2 W R, Mis., 13

14 —————— *Suit to set aside sale—Fraud—Sale under Act X of 1859—Act XXIII of 1861 s 11*—Decree obtained by *ex parte* decree for arrears of rent against S under Act X of 1859 and in execution of that decree brought the tenure to sale. At the sale the tenure was purchased by N. S then brought a suit against B and N to set aside the sale on the ground that the rent-decree and all execution-proceedings taken thereunder were fraudulent and alleging that B was the actual purchaser in the name of N. An objection was taken that the suit would not lie and that the questions in the suit were such as could have been determined and were determined by the Court executing the decree;—*Held* that neither s. 244 of the Civil Procedure Code nor the corresponding s. 11 of Act XXIII of 1861 had any application to proceedings in execution of a decree under Act X of 1859 and that the suit being one to set aside the sale on the ground of fraud, was maintainable *Saroda Churn Chuckerbutty v Mahomed Isuf Meah I L R 11 Calc 376* distinguished BROJO GOPAL SARKAR v BUSSATUNNISSA BIBI [I. L. R., 15 Calc. 170

15 —————— Question as to whether purchase-money has been paid within time *Conditional decree*—The plaintiff in a suit to enforce a right of pre-emption obtained a decree to the effect mentioned in s 214 of the Civil Procedure Code. On payment by him of the purchase-money into Court the defendants objected in the execution department to such payment on the ground that it had not been made within time. The Court which made the decree disallowed the objection. The defendants appealed from the order disallowing the objection; they had previously appealed from the decree The Appellate Court heard both appeals together and holding that the purchase money had not been paid into Court within time reversed the decree and allowed the objection. The plaintiff preferred a second appeal to the High Court from the Appellate Court's decree which was admitted. He also preferred an appeal from the appellate order allowing the objection but this appeal was rejected as being beyond time and such order became final *Held* that inasmuch as the question whether the plaintiff had paid the purchase-money into Court within time was not one relating to the execution of the decree within the meaning of s 244 of the Civil Procedure Code but was one which should be decided in the suit itself and therefore the proceedings in the execution department touching that question were ill founded, such order was not a bar to the hearing of the second appeal preferred by the plaintiff MUHAMMAD ALI v DEBI DIN LAL I. L. R., 4 All., 420

16 —————— Suit to set aside order in execution of decree—Where the object of the suit was to set aside orders passed in the miscellaneous department relating to execution of decree—*Held* that such suit was untenable, s 11 Act XXIII of 1861 having distinctly prohibited all remedy by separate suit and the remedy provided being an appeal from the order complained of AMRIT KOONWAR v LUCHMEE NARAIN 1 Agra, 93

17 —————— Regular suit to set aside summary order—*Application in summary suit*—A person who, in the course of executing a decree had been turned out of possession by an order under s. 263 Act VIII of 1859 and who was compelled to pay the costs of that order, brought a regular suit for its reversal and obtained a decree which was silent as to the costs of the summary order In consequence of the plaintiff not having demanded them, subsequently the plaintiff made an application in the summary suit that the costs of the summary order should be repaid to her *Held* that the Court had no power to entertain it under s 11 Act XXIII of 1861 TOYBOON v MAHOMED WAJID 2 C. L. R., 504

18. —————— Resistance to execution as being cultivators—*Decree for limited possession—Separate suit*—In a suit to recover possession of land the defendants resisted execution on the ground that they were cultivators and that the decree only authorized the plaintiff to recover possession as proprietor. The objection was overruled and the defendants were ejected. They then sued to set aside the order made in the execution proceedings and to recover possession *Held* that the suit was barred under s. 244 cl (c) of the Civil Procedure Code NAJHAN v MAHOMED TAKI KHAN *alias* IZER BUX KHAN [I. L. R. 9 Calc. 872 12 C L. R. 571

19 —————— Liability of property for debts—*Separate suit—Debts of father*—Whether property seized by a judgment-creditor in the hands of his deceased judgment-debtor's son is held by the son under such circumstances as render him liable for his father's debts is a question which cannot be tried in execution proceedings but must form the subject of an independent suit. RAMA NOOGRO SINGH v KISHEN KISHORE NARAIN SINGH [23 W R, 265

20 —————— *Liability of son for father's debt—Suit against son to enforce decree against father—Limitation—Suit to recover money charged on land by decree*—A suit for money having been brought against the holder of an impartible zamindari a decree was passed in 1867 by consent to the effect that the zamindar undertook to

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

pay a certain sum by yearly instalments and hypo thecated certain lands as security A memorandum of this decree was registered under s. 42 of Act XX of 1866. The last instalment fell due in February 1870 The decree was kept alive against the zamindar up to his death in 18 3 Upon the death of the zamindar proceedings in execution were taken against his son who succeeded to the zamindari but were set aside on appeal In January 1882 a suit was brought against the son to recover the amount of the last instalment due by his father under the decree of 1867 *Held* that the suit was neither barred by the provisions of s 244 of the Code of Civil Procedure nor by limitation ARUNACHALA v ZAMINDAR OF SIVAGIRI I L R. 7 Mad. 328

21. ———————— *Hindu law—Obligation of son to pay debt of deceased father—Nature of obligation —D* obtained a decree against the father of *A* and *B* Hindus on a hypothecation bond whereby certain land was pledged as security for repayment of a loan. The decree declared the land liable to be sold for repayment of the debt The judgment-debtor having died before the decree was executed *A* and *B* were made parties to the proceedings in execution and the land was attached *A* and *B* objected to the attachment on the ground that their shares in the land were not liable to be sold in execution of the decree as they were not parties to the suit. This objection was allowed and *D* brought a suit for a declaration that the property was liable to be sold. That suit was dismissed, on the ground that a suit for a declaration would not lie *D* then sued to recover from *A* and *B* the balance due under the decree against their father after crediting the amount recovered by the sale of their father s share It was objected that the suit was barred by s 244 of the Code of Civil Procedure *Held* that the duty *of a son under Hindu law to pay his father s debts* out of his own share of ancestral estate is not a matter which can be decided under s 244 of the Code of Civil Procedure The questions contemplated by s 244 are those which relate to the enforcement of the obligation created by the decree The obligation to pay the father's debts out of the son s share of the ancestral estate is not an obligation created by a decree against the father ARIABUDRA v DORASAMI I L. R 11 Mad. 413

22 ———————— *Suit against sons of a deceased judgment debtor—Decree for money against father to be discharged by instalments—Separate suit—Liability of son for father's debt* —A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on 19th October 1877 The decree provided for payment of the secured debt in various instalments by May 1895 The mortgagor died in 1883 having discharged part of the debt The decree-holder having attached certain family property in execution the mortgagor's two younger sons who had not been born at the date of the above decree objected that their shares were not liable to attachment This objection prevailed the Court expressing the opinion that the matter in controversy should be determined in a regular suit The other defendants in the suit of 1877 had both died in the interval one of them leaving infant sons The decree holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews for payment out of the family property of all unpaid instalments and objection was taken that the question whether ancestral property is liable or not for the father's debt in the present suit was one which related to the execution of the decree in the former suit and that the order whereby the attachment was raised was an order under s 244 of the Civil Procedure Code and no fresh suit could be brought *Held* that the plaintiff was not precluded from maintaining the suit against the sons of the mortgagor by Civil Procedure Code s 244 RAMAYYA v VENKATARATNAM

I. L R. 17 Mad 122

23 ———————— *Execution of decree against son in Hindu joint family as representative of his father—Question as to legality of debt for which decree was obtained* —Where a son against whom a decree which has been obtained by his father in a joint undivided Hindu family is sought to be executed as representative of his father takes the objection that the debts are tainted with immorality he can do so under s 244 of the Civil Procedure Code (Act XIV of 1882) *Ariabudra v Dorasami I L R 11 Mad 413* and *Lachmi Narayan v Kunjilal I L R 16 All 449* not followed. UMED HATHISING v GOMAN BHAIJI

I L R., 20 Bom 385

24 ———————— **Mode of redeeming mortgaged lands in execution of former decree** —*A mortgagee was put into possession of* the mortgaged property under a decree obtained by him against the mortgagor to the effect that the mortgagee should remain in possession until the mortgage debt was paid. The mortgagor subsequently paid into Court the money due under the mortgage decree and applied to be restored to the possession of the mortgaged property Both the lower Courts granted the mortgagor's application On special appeal —*Held* (following the decision of the Full Bench in *Raji Shivram Joshi v Kaluram Malukchand 12 Bom 161*) that such an application was not the proper mode for the mortgagor to redeem the property and to recover possession from the mortgagee, the previous decree for possession having been fully executed when the mortgagee was put into possession. RAMCHANDRA BALLAL v BABA ESGONDA

12 Bom 163

25 ———————— *Application for further execution by taking an account* —An application to the Court passing a decree for possession in favour of the heirs of a mortgagee for further execution thereof by taking an account is

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

not the proper mode for the mortgagor to redeem the mortgaged lands and to recover possession thereof. The proper course for a mortgagor who seeks for an account and redemption or for redemption alone is to bring an independent suit for that purpose. *Janoji v. Janoji,* 7 *Bom.,* 571 overruled. RAVJI SHIVRAM JOSHI *v.* KALURAM [12 Bom., 100

26. ———— Question as to amount received under mortgage—*Attempt to obtain redemption of a usufructuary mortgage by means of an application in execution.*—Certain mortgagees held a mortgage which, in its inception was a simple mortgage but which was to become a usufructuary mortgage upon non-payment of the mortgage debt by a certain date. The mortgage debt was not paid within the time limited. The mortgagees sued on the covenant in their bond and obtained a decree for possession declaring them entitled to remain in possession until the mortgage debt was satisfied from the usufruct. Some time after the mortgagees had got possession under this decree the mortgagors applied, ostensibly under s. 244 of the Code of Civil Procedure for recovery of possession of the mortgaged property and for payment of a large sum of money which they alleged the mortgagees to have collected as profits in excess of what was due under the mortgage. *Held* that such an application would not lie. If the allegations of the mortgagors were true their proper remedy was by a suit for redemption and not by application in the execution department. *Ravji Shivram Joshi v. Kaluram,* 12 *Bom.,* 160, *Ram Chandra Ballal v. Baba Fegonde,* 12 *Bom.,* 163 and *Narsinha Manohar v. Bhagvantrao,* *I. L. R.,* 14 *Bom.,* 87 referred to. HAR PRASAD *v.* SHEO RAM [I. L. R., 20 All., 506

27. ———— *Usufructuary mortgage.*—In a suit for possession under an usufructuary mortgage plaintiff obtained a decree which was afterwards authoritatively interpreted to mean that he was to get possession of the property in order to repay himself out of the profits keeping the usual accounts and after satisfaction of his claim restore the property. *Held* that under the terms of the decree he was in effect required to certify for the information both of the Court and of the judgment-debtors the amounts received and outstanding; and that the Court executing the decree was bound to require from him from time to time a statement of the amount received and could deal with the matter under Act XXIII of 1861, s. 11. GOLAM RUSSOOL KHAN *v.* KISHEN MOHUN SHAHA 23 W. R., 156

28. ———— Property attached in execution after satisfaction of decree from other sources—*Separate suit.*—An elephant having been attached in execution it was released on the claim of one *I* upon *S* standing surety. It was finally declared to be the property of the judgment-debtors but the decree having been satisfied from other sources, it was ordered that the elephant be returned to the judgment-debtors. It was then demanded from the surety, but he objected, the claimant (*I*) was served with notice to produce it. This not having been done within the period fixed, the Munsif ordered that it should be demanded from the surety and (on his failure to produce its stipulated price) should be realized by attachment and sale of his property. *Held* that the decree having been executed, the Munsif's subsequent proceedings as to the elephant were illegal and that the right to it was open to a suit. JUGGUT CHUNDER BHADOORREE *v.* SHIB CHUNDRA BHADOOREE 16 W. R., 209

29. ———— Execution of pottah by decree-holder in favour of judgment-debtor—*Suit on a decree for possession.*—Where a decree-holder declared to be entitled to possession of certain land, subsequently to decree executed a pottah in favour of the judgment-debtor who was then in possession and afterwards took out execution under his decree,—*Held* on an objection by the judgment-debtor that, under these circumstances, he was not entitled to possession; that satisfaction of the decree not having been entered up such objection could not be dealt with under s. 244 of the Civil Procedure Code. BABA MAHOMED *v.* WEBB [I. L. R., 6 Calc., 780 8 C. L. R., 30

30. ———— *Powers of Court in executing decree.*—The validity of a decree of which execution is sought cannot be disputed in execution proceedings under s. 244 of the Code of Civil Procedure (Act XIV of 1882). CHINTAMAN VITHOBA *v.* CHINTAMAN BAJAJI DEV [I. L. R., 22 Bom., 475

31. ———— Question as to validity of mortgage decree for sale on mortgage.—*Held* that when a decree for the sale of specific mortgaged property is being executed it is not open to persons made parties to the execution proceedings as legal representatives of the deceased judgment-debtor to contend in those proceedings that the mortgagor was not competent to make the mortgage and that the decree was one which ought not to have been passed. *Chintaman Vithoba v. Chintaman Bajaji Dev,* *I. L. R.,* 22 *Bom.,* 475, *Seth Chand Mal v. Durga Dei,* *I. L. R.,* 12 *All.,* 313, *Sawal Das v. Ram Ilahi Begam,* *I. L. R.,* 19 *All.,* 490 and *Lochan Singh v. Sarat Chandar Mukerji,* *Weekly Notes* 1899, p. 21 referred to. GIRDHAR *v.* CHATURBHUJ I. L. R., 21 All., 277

32. ———— *Question as to authority to consent to decree—Validity of decree made by consent.*—In proceedings for execution of a decree one of the judgment-debtors opposed the application for execution under s. 244 of the Civil Procedure Code on the ground that the person who was said to have consented to the decree had no authority

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1. QUESTIONS IN EXECUTION OF DECREE —*continued*

to consent to it *Held* that this was a question which could not be raised in execution *Sadindra* v *Budan* I L R 9 *Mad* 80 approved. DHANI RAM MAHTA v LUCHMESWAR SINGH [I. L. R 23 Calc 639

33 ———— Question as to whether debt was properly contracted—*Execution of decree against endowed property*—B obtained a decree on a settlement of accounts made with P as trustee of a muth P's title as trustee having subsequently been negatived by decree and the title of S declared, B applied to execute the decree against the property of the muth and to have S substituted as party to the suit in place of P The application was rejected by the Munsif but on appeal the District Judge made S a party and reserved for determination in execution proceedings the question whether the debt was contracted for the benefit of the muth *Held* that S was properly made a party but that it was not open to him to raise this question in execution proceedings SUDINDRA v BUDAN [I. L. R 9 Mad., 80

34. ———— *Decree for sale on a mortgage—Powers of Court executing decree—Joint Hindu family—Objection by son that his interest in the property mortgaged is not saleable in execution of a decree obtained against his father*—*Held* that it is not open to a son in a joint Hindu family who has been made a party as the legal representative of his father to proceedings in execution of a mortgage decree against his father to raise an objection in those execution proceedings that the decree against the father is not binding on him in his personal capacity by reason of his not having been made a party to the suit in which the decree was passed. *Bhawani Prasad* v *Kallu* I L R 17 *All* 537 referred to *Sanwal Dass* v *Bismillah Begam* I L R 19 *All* 480 and *Lиladhar* v *Chaturbhuj* I L R., 21 *All* 277 approved. *Lochan Singh* v *Sant Chandar Mukerji* *Weekly Notes* 1893 p 24 not followed HIRA LAL SAHU v PARAMESHAR RAI I. L. R 21 All. 356

35 ———— Right to maintenance—*Maintenance payable by instalments under decree*—Where the holder of a decree for maintenance is opposed in execution by the heirs of her judgment debtors the questions arising between them cannot be determined in execution but must be tried in a regular suit *Quære*—If the original judgment-debtor were alive could the decree-holder enforce her claim for maintenance by execution without a fresh suit for each instalment unpaid? PREMOO BIBI v DASSOO DEBIA 10 W R, 93

36 ———— Monthly allowance payable under decree—*Cause of action—Separate suit on failure to pay*—Where by a decree the plaintiff's right to a monthly allowance was declared—*Held* that any failure on the part of the person bound to pay by the terms of the decree would constitute a good cause of action and a fresh suit brought on the assertion of payment being withheld would not be affected by the provisions of s 11 Act XXIII of 1861 NAWAZISH ALY BEG v VILAYTEE KHANUM 2 Agra, 23

37 ———— Claim for damages for injury to goods wrongly attached—*Separate suit*—A claim for damages for injury to certain goods belonging to plaintiff but attached by the defendant in execution of a decree held by him against the plaintiff pending such attachment through the alleged negligence of the defendant is a matter which should be determined by a separate suit and not by the Court executing the decree under which the goods are attached. LUCHMAN DASS v HEERA LAL 3 N W 187

38 ———— Question of liability for wrongful execution—*Separate suit*—Where property attached in execution of a decree is found by the Court executing the decree to have been wrongly seized the question of the legal liability of the plaintiff for the loss sustained can only be determined by a separate suit and an order adjudging such liability passed in execution of the decree will be set aside as illegal WRIGHT v SEETA RAM [2 Agra 105

39 ———— Damages for injury to goods under attachment—*Separate suit*—A claim for damages in respect of injury sustained by goods while under attachment in execution of a decree which was afterwards set aside is not a matter to be disposed of under s 11 Act XXIII of 1861 but must be made the subject of a separate suit KASHEE KISHORE ROY CHOWDHRY v NOOR KHAN [7 W R. 45

40 ———— Damage done by removal of crops for possession of which decree had been obtained—By the terms of a decree passed by the District Munsif the plaintiff was declared entitled to the possession of certain land together with the crops upon it The plaintiff asked for execution of the decree in respect of the land and the crops which he alleged had been unlawfully taken away by the defendants and possession of the land was given to the plaintiff but it was referred to a separate suit for the damage sustained by him by reason of the removal of the crop *Held* that no separate suit could be maintained but the plaintiff's remedy was by a proceeding in execution under s 11 of Act XXIII of 1861 (Civil Procedure Code) SUNGARA NARAYANA PILLAY v SANDIRA PILLAY [6 Mad. 13

41 ———— Land wrongly given to defendant in another suit—*Separate suit*—The plaintiff sued to recover certain land of which the defendant obtained possession in execution of a decree in a former suit in which the plaintiff was a defendant although it was not part of the land

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued.*

mentioned in the plaint or decree in the former suit *Held* that the plaintiff's suit could not be maintained and that his only remedy for the wrongful dispossession was a proceeding under s 11 Act XXIII of 1861 MUTTUVELU PILLAI *v* VITHILINGA PILLAI 5 Mad., 185

42 ——— **Objection to claim to portion of the land**—*Decree altering possession of land* —Where a decree directed certain land to be taken from first defendant and put into plaintiff's possession for a term and a claim was put in by second defendant s assignees to part of the land — *Held* that an objection by first defendant to the claim was a matter to be determined in execution proceedings and not by separate suit RAHIMAN KHAN SAMOJI SAHIB *v* PATCHA MIYAH [I L R. 4 Mad. 285

43 ——— **Land taken in excess of decree**—*Separate suit—Cause of action* —Where a party who has obtained a decree for land takes possession by his own act and not by the act of the officer of Court of more land than the decree gives him —*Held* that a suit will lie to recover back possession of any land taken in excess of the decree MUDUN MOHUN SINGH *v* KANYEE DOSS CHUCKERBUTTY 12 B L R. 201

SHURUT SOONDUREE DEBEE *v* PURESH NARAIN ROY 12 W R. 85

44 ——— *Cause of dispossession* —It should be distinctly found in such a case how the dispossession occurred whether through the Court or by the act of the defendant himself SUROT SOONDERY DABEE *v* ONWAR NARAIN PERSHAD DEY [12 B L R. 207 note

S C SHURUT SOONDUREE DEBEE *v* PURESH NARAIN ROY 12 W R. 85

45 ——— *Separate suit.*—In execution of a decree for the recovery of certain lands from the plaintiff within specified boundaries the defendant took possession of land as being covered by the decree the possession being given him by an officer of Court Thereafter the plaintiff preferred a complaint that the defendant had taken illegal possession as the land was not covered by the decree but the Court rejected his application The plaintiff then brought a suit to recover possession of the lands which he alleged had been wrongfully taken under the defendant s decree *Held* that the suit would not lie The matter was a question arising between the parties relating to the execution of the decree under s 11 Act XXIII of 1861 and should therefore have been the subject of an application to the Court which made the decree. JOGENDRO NARAIN COOMAR *v* SURNOMOYEE [12 B L R. 203 note 14 W R. 39

See KISHEN SOONDER ROY *v* PROSUNNONATH BHUTTACHARJEE W R 1864 208

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1 QUESTIONS IN EXECUTION OF DECREE —*continued*

And MAHOMED IBRAHIM *v* LALLA JUSSODALAL [W R., 1864 247

46 ——— *Suit for property wrongly taken in execution of decree—Right of suit—Question of jurisdiction* —Under s 244 of the Civil Procedure Code (Act XIV of 1882) no separate suit will lie for the recovery of lands taken by the decree-holder in excess of the terms of his decree if the decree holder has been put in possession of such lands by the officer of the Court executing the decree *Mudhun Mohun Singh* v *Kanye Doss Chuckerbutty 12 B L R 201* referred to But where the suit has been instituted in the Court which had jurisdiction to execute the decree the plaint may be regarded as an application to that Court for determining the question whether the lands are covered by the decree and the suit does not therefore fail for want of jurisdiction *Purmessuree Pershad Narain Singh* v *Jankee Kooer 19 W R 90* and *Azizuddin Hossein* v *Ramanugra Roy I L R 14 Calc 605* referred to and followed. *Held* also that in such a case it is incumbent upon the defendant to raise the plea of jurisdiction in the Court of first instance the question being not a pure question of law but a question which would depend upon facts BIRU MAHATA *v* SHYAMA CHURN KHAWAS I. L. R., 22 Calc. 483

47 ——— *Question whether lands were included in decree—Act VIII of 1859 s 387—Act XXIII of 1861 s 11* —The father of the defendant in 1853 obtained a decree against the father of the plaintiff and other persons for partition of village lands The decree directed that in effecting the partition certain dhara lands then occupied by the plaintiff s father were not to be included Application for execution of that decree was made in 1861 but the execution proceedings remained pending until 1882 On the 12th December 1882 the decree was executed, and the defendant (his father being then dead) was put into possession of the lands now in dispute as being part of the lands to which he was entitled under the decree The plaintiff objected that these lands were not subject to partition under the decree and he applied for an order that they should be delivered back to him. His application was rejected and he thereupon brought the present suit to recover the lands from the defendant The Court of first instance was of opinion that the question raised in the suit related to the execution of the decree made in 1853 and under s 244 of the Civil Procedure Code (Act XIV of 1882) could not be raised again by a separate suit The plaintiff appealed to the Assistant Judge who reversed the lower Court s decree On appeal by the defendant to the High Court —*Held* reversing the decree of the lower Appellate Court that the plaintiff s suit should be dismissed The question whether the dhara lands received by the defendant in execution of the decree

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

of 1853 were included in that decree was a question relating to the execution of the decree within the meaning of s. 244 of the Civil Procedure Code Act XIV of 1882 which barred a separate suit LAGHUNATH GANE II v MULNA AMAD

[I. L. R. 12 Bom. 449

48 ———— Decree wrongly executed—*Trespass Suit for*—Where in execution of a decree something is done which is not ordered by the decree as making breaches in a bund which were thought by the nazir necessary for the protection of the bund a suit will lie for trespass committed thereby It is not a question arising in execution of a decree under s 11 Act XXIII of 1861 I ASH BEHARY LALL v WAJAN

[12 B. L. R. 208 note 11 W R. 516

See also SUBJAN BIBI v SARIATULLA

[3 B. L. R. A. C 413 12 W R. 329

49 ———— *Suit by judgment debtor to set aside sale—Fresh suit—Civil Procedure Code s 244*—A judgment debtor sued the decree-holder for recovery of possession of certain land which had been sold in execution of the decree and to set aside the sale on the ground that the land was not liable under s 9 of the N W P Rent Act to sale in execution of decree *Held* that the question at issue between the parties was clearly one relating to the execution and satisfaction of the decree and that the suit was therefore barred by the provisions of s. 244 of the Civil Procedure Code JANKI SINGH v ABLAK SINGH I. L. R. 6 All 393

50 ———— *Retention by the Court of property not the subject-matter of a decree in the course of its execution—Dismissal of petition for delivery of possession—Appeal from order of dismissal*—A decree having been passed awarding to a plaintiff in a suit a moiety of certain jewels which were stored in family boxes in the possession of the defendant the boxes containing the jewels were taken possession of by an officer of the District Court and a division was effected by a commissioner appointed for that purpose by that Court After the division certain jewels remained which had been set aside by the commissioner as not forming part of the subject matter of the decree and these continued in the custody of the District Court. The defendant thereupon presented a petition to the District Court praying that the jewels so remaining undivided might be returned to him Plaintiff resisted the application but both parties were agreed that the said remaining jewels were not part of the subject matter of the suit and were not dealt with by the decree The petition was dismissed whereupon the petitioner appealed. On objection being taken that no appeal lay against the order of dismissal on the ground that since the jewels in question were not part of the subject matter of the suit and were not dealt with in the decree the question was not one relating to the execution of a decree and was not governed by s 244 of the Code of Civil Procedure—*Held* that the question as to what should be done with the boxes and their contents arose between the parties to the suit and related to the execution of the decree; that the order was passed under s 244 of the Code of Civil Procedure and that consequently an appeal lay *Per* MICHELL *J*—The property having been interfered with in the course of the execution of a decree the question involved was one relating to the execution of the decree The general words in the section should be construed liberally *Muttuvelu Pillai* v *Vythilinga Pillai 5 Mad 185* and *Madhan Mohan Singh* v *Kangu Doss Chuckerbutty 12 B L R 201* referred to APPA RAO v VENKATA RAMANAYAMMA I. L. R., 23 Mad. 55

51.———— Crops misappropriated while in possession under decree afterwards set aside on appeal—*Separate suit for value of crops*—The defendant obtained a decree in a suit brought against the plaintiff for arrears of rent and for ejectment in execution of which he evicted the plaintiff from his holding and after getting possession thereof carried away certain crops which were then standing on the land. The plaintiff appealed from the decree obtained by the defendant and on appeal it was set aside on the plaintiff depositing the rent due and the plaintiff recovered possession of his tenure *Held* that a suit for the value of the crops carried away by the defendant while in possession under his decree was not barred by s 11 of Act XXIII of 1861 SHURNOMOYEE v PATARBI SIRKAR

[I. L R. 4 Calc 625

52.———— *Decree for costs—Sale of immoveable property in execution—Reversal of decree on appeal—Suit for recovery of mesne profits—Suit for value of crops wrongly appropriated—Right of suit—Civil Procedure Code (Act XIV of 1882) s 583*—*A* brought a suit against *B* for compensation but it was struck off and *B* obtained a decree for costs *A* appealed but pending the appeal *B* executed his decree and in execution thereof purchased a certain immoveable property of *A* and took delivery of possession The Appellate Court remanded the case for retrial on the merits and a decree was passed by the Court of first instance in *A*'s favour which was confirmed on appeal and he got back his property A then brought a suit for the value of crops wrongfully appropriated by *B* during the period he was in possession It was contended on second appeal that such a suit was barred by the provisions of s. 244 of the Civil Procedure Code. *Held* that the question to be decided in this suit did not relate to the execution discharge or satisfaction of the original decree within the meaning of s. 244 because it did not arise at all until that decree had ceased to exist and such a suit was not barred by the provisions of that section. *Lati Koer* v *Sobhadri Kooer I L R., 3 Calc 720 Mookoond Lal Pal Chowdhry* v *Mahomed Sami Meah I L R 14 Calc 484 Hameeda* v *Bhudhun 20 W R 238*

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1 QUESTIONS IN EXECUTION OF DECREE —continued

Ramasoondvree Dabee v *Tarinee Kant Lahooree* 20 *W R* 415 *Dulfeet Gorain* v *Rewal Gorain* 22 *W R* 435 *Ram Roop Singh* v *Sheo Golam Singh* 25 *W R* 327 *Ram Ghulam* v *Dwarka Rai* *I L R* 7 *All* 170 referred to *Mothoora Pershad Singh* v *Shumbhoo Geer* 19 *W R* 413 distinguished. COFFIN *v* KARBARI RAWAT [I. L. R. 22 Calc. 501

53 ———— **Suit for restoration of property where decree is reversed.**—Where a person obtains possession of property under a decree which is subsequently reversed a claim for the restoration of the property need not under Act XXIII of 1861 s 11 be the subject of a separate suit but may be enforced in a miscellaneous proceeding NAGINDAS DEVCHAND *v* NATHA PITAMBER [10 Bom., 297

54. ———— **Failure to execute decree**—*Suit after omission to execute decree*—Plaintiff s father purchased a house on the 11th June 1854 at a sale made under a decree against *G D* but was not put into possession of it accordingly in 1866 he obtained a decree for possession which however was never executed. The defendant in 1870 obtained possession of the house by another sale made in execution of another decree against *G D* The present suit was instituted by plaintiff in 1871 *Held* that not only was the remedy on the cause of action which accrued in 1854 and the decree of 1866 barred but also that Act XXIII of 1861 s 11 prevented the plaintiff from bringing a new suit on the fresh cause of action accruing to him under the decree of 1866 as that section took away from the parties to the suit the right to raise by a fresh suit any question as to their rights and liabilities under the decree *Runganasary* v *Shappani* 5 *Mad.* 375 followed KISAN NANDRAM *v* ANANDARAM BACHAJI [10 Bom 433

55 ———— **Suit for possession after failure of attempt to execute decree giving possession**—*Separate suit*—The ancestors of the plaintiff brought a suit in 1821 before the Registrar of the Adawlut Court to eject the defendant s grand father from a piece of ground. The Registrar found that the defendant was a tenant under the plaintiff at a monthly rent and the Court decreed that defendant should remain in possession so long as he should continue to pay the rent regularly and that in default of payment the plaintiff should be placed in possession An attempt to obtain possession in execution of that decree in 1861 failed and the plaintiff brought a suit to recover possession with arrears of rent *Held* that s 11 of Act XXIII of 1861 precluded the plaintiff from maintaining the suit RUNGANASARY *v* SHAPPANI ASARY 5 Mad. 375

56 ———— **Execution of decree raising question of mismanagement of property after rejection of application to be put into possession**—*Declaratory decree*—In a partition suit brought by the plaintiff a decree was passed in 1882 which provided (*inter alia*) that the defendant should manage certain devasthan lands and apply the income thereof to devasthan purposes and that if he failed to manage the lands properly or alienated them by sale or mortgage the plaintiff and his younger brother should enjoy the lands and apply the proceeds towards the maintenance of the devasthan. In execution of this decree plaintiff presented an application on the 28th November 1894 praying that he should be put in management of the devasthan lands on the ground that the defendant was guilty of mismanagement and misapplication of the devasthan property This application was rejected by the Court of first instance on the ground that the question of mismanagement did not fall within s. 244 cl (*c*) of the Code of Civil Procedure This order was confirmed on appeal on the ground that the decree was a declaratory decree and therefore incapable of execution *Held* on second appeal that the decree was not declaratory only and that it could be enforced in execution under s. 244 of the Code of Civil Procedure MADHAVRAO *v* RAMRAO [I. L. R. 22 Bom., 267

57 ———— **Suit for possession which might have been had under decree**—*Separate suit*—A suit will not lie for possession of land of which the plaintiff should have been but was not put in substantial possession in execution of decree His remedy is to further execute his decree KISTO GOBIND KUR *v* GUNGA PERSHAD SURMAH [25 W R. 372

LOLIT COOMAR BOSE *v* ISHAN CHUNDER CHUCKERBUTTY 10 C L. R. 258

58 ———— *Separate suit*—*New cause of action.*—A plaintiff who has obtained a decree declaring him entitled to the possession of immoveable property must under s 11 of Act XXIII of 1861 proceed by execution of the said decree and not otherwise if he neglect to do so till he is time barred he cannot any the more on that account bring another suit for possession of the same property whether founded on the old decree in his favour or on the continued occupation of the said property by the defendant NASRUDIN *v* VENKATESH PRABHU [I. L. R. 5 Bom. 382

59 ———— **Formal possession under decree**—*Separate suit for actual possession*—*Cause of action*—*Execution of decree*—*Civil Procedure Code Act XIV of 1882 ss 244 cl (c) 263 264*—In 1877 the plaintiff sued the defendant for possession of certain properties and obtained a decree in execution of this decree the plaintiff on 12th of July 1879 obtained formal possession of the properties sued for The defendant continued to remain in actual possession and occupation of a portion of the premises and refused to give up possession of the same to the plaintiff who served him with a two months' notice to quit in June 1881

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—continued

1 QUESTIONS IN EXECUTION OF DECREE —continued

The plaintiff did not eject the defendant in execution of the decree obtained by him against the defendant but instituted a fresh suit for that purpose *Held* that such a suit would lie *Semble*—That the delivery of formal possession in execution of a decree for possession gives a cause of action against a defendant who remains in occupation of the premises which may be enforced in a regular suit SHAMA CHARAN CHATTERJI *v* MADHUB CHUNDRA MOOKERJEE I. L. R. 11 Calc., 93

60 ———— Order absolute for sale—*Transfer of Property Act (IV of 1882) s 88—Questions relating to the order absolute for sale*—When an order absolute for sale of mortgaged property has been made any question that arises as to that order absolute for sale is not a question relating to the execution of the decree within the meaning of s. 244 of the Code of Civil Procedure *Ajudhia Pershad v Baldeo Singh I L R 21 Calc 818 Tilak Singh v Persotein Proshad I L R 22 Calc 924 Tara Prosad Roy v Bhobodeb Roy I L R 22 Calc., 931* and *Lal Singh v Drigpal I L R 16 All 23* followed. *Kedar Nath v Lalji Saha I L R 12 All., 61 Oudh Behari Lal v Nageshar Lal I L R 13 All 278* dissented from AKIKUNNISSA BIBEE *v* ROOP LAL DAS I. L. R 25 Calc. 133

61 ———— Question as to title raised and decided in execution proceedings—*Omission to appeal—Fresh suit brought to establish title*—The defendant obtained a decree against the plaintiff as representative of his (the plaintiff's) deceased uncle and in execution he attached the property in dispute The plaintiff objected to the attachment but his objection was disallowed and the property was sold The plaintiff did not appeal against the order disallowing his objection but filed the present suit to establish his right Both the lower Courts allowed the plaintiff's claim On appeal by the defendant to the High Court —*Held* reversing the decree of the Courts below that the plaintiff's suit was not maintainable The question raised in the present suit was one which ought to have been taken in the execution proceedings in the former suit under s 244 of the Civil Procedure Code (Act XIV of 1882); and having been as a fact raised and decided against the plaintiff he could not bring a separate suit NIMBA HARISHET *v* SITARAM PARJI I. L. R. 9 Bom. 458

62 ———— Omission to oppose execution of decree—*Suit to set aside illegal sale*—A suit will lie to set aside a sale made in contravention of the terms of s 64 Bengal Act VIII of 1869 the judgment debtor not being bound to oppose the sale in the proceedings in execution. BAMA SOONDUREE DOSSEE *v* MUDHOO SOODUN BISWAS 25 W R. 156

63 ———— Claim to have sale set aside as fraudulent—*Suit by judgment-debtor against judgment-creditor and purchaser to set aside fraudulent sale*—A judgment-debtor who claims to have a sale of his land set aside on the ground of fraud committed by the judgment creditor who procured a sale without advertisement and purchased the property without leave of the Court is debarred from bringing a suit to set aside the sale inasmuch as the question is one arising between the parties to the suit and relates to the execution of the decree within the meaning of s 244 of the Code of Civil Procedure 1877 VIRARAGHAVA AYYANGAR *v* VENKATA CHARYAR I. L. R 5 Mad. 217

64 ———— Application to set aside sale—*Civil Procedure Code 1882 s 294*—An application under s 294 of the Civil Procedure Code to have a sale set aside on the ground that the purchaser took nothing by his purchase inasmuch as he *was the holder of the decree in execution of which the* property was sold is a matter in execution falling under s. 244 of the Code *Viraraghava Ayyangar v Venkata Charyar I L R., 5 Mad 217* followed. CHINTAMANRAV NATU *v* VITHABAI I. L. R 11 Bom 588

GENU *v* SAKHARAM I. L. R. 22 Bom. 271

65 ———— *Sale in execution the judgment-debtor being ignorant of the execution proceedings through the fraud of the decree holder—Setting aside proceedings in execution—Separate suit*—In 1879 *D* obtained a decree against *S* *S* gave security for the satisfaction of the decree whereupon *D* agreed not to take proceedings in execution In breach of this agreement *D* in the same year applied for execution and sold certain immoveable property belonging to *S* of which *K* became the purchaser *K* did not apply for possession until 1883 in which year he applied for and obtained possession of the property *S* alleged that he then for the first time became aware of the sale and that by the fraud of *D* and *K* he had been kept in ignorance of the execution proceedings taken by *D* in breach of the above mentioned agreement and within thirty days after *K* obtained possession he (S) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings The Subordinate Judge held that the application was barred and referred the applicant to a separate suit to set aside the sale On application to the High Court —*Held* on the authority of *Paranjpe v Kanade I L R 6 Bom 148* that a separate suit would not lie and that the relief sought by *S* could only be obtained at all events as against *D* by an application under s. 244 of the Civil Procedure Code 1882 SAKHARAM GOVIND KALE *v* DAMODAR AKHARAM I. L. R. 9 Bom. 468

66 ———— *Sale in execution of decree for arrears of rent—Fraud—Suit to set aside a sale on the ground of fraud—Decree—Questions arising between the parties or their representatives—Right of suit—Code of Civil Procedure (Act XIV of 1882) ss 311 312 314 316*—*Held* by the Full Bench—PETHERAM C.J PRINSEP

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

TOTTENHAM and PIGOT JJ (GHOSE J dissenting) —that when circumstances affecting the validity of a sale in execution have been brought about by the fraud of one of the parties to the suit and give rise to a question between these parties such as apart from fraud would be within the provisions of s 244 a suit will not lie to impeach the validity of the sale on the ground of such fraud *Saroda Chunder Chuckerbutty* v *Mahomed Isuf Meah I L R 11 Calc 376 Vira raghava Ayyangar* v *Venkata Charyar I L R 5 Mad 217 Paranjpe* v *Kanade I L R 6 Bom 148* and *Sakharam Govind Kale* v *Damodar Akharam Gujar I L R 9 Bom 468* approved *Gobind Chandra Majumdar* v *Uma Churn Sen I L R 14 Calc 679* dissented from in part *Held* that in such a case the judgment-debtor is entitled whether the sale has been confirmed or not to make as against the person guilty of the fraud or accessory thereto such application (if any) under s 311 as he *may be entitled to make his time for making it being* computed from the time when the fraud first became known to him *Held* further that in cases in which the decree or the purchase is made benami s 244 does not apply and a suit may be held to lie to set aside the sale *Per* GHOSE *J*—An objection under s 311 or upon the ground of fraud raised by the judgment debtor after the sale has been confirmed under s 312 cannot be dealt with under s 244 In such a case the judgment-debtor is entitled upon the ground of fraud to bring a suit to set aside the sale or at all events to have it declared that the sale passed no title to the purchaser or that the purchaser is a trustee for him There is no special provision in the Code for setting aside a sale on the ground of fraud when it has once been confirmed MOHENDRO NARAIN CHATURAJ v GOPAL MONDUL

[I L R 17 Calc 769

67 ——— *Suit to set aside sale on ground of fraud—Sale in execution of mortgage decree directing the sale of the mortgaged property under ss 88 and 89 of Transfer of Property Act—Decree nisi not absolute—Right of suit—Civil Procedure Code ss 311 and 312*—Where a suit to set aside a sale in execution of a decree was brought on the ground that by the fraud of the judgment creditor the proclamation of sale had not been duly made and the facts were that the sale was not an ordinary sale of attached property in execution of a decree but a sale in execution of a mortgage decree which directed the sale of the mortgaged property in accordance with the provisions of ss 88 and 89 of the Transfer of Property Act but that there was no such decree in existence as only a decree *nisi* and not a decree absolute directing the sale had been made and it was contended that until a decree absolute was made for the sale the right to redeem existed and that the suit might be regarded as a suit to redeem —*Held* that there was nothing in these facts to distinguish the case from the Full Bench case of *Mohendro Narain Chaturaj* v *Gopal Mondul I L R 17 Calc 769* and that the suit was therefore not maintainable An order directing a sale in such a case would be sufficient authority under s 89 of the Transfer of Property Act even if the order did not take the form of a decree such as is prescribed for a decree absolute in the case of a suit for foreclosure SIVA PERSHAD MAITY v NUNDO LALL KAR MAHAPATRA I L R 18 Calc 139

68 ——— *Application to set aside sale on ground of fraud—Question between decree holder or auction purchaser and judgment debtor*—Where a judgment debtor applies to have an execution sale set aside alleging circumstances which if found in his favour would amount to fraud on the part of the decree-holder or the auction purchaser the case comes within s 244 of the Civil Procedure Code *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683 Chand Monie Dasya* v *Santamonee Dasya I L R, 24 Calc 707* and *Nemai Chand Kanji* v *Denonath Kanji 2 C W N 691* referred to ROJONIKANT BAGCHI v HOSSEN UDDIN AHMED 4 C W N 538

69 ——— *Sale in execution of decree for arrears of rent—Fraud—Suit to set aside sale on ground of fraud—Civil Procedure Code 1882 s 311—Right of suit*—*A* and *B* were two tenants whose names were registered in the landlord's sherista *B* died leaving *C D* and *E* his sons and heirs but no application for mutation of names in the sherista was made Disputes as to rent having arisen *A* and *C* proceeded to make deposits in Court in respect thereof and the landlord instituted a suit against *A* joining *C* as a party defendant to recover the amount of rent he claimed and obtained an *ex parte* decree which *inter alia* directed that it should be satisfied out of the amount so deposited in Court That amount according to the landlord's case proving insufficient to satisfy his demands he proceeded to execute the decree and brought the holding to sale and purchased it himself *A* and *C* then applied under s 311 of the Code to have the sale set aside alleging that the decree had been *fraudulently executed, the sale proclamation* suppressed and that the decree was incapable of execution in the manner adopted and contending that it could only be executed against the amounts so deposited in Court which were more than ample to satisfy the full amount justly due under it That application was unsuccessful *A C D* and *E* then instituted a suit to have the sale set aside on the ground of fraud *Held* as regards *A* and *C* following the decision in *Mohendro Narain Chaturaj* v *Gopal Mondul I L R 17 Calc 769* that the questions as to the propriety of the execution of the rent-decree by sale and as to the suppression of the sale proclamation were questions which could and ought to have been decided under s 244 and that so far as they were concerned the suit would not lie *Held* however as regards *D* and *E* that as they were not parties to the rent suit or proceedings had therein and although as heirs of a deceased tenant who

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

had not got their names registered in the landlord's sherista, they might not be able to question the decree obtained for arrears of rent they were not thereby precluded from contesting a sale on the ground that it had been fraudulently obtained under colour of such a decree and that it was competent to them at any rate to sue for a declaration that the sale in question did not in any way affect their rights. JAGAN NATH GORAI *v* WATSON & Co [I. L. R. 19 Calc 341

70 ——— *Suit to have an execution sale of land set aside—Purchaser at sale sought to be set aside—Fraud allegation of*—Where questions are raised between the parties to a decree relating to its execution discharge or satisfaction the fact that the purchaser at a judicial sale who is no party to the decree of which the execution is in question is interested and concerned in the result has never been held to prevent the application of s. 244 of the Civil Procedure Code limiting the disposal of these matters to the Court executing the decree The plaintiffs in a suit to have the judicial sale of a zamindari set aside alleged that the decree-holder in part satisfaction of his decree had received from them and other co-sharers in the zamindari their proportionate amounts of the debt decreed and had agreed that their shares should be exempt from the execution sale about to take place that the sale took place subject to that exemption that the decree-holder however with whom some of the co-sharers and the purchasers colluded, fraudulently had the sale set aside revived the attachment and caused a second sale at which all the shares in the zamindari were sold. *Held* that the question besides that the charge of fraud was not sufficiently specific was determinable in virtue of s 244 of the Code of Civil Procedure only by order of the Court executing the decree PROSUNNO KUMAR SANYAL *v* KALI DAS SANYAL [I. L. R 19 Calc. 683 L. R 19 I. A 166

71 ——— *Question arising between the parties to the suit —Sale of property by the Collector as ancestral property—Suit to set aside sale on the ground that property was not ancestral*—Certain property of a judgment debtor having been sold by the Collector under s. 320 of the Code of Civil Procedure as being ancestral property the judgment-debtor sued the decree holder and the auction purchaser to have the sale set aside upon the two main grounds that the property was not ancestral and therefore could not legally be sold by the Collector and that the real purchaser at the auction sale was the decree holder himself who had not obtained the leave of the Court to bid. *Held* that the questions thus raised were questions arising between the parties to the suit within the meaning of s 244 of the Code of Civil Procedure and that the suit would not lie *Basti Ram* v *Fattu I L R 8 All 146* and *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683* referred to DAULAT SINGH *v* JUGAL KISHORE [I. L. R. 22 All. 108

See DHANI RAM *v* CHATURBHUJ [I L. R. 22 All. 83

72 ——— *Application to set aside sale on the ground of fraud in a case where a third party is the auction purchaser—Code of Civil Procedure (Act XIV of 1882) ss 2 311*—The decision in the case of *Mohendro Narain Chaturaj* v *Gopal Mondul I L R 17 Calc 769* has been in effect overruled by the decision of the Privy Council in the case of *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683 L R 19 I A 166* An application to set aside a sale on the ground of fraud would come under s. 244 of the Civil Procedure Code notwithstanding that the purchase was made by a person who was a third party *Saadatmand Khan* v *Phul Kuar I L R 20 All 412* distinguished BHUBON MOHUN PAL *v* NUNDA LAL DEY I L. R 26 Calc 324 [3 C W N 399

See HIRA LAL GHOSE *v* CHANDRA KANTA GHOSE [I L R. 26 Calc 539 3 C W N 403

73 ——— *Suit to set aside a sale on the ground that the decree was obtained by fraud whether maintainable where third party is the auction purchaser*—A suit to set aside an execution sale on the ground of fraud is not maintainable under the provisions of s 244 of the Civil Procedure Code even in a case where the real or nominal auction purchaser is a person who was not a party to the original suit *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683 L R 19 I A 166* followed MOTI LAL CHAKERBUTTY *v* RUSSICK CHANDRA BAIRAGI [I L R 26 Calc 326 note 3 C W N 395

RAM NARAIN TEWARI *v* SHEW BHUNJAN ROY [I. L. R., 27 Calc 197

and NEMAI CHAND KANJI *v* DENO NATH KANJI [2 C W N 691

74 ——— Question as to transfer of decree—*Purchaser of the decree from the decree holder—Civil Procedure Code (Act XIV of 1882) ss 2 232—Application by transferee of decree—Civil Procedure Code Amendment Act (VII of 1888)*—The word representative as used in s 244 of the Code of Civil Procedure when used with reference to a decree holder includes the purchaser of the decree from the decree holder by an assignment in writing *Ishan Chunder Sircar* v *Beni Madhub Sirkar I L R 24 Calc., 62* and *Badri Narain* v *Jai Kishen Das I L R 16 All 483* referred to The Court executing a decree which has been so transferred can go into the disputed question of the transfer of the decree under the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

provisions of s 244 of the Civil Procedure Code as amended by Act VII of 1888 DWAR BUKSH SIRKAR v FATIK JALI I L R 26 Calc, 250 [3 C W N, 222

GANGA DAS SEAL v YAKUB ALI DOBASHI [I L R 27 Calc, 670

75 ——— **Order refusing to confirm a sale in execution of ex parte decree set aside** — An order refusing to confirm a sale on the ground that there was no subsisting decree at the date when the confirmation of the sale is applied for is one under s 244 of the Civil Procedure Code the question raised being one relating to the execution or satisfaction of the decree within the meaning of that section *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683* referred to DOYAMOYI DASI v SARAT CHUNDER MAJUMDAR [I L R 25 Calc., 175 1 C W N 656

76 ——— **Effect of satisfaction of decree** —Where a decree has been satisfied it prevents an application under s 244 of the Code of Civil Procedure there being no decree then existing RASH BEHARY MONDAL v PAKHAL CHARAN MANDAL 1 C W N, 708

77 ——— **Application to set aside sale in execution of an ex parte decree subsequently set aside under s 108 Civil Procedure Code** —Where a property was sold in execution of an *ex parte* decree and purchased by the decree holder and the decree was subsequently set aside under s 108 Civil Procedure Code —*Held* that it is competent to a Court under s 244 Civil Procedure Code to go into the question and to set aside the sale as bad *Prosunno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Cal 683* and *Mohendro Narain Chaturaj* v *Gopal Mondul I L R 17 Calc 769* relied on BENI PERSHAD KOERI v LAKHI RAI 3 C W N 6

78 ——— **Claim to have sale set aside as being under barred decree**—*Separate suit* —A separate suit will not lie to have set aside a sale made in execution of decree barred at the time of execution the invalidity should be declared in proceedings in execution as provided in s 11 Act XXIII of 1861 NOJABUT ALI CHOWDHRY v MOHA BUSSEEROOLLAH CHOWDHRY [11 B L R 42 20 W R 5

See GOLAM ASGAR v LAKHMAN DEBI [5 B L R 68 13 W R, 273

and ZAMEER SIRDAR v ASSEEMOODDEEN SIRDAR [23 W R 257

URDUB CHURN DEBTA v SOOKDEB DEBTA [24 W R 45

79 ——— **Claim to set aside sale as wrongly made**—*Decree for sale of land —Objections by representative of deceased judgment debtor in his own right disallowed—Order reversed on appeal—Claim under s 278 rejected* —*S* mortgaged four parcels of land to *M* *M* obtained a decree against *S* directing the sale of the lands mortgaged. *S* died and *K* was brought in as his representative under s 234 of the Code of Civil Procedure *M* applied for execution against the lands mortgaged as assets of *S* *K* objected to the sale of three parcels on the ground that one parcel belonged to himself (*K*) and two to the family to which *S* belonged and of which *K* was the manager The District Munsif investigated these questions under s 244 of the Code of Civil Procedure and directed that execution should proceed against all four parcels The District Court on appeal reversed the order of the Munsif on the ground that he had no power to decide these questions under s 244 and that the proper course was for *M* to attach the properties and for *K* to make a claim. This course was adopted and *K*'s claim was rejected and the four parcels were sold and bought by *V* *K* thereupon brought a suit against *M* and *V* to cancel the sales to *V* *Held* that by virtue of s 244 of the Code of Civil Procedure the suit would not lie KURIYALI v MAYAN [I L R 7 Mad. 255

80 ——— **Sale in execution of an ex parte decree and purchase by the decree-holder**—*Confirmation of the sale—Subsequent setting aside of the ex parte decree—Application by a subsequent purchaser in execution of another decree to set aside the sale on the ground that the ex parte decree had been set aside* —Certain immoveable properties were sold in execution of an *ex parte* decree and were purchased by the decree holder himself After the confirmation of the sale the decree was set aside under s. 108 of the Civil Procedure Code at the instance of some of the defendants in the original suit On an application under s 244 of the Civil Procedure Code having been made by a prior purchaser of the said properties in execution of another decree to set aside the sale held in execution of the *ex parte* decree the defence was that the application could not come under s 244 of the Civil Procedure Code and that the sale could not be set aside as it had been confirmed *Held* that the case was one under s 244 of the Civil Procedure Code and that the *ex parte* decree having been set aside the sale could not stand inasmuch as the decree holder himself was the purchaser *Doyamoyi Dasi* v *Sarat Chunder Mozoomdar I L R 25 Calc 175 Beni Persad Koeri* v *Lakhi Rai 3 C W N 6 Durga Charan Mandal* v *Kali Prasanno Sarkar I L R 26 Calc 727 Zainal-ub-din Khan* v *Mahammed Asghar Ali I L R 15 I A 12 I L R 10 All 166* and *Minal Kumari Bibee* v *Jagat Sattani Bibee I L R 10 Calc 220* referred to SET UMEDMAL v SRINATH LOY I L R. 27 Calc. 810 [4 C W N 692

81 ——— **Restitution of amount paid under decree**—*Reversal of decree—Interest*

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued*

—*Fresh suit* —In a suit for redemption of a mortgage a decree was passed for possession by redemption on the plaintiff paying the sum of R43,625-7-0 the amount of the mortgage-debt. Prior to the institution of the suit the defendant had taken proceedings in the Judge's Court to foreclose the mortgage and the plaintiff paid the above mentioned sum into that Court for the defendant who took it. The plaintiff appealed to the High Court from the decree directing him to pay R43,625-7-0 as the mortgage-debt, and obtained a decree by which the decree of the first Court was modified and the amount payable on redemption was reduced to R2,155 The plaintiff then took out execution of the decree to recover from the defendant the difference between the two sums with interest *Held* that the effect of the Appellate Court's decree was to direct restitution of any sum paid under the first Court's decree which was disallowed by the Appellate Court's decree and that the question was clearly one for determination by the Court executing the decree and not by separate suit being expressly provided for by s. 583 of the Civil Procedure Code *Held* also that the decree holder was entitled to restitution of the amount with interest *Irger v Comptoir d'Escompte de Paris L R 3 P C 465* referred to *Ram Ghulam v Dwarka Rai I L R 7 All 170* distinguished by MAHMOOD J JASWANT SINGH v DIP SINGH

[I. L. R. 7 All., 432

82. ———————— Question arising after sale *Question as to interest taken by purchaser* —*Per* MAHMOOD J —The scope of s 244 of the Civil Procedure Code is limited to matters connected with the execution of the decree between the decree holder and the judgment debtor and covers all the questions which may arise between the decree holder and the judgment debtor relating to the execution etc of the decree Questions that may arise after the sale are not strictly speaking questions relating to the execution discharge or satisfaction of the decree within the meaning of cl (3) s 244 but as soon as there has been a sale the execution of the decree so far as the decree holder is concerned is over and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree holder's decree RAMCHHAIBAR MISR v BECHU BHAGAT I. L. R. 7 All. 641

83 ———————— Refund of purchase money—*Separate suit—Adjudication of judgment debtor as bankrupt and order not to deal with property* —A sale on the 4th March 1871 of certain property sold in execution of a decree obtained by *A* having been confirmed on the 5th May 1878 notice was on the 31st May received that the judgment debtor had been adjudicated a bankrupt in London and an application was made to the Court to abstain from dealing with his property All proceedings were thereupon stayed and on the 8th of July 1878 the purchaser applied to the Court for a refund by the present plaintiffs who were the administrators of *A* of his purchase money and on the 19th of the same month an order was made for such refund The amount was refunded without protest by the plaintiffs who then sued the purchaser and the original judgment debtor to recover the amount paid by them *Held* that the suit would not lie but that the question was one to be determined under s 244 of the Civil Procedure Code by the Court executing the decree SOLANO v AHMEIDA 10 C L R. 573

84. ———————— Compromise as to possession after decree—*Procedure* —*B* sued his brother *C* for possession of certain lands *B* and *C* came to an amicable settlement one of the terms of which was that *C* during his life should retain possession of certain of the lands and that after his death they should pass to *B* A decree was given in accordance with the terms of the compromise On *C*'s death, his widow refused to put B in possession of the lands. *B* sought to obtain possession of the lands with mesne profits by executing the decree under the compromise against *C*'s widow *Held* that he ought to proceed by regular suit TARA MANI DASI v RADHA JIBAN MUSTAFI

[6 B L. R. Ap 142 14 W R. 485

85 ———————— Agreement to give time—*Suit on agreement* —The parties to a decree presented a petition to the Court executing the decree in which they stated that they had agreed that the principal amount of the decree was to be paid within eight years that a sum of R50 was to be paid annually as interest on the principal amount and that upon default of payment of the interest the whole amount due should be realized by execution of the decree On this petition being presented the Court struck the case off its file *Held* that upon default being made the decree holder's remedy was by execution of the decree and not by suit to enforce the terms of the agreement CHAMPAT RAI v PITAMBAR DAS

[I. L. R. 6 All 16

86 ———————— Compromise of decree —*Effect of compromise—Mode of enforcing agreement of compromise—Right of suit* —A decree for partition having been compromised by an agreement made by the parties and communicated to the Court which passed the decree —*Held* that the effect of the decree was extinguished by the agreement which could only be enforced by a fresh suit and not by an application for execution of the former decree HARI RAGHUNATH JOSHI v KRISHNAJI ANANT JOSHI

[I. L. R. 19 Bom. 546

87 ———————— Contract superseding decree—*Separate suit* —In the course of proceedings in execution of a decree by which a simple mortgage of immoveable property was enforced the judgment debtor made an application to the Court executing the decree dated in April 1877 stating that the decree had been partially satisfied by the sale of a part of the mortgaged property that the decree-holder had

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

remitted a portion of the decree that the balance should be paid by a certain date and that a certain banker had given a note of hand for the payment of interest on the balance at a certain rate The judgment debtor then stated as follows So long as the petitioner does not pay the money to the decree holder —*i e* during the term fixed above – the banker shall pay interest to the decree-holder the decree holder shall not have power to take out execution within the said term but after the expiry thereof he shall be at liberty to realize his money together with interest from the petitioner and his property by executing the decree excepting the property sold all the property mortgaged and attached under the decree shall continue so mortgaged and attached the decree holder's pleader has affixed his signature at the foot of this petition showing that he consents to it the petitioner therefore prays that the case may be struck off as partially executed The decree holder subsequently sued the judgment-debtor to recover the balance of the decree claiming under the arrangement set forth in the petition of April 1877 as a contract superseding the decree *Held* having regard to the terms of that petition that no new contract superseding the decree was either intended or effected and the suit was consequently not maintainable *Billings* v *Uncovenanted Service Bank I L R 3 All 781* distinguished. *Ganga* v *Murli Dhar I L R 4 All 240 S A No 25 of 1882 Weekly Notes All 1883 p 93* and *Champat Rai* v *Pitambar Das I L R 6 All 16* followed MAKUND RAM *v* MAKUND RAM

[I. L. R. 6 All 228

88 ———— Compromise effected by fraud—*Separate suit—Practice—Power of Court to vacate any judgment or order procured by fraud* —The plaintiff held two decrees against the defendant for R5 490-1 6 and applied for execution The defendant by misrepresentation induced the plaintiff to receive R3 900 only in full satisfaction of those decrees and to withdraw the application The plaintiff on discovering the misrepresentation brought this suit to recover the difference *Held* that the suit was barred by s 11 of Act XXIII of 1861 (which corresponds with s 244 of Act X of 1877) the question between the parties being a question relating to the *execution of a decree* *It is always competent to any* Court to vacate any judgment or order if it be proved that such judgment or order was obtained by manifest fraud and in the case of orders made in execution s 11 of Act XXIII of 1861 excludes all other remedy PARANJPE *v* KANADE I L R 6 Bom 148

89 ———— Refund of proceeds of sale on ground of compromise —When a refund is claimed of the proceeds of an execution sale on the ground that the decree has been satisfied by compromise the matter ought to be tried under Act XXIII of 1861 s 11 and not by regular suit VELAYET HOSSEIN *v* WULEE AHMED 23 W R 207

90.———— Compromise for larger amount than that claimed—*Refusal of execution for larger amount—Suit for amount of compromise* —The parties to a suit agreed upon a compromise the result of which was that the plaintiff obtained by the decree a greater quantity of land than he had originally claimed and a decree was drawn up in accordance with the compromise In the execution proceedings the defendant raised an objection that the plaintiff could not have execution for a greater quantity of land than he had claimed originally and the Court executing the decree allowed the objection No appeal from the Court's order was made but the plaintiff brought a suit to recover possession of the larger amount of land mentioned in the compromise *Held* that the order of the Court executing the decree was erroneous in law and might properly be reconsidered upon an application for review but that the present suit came within s 244 of the Civil Procedure Code, and therefore could not be maintained. MOHIBULLAH *v* IMAMI I. L. R. 9 All, 229

91. ———— Refund of money wrongly realized under decree—*Execution of decree—Separate suit* —Moneys realized as due under a decree if unduly realized are recoverable by application to the Court executing the decree and not by separate suit The opinion of STUART C J in *Agra Savings Bank* v *Sri Ram Mitter I L R 1 All 388* differed from *Haromohini Chowdhrain* v *Dhanmani Chowdhrain 1 B L R A. C., 138* and *Ekowri Singh* v *Bijayanath Chattapadhya 4 B L R A C 111* distinguished. PARTAP SINGH *v* BENI RAM I. L. R. 3 All, 61
TAJ *v* GUNGAPERSHAD 2 Agra, 45

92. ———— *Decree subsequently reversed or modified* —When money has been taken in execution of a decree which is subsequently reversed or modified no fresh suit will lie for its recovery the matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree SALIGRAM SINGH *v* GOBIND SAHAI

[4 B. L. R., Ap 64

NUBSING CHUNDER SEIN *v* BIDYA DHUREE DOSSEE 2 W. R. 275

JADOO NATH GOSSAIN *v* NOBO KISHEN CHATTERJEE 4 W. R., 88

93 ———— *Suit for money paid under decree afterwards reversed* —In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year Pending an appeal against that decree execution was stayed on the present plaintiff depositing a note for R15 000 as security The decree was affirmed on appeal and the present defendant had the note sold in execution and drew out of the proceeds a sum for mesne profits for subsequent years; but an appeal was preferred in the execution proceedings to the High Court which set aside the execution so far as concerned the mesne profits for the years subsequent to that to which the original decree

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

I QUESTIONS IN EXECUTION OF DECREE—*continued*

related. The present plaintiff thereupon attached and sold the village to recover the balance before that amount was paid to the present plaintiff, the present defendant brought a suit against him in the District Court, and there obtained a decree for mesne profits for the subsequent years and in execution drew the amount of the decree out of Court In second appeal however the High Court on 20th September 1881 reversed the decree of the District Court whereupon the present plaintiff applied for restitution under Civil Procedure Code s. 583 which application was ultimately disallowed. The present suit was brought to recover the amount to which that application related. *Held* that the suit was not barred by the provisions of Civil Procedure Code s 244. NARAYANA v NARAYANA I. L. R. 13 Mad. 437

94. ——————— **Excess sum retained by decree holder after satisfying decree**—*Separate suit*—Suit brought to recover the amount to which plaintiff was entitled under a decree passed in favour of himself and defendant as co plaintiffs in a former suit It appeared that defendant purchased the property sold in execution of the decree and that the price for which the sale took place was sufficient to satisfy the decree Instead of paying the purchase-money into Court defendant with the knowledge and assent of plaintiff retained the whole sum upon the understanding that he should give the Court a receipt for himself and on behalf of plaintiff and afterwards pay to plaintiff his portion of the amount decreed. Accordingly defendant presented a petition to that effect, and obtained a certificate confirming the sale Defendant having failed to pay plaintiff his portion the present suit was brought Upon these facts it was held, in special appeal that the decree was satisfied by sale of the judgment debtor s property and that the execution proceedings were completely at an end the defendant having been by the assent of the plaintiff made his agent for the acknowledgment of the satisfaction of the decree No subsequent application under the decree could have been entertained by the Court which executed it. Therefore plaintiff s claim was not a matter determinable under s 11 of Act XXIII of 1861 RAMANADAN CHETTI v KUNNAPPU CHETTI 6 Mad. 304

KRISTO CHUNDER GOOPTO v PAMSOONDUR SEIN [17 W R. 14

95 ——————— **Suit to recover sum paid in excess under decree**—*Separate suit*—Sums paid in execution in excess of what was due under the decree can only be recovered by application to the *Court which executed the decree not by a separate* suit KASHEE KISHORE ROY CHOWDHRY v KISHEN CHUNDER SANDYAL 15 W R. 160

96 ——————— **Money paid in excess under decree**—*Decree reduced on appeal—Separate suit*—A judgment creditor having caused certain property of his judgment debtor to be sold in execution, the proceeds realized did not amount to the full judgment-debt Afterwards the judgment debt was reduced in appeal to a sum far below the amount realized in execution and the judgment debtor brought a suit to recover the excess moneys *Held* with reference to Act XXIII of 1861 s 11 that the suit did not lie but that the Court which charged with the execution of the decree had full jurisdiction to determine the question and order a refund. MOTHOORA PERSHAD SINGH v SHAMBHOO GEER 19 W R 413

97 ——————— *Separate suit—Limitation*—In execution of a decree the property of the judgment debtor was sold and on an account being taken a certain sum therein appearing to be due was paid in December 1868 to the decree holders Subsequently on the application of the judgment debtor the account was re opened and had been over drawn by the decree holders In 1876 the judgment debtor applied to the Court which executed the decree for an order for the repayment of the amount over drawn *Held* that while the application was not barred by any provisions of the Limitation Act IX of 1871 the English doctrine of laches did not apply in this country and further that the application had been presented in the proper Court as required by s 11 of Act XXIII of 1861 (corresponding with s 244 of Act X of 1877) ALLIJ HOSSEIN v MUZHUR HOSSEIN 4 C L R 577

98 ——————— *Application by judgment debtors to recover surplus from decree holders*—Where by a sale in execution the decree as it stood at the time when execution was taken out had been fully satisfied but the decree was afterwards amended at the instance of the judgment debtors and in consequence of the amendment the decree holders were found to have realized more from the judgment debtors than they were entitled to it was *held* that it was competent to the judgment debtors by application under s 244 of the Code of Civil Procedure to recover such surplus from the decree holders DHAN KUNWAR v MAHTAB SINGH [I. L. R. 22 All. 79

99 ——————— **Money paid in excess by mistake**—*Satisfaction of decree of Small Cause Court—Damages Suit for*—Where the plaintiff sued defendant in a Civil Court for recovery of a sum alleged to have been paid by plaintiff to defendant under a mistake in excess of the sum due in satisfaction of a decree of the Small Cause Court —*Held* by STUART C J PEARSON J dissenting that such a suit was in the nature of one for damages cognizable by the Court of Small Causes and was not barred by the terms of s. 11 of Act XXIII of 1861 the question involved in the claim not being one which could properly arise in execution proceedings which must be confined to matters embraced in the decree passed between the parties to the suit AGRA SAVINGS BANK v SRI RAM MITTER [I. L. R. 1 All, 388

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

100 ——— Value of elephant accepted in satisfaction of decree but not delivered—*Separate suit*—The plaintiff held a decree against the defendants and agreed to take an elephant in satisfaction the defendants promising if satisfaction were entered up to be responsible for the value of the elephant should it be claimed and recovered by any other person It was so claimed and recovered and the plaintiff sued for its value *Held* that the suit was not barred by s. 11 of Act XXIII of 1861 MUTHRA CHOWDRY v SHEORUTTUN MULL [6 N W 126

101. ——— Part satisfaction of decree not certified to the Court—*Suit to recover money so paid after execution of entire decree —Civil Procedure Code 1859 s 206*—*A* a judgment debtor paid to *B* the decree holder a sum of money by way of compromise in full satisfaction of the decree *B* failed to certify this payment to the Court and afterwards executed her decree for the full amount In a suit by *A* against B for recovery of the amount previously paid out of Court in satisfaction of the decree —*Held* that notwithstanding s 11 of Act XXIII of 1861 the suit was maintainable GUNAMANI DASI v PRANKISHORI DASI [5 B L.R. 223 13 W R. F B 69

Overruling ALUNGA BEEBEE v GOOROO CHURN ROY 3 W R S C C Ref. 3

102. ——— Money paid in satisfaction of decree out of Court—*Civil Procedure Code (VIII of 1859) s 206*—*N* having obtained a decree in a suit against *K* requested him to discharge certain sums due on outstanding bonds which *N* had given to third parties promising to credit the sums so paid to the amount due under the aforesaid decree *K* paid as requested but *N* took out execution in full of the decree and the Court refused to recognize the payments made by *K* out of Court In a suit by *K* for the money paid as aforesaid,—*Held* that the payments not having been made directly in adjustment of a decree the suit was not barred within the rule laid down in *Arunachella Pillai v Apparu Pillai 3 Mad 188* KUNHI MOIDIN KUTTI v PAMEN UNNI [I. L. R. 1 Mad. 203

103 ——— Satisfaction or part satisfaction out of Court but not certified—*Subsequent execution of decree for full amount—Suit for money previously paid—Civil Procedure Code (X of 1877) s 258—Limitation Act (XV of 1877) sch II art 161*—A suit for the recovery of money paid to a judgment creditor out of Court in satisfaction of a decree but not certified is barred by s 244 (c) of Act X of 1877 and by the last paragraph of s. 258 as amended by Act XII of 1879 LATANKAR v DEVJI I. L. R., 6 Bom. 146

104. ——— Part satisfaction of decree out of Court—*Separate suit*—Questions as to part satisfaction of a decree cannot according to s 244 cl (c) of Act X of 1877 be raised in a separate suit That section alludes to parties to the decree or their representatives but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit KRISTO MOHINEE DOSSEE v KALIPROSONNO GHOSE [I L R 8 Calc 402

105 ——— Satisfaction of decree out of Court—*Suit for damages against decree holder for execution of decree after satisfaction—Civil Procedure Code 1877 s 258*—A decree holder who although he has settled with his judgment debtor out of Court yet nevertheless sues out execution against him will be liable to an action for damages at the hands of the judgment-debtor Ss 244 and 258 of Act X of 1877 have made no change in the law in this respect GUNI KHAN v KOONJO BEHARY SEIN [3 C L R. 414

106 ——— *Remedy of judgment debtor on creditor failing to certify—Civil Procedure Code 1877 s 258*—In 1878 a decree holder having received certain grain from the judgment debtor in satisfaction of the decree failed to certify satisfaction of the decree to the Court in accordance with the provisions of s 258 of the Code of Civil Procedure 1877 and executed the decree nevertheless. In a suit for damages against the decree holder —*Held* that the judgment debtor's remedy for the wrong suffered was not taken away by the provisions of ss 244 and 258 of the Code VIRARAGHAVA v SUBBAKKA [I. L R 5 Mad., 397

107 ——— *Agreement not to execute decree—Breach of contract—Suit to recover damages*—The provisions of s 244 of the Civil Procedure Code are no bar to a suit to recover damages for breach of a contract not to execute a decree HANMANT SANTAYA PRABHU v SUBBABHAT [I L. R. 23 Bom 394

108 ——— *Suit to recover money paid—Civil Procedure Code 1877 s 258*—In 1879 a judgment debtor paid R100 to *S* who promised to pay the same to the judgment creditor and to get the latter to certify satisfaction of the decree to the Court The money was paid to the judgment creditor who not only did not certify satisfaction of the decree but executed it and again collected the amount from the judgment debtor *Held* following *Viraraghava v Subbakka I L. R 5 Mad 397* that the provisions of the Code of Civil Procedure 1877 (prior to amendment) did not debar the judgment debtor from suing either *S* on his express promise or the judgment-creditor to recover the amount paid by *S* to the latter MUSUTTI v SHEKHARAN [I L. R. 6 Mad. 41

109 ——— *Separate suit—Adjustment of decree—Assignment of decree—Civil Procedure Code 1882 s 258*—*M* who held a decree against *S* for possession of certain immoveable property and costs assigned such decree to *S* by way of

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

sale agreeing to d liver the same to him on payment of the balance of the purchase m ney He subsequently pplied f r execution of the decree against S claiming the costs which it awarded S thereupon paid the amount of such costs into Court and, having obtained stay of executi n sued M for such decree, claiming by virtue of such assignment The lower Court held that the suit was barred by the provisions of s. 244 of Act X of 1877 and also treating such assignment as an uncertified adjustm nt of such decree that it was barred by the terms of the last paragraph of s. 258 of that Act. *Held* that the suit was not barred by anything in either of th se sections. The words any Court in the last paragraph of s. 258 refer to proceedings in execution and to the Court or Courts executing a decree SITA RAM v MAHIPAL I. L. R. 3 All, 633

110 ———— *Separate suit—Adjustment of decree—Civil Procedure Code 1882 s 258*—S alleging that a money decree against him held by G had been adjusted out of Court by a payment in cash and the delivery of certain property and that M had notwithstanding such adjustment applied for execution of such decree and recovered the amount thereof as the Court executing such decree had refused to determine whether it had been satisfied, on the ground that such adjustment had not been certified, sued M for the money which he had paid him out of Court *Held* that the suit was not barred by the provisions of s 244 of Act X of 1877 or of s 258 of that Act The last paragraph of s 258 means that the Court executing the decree shall not recogn ze an uncertified payment or adjustment out of Court It does not prohibit a suit for money paid to a decree holder out of Court and the payment of which, n t being certified could not be recognized and which the decree holder had not returned but had misappropriated by taking out execution of the decree a second time and securing the amount in full through the Court SHADI v GANGA SAHAI I. L. R. 3 All 538

111. ———— *Question as to adjustment between decree holder and third party*—Certain immoveable property having been attached in execution of a decree for money dated in 1879 directing the sale of such p operty T who had purchased such property in 1880 objected to the attachment His objection having been disallowed he sued to establish his right to the property and for the removal of the attachment He claimed on the ground amongst others that the decree of 1879 had been wholly adjusted. The alleged adjustment had not been certified under s 258 of the Civil Procedure Code *Held* that the provisions of that section did not debar the Courts trying the suit from determining as between T and the decree holder whether the decree of 1879 had been adjusted or not *Sita Ram v Mahipal I L R 3 All 533* and *Shadi v Ganga Sahai I L R 3 All 538* followed TEGH SINGH v AMIN CHAND I L R, 5 All, 260

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

112 ———— *Fraud—Setting aside sale in execution of decree—Cause of action—Right of suit*—A obtained a money decree against B and others jointly for R11? and in consideration of a payment of R.. made by B agreed to release B from all liability under the decree This payment was not certified to the Court and A afterwards in execution of the decree had certain immoveable pr perty belonging to B put up for sale and this property he purchased himself *Held* that a suit would lie by B to set aside the sale and to recover the pr perty from A ISHAN CHUNDER BANDOPADHYA v INDRO NARAIN GOSSAMI

[I. L. R. 9 Calc 788 12 C L R. 391

113 ———— *Fraud—Cause of action—Regular suit—Code of Civil Procedure (Act XIV of 1882) s 258*—The holder of a money decree agreed to accept in satisfaction of the amount thereof a part payment in cash and a lease of certain lands for five years rent free The judgment debtor made the payment and gave the lease agreed on Afterwards the decree holder executed the decree against the judgment debtor and then the judgment debtor brought the present suit for a declaration that the money decree was satisfied and for damages against the decree holder *Held* that such a suit would lie *Gunamani Dasi v Prankishori Dasi 5 B L R 223 Viraraghava Reddi v Subbaka I L R 5 Mad 397 Musutti v Shekharan I L R 6 Mad 41 Sita Ram v Mahipal I L R 3 All 533 Shadi v Ganga Sahai I L R 3 All 538* and *Ishan Chunder Bandopadhya v Indro Narain Gossami I L R 9 Calc 788* followed *Patankar v Devji I L R 6 Bom 146* not followed POROMANAND KHASNABISH v KHEPOO PARAMANICK I L R 10 Calc, 354

114. ———— *Separate suit to enforce agreement to adjust—Civil Procedure Code 1882 s 258*—Under ss 244 cl (c) and 258 of the Civil Procedure Code (XIV of 1882) no compromise of a decree which has not been duly certified under the provisions of the last mentioned section can be recognized by any Court and a separate suit to enforce such compromise is not maintainable HORMASJI DORABJI VANIA v BURJORJI JAMSETJI VANIA I L R 10 Bom 155

ABDUL RAHIMAN v KHAJA KHAKI ARUTH LONDON BOMBAY AND MEDITERRANEAN BANK v PESTANJI DHUNJIBHOY

[I L R. 10 Bom 155

115 ———— *Suit to set aside a sale on the ground of an adjustment of the decree out of Court—Adjustment not certified—Civil Procedure Code (1882) s 258*—*Held* that no separate suit would lie to set aside a sale held in execution of a decree on the ground that the decree had been adjusted out of Court when in fact no such adjustment of the decree had been certified in the manner provided by s 258 of the Code of Civil Procedure *Shadi v Ganga Sahai I L R, 3 All,*

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE—*continued*

further that s. 258 Civil Procedure Code was inapplicable to the present case since that section applies only to the case of parties who stand in the relation of judgment debtor and judgment creditor at the date of the transaction RAMA AYYAN *v* SREENIVASA PATTAR I. L. R. 19 Mad. 230

125 ——— *Uncertified adjustment of decree—Separate suit—Suit by judgment debtors to recover back their property which the decree holder obtained possession of in execution of his decree whether maintainable*—One M obtained a decree for possession of a jote and for mesne profits against the plaintiffs Subsequently by a registered ekrarnamah the decree-holder having received from the judgment debtors (the plaintiffs) the amount du on account of mesne profits and also a further consideration of R166 relinquished an 8 anna share of the jote in favour of them The remaining 8 anna share of the jote was also sold by the decree holder by a registered kobala to the judgment-debtor The heirs of the decree holder on his death applied for execution of the decree but notwithstanding the judgment debtor's objection that the decree could not be executed it having been satisfied by virtue of the aforesaid ekrarnamah and kobala they obtained possession of the jote the adjustment not having been certified was not taken into account by the Court executing the decree On a regular suit by the judgment debtors for a declaration of title to as well as for the recovery of possession of the jote the defence mainly was that under s 244 of the Code of Civil Procedure no separate suit would lie *Held* that such a suit was maintainable and that s 244 of the Code of Civil Procedure was no bar to it *Azizan* v *Matuk Lall Sahu I L R 21 Calc 437* distinguished. ISWAR CHANDRA DUTT *v* HARIS CHANDRA DUTT

[I. L. R. 25 Calc. 718
2 C W N 247

126 ——— *Adjustment out of Court—Subsequent execution by decree holder—Suit to recover money paid on adjustment*—It was agreed between a decree holder and the judgment debtors that the former should accept R200 which was paid in full satisfaction of the decree and should certify the adjustment to the Court and that an attachment already placed on the judgment debtor's property should be raised The decree holder accepted the money but did not carry out his part of the agreement and more than two years later applied for execution which was ordered to issue the judgment debtor's objections being dismissed as out of time The judgment debtors now sued in a Small Cause Court to recover the money paid to satisfy the decree *Held* that the plaintiffs were entitled to recover PERIATAMBI UDAYAN *v* VELLAYA GOUNDAN

[I. L. R. 21 Mad. 409

127 ——— *Agreement before a decree by the decree holder not to recover costs which the decree might award—Question to be determined in execution and not by a separate suit*—D and H obtained a decree on an award with costs against S and L When they applied for its execution against L in order to recover his half share of the costs he pleaded that before the proceedings had commenced the plaintiffs had entered into an agreement with him that none of the costs which might be awarded by the Court should be recovered from him *Held* that the existence and validity of such an agreement ought to be determined in execution under the provisions of s 244 of the Civil Procedure Code and not in a separate suit. LALDAS NARANDAS *v* KISHORDAS DEVIDAS I. L. R 22 Bom 463

128 ——— **Question as to amount of security on stay of execution pending appeal**—The question as to the amount of security to be given by a defendant against whom a decree has been passed when a stay of execution is granted pending appeal is a question relating to the execution of the decree as contemplated by s. 244 of the Civil Procedure Code ISHWAGAR *v* CHUDASAMA MANABHAI I. L. R 12 Bom., 30

129 ——— **Claim to attached property**—*Question to be decided in execution—Liability of property to be sold in execution*—The question whether property is liable to be sold in execution of a decree is one to be determined under s 244 of the Code of Civil Procedure *Chowdhry Wahid Ali* v *Jumaee 11 B L R 149 18 W R 185* followed in principle MUNGESHUR KOER *v* JUMOONA PERSAD I. L. R., 16 Calc 603

130 ——— **Question as to legality of purchase by judgment-debtors of right of some of decree holders**—Disputes as to the legality of the purchase by judgment debtors of the rights of some of the decree-holders in the property to which the decree relates and the extent of the share acquired under the purchase are questions falling within the purview of cl (c) of s. 244 of the Code of Civil Procedure and must be determined by order of the Court executing the decree KHUDAI *v* SHEO DYAL

[I. L. R., 10 All. 570

131. ——— **Separate suit**—*Auction purchaser not a representative of either party to a suit—Sale in execution of property belonging to a person other than the judgment-debtor*—In execution of a decree on a mortgage certain property was sold which the plaintiff in this suit claimed as his own under sale to himself by the sons of the judgment debtor He applied to the Court to have the sale set aside but failing in his application he sued both the decree-holder and the auction purchaser for a declaration of his title to the property in question. The Assistant Judge held on appeal that the suit was not maintainable on the ground that the greater part of the property being included in the decree the question of

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

title ought to have been settled in execution proceedings under s. 244 of the Code of Civil Procedure and not by a separate suit *Held* reversing the decision of the Assistant Judge that s 244 did not bar the present suit. It could not apply except as regards property affected by the decree and a part of the property claimed by the plaintiff was not included in the decree Moreover the question in the present suit did not arise between the parties to the former suit, or their representatives. SHIVRAM CHINTAMAN v JIVU I. L. R. 13 Bom 34

132. ——— *Separate suit on disallowance of objection to execution*—In execution of a decree the defendant who was sued as the representative of her deceased brother objected under s. 244 of the Code of Civil Procedure to the attachment of certain lands to which she set up independent title The objection was disallowed and the land was sold. She then sued the execution purchaser to set aside the Court sale and obtained a decree against which no appeal was preferred. She now sued for possession *Held* that the suit lay not withstanding the order under s 244. KETTILAMMA v KELAPPAN I. L. R 12 Mad. 228

133 ——— *Objection raising question of title between party added as representative and the person whom he represents—Order disallowing objection*—G brought a suit against I for the establishment of her rights as purchaser of certain immoveable properties sold in execution of a decree obtained against I and for possession of the same After the settlement of issues but before the suit was finally disposed of I died and his brother J was made defendant as his legal representative J consented to the suit being tried on the defence raised by I and upon the issues already settled The suit was decreed it being held that G was the purchaser In execution of this decree under which G sought to obtain possession J objected that he was entitled to a half share of some and to the entire sixteen annas of the other properties and that his brother I had no right whatever in the same This objection was disallowed by the Court executing the decree on the ground that it had not been raised in the original suit and that as the decree has been passed in the presence of J he was not entitled now to urge it Thereupon J brought a suit against G to establish his rights *Held* that the order passed in the execution proceedings disallowing J's objection was no bar to the suit under s 244 of the Code of Civil Procedure *Kanai Lal Khan* v *Shashi Bhusan Biswas I L R 6 Calc 777 8 C L R 117* followed GOURMONI DABEE v JUGUT CHANDRA AUDHIKARI

[I. L. R., 17 Calc 57

134. ——— *Right of a mortgagee to the benefit of s 310A—Appeal against order adverse to mortgagee*—A mortgagee being a party to a suit objected that the mortgaged premises had been attached and sold in execution of the decree and applied to have the sale set aside on payment being made by him under Civil Procedure Code, s 310A The purchaser was the decree-holder. The application having been refused by the Courts of first instance and first appeal the [illegible] appealed to the High Court *Held* that the appeal was maintainable the question being one between the appellant and the purchaser (also a party [illegible]) and the appellant was entitled to the relief [illegible]. SRINIVASA AYYANGAR v AYYATHORAI [illegible]

[I. L. R. 21 [illegible]

135 ——— *Cl[illegible] attached property—Questions arising between parties or their representatives—Code of Civil Procedure (Act XIV of 1882) ss 278 283*—[illegible] Full Bench —An objection taken by a person [illegible] become the representative of the judgment-debtor [illegible] the course of the execution of a decree to the effect that the property attached in satisfaction [illegible] his own property and not held by him as [illegible] representative is a matter cognizable only under s 244 of the Code of Civil Procedure and [illegible] proper subject matter of a separate suit by a party against whom an adverse order may have been passed under ss 280 and 281 as provided by s 283 [illegible] by the majority of the Full Bench ([illegible] O KINEALY and GHOSE JJ)—Ss 2 [illegible] Civil Procedure Code do not cover the case of [illegible] contest between parties to the suit or their representatives on the record of the suit in regard to [illegible] cution discharge or satisfaction of a decree [illegible] effect of the decision between such parties [illegible] right to enforce or oppose execution [illegible] under s 244 subject to the result of such [illegible] allowed by law *Per* PRINSEP and O'K[illegible] JJ—S 244 should be liberally construed [illegible] litigation PUNCHANUN BUNDOPADHYA v R[illegible]

[I. L. R., 17 Calc

136 ——— *Claim by [illegible] representative to property as his own [illegible] dently of deceased judgment debtor—[illegible] Civil Procedure Code ss 234 [illegible]* by the Full Bench (TYRRELL, J., [illegible] Where a judgment debtor dies after the [illegible] decree and his legal representatives are [illegible] record in execution proceedings to [illegible] respect of the decree questions which they [illegible] property which they say does not belong to [illegible] in their hands and as such is not [illegible] taken in execution are questions which [illegible] (c) of the Civil Procedure Code must be [illegible] the execution department and not by [illegible] There is no distinction in this respect [illegible] position of legal representatives added [illegible] before and those added after the decree [illegible] last paragraph of s 234 the Court [illegible] decree may try and determine the [illegible] property in the legal representative's [illegible] part of the deceased judgment-debtor's [illegible] finds this fact for the purpose of bringing th[illegible]

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

to sale in execution and giving the auction purchaser a good title under the sale and the Court s order is subject to appeal but not to a separate suit under s 283 Where the legal representative asserts that the property is his own and has not come to him from the deceased judgment debtor he cannot set up a *jus tertii* so as to come in under s 278 and the following sections of the Code He can only do so where he opposes execution against any particular property on the ground that although it is vested in him it is vested in him not beneficially by reason of his being the representative of the judgment debtor but as trustee or executor of someone else In that case either party may have the question of *jus tertii* determined in a separate suit *Rajrup Singh* v *Ram golam Roy I L R 16 Calc 1* approved. *Abdul Rahman* v *Muhammad Yar I L R 4 All 190* and *Awadh Kuari* v *Raktu Tiwari I L R 6 All 109* overruled *Bahori Lal* v *Gauri Sahai I L R 8 All 626* distinguished *Held* by TYRRELL J *contra* that where the legal representative of a deceased party to the decree appears not in his capacity of legal representative contesting a question arising between the parties and relating to the execution discharge or satisfaction of the decree but in his personal character independent of the suit and decree and prefers a claim under s 278 on the ground that the decree has no operation against certain property attached for reasons personal to the objector and antagonistic to all the parties and their representatives as such the objector is not debarred from bringing a separate suit by the mere accident that he is a legal representative in the execution proceedings SETH CHAND MAL v DURGA DEI [I. L R 12 All. 313

137 ———— *Application to execute decree against alleged representative of deceased judgment debtor—Civil Procedure Code s 234* —In the case of an application under s 234 of the Code of Civil Procedure to execute a decree against a person alleged to be the representative of a deceased judgment debtor it is for the Court which passed the decree to decide whether the person against whom execution is sought is or is not such representative but it is for the Court executing the decree to decide to what extent such person is liable as such representative *Sriharg Mundul* v *Murari Chowdhry I L R 13 Calc 257* SETH SHAPURJI NANABHI v SHANKER DAT DUBE I. L. R. 17 All. 431

138 ———— *Decree for sale on a mortgage—Mode of intervention of third party claiming an interest by succession in the property decreed to be sold—Civil Procedure Code (1882) s 278—Right of suit* —Two heirs of a Mahomedan woman took possession on her death of certain immoveable property left by her to the exclusion of the third heir their sister They mortgaged that property The mortgagee brought a suit and obtained a decree for sale After decree one of the mortgagors died and his sister was brought upon the record as his representative The property was sold and subsequently the sister brought a suit against the auction purchaser for recovery of her share in the mortgaged property *Held* that s 244 of the Code of Civil Procedure did not apply and that the suit was maintainable *Deefholts* v *Peters I L R, 14 Calc 631,* and *Seth Chand Mal* v *Durga Dei I L R, 12 All 313* referred to SANWAL DAS v BISMILLAH BEGAM I. L. R. 19 All. 480

139 ———— *Question as to whether property belongs to judgment debtor or not —Grounds of objection to attachment of property —Civil Procedure Code ss 278 to 283* —Where the question is whether the property in dispute belong to the judgment debtor or to his estate or not and the question is raised in a proceeding in execution between parties to the suit or their representatives it matters not on what grounds the objection is taken to the property being made the subject of execution and the question is one to be determined in execution and s 244 of the Code of Civil Procedure bars a separate suit *Abidunissa Khatoon* v *Amirunnissa Khatoon I L R 2 Calc 327 L R 4 I A 66* followed. UPENDRA BHATTA v RANGANATHA BHATTA I. L R., 17 Mad 399

140 ———— *Claim to attached property—Order in execution proceedings—Separate suit to declare property not liable to attachment* —In execution of a decree passed against the plaintiff certain property in his possession was attached Thereupon he laid claim to the property on the ground that it was service vatan This claim was rejected. The plaintiff then filed a regular suit for a declaration that the property was not liable to attachment and sale *Held* that the suit was barred under s 244 of the Code of Civil Procedure The Court which originally rejected the plaintiff s claim in the execution proceedings had jurisdiction to investigate the claim under cl (c) of s 244 of the Code TRIMBAK RAMRAO DESHPANDE v GOVINDA [I. L R 19 Bom. 328

141 ———— *Claim to attached property—Scope of s 244 and questions with which it deals* —S 244 presupposes that the questions with which it deals are such as can be finally determined in the execution proceedings If they cannot it has no application The Court should look to the substance of the objection and not to the accident that it is put forward by one person rather than another *Upendra Bhatta* v *Ranganatha Bhatta I L R, 17 Mad 399* considered. *Punchanun Bundopadhya* v *Rabia Bibi I L R 17 Calc 711* and *Murigeya* v *Hayat Saheb I L R 23 Bom, 237* referred to RAMANATHAN CHETTIAR v LEVVAI MARAKAYAR [I. L. R. 23 Mad. 195

142 ———— *Questions arising between the decree holder and the representatives*

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

of the judgment debtor—Claims to attached property where representative judgment debtor claims to hold the attached property as trustee of third party—Civil Procedure Code 1882 ss 278 283 —The plaintiffs sued for a declaration that certain property was liable to be attached in execution of a decree obtained by them in suit No. 501 of 1888 against the estates of one *G* deceased who had been the head of a math situate in the Dharwar District. The property had been attached in execution but the defendant, who was *G*'s successor in office had obtained the removal of the attachment on the ground that the property belonged to the math and not to *G* personally and was not therefore liable to satisfy the decree The plaintiffs thereupon brought this suit. The lower Appellate Court passed a decree for the plaintiffs and granted the declaration. On second appeal it was contended that under s. 244 of the Civil Procedure Code the question ought to have been decided in execution of the decree in suit No 501 of 1888 and that a separate suit would not lie *Held* on the merits that the decree of the lower Appeal Court should be reversed and the suit dismissed. *Per* RANADE *J*—Where the representative of a judgment-debtor puts forward a personal claim to property which is attached as assets of the judgment-debtor in his hands the investigation of the claim must be made in execution under the provisions of s. 244 of the Code of Civil Procedure But where he asserts that he holds the property in trust for or on behalf of or as manager of some third person or body of persons or of a religious charity or institution the claim must be investigated under the provisions of ss 278 to 283 and the order passed therein cannot be challenged by an appeal but must form the subject of a separate suit *Per* PARSONS *J*—Ss 278 to 283 of the Code of Civil Procedure have no reference to any claim preferred or objection made by any person who is on the record as a party to the suit. Whenever a question arises between the representative of a judgment debtor on the record (whether originally sued as such or added before or after decree) and the decree holder as to whether property in the hands of the representative was of the assets of the deceased or not that question must be determined by order of the Court executing the decree under the provisions of s 244 MURIGEYA *v* HAYAT SAHEB I L. R. 23 Bom 237

143 ——————— *Possession in execution of decree after sale—Question arising between the parties or their representatives—Separate suit—Appeal* —Proceedings for the delivery of possession to the auction purchaser after sale in execution of a decree are proceedings in execution of the decree and when the application for possession is resisted by the legal representative of the judgment debtor on the allegation that portions of the property belonged to him and not to the judgment debtor the question raised comes under s 244 of the Civil Procedure Code and must be decided under that section and not by a separate suit MADHUSUDAN DAS *v* GOBINDA PRIA CHOWDHURANI

[I. L. R. 27 Calc 34
4 C W N 417

144 ——————— *Claim to property attached in execution of decree— Parties to the suit —Subsequent suit by a defendant who had been exonerated in a former suit—Maintainability of such suit* —A family consisted of plaintiff's father first defendant's father and second defendant's grand father Plaintiff's brother died leaving a widow Plaintiff's father then died and also left a widow (plaintiff's mother) him surviving The brother's widow brought a suit for maintenance against the representatives of the first and second defendants branches of the family plaintiff's mother being joined as third defendant. A decree was passed against the two first mentioned defendants but plaintiff's mother was exonerated on the ground that being a female she was not liable In execution of the decree certain lands were brought to sale and purchased by the brother's widow who transferred them to another person At the death of plaintiff's mother which occurred subsequently the said lands would have vested in the plaintiff who now brought this suit claiming that the sales referred to were not binding on her (plaintiff) inasmuch as her mother had not been a party to the decree under which they had taken place *Held* that where a party defendant in a suit is exonerated from such suit the suit being dismissed against him and decree passed against a co-defendant in the suit and in execution of that decree property belonging to and in the possession of the defendant who was so exonerated from the suit is attached and sold the latter is not entitled to maintain a suit for recovery of possession of the property and the question of his claim to and to recover possession of the property is a question falling within s 244 of the Code of Civil Procedure so as to debar him from maintaining such suit *Gadicherla China Seetayya* v *Gadicherla Seetayya I L R 21 Mad 45* explained. RAMASWAMI SASTRULU *v* KAMESWARAMMA

[I. L. R. 23 Mad. 361

See GADICHERLA CHINA SEETAYYA *v* GADICHERLA SEETAYYA I. L. R. 21 Mad. 45

145 ——————— *Parties to suit—Alteration of decree by Court executing decree* —The plaintiff purchased a one-gunda share in estate No 831 and obtained a decree for possession against the defendants While the plaintiff's suit was pending and before he took out execution under the said decree partition proceedings took place By the partition proceedings the defendant's interest in the estate No 831 was converted into a smaller estate No 2718 in lieu of their share of the whole estate The plaintiff then brought a separate suit to have it declared that the defendants interest in estate No 831 had passed to estate No 2718 *Held* that the suit was not barred by s 244 of the Civil

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

Procedure Code The required transformation of the defendants interest could not be effected without altering the decree which was given in the former suit The question that arose in the suit although it was one between the same parties as those in the former suit could not be regarded as a question relating to the execution of the decree in the former suit and therefore the Court in execution proceedings had no authority to make the necessary alteration in the decree KRISHNA ROY *v* JAWAHIR SINGH

[I. L. R. 20 Calc. 260

146 ——— *Order cancelling an execution sale of land—Subsequent suit for possession brought by judgment debtor* —A decree holder attached land of his judgment debtor and brought it to sale and himself became the purchaser in execution of his decree The purchase having been made without the permission of the Court the sale was set aside on the application of the judgment debtor who now sued to recover possession of the land *Held* that the suit was not maintainable under Civil Procedure Code s. 244. VIRARAGHAVA *v* VENKATA

[I. L. R. 16 Mad. 287

147 ——— *Purchaser of land sold in execution—Confirmation of sale—Objection of unsaleability* —A judgment debtor having died before the decree was executed his sons were brought on to the record as his representatives. Ancestral property of the judgment debtor was then brought to sale in execution and purchased by the decree holder and the sale to him was confirmed. Subsequently the judgment debtor's sons objected under Civil Procedure Code s. 244 that the property which had been brought to sale was not liable to be sold in execution *Held* that the objection was rightly made under s 244 and a separate suit was not necessary for the purpose of an adjudication on it KRISHNAN *v* ARUNACHALAM

[I. L. R., 16 Mad , 447

148 ——— *Question of validity of sale of an occupancy holding not transferable by custom in execution of a decree for arrears of rent obtained by a co sharer landlord—Bengal Tenancy Act (VIII of 1885) ss 22 65 73 and 158* —An occupancy holding which is not transferable by custom as also the interest of the judgment-debtor in the said holding are not saleable in execution of a decree for rent obtained by only some of several co-sharer landlords. *Bhiram Ali Shaik Shikdar* v *Gopi Kanth Shaha I L R 24 Calc 355* referred to A judgment-debtor whose occupancy holding which was not transferable by custom had been sold in execution of a decree for rent obtained by some of the co sharer landlords objected to the application made by the auction purchaser after the confirmation of the sale for delivery of possession of the said holding on the ground that the sale was illegal. *Held* that the confirmation of sale was no bar to the application that was made by the judgment-debtor to have it declared that in execution of such a decree the holding could not be sold, the question being one which related to the execution discharge and satisfaction of the decree *Basti Ram* v *Fattu I L R 8 All 146* referred to. DURGA CHARAN MANDAL *v* KALI PRASANNA SARKAR

[I. L. R. 26 Calc. 727
3 C W N., 586

149 ——— *Sale by mortgagee in execution of decree—Sale contrary to provisions of s 99 Transfer of Property Act* —Property subject to a mortgage having been sold by the mortgagee as holder of a decree against the mortgagors a separate suit was brought by the mortgagors to set aside the sale as being in contravention of s. 99 of the Transfer of Property Act. On objection being taken that the suit was not maintainable the matter being one for determination in execution proceeding under s. 244 of the Code of Civil Procedure —*Held* (1) that although the sale was contrary to the provisions of s. 99 of the Transfer of Property Act that section being for the benefit only of a particular class of persons namely those concerned with a right to redeem mortgaged property such a sale was not void, but voidable (2) that the question being one arising between the parties to the suit wherein the sale was made and relating to execution could not be raised and decided in a suit but should be raised and tried only in execution proceedings taken under s 244 of the Code of Civil Procedure and the sale set aside if such relief were not for any reason barred (3) that the sale having been confirmed such confirmation was final and precluded the mortgagors from seeking the relief to which they would otherwise have been entitled and (4) that notwithstanding such sale and confirmation, the mortgagors might not be precluded from suing to redeem the mortgaged property on payment of the amount given credit for by the mortgagee in respect of the sale MAYAN PATHUTI *v* PAKURAN I L R. 22 Mad., 347

150 ——— *Question of saleability of occupancy holding in execution of decree—Transferability of occupancy holding according to custom or usage* —When an application is made to execute a decree for money by the attachment and sale of an occupancy holding the judgment debtor is entitled under s 244 of the Civil Procedure Code, to raise the question as to whether the holding is saleable according to custom or usage and to have that question determined by the Court executing the decree MAJED HOSSEN *v* RAGHUBUR CHOWDHRY

[I L R., 27 Calc. 187

151 ——— *Question for Court executing decree—Question between decree holder and judgment-debtor as to saleability or otherwise of an occupancy holding* —Under s. 244 of the Civil Procedure Code the question as to the saleability or otherwise of an occupancy holding between the decree holder and judgment debtor can be

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

determined in the execution proceeding *Durga Charan Mandal v Kali Prasanna Sarkar I L R, 26 Calc 727* and *Bhiram Ali Shaik Shikdar v Gopi Kanth Shaha I L R 24 Calc 355* referred to. GAHAR KHALIFA BIBARI v KASHI MUDDI JAMADAR L L R 27 Calc 415 [4 C W N 557

152 ———— *Suit for administration in respect of barred decree—Mortgage decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code (1882) ss 223 and 230—Transfer of Property Act (IV of 1882) ss 67 and 99—Limitation Act (XV of 1877) sch II arts 122 179 and 180* —On the 29th September 1882 a decree was obtained against the defendant s husband in a suit on a mortgage by the latter dated the 6th April 1880 On the 24th July 1883 an order was made for transfer of the decree to the High Court for execution On the 8th April 1886 the mortgagee applied to the High Court for execution by attachment of the mortgaged properties and in the same year an order for attachment was made. The mortgagee died in April 1893 and on the 20th August 1894 the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties under s 89 of the Transfer of Property Act On the 5th January 1895 the application was refused on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court The plaintiff then instituted the present suit in which she sought (*inter alia*) administration of the estate of the mortgagor (who had died before the mortgage suit was filed) and asked for the sale of such properties as might be found subject to such mortgage *Held* (affirming the decision of SALE J) that the suit was not maintainable by reason of the provisions of ss 230 and 244 of the Civil Procedure Code the questions arising in the suit being such as should have been determined in execution of the decree and not by a separate suit JOGEMAYA DASSI v THACKOMONI DASSI L L R, 24 Calc 473

153 ———— *Question as to the appointment of a manager of the property of a religious institution—Right of appeal* —A decree of the High Court declared its holder entitled as the Pandara Sannadhi or religious chief of an adhinam to see that a competent person from among the Tambirans who had received initiation at that institution was appointed to fill the then vacant office of Tambiran managing certain maths The decree directed that the Pandara should name a Tambiran of his adhinam for the office whom after inquiry as to his fitness the subordinate Court should appoint If that Court found him unfit it was to appoint a Tambiran of that adhinam upon its own selection. In execution the Pandara named a Tambiran for the office but died before the inquiry as to his fitness His successor as head of the adhinam petitioned to withdraw the nomination naming another Tambiran The subordinate Court made an order disallowing the withdrawal and after inquiry as to the fitness of the first named Tambiran appointed him to the office The High Court on the Pandara s appeal decided the first nomination had been competently withdrawn and directed an inquiry as to the fitness of the person secondly named finding on the evidence that the first named was not fit *Held* on the appeal of the Tambiran first named that the question as to his right was one that had arisen between the parties to the suit and related to the execution of the decree within the meaning of s 244 sub s (c) Civil Procedure Code and that he could appeal from the order made PONNAMBALA TAMBIRAN v SIVAGNANA DESIKA GNANA SAMBANDHA PANDARA SANNADHI [I. L. R. 17 Mad 343 L R 21 I. A 71

154 ———— *Second suit for restitution of conjugal rights—Decree in former suit not executed—Subsequent voluntary cohabitation followed again by desertion—Satisfaction of decree—Cause of action—Husband and wife* —Plaintiff obtained a decree against his wife for restitution of conjugal rights in 1885 which was never executed In 1887 however she returned to his house and stayed with him for two months She afterwards deserted him again Thereupon the plaintiff filed a second suit for restitution of conjugal rights *Held* that the suit was not barred either under s 13 or s 244 of the Code of Civil Procedure A second withdrawal from cohabitation constitutes a fresh cause of action KESHAVLAL GIRDHARLAL v BAI PARVATI I. L. R 18 Bom 327

155 ———— *Objection by representative of party to the suit to the jurisdiction of the Court which passed the decree* —S 244 of the Code of Civil Procedure applies as well to a dispute arising between the parties contemplated by that section in relation to the execution of a decree after it has been executed as it would to a dispute between such parties relating to the execution of a decree before it had been executed It is competent to the Court charged with the execution of a decree to consider the question as to whether the Court which passed the decree had jurisdiction to pass it unless the decree itself precludes that question. *Muhammad Salaiman Khan v Fatima I L R 11 All 314* and *Musa Haji Ahmed v Purmanand Nursey I L R 15 Bom 219* referred to IMDAD ALI v JAGAN LAL I L R. 17 All. 478

156 ———— *Suit for mesne profits subsequent to partition—Right of suit—Decree in suit for partition not giving mesne profits* —Where a decree for partition is silent about mesne profits subsequent to the institution of the suit a party is at liberty to assert his right to such profits by a separate suit S 244 para 2 of the

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DECREE —*continued*

Code of Civil Procedure expressly reserves such a right of suit BHIVRAV *v* SITARAM

[I L R 19 Bom 532

157 ———————— *Suit for contribution against joint judgment debtor*—S 244 of the Code of Civil Procedure does not apply to a suit brought by one of two joint judgment debtors who has been compelled to satisfy the decree in full against the other joint judgment debtor for contribution the liability being one which could not have been decided in execution of decree RAM SARAN PANDE *v* JANKI PANDE

[I L R, 18 All 106

158 ———————— *Decree incapable of execution by reason of events subsequent to decree—Decree giving an option to the parties*—A partition suit brought by a son against his father was referred to arbitration On the 9th January 1890 the award was published and on the 27th March 1890 the defendants moved for and obtained a decree in terms of the award. By this decree it was ordered that in satisfaction of the plaintiff s claim the defendant should pay to him R1 05 000 in the manner therein stated *viz* R40 000 to be paid forthwith and the balance of R65 000 to be paid upon the plaintiff delivering to the defendant certain specified property which included two vessels or buglows called respectively the *Nasri* and *Sambuk* In no event was defendant to be required to pay the R65 000 before the 15th November 1890 At the date of the decree the vessel *Sambuk* was at sea on a voyage and on the 18th June 1890 while still on the voyage she was lost On the 15th November 1890 the plaintiff s attorneys demanded payment of the balance of R65 000 They offered to deliver the other properties specified in the decree but stated that the vessel *Sambuk* had been lost They offered to pay its value which they estimated at R1 000 The defendants however demanded the delivery of the buglow which they stated to be worth a very large sum. The defendant having under the circumstances refused to pay the R65 000 the plaintiff applied for execution of the decree which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative if delivery of the vessel *Sambuk* could not be made such delivery having become impossible That rule was discharged. The plaintiffs then took out a summons calling on the defendant to show cause why an order should be made under s. 244 of the Civil Procedure Code directing the plaintiffs to pay to the first defendant in lieu of the delivery of the vessel *Sambuk* such sum of money as might be fixed by the Court as the value of or compensation for the loss of the vessel *Sambuk* in the decree mentioned and why an order should not be made that on payment of such sum and delivery of the other properties mentioned in

CIVIL PROCEDURE CODE ACT [XIV] OF 1882 (ACT X OF 1877)—*continued*

1 QUESTIONS IN EXECUTION OF DE[CREE] —*concluded*

the decree which the plaintiffs were to deliver [...] the decree to the first defendant on payment [...] latter to them of R65 000 the first defendant [...] pay to the plaintiffs R65 000 and interest t[...] from the 15th day of November 1890 mentio[ned in] the said decree and in the event on its bein[g held] that the first defendant was not bound to pa[y the] said sum of R65 000 then why an order shoul[d not] be made that the property mentioned in the [decree] which the plaintiffs were to hand over to the [first] defendant on payment of R65 000 should n[ot be] retained used and appropriated absolutely b[y the] plaintiffs for their own use and benefit freed and [dis]charged of all claims on the part of the first d[efen]dant and why the first defendant should no[t be] directed to withdraw the claim made by him to a [sum] of R22 000 or thereabouts mentioned in an [affi]davit of one Ahmed bin Essa Khaliffa and why [such] further or other order as to the Court might see[m fit] and the justice of the case may require should [not] be made in the premises and in relation to [the] properties mentioned in the decree which were t[o be] delivered over by the plaintiffs to the first defen[dant] on receiving from him R65 000 and why in [the] alternative this suit should not be restored and pla[ced] on the board for trial It was contended by [the] plaintiff that the questions raised in the summ[ons] were questions arising in execution to be dealt w[ith] by a Judge in chambers under s 244 of the C[ivil] Procedure Code and that a fresh suit was not nec[es]sary *Held* dismissing the summons that [the] application was not one in execution of a decree [nor] was the question one arising in the course of executi[on] but that the decree having become incapable of exec[u]tion the summons asked the Judge to decide wh[at] were the rights of the parties in consequence of [the] non execution *Held* also (as to the part of the sum[mons] asking for restoration of the suit) that t[he] matters in issue in the suit had been fully heard a[nd] determined and the rights of all parties had be[en] settled by the decree and consequently there w[as] nothing further to be tried The Court could not [in] this suit after passing a decree proceed to ascerta[in] the rights of the parties under a state of facts quit[e] different from those which appeared in the pleading[s] and arising subsequently to the decree AHMED BI[N] SHAIK ESSA KHALIFFA *v* ESSA BIN KHALIFFA

[I L R 18 Bom. 40[...]

2 PARTIES TO SUIT

159 ———————— **Representative of decree holder**—*'Parties to suit' Meaning of*—The words in s. 11 Act XXIII of 1861 questions arising between the parties to the suit cannot be limited to questions arising between those who were parties to the suit at the date of the decree but after decree the representative of a decree holder or the representative of a defendant against whom an execution is sought under ss 210 and 216 of the Code

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2. PARTIES TO SUIT—*continued*

become parties to the suit for the purpose of execution and questions arising between the parties to the suit within the meaning of s 11 of the amending Act. BUDDU LAKAIYA v VENKAIYA 3 Mad. 263

160 ———— *Separate suit* —*R* having obtained a decree for money against *K* the karnavan of the defendants *K* died and the defendants were made parties to the suit as representatives of *K* Tarwad property was then attached by *R* and the defendants having objected, the Court raised the attachment *R* sued for a declaration that the property released was liable to be sold. *Held* that the suit was barred by s 244 of the Code of Civil Procedure RAYUNNI MENON v KUNJU NAYAR I. L. R. 10 Mad. 117

161. ———— *Transfer of decree by operation of law—Representative of original decree holder—Right to appeal against order refusing execution*—*R* died in May 1869 leaving his property to his executors in trust for the appellant *P* and he directed that the property should be assigned by them to the appellant as soon as he came of age In August 1868 the executors filed this suit against *L* as manager of certain landed property belonging to the Hallai Bhattia caste and known as Mahajan Wadi to recover certain loans made by them as executors to him as manager of the said wadi. On the 11th May 1870 while this suit was pending the executors assigned all the property of their testator to the appellant *P* By the deed of assignment they assigned to him *inter alia* all moveable property debts claims and things in action whatsoever vested in them as such executors No steps were taken subsequently to this assignment to make the assignee *P* a party to the suit which proceeded without amendment. On the 23rd January 1873 a decree was passed for the plaintiffs on the record for R31 ?72 13 5 and it was declared that the said sum should be a first charge on the rents and income of the said wadi Subsequently to this decree *L* opened an account in the name of the appellant *P* and from time to time made payments to him on account of the decree The last of these payments was made on the 19th November 1884 None of these payments were certified to the Court. In 1885 the respondent *J* was appointed to the office of manager of the Hallai Bhattia caste in the place of *L* the original defendant in the suit On the 4th January 1886 his attorneys wrote to the appellant's attorneys offering to pay the appellant the balance due to him *under the decree Subsequently however he refused* to make any payment to the appellant whereupon the appellant applied for execution of the decree against him as manager of the said wadi He claimed to be a transferee of the decree under s 232 of the Civil Procedure Code (Act XIV of 1882) His application was refused by the Judge in chambers *Held* that the appellant was a transferee of the decree within the meaning of s 232 of the Civil Procedure Code The decree had been transferred to him by operation of law As such he was entitled to sue out execution and was to be regarded as the representative of the original decree holder within the meaning of cl (*c*) of s 244 of the Civil Procedure Code and had a right of appeal against the order of the Judge in chambers refusing execution PURMANANDAS JIWANDAS v VALLABDAS WALLJI [I. L. R. 11 Bom 506

162 ———— *Representatives of transferor of decree—Application for substitution of names by transferees—Non registration of transfer*—The holders of a decree for the sale of mortgaged property transferred the same to *M* by instruments which were registered at a place where a small portion only of the property was situate Subsequently *M* transferred the decree to other persons and the co transferors applied under s 232 of the Civil Procedure Code to have their names substituted for those of the original decree holders The judgment debtor opposed the application on the grounds that his name had not been substituted for those of the original decree holders who had transferred to him and that the transfers to *M* were inoperative as the instruments *of transfer had not been registered at the place* where the substantial portion of the mortgaged property was situate in accordance with s 20 of the Registration Act of 1877 It appeared that no notice had been issued to *M* under s 232 of the Civil Procedure Code that he was dead and that his legal representatives had not been cited as required by law The application was allowed by the Courts below *Held* that the matter involved questions arising between the parties to the decree or their representatives within the meaning of s 244 (*c*) of the Code and that the order allowing the application was therefore a decree within the definition of s 2 and was appealable as such GULZARI LAL v DAYA RAM [I. L. R 9 All., 46

163 ———— *Representative of decree holder—Attachment of decree—Civil Procedure Code (Act XIV of 1882) ss 232 273*—A person attaching a decree is a representative of the decree holder within the meaning of that term as used in s 244 cl (*c*) of the Civil Procedure Code and in every case is entitled to enforce execution of the decree which he has attached When the decree attached has been passed by the same Court as the decree in execution of which it has been attached, the Court has jurisdiction to execute the attached decree on the application of the attaching creditor PEARY MOHUN CHOWDHRY v ROMESH CHUNDER NUNDY [I. L. R. 15 Calc. 371

164. ———— *Question relating to execution of decree—Representatives*—*K* and *M* were brothers alleged to be joint in food, dwelling and business In a suit which was brought against *K* and which was unsuccessfully defended by him on behalf of himself and the joint family a decree for costs was passed against him *K* died after decree and the decree holder in execution had *K*'s

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

sons put on the record as his representatives. Certain property was attached in execution and the sons objected that the property in question had come to them as the self acquired property of their uncle *M* who had died after *K* and that they had inherited no property from their father *K*. Their objection was followed by the Court executing the decree and the property was ordered to be released from attachment. In a suit brought by the assignee of the decree holder against the sons of *K* to establish his right to proceed against the property in question in execution of the decree against K —*Held* that the question of the liability of the property to be taken in execution in the hands of the defendant was a question arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution etc of the decree within the meaning of s 244 of the Civil Procedure Code and that the suit was consequently not maintainable. The cases as to the position of representatives added to the suit either before or after decree referred to and discussed. RAJRUP SINGH v RAMGOLAM ROY

[I L. R. 16 Calc. 1

165 ——————— *Representatives of judgment debtors—Question of liability of property to be sold* —*Held* that the question whether a person alleged to be a representative of a deceased party to a suit is such representative and also the question whether property against which execution is sought in the hands of the representative of a deceased party was in fact the property of such deceased party and not the separate property of the representative are questions to be decided under s 244 of the Code of Civil Procedure and not by separate suit. *Rajrup Singh* v *Ramgolam Roy I L R, 16 Calc 1* *Chowdry Wahed Ali* v *Jumaee 11 B L R 149* and *Seth Chand Mal* v *Durga Dei I L R 12 All 313* referred to. BENI PRASAD KUNWAR v IUKHNA KUNWAR I L R, 21 All. 323

166 ——————— *Party — Representative of a party —Auction purchaser —Order in summary inquiry* —A purchaser at a Court sale is not a party or the representative of a party within the meaning of s 244 of the Code of Civil Procedure (Act XIV of 1882). He is therefore not bound by any order in the miscellaneous inquiry under s 280 281 or 282 of the Code. Nor is he bound by the specifications contained in the proclamation of sale of the claims of intervenors. Certain property was attached in execution of a decree. The defendants intervened and objected to the attachment on the ground that they held the property on permanent tenancy. Their objection was allowed and the Court made an order directing the property to be sold subject to the defendants' rights. In the proclamation of sale however it was stated that the Court did not guarantee the title of the intervenors. The plaintiff purchased the property at the Court sale. He then sued to eject the defendants. The defendants pleaded that the plaintiff had purchased subject to their rights as permanent tenants. Both the lower Courts rejected the plaintiff s claim on the ground that he was bound by the order in the miscellaneous inquiry which had become conclusive by reason of his having omitted to sue within one year from the date of the order. *Held* reversing the lower Court s decision that the order in the miscellaneous inquiry was not binding on the plaintiff as an auction purchaser. VISHVANATH CHANDU NAIK v SUBRAYA SHIVAPA SHETTI

[I. L R, 15 Bom 290

167 ——————— *Purchaser of rights of Hindu widow—Representative* —After the death of a childless Hindu widow a lessee from her of property which had belonged to her husband obtained against her vendees of part of the same property a decree for damages for wrongfully keeping him out of possession. The effect of the decision was to decree the claim against the estate of the widow and to exempt from liability the judgment debtors personally and the property which they had purchased. In execution of the decree the said property was sold and was purchased by the decree-holder; one of the judgment debtors had died during the execution proceedings and her son was duly impleaded as her representative and he raised no objection to the attachment and sale. Subsequently this son sold his rights and interests in the property and his vendee sued the decree holder to recover possession on the ground that the decree being limited to the estate of the childless Hindu widow the defendant as purchaser could not acquire by the sale any rights superior to those of the widow that those rights had expired upon her death and left nothing to be sold and that on her death the property devolved upon the plaintiff's vendor and had thence passed to the plaintiff. *Held* that the plaintiff s vendor was a party to the suit within the meaning of s 244 (c) of the Civil Procedure Code and that he n t having objected to the sale in execution of the decree neither he n r the plaintiff could go behind that sale or claim the property upon any title which he might have asserted in the execution proceedings and that the suit was barred by s 244. *Ram Ghulam* v *Hazaru Kuar I L R 7 All 547* followed. *Bahori Lal* v *Gauri Sahai I L R 8 All, 62* distinguished. *Mulmantri* v *Ashfak Ahmad I L R 9 All 605* *Roop Lall Dass* v *Bekani Meah I L R 15 Calc 437* and *Ravunni Menon* v *Kunju Nayar I L R 10 Mad 117* referred to. RAGHUBAR DIAL v HAMID JAN

[I L R. 12 All, 73

168 ——————— *Execution of decree—Transferee of decree—Representative of party to suit—Appeal—Civil Procedure Code (1882) ss 232 540 and 588* —A person who, within the meaning of s 232 of the Code of Civil Procedure is a transferee of a decree is a representative within the meaning of s 244 *quâ* the decree of the party to the suit under whom he immediately or by mesne assignment in writing or by operati n of law has derived title to the decree in the suit. It is the assignment in writing from the decree-holder and

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2. PARTIES TO SUIT—*continued*

not the recognition by a Court of him as a representative which makes such transferee a representative of a party to the suit A Court upon the application of such a transferee for execution of a decree may wrongly decide that he is not a transferee within the meaning of s. 232 or that although he is a transferee within the meaning of that section he is not a representative of a party to the suit or that by reason of limitation he is not entitled to obtain execution of the decree and if the Court has so decided it has determined a question or questions mentioned or referred to in s. 244 of the Civil Procedure Code but not specified in s 588 and an appeal lies under s. 540 of that Act *Parmanandas Jiwandas v Fallabji Wallji I L R 11 Bom 506* and *Gulzar Lal v Dayaram I L R 9 All 46* approved. *Ram Bakhsh v Panna Lal I L R 7 All. 457* considered. *Halodhar Shaha v Harogobind Das Kobirto I L R 12 Calc 105* *Samba siva v Srinivasa I L R 12 Mad 511* *Raman v Muppil Nayar I L R 14 Mad 478* and *Vilayati Begam v Intizar Begam Weekly Notes All 1893 p 106* referred to. BADRI NARAIN v JAI KISHEN DAS I. L. R. 16 All. 483

169 ———— *Representative of party—Purchaser of the decree from the decree holder—Civil Procedure Code (Act XIV of 1882) ss 2 232—Decree holder—Application by transferee of decree—Civil Procedure Code Amendment Act (VII of 1888)—Second appeal* —The word representative as used in s 244 of the Code of Civil Procedure when used with reference to a decree holder includes the purchaser of the decree from the decree holder by an assignment in writing *Ishan Chunder Sirkar v Beni Madhub Sirkar I L R 24 Calc 62* and *Badri Narain v Jai Kishen Das I L R 16 All 483* referred to The Court executing a decree which has been so transferred can go into the disputed question of the transfer of the decree under the provisions of s 244 of the Civil Procedure Code as amended by Act VII of 1888 DWAR BUKSH SIRKAR v FATIK JALI

[I. L. R. 26 Calc 250
3 C W N 222

170 ———— *Civil Procedure Code (Act XIV of 1882) ss 232 244 cl (c) —Civil Procedure Code Amendment Act (VII of 1888)—Application by transferee from legal representative of decree holder—Question—Legal representative—Meaning of the terms "transferee and representative —Administrator of estate* —Any person who at the time of the execution of a decree is a transferee within the meaning of s 232 of the Code of Civil Procedure is a representative of the decree holder within the meaning of s 244 cl (c) of the Code and the term representatives in that section includes subsequent transferees as well as those who purchased directly from the person who obtained the decree *Dwar Buksh Sirkar v Fatik Jali I L R 26 Calc 250,* and *Badri Narain v Jai Kishen Das I L R 16 All 483* followed. GANGA DAS SEAL v YAKUB ALI DOBASHI

[I. L. R. 27 Calc 670

171 ———— Party unnecessarily added to suit—*Separate suit* —S 244 of the Civil Procedure Code alludes to parties to the decree or their representatives but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit KRISTO MOHINEE DASSEE v KALIPROSONNO GHOSE

[I. L. R. 8 Calc. 402

172 ———— Purchaser of decree —*Rights of purchaser* —The words party to a suit in s. 11 Act XXIII of 1861 include the heirs assignees and representatives of such party and consequently give the purchaser of a decree all the rights of appeal etc which his vendor had HURO LALL DASS v SOOJAWUT ALI 8 W R 197

TARA CHAND HAJRAH v DOORGA CHURN HAJRAH

[10 W R. 205

173 ———— Petitioner Position of when petition struck off—*Stranger* —In a suit brought by *M* against *K* and others certain lands belonging to *G* were included, and *G* was made a defendant these lands however were released from the claim and *K* excluded from the decree obtained by plaintiff against the other defendants In execution however *M* had them measured as a part of the decreed lands and *G* s petition of objection under s 230 of Act VIII of 1859 having been struck off the file *G* brought a suit to have his title established. *Held* that though as a party to the suit brought by *M* *G* would have been bound by s 11 Act XXIII of 1861 to seek his remedy in the execution department yet as he was released from the operation of the decree he must be considered a stranger and permitted to bring his present action GOUR KISHORE CHOWDHRY v MAHOMED HASSIM CHOWDHRY

[10 W R. 191

174 ———— Party on record though wrongly—*Rights of appeal* —A party who has been put upon the record whether rightly or wrongly is so far a party to the suit that he has a right of appeal under Act XXIII of 1861 s 11 BHUGGOBUTTY KOWAR v MONEY 2 C L. R. 545

175 ———— *Applicability of section to application made by judgment debtor as well as to those by decree holder* —The provision in s 244 of the Code of Civil Procedure that questions arising between the parties to the suit and relating to the execution discharge or satisfaction of a decree shall be determined by order of the Court executing the decree relates not only to proceedings initiated by the decree holder but also to applications made by the judgment debtor ERUSAPPA MUDALIAR v COMMERCIAL AND LAND MORTGAGE BANK

[I. L. R., 23 Mad., 377

176 ———— *Person obstructing the decree holder at the instigation of the*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

judgment debtor—Suit by the person so obstructing—*Held* that a person who at the instigation of the judgment debtor obstructed the decree-holder in obtaining possession of property is n t a party to the suit within the meaning of s 244 so orders passed against him under ss. 329 and 332 do not bar a suit *Mohendro Narain Chatturaj v Gopal Mondul I L R, 17 Calc 769* referred to BISHEN DYAL SINGH v SAGRO SINGH 2 C W N 511

177 ———— Claimant in execution proceedings—*Separate suit—Suit for damages for tort—Party to suit*—*A* sold to *B* certain logs of timber and 95 logs were delivered to *B* in part performance of the contract *C* brought a suit against *A* and *B* claiming the logs under another title Pending this suit *C* entered into an agreement with *D* selling him the logs in the event of being successful in his suit The judgment of the Court of first instance was in *C's* favour and under such judgment *D* obtained possession of the logs in suit This judgment was on appeal reversed *B* then brought a suit in the nature of an action of trover against *C* and *D* for the logs and damages. The Court without entering into the merits dismissed the suit on the ground that it was not maintainable as the same relief would have been obtained under the provisions of s 11 Act XXIII of 1861 *Held* by the Judicial Committee, reversing such judgment that there had been a miscarriage as that section did not apply the suit by *B* against *C* and *D* being to recover damages for a tort alleged to have been committed by *C* and *D* and that the latter was not a party to the original suit or bound by the judgment in that suit AGA SYED ABDOOL HOSSANI v LENAINE

[13 Moore's I. A. 69

178. ———— Transferee of judgment-debtor—*Suit brought by decree holder to question alienation by judgment debtor*—*Held* that s. 11 Act XXIII of 1861 does not apply to suits brought by a decree holder to question an alienation made by the judgment-debtor inasmuch as the transferee was not a party to the former suit and only questions between the parties to the suit must of necessity be determined in the execution department SURUBSOOKH v USGUR ALLY KHAN

[2 Agra Pt. II 180

179 ———— Representative of deceased person—*Execution of decree—Party—Civil Procedure Code ss 201 209—Representative*—In a former suit for possession of immoveable property against *J* and her father and subsequently revived against *J* as the representative of her father possession and mesne profits were decreed against *J* in her representative capacity while as against her in her individual capacity the suit was dismissed. The decree-holder after obtaining possession attached and sold in satisfaction of his decree for mesne profits *J's private property* notwithstanding her objections and himself became the purchaser but never obtained possession This sale ordered on the 8th October 1863 was confirmed by the Judge on 1[illegible] March 1864 The present suit was brought by *J* [illegible] confirmation of her possession of her private prope[rty] by cancellation of the execution sale *Held* (M[AC]PHERSON and GLOVER *JJ.*, dissenting) that such s[uit] was maintainable and that *J* in her individual ca[pa]city was not a party to the suit in which executi[on] issued within the meaning of s. 11 of Act XX[III] of 1861 WAHED ALI v JUMAYEE

[2 B. L. R. F B., [illegible] 11 W R., F B. [illegible]

POOTEE BEGUM v INDURJEET KOOER

[12 W R. 2[illegible]

In the same case on appeal the decree of the Hi[gh] Court was affirmed under the circumstances of [th]e case but held (contrary to the opinion of the major[ity] of the Full Bench)—Where a decree against [a] person in a representative capacity has been pr[o]per[ly] passed and proceedings have been taken under [it] to obtain execution against the party in his represe[n]tative character he is a party to the suit with respe[ct] to any question which may arise between him a[nd] the other parties relating to the execution of t[he] decree within the meaning of Act XXIII of 18[61] s 11 CHOWDRY WAHED ALI v JUMAEE

[11 B L R., P C., 149 18 W R. 1

OSEEMUNNISSA KHATOON v AMEEROONNIS[SA] KHATOON 20 W R., 1[illegible]

180 ———— Representative—*[As]signee of auction purchaser*—The expression "[re]presentative of a party" in the last paragraph of s. 2[44] Civil Procedure Code does not mean the representati[ve] of a party to the execution proceedings but it mea[ns] the representative of a party to the suit An app[li]cation by the assignee of an auction purchaser to [be] placed on the record cannot be dealt with und[er] s 244 Civil Procedure Code and no appeal or seco[nd] appeal lies from an order refusing such applicati[on] SREENATH GHOSE v POMA NATH SANTRA

[3 C W N., 2[illegible]

181. ———— Assignee of decree—*Indirect assignment*—*A* a decree holder appli[ed] for execution of his decree but was opposed by [the] judgment debtor on the ground that *A* had so[ld] his decree to a third party from whom it had pass[ed] to *B's* son *Held* that this was a question aris[ing] between the parties to the suit in which the decr[ee] was passed and relating to the execution of t[he] decree and might be determined by the Court ex[e]cuting the decree under s 11 Act XXIII of 18[61] PAMDHAN RAKHIT v PANCHANAN CHUCKERBUTTY

[1 B L R. S N 9 10 W R. 14

182. ———— *Separate su[it]*—*Questions for Court executing decree*—Three out [of] six decree holders sold their share in the decree to [*A*] who thereafter made an application to the Co[urt] under s 232 of the Code of Civil Procedure Th[e] application was dismissed on the ground that *A*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

purchase was made benami for some of the judgment debtors. In a subsequent suit brought by *A* and the persons who were said to be the real purchasers it was contended that a separate suit was barred under the provisions of s 244 cl (c) of the Code of Civil Procedure *Held* that *A* was not a party to the suit in which the decree was passed nor the representative of any such party and that the suit was not barred. HALODHAR SHAHA *v* HAROGOBIND DAS KOIBURTO I. L. R. 12 Calc. 105

183 ——————— *Suit for declaration that the defendant is a mere benamidar for plaintiff*—A suit brought by *A* to obtain a declaration that a decree originally obtained by B against *C* and another which had been purchased in the name of *D* had really been purchased by the plaintiff for his own benefit was held not to be barred by s 244 cl ( ) of the Civil Procedure Code as the question raised was not one arising between the parties to the suit in which the decree was passed or their representatives but one that arose between two parties each of whom claimed to be the representative of one of the parties to the suit *viz* *B* the party in whose favour the decree was passed. GOUR MOHUN GOULI *v* DINONATH KARMOKAR

[I. L. R., 25 Calc. 49
2 C W N 76

184. ——————— *Application for execution by beneficial holder of decree—Application dismissed—Suit for declaration of applicant's right to execute the decree—Civil Procedure Code s 232*—*Held* that where an application under s 232 of the Code of Civil Procedure by a person alleging himself to be beneficially entitled under a decree to execute such decree has been rejected it is still competent to the applicant (no appeal lying from the order under s 232 rejecting his application) to bring a separate suit for a declaration that he is the person entitled to execute the decree. *Ram Baksh* v *Panna Lal I L R 7 All 457* and *Halodhar Shaha* v *Harogobind Das Koiburto I L R 12 Calc 105* referred to SHEORAJ SINGH *v* AMIN UD DIN KHAN

[I. L. R. 20 All 539

185 ——————— *Execution of decree—Regular suit*—The assignee of a decree applied for execution; his application was dismissed and he was never brought on to the record as decree holder He now sued for the cancellation of the order refusing execution and for a declaration of his right to execution. *Held* that the suit was not precluded by Civil Procedure Code s. 244 RAMAN *v* MUPPIL NAYAR I. L. R. 14 Mad. 478

186 ——————— *Questions relating to execution—separate suit*—A plaintiff alleging that her husband (deceased) had advanced money on the security of land belonging to a family of four Hindus sued them to enforce his lien and obtained a decree The representatives of one of the defendants only appealed and the decree was reversed as regarded them The decree was executed as against the other defendants by the attachment and sale of their shares of the land and the plaintiff became the purchaser The successful appellants obstructed her in her attempts to obtain possession and she now sued them for partition of the three quarters share purchased by her *Held* that the suit was not precluded by Civil Procedure Code s 244 NAGAMUTHU *v* SAVARIMUTHU

[I. L. R. 15 Mad. 226

187 ——————— *Judgment debtor —Question of right to possession—Civil Procedure Code (1882) ss 332 and 335*—*T's* predecessor in interest had a mortgage on certain land and was made a party to a partition suit in which a share in the land was allotted to a member of the family subject to a proportionate share of *T's* mortgage and also subject to a proportionate share of a certain decree debt The then plaintiff got his share of the property made over to him After the date of the decree *i e* the decree in the partition suit *T* purchased the equity of redemption in the mortgaged property from certain members of the family In a subsequent execution of the partition decree part of the land was sold for money due as costs and mesne profits by *T's* vendors of the equity of redemption and *T* was ejected *T* objected under s 332 of the Code but the Court refused to order redelivery In a suit brought by *T* for possession —*Held* that *T* was not a judgment debtor within the meaning of ss 244 332 and 335 Civil Procedure Code and that the suit was not barred by the provisions of s 244 *Nagamuthu* v *Savarimuthu I L R 15 Mad 226* followed VASUDEVA UPADYAYA *v* VISVARAJA TIRTHASAMI I. L. R. 19 Mad 331

See VIBHUDAPRIYA THIRTHASAMI *v* VIDIANIDHI THIRTHASAMI

[I L. R. 22 Mad. 131

where these two last mentioned cases were distinguished.

188 ——————— Rival decree holders —*Right of action—Act VIII of 1859 s 270*—A regular suit will lie at the instance of one decree holder against another for a refund of money that has been erroneously paid away to the latter contrary to the provisions of s 270 of Act VIII of 1859 GOGARAM *v* KARTICK CHUNDER SINGH

[B L R. Sup Vol. 1022 9 W R. 515

See GOKOOL DASS *v* GUNGESHER SINGH

[3 N W 164

189 ——————— Claim for rateable distribution by creditor rejected—*Sum detained in Court pending application of High Court—Application rejected—Interest on sum detained claimed in execution—Procedure*—In execution of a decree by *R S* another creditor claimed a rateable share of the proceeds realized His claim was rejected Pending an application to the High Court under s. 622 of the Code of Civil Procedure to set aside this order the share claimed by *S*

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

or conducting the sale as also on the ground of fraud The Court of first instance rejected the application and refused to set aside the sale On appeal to the Subordinate Judge he reversed the decision of the first Court On a second appeal to the High Court by the auction purchaser an objection was taken that no second appeal lay at his instance *Held* that inasmuch as the application was under s 244 of the Civil Procedure Code a second appeal would lie The question of a right to a second appeal does not turn upon who may happen to be the appellant but upon whether or not the case is one within s 244 of the Code HIRA LAL GHOSE v CHUNDRA KANTO GHOSE I L R. 26 Calc. 539 [3 C W N 403

See BHUBON MOHUN PAL v NANDA LAL DEY [I. L. R. 26 Calc. 324 3 C W N 399

and MOTI LAL CHAKRABUTTY v RUSSIK CHANDRA BAIRAGI I L R. 26 Calc 326 note [3 C W N, 395

201. ——— *Application to set aside sale on the ground of fraud*—Where a judgment debtor applies to have an execution sale set aside and alleges circumstances which if found in his favour would amount to fraud on the part of the decree holder or auction purchaser the application comes under s 244 Civil Procedure Code although the question is one between the judgment debtor and the auction purchaser who was not the decree holder *Prosonno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683* referred to NEMAI CHAND KANJI v DEVONATH KANJI [2 C W N 691

POJONI KANT BAGCHI v HOSSANI UDDIN AHMED [4 C W N 538

202. ——— Purchaser from some of the judgment-debtors of property not affected by decree—*Representative of judgment debtor*—Certain persons claiming by right of inheritance to C sued B N A K and others for possession of certain immoveable property and obtained a decree dated in August 1876 for possession of the same In the course of the litigation which ended in that decree Z purchased certain immoveable property from B N A and K Z was subsequently dispossessed of such property in execution of the decree of August 1876 He thereupon sued the holders of that decree for possession of the same alleging that his vendors had inherited the same from D that it was not affected by that decree and that he had been improperly dispossessed of it in execution of that decree *Held* by the Court that the plaintiff not being the representative of any of the parties to the suit in which that decree was passed in the sense of s 244 of the Civil Procedure Code but being if his allegations were true a purchaser from certain of the judgment-debtors of property not affected by that decree the suit was not barred by the provisions of that section. *Partab Singh* v *Beni Ram I L R 2 All 61* distinguished Observations by STUART C J on his judgment in *Agra Savings Bank* v *Sri Ram Mitter I L R 1 All., 388* and on the judgment of the Full Bench in *Partab Singh* v *Beni Ram* referring to that judgment ZANKI LALL v JAWAHIR SINGH [I. L. R. 5 All., 94

203 ——— Party to suit in representative character—In 1875 a decree was passed against N as representative of L who died pending the suit declaring N liable to the extent of the assets of L which might have come to the hands of N In 1879 the decree holder applied for execution of the decree and without proof that any of the assets of L had come to the hands of N obtained an order and attached lands belonging to N N objected to the attachment but the Munsif without investigation rejected his claim and directed N to bring a regular suit The land was sold and purchased by A B N after an abortive attempt to obtain a review of the Munsif's order from his successor brought a suit in 1880 against the decree holder and A B to recover the land *Held* that as N was a party to the former suit of 1875 within the meaning of s 244 of the Civil Procedure Code 1877, the suit would not lie ARUNDADHI v NATESHA [I. L. R 5 Mad., 391

204 ——— *Sale of property in execution of decree obtained by second mortgagee for sale of property—Holder of prior decree enforcing first mortgage—Execution of decree—Fresh suit—Meaning of "representative" of judgment debtor*—A decree enforcing a first mortgage of certain property not being satisfied the property was sold in execution of a decree of a later date enforcing a second mortgage of the property *Per* STUART C J that the decree enforcing the first mortgage could not be executed against the property but the holder of such decree was bound to bring a fresh suit against the purchaser of the property to enforce his decree *Per* STRAIGHT BRODHURST and TYRRELL, JJ that a fresh suit was the most convenient and expeditious remedy *Per* OLDFIELD J that the purchaser not being the "representative" of the judgment-debtor within the meaning of s. 244 (c) of the Civil Procedure Code the holder of such decree must bring a fresh suit to enforce it JAGAT NARAIN v JAGRUP I. L. R. 5 All., 452

205 ——— *Transfer of interest pending suit—Lis pendens—Application to bring transferee upon the record*—A decree of the High Court giving possession of certain shares in a bank to the plaintiff R was reversed on appeal by the Privy Council The defendant then applied to the Court of first instance to order restitution of the shares which had been realized by the plaintiff Upon being ordered to produce the shares R made an application to the Court professedly under s 244 of the Civil Procedure Code in which he alleged that

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

pending the appeal to the Privy Council he had transferred the shares to *G* his counsel in the case who had failed to restore them and he prayed that the said person might be brought upon the record and that execution for recovery of the said shares might be given against him The Court passed an order upon this application calling on *G* to show cause why he should not be called upon to restore the shares made over to him by *R* and he thereupon filed an answer denying that he was the custodian of the shares and alleging that he was their purchaser for value The Court passed an order directing that *G* s name should be placed on the record, so that the decree might be executed against him *Held* that the question being one between two judgment-debtors *inter se* and not between the parties arrayed against each other as decree-holders of the one part and judgment debtors or their representatives on the other the provisions of s. 244 of the Civil Procedure Code were not applicable to the case that *G* could not be regarded as a representative of *R* within the meaning of that section. RAYNOR *v* MUSSOORIE BANK [I. L. R. 7 All. 681

206 ———— *Decree on bond against representatives of obligor* —Where certain property was attached in execution of a decree passed upon a bond against the legal representatives of the obligor and the judgment debtors objected to the attachment on the ground that the property was not part of the obligor's estate and liable to be taken in execution of the decree but was property which they could claim in their own right —*Held* that the matter in dispute was one between the parties to the suit in which the decree was passed and relating to the execution discharge or satisfaction of the decree within the meaning of s 244 of the Civil Procedure Code and was therefore to be determined in the execution department and not by regular suit *Chowdry Wahed Ali* v *Jumaee 11 B L R 149* *Shankar Dial* v *Amir Haidar I L R 2 All 752* and *Nath Mal Dass* v *Tajammul Husain I L R 7 All 36* referred to *Per* MAHMOOD *J*—That the turning point upon which the application of the rule contained in s 244 of the Civil Procedure Code barring adjudication in a regular suit depends is whether the judgment debtor in raising objections to execution of decree against any property pleads what may analogically be called a *jus tertii* or a right which although he represents it belongs to a title totally separate from that which he personally holds in such property *Kanai Lal Khan* v *Sashi Bhuson Biswas I L R 6 Calc., 777* dissented from. RAM GHULAM *v* HAZARU KOER [I L. R. 7 All. 547

207 ———— *Party to suit—Representative* —Where certain property having been attached in execution of a decree the representative of the judgment debtor objected that the property had been acquired by himself and not inherited from the judgment debtor and was therefore not liable in execution —*Held* that the question was one which must be decided in the execution department, under s 244 of the Civil Procedure Code. *Ram Ghulam* v *Hazaru Koer I L R 7 All 547* referred to SITA RAM *v* BHAGWAN DAS [I. L R 7 All 733

208 ———— *Official Assignee—Attachment of property—Judgment debtor declared an insolvent—Claim by Official Assignee to attached property—Appeal from order disallowing claim—Stat 11 & 12 Vic c 21 ss 7 49— Representative of judgment debtor* —A decree holder having attached the property of his judgment-debtors in execution of the decree obtained an order for sale of the attached property Prior to sale the judgment debtors made an application to be declared insolvents and obtained an order under Stat 11 & 12 Vic c 21 s 7 by which their property was vested in the Official Assignee An application was then made by the Official Assignee to the Court in which the execution of the decree was pending for the release of the property from attachment and that the property might be made over to him The Court dismissed the application On appeal the District Judge reversed the first Court s order *Held* that the matter did not come before the Court of first instance under s. 49 of Stat 11 & 12 Vic c. 21 inasmuch as that section refers to cases where the insolvent s schedule has been filed and to debts or demands admitted therein and in the present case no schedule had been filed at the time of the Official Assignee s application and the Court could therefore only entertain the application under the provisions of the Civil Procedure Code relating to the execution of decrees. *Held* that the Official Assignee could not be held to be a representative of the judgment debtors within the meaning of s 244 of the Civil Procedure Code and his application was not one relating to the execution discharge or satisfaction of the decree *Held* that the Court of first instance had only jurisdiction in the matter under s 278 of the Code and disposed of it under that section and that the District Judge had no jurisdiction to entertain the appeal KASHI PRASAD *v* MILLER I L. R. 7 All. 752

209 ———— *Execution of decree— Representative of judgment-debtor* —The word "representative" as used in cl (*c*) s 244 of the Code of Civil Procedure means any person who succeeds to the right of any of the parties to the suit after the decree is passed. A Hindu widow mortgaged certain properties and afterwards by an ikrarnamah made them over to *B* the next heir The ikrarnamah contained a condition that *B* was to be liable for the widow s debts. Subsequently the mortgagee brought a suit against the widow on the mortgage and joined *B* as a party on the ground that he was in possession of the mortgaged properties That suit resulted in a money decree being passed on appeal by the High Court against the widow personally the property in the hands of *B* being held not to be liable The case was taken on appeal to the Privy

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—continued

2 PARTIES TO SUIT—continued

Council and pending the hearing of that appeal the widow died and *B* was brought on the record as her legal representative The decree of the High Court was ultimately confirmed by the Privy Council In execution of the decree it was sought to make *B* liable to satisfy the amount out of the properties which he had obtained under the ikrarnamah the mortgagee not having been aware of the conditions of that document before the decree of the High Court *Held* that so far as these properties were concerned he was not the legal representative of the widow as he inherited them as heir at law of her husband and that his title to them under the ikrarnamah was not that of a representative within the meaning of cl (c) of s 244 *Held* further that the question of *B*s liability under the ikrarnamah did not fall within the scope of the provisions of cl (c) of s 244 as being a question to be decided between the parties to the suit as although *B* was a party to the suit the only claim against him was that the property in his hands was liable as having been previously hypothecated and as the suit was dismissed so far as that claim was concerned it was not a question relating to the execution of the decree KAMESHWAR PERSHAD v RUN BAHADUR SINGH

[I L R 12 Calc 458

210 ——— *Representative of a party to the suit—Second mortgagee taking a mortgage during the pendency of a suit on the first mortgage*—*Held* that a second mortgagee who takes his mortgage during the pendency of a suit on the first mortgage is a representative of the mortgagor within the meaning of s 244 of the Code of Civil Procedure *Madho Das* v *Ramji Patak I L R 16 All 286* referred to SHEO NARAIN v CHUNNI LAL

[I L R 22 All 243

211 ——— *Person who had acquired interest in property sold before the judgment debtor became liable under the decree—Application to set aside sale—Civil Procedure Code s 310*—Where an application to have a sale set aside under s 310A of the Civil Procedure Code is made by a person who has acquired an interest in the property sold before the judgment debtor became liable under the decree such person is not a representative of the judgment debtor within the meaning of s. 244 of the Code BUNOSHI DHAR HALDAR v KEDARNATH MONDAL

1 C W N, 114

212 ——— *Civil Procedure Code ss 278 283—Question for Court executing decree—Separate suit—Representative of judgment debtor*—The decree-holder under a decree for enforcement of lien against the zamindari rights and interest of *K* applied for execution by attachment and sale of certain shares one of which was recorded in the khewat in the name of *K* and two others in the name of *B* his brother's widow The shares having been attached the judgment debtor died and *J* his brother and *L* his son were substituted as his representatives In execution of the decree only the share which had stood recorded in the name of the deceased judgment debtor and which was in possession of *J* and *L* as his representatives, was sold and the decree holder then applied for sale of the other shares which had been attached To this *B* objected under s 281 of the Civil Procedure Code claiming to be the owner of the shares in question Before the hearing of her objection she died and *L* applied to have his name brought upon the record in her place for the purpose of supporting the objections An order having been passed disallowing the objections which had been filed by *B* *L* applied to the High Court A preliminary objection was taken on behalf of the decree-holder to the hearing of the appeal on the ground that as the first Court's order related to *L*s claim as the heir of *B* to have the shares entered in her name released from attachment it must be regarded as passed under s 281 of the Civil Procedure Code and as conclusive subject to *L*s bringing a suit to establish his right On the other side it was contended that *L* being the representative of the deceased judgment debtor *K* the first Court's order must be regarded as passed under s. 244 of the Code and the appeal would therefore lie *Held* that the preliminary objection must prevail and the first Court's order must be regarded as passed under s 281 and not under s 244 of the Code inasmuch as *L*s claim which was rejected by it was nothing more than to come in as *B*'s representative for the purpose of supporting her objections and it was in right of a third person whose interest he asserted to have passed to him that he prayed admission to the proceedings and his character was wholly distinct from that he filled as the legal representative of his deceased father Because *L* happened, for the purpose of the execution proceedings to be his father's legal representative and to be liable to satisfy the decree to the extent of any assets which might have come to his hands it did not follow that any rights claimed by him through a third person must be dealt with and could only be dealt with between him and the decree holder in the execution proceedings *Wahed Ali* v *Jumaee 11 B L R 149 Ram Ghulam* v *Hazaru Kuar I L R 7 All 547 Sita Ram* v *Bhagwan Das I L R 7 All 733 Shankar Dial* v *Amir Haidar I L R., 2 All 752 Nath Mal Das* v *Tajammul Husain I L R 7 All 36* and *Kanai Lal Khan* v *Sashi Bhuson Biswas I L R 6 Calc 777* referred to. BAHORI LAL v GAURI SAHAI

[I L R 8 All, 628

213 ——— *Suit by representative against purchaser—Separate suit—Civil Procedure Code ss 266 310*—The provisions of s 244 (c) of the Civil Procedure Code prohibit not only a suit between parties and their representatives, but also a suit by a party or his representatives, against a purchaser at a sale in execution of the decree the object of which is to determine a question which properly arises between the parties or their

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

representatives and relates to the execution discharge or satisfaction of the decree A judgment debtor whose occupancy tenure had been sold in execution of a decree for money sued the purchaser for recovery of the property on the ground that the sale of occupancy rights in execution of decree was illegal and void being in contravention of the provisions of s 9 of Act XII of 1881 (North Western Provinces Rent Act) *Held* by the Full Bench that the question involved in the suit was one of the nature referred to in s. 244 (c) of the Civil Procedure Code as determinable only by order of the Court executing the decree and that the suit was therefore not maintainable *Narain* v *Puran Weekly Notes All 1883 p 218* referred to BASTI RAM *v* FATTU I. L. R., 8 All. 146

See DURGA CHARAN MANDAL *v* KALI PRASANNA SARKAR I. L. R 26 Calc 727

214. ———————— *Representatives of judgment-debtor*—*Held* that proceedings in execution of a decree taken against the plaintiff's father and elder brother on previous occasions did not bind the plaintiffs under s 244 of the Civil Procedure Code of 1882 the plaintiffs not having been parties to them within the meaning of that section KRISHNAJI *v* VITHALRAV I L R. 12 Bom. 80

215 ———————— *Decree passed against representative of debtor—Attachment of property as belonging to debtor—Objection to attachment by judgment debtor setting up an independent title—Appeal from order disallowing objection—Civil Procedure Code ss 2 283*—The decree holders in execution of a simple money decree passed against the legal representative of their debtor and which provided that it was to be enforced against the debtor's property attached and sought to bring to sale a house as coming within the scope of the decree The judgment debtors objected to the attachment and proposed sale on the ground that the house was their own private property and not the property of the debtor within the meaning of the decree having been validly transferred to them during the debtor's life time The objection was disallowed by the Court of first instance *Held* that s 283 of the Civil Procedure Code had no application that the case fell within s 244 and that an appeal would lie from the first Court's order *Ram Ghulam* v *Hazaru Kuar I L R., 7 All 547* and *Sita Ram* v *Bhagwan Das I L R 7 All 733* followed. *Shankar Dial* v *Amir Haidar I L R 2 All 752 Abdul Rahman* v *Muhamad Yar I L R 4 All 190 Awadh Kuari* v *Roktu Tiwari I L R 6 All 109 Chowdhry Wahed Ali* v *Jumaee 11 B L R 149 Ameeroonnissa Khatoon* v *Meer Mahomed 20 W R 280* and *Kuriyal* v *Mayan I L R 7 Mad 255* referred to MUKMANTRI *v* ASHFAK AHMAD I L R 9 All 605

216 ———————— *Issue raised in form of objection by defendant in separate suit*—S 244 of the Civil Procedure Code bars a suit brought for the determination of certain questions specified therein but does not bar the trial of any issue involved in these questions if the issue is raised at the instance of a defendant in a suit brought against him *Basti Ram* v *Fattu I L R 8 All 146* distinguished. BHIRAM ALI SHAIK SHIKDAR *v* GOPI KANTH SHAHA I. L. R. 24 Calc 355 [1 C W N 393

217 ———————— *Question for Court executing decree—Plea taken by defendant in separate suit—Civil Procedure Code (Act XIV of 1882) s 13—Res judicata*—When an issue arising out of the execution of a decree has not been raised and determined under s 244 of the Civil Procedure Code there is nothing in that section to prevent a defendant in a separate suit subsequently brought from raising that issue in that suit *Bhiram Ali Shaik Shikdar* v *Gopi Kanth Shaha I L R 24 Calc 355* followed. NIL KAMAL MUKERJEE *v* JAHNABI CHOWDHURANI [I. L. R. 26 Calc 946

218 ———————— *Party to suit—Question in execution of decree—Right of suit—Minor defendant objecting to sale in mortgage suit but withdrawing his defence*—In a suit brought upon a mortgage bond after the death of the executant who was the widow of the last full owner of the properties mortgaged the present plaintiff who was a minor at that time appeared represented by the manager under the Court of Wards and denied the widow's right to mortgage the properties in dispute He subsequently withdrew his defence but remained a party on the record and a decree was made in his presence At an execution proceeding taken against the minor son of the alleged adopted son of the last full owner without any notice to the present plaintiff some of the mortgaged properties were sold. In a suit by him (the plaintiff) for recovery of possession of the said properties the defence was that the suit was not maintainable by virtue of the provisions of s 244 of the Civil Procedure Code *Held* that inasmuch as the plaintiff was a party to the suit in which the decree was passed his remedy if he could object to the sale was by an application under s 244 of the Civil Procedure Code and not by a separate suit RAM CHANDRA MUKERJEE *v* RANJIT SINGH [I. L. R. 27 Calc 242 4 C W N 405

219 ———————— *Suit by decree holder and judgment debtor against auction purchaser to set aside sale alleging an uncertified adjustment of the decree prior to sale*—The provisions of s 244 of the Code of Civil Procedure disallowing a separate suit to determine questions arising between the parties to the suit in which a decree has been passed and bearing upon the execution thereof operate not only to prohibit a suit between the parties and their representatives but also a suit by a party or his representative against an auction purchaser in execution of the decree the object of which suit is to

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

determine a question which properly arose between the parties or their representatives relating to the execution discharge or satisfaction of the decree *Basti Ram* v *Fattu I L R 8 All 146* and *Prosonno Kumar Sanyal* v *Kali Das Sanyal I L R 19 Calc 683* referred to DHANI RAM v CHATUR BHUJ I. L. R., 22 All. 86

See DAULAT SINGH v JUGAL KISHORE [I. L. R., 22 All. 108

220 ——— *Deceased judgment debtor—Execution against a person not the legal representative*—The defendants along with one *N* and *C* had brought a suit against one *A* in the Civil Court at Peshawar in the Punjab and obtained a decree on the 23rd July 1878 for R3 05 545 12 0 In 1881 application for transfer of the decree to the Court at Moradabad for execution was made and it was granted, but no steps were taken thereupon On the 12th June 1883 *A* died. On the 30th April 1884 the defendants again applied to the Court at Peshawar treating their judgment debtor as being then alive for a fresh certificate to execute their decree in the Moradabad district and obtained it On the 20th August 1885 they made an application to the District Judge of Moradabad for execution of their decree and in it it was stated that the application was for execution against Adjudhia Prasad and after his death against Angan Lal the own brother and Durga Kuar widow and Lachman Prasad and others sons of Ajudha Prasad residents of Kundarki and the said Angan Lal at present residing at Umballa and employed in the Commissariat Transport Department judgment debtors It was further stated that the judgment debtor was dead and his heirs are living and in possession of his estate and Angan Lal himself has realized R9 637 4-9 due to the deceased judgment debtor from the Commissariat Department of Calcutta and appropriated the same therefore to that extent the person of the said Angan Lal was liable Notification of this application was issued to Angan Lal as also to the other persons named therein Angan Lal objected to the application as against him stating that although he was the brother of *A* deceased yet he always lived separate and carried on business separately and that there was no connection or partnership between him and the deceased judgment debtor and that he had no property of the deceased in his possession Further that as *A* left issue it was wrong to call him an heir to *A* and take out execution process against him In reply to these objections the judgment creditors (defendants) did not contend that Angan Lal was the legal representative of the deceased judgment debtor but treated him as a person in possession of a sum of money belonging to the deceased and therefore liable to the extent of the sum so received by him The Subordinate Judge holding that Angan Lal was the brother of the deceased and had realized the amount of the Commissariat Office which he failed to prove that he paid to the deceased ordered execution to proceed against him. Angan Lal then instituted this suit to set aside the order of the Subordinate Judge It was contended that the proceedings of the Subordinate Judge were held under s 244 of the Code and therefore no separate suit would lie *Held* that the contention must fail as the Subordinate Judge never treated the proceedings in execution against Angan Lal upon the footing that he was the legal representative of the deceased judgment debtor *Mahomed Aga Ali Khan* v *Balmukund L R 3 I A, 241* and *Nadir Hossain* v *Bipen Chand Bassarat 3 C L R 437*, were referred to ANGAN LAL v GUDAR MAL I. L. R., 10 All 479

221 ——— *Representative of party to suit—Mortgagee under a conditional sale deed who has become owner in pursuance thereof*—A person who becomes owner by process of law of property mortgaged to him by a deed of conditional sale must be considered as the representative of his mortgagor within the meaning of s 244 of the Code of Civil Procedure JANKI PRASAD v ULFAT ALI [I. L. R. 16 All., 284

222 ——— *Representatives of judgment debtor—Death of party to suit before final decree in appeal—Subsequent proceedings in execution taken against representatives of such party*—A decree was given to the defendant (then plaintiff) in 1856 for possession of land and mesne profits against numerous defendants including one Dawan Rai Some of the judgment debtors including Dawan Rai appealed to the Sadr Diwani Adalat but before the decree of the Sadr Diwani Adalat was passed, Dawan Singh died No application was made to put any representative of Dawan Rai on the record but in 1881 (the amount of the mesne profits payable under the decree having been finally determined in 1877) certain persons were made parties as representatives of Dawan Rai to various proceedings in execution of the decree for mesne profits, which ended in the sale of certain property which had been of Dawan Rai in his lifetime Subsequently the said representatives of Dawan Rai brought a suit to recover the property sold as above described on the ground that they were no parties to the decree under execution *Held* that the plaintiffs were entitled to bring such a suit and it was not barred by the provisions of s 244 of the Code of Civil Procedure BENI PRASAD KUNWAR v MUKHTESAR RAI [I. L. R. 21 All., 316

223 ——— *Representative of judgment-debtor—Purchaser at execution sale—Private purchase—Purchase pendente lite*—The defendants Nos 2 3 and 4 were together with one *M* the owners of certain immoveable property including two mehals Olipore and Ekdhala subject to a mortgage on which the mortgagee obtained a decree on 30th July 1875 Whilst that suit was pending one *K D* took out execution of a money-decree which he had obtained in 1871 against defendant No 3 and put up for sale the mehal Olipore which was

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

purchased by the father of the plaintiff *A* who eventually obtained possession of it through the Court The plaintiff *B* purchased privately the mehal Ekdhala from the mortgagors and from *M* some time after the date of the decree on the mortgage That decree was in course of execution when the mortgagee died, and his estate came into the hands of the Administrator-General who on 13th August 1878 sold the decree to *G* defendant No 1 After this sale several applications were made to have the name of *G* substituted for that of the original decree holder but in none of these applications was any further step taken towards execution of the decree or any order made for substitution of the name of *G* until 18th July 1885 when after notice to the defendants under s. 232 of the Civil Procedure Code *G* s name was substituted as decree-holder and execution was taken out against the mortgaged property including Olpore and Ekdhala The plaintiffs each claimed the mehal they had respectively purchased but their claims were disallowed. In suits brought by the plaintiffs for a declaration of their right to hold the properties free of the mortgage the Court found that *G* was only a benamidar so far as his purchase of the mortgage-decree was concerned. *Held* the plaintiff *A* being the purchaser at a public sale in execution of a decree was not the representative of the judgment debtors the mortgagors within the meaning of s. 244 of the Civil Procedure Code but the case was different with respect to plaintiff *B* who claimed by private purchase and must be considered the representative of the judgment debtors within the meaning of that section. *Dinendronath Sannyal* v *Raj Coomar Ghose L R 8 I A 65 I L R 7 Calc 107 Anundmoyee Dossee* v *Dhonendro Chunder Mookerjee 14 Moore s I A 101: 8 B L R 122* and *Lalla Prabhulal* v *Mylne I L R 14 Calc 401* referred to GOUR SUNDAR LAHIRI *v* HEM CHUNDER CHOWDHURY GOUR SUNDAR LAHIRI *v* HAFIZ MOHAMED ALI KHAN

[I. L. R. 16 Calc 355

224 ——————— *Representative of party to suit—Representative of judgment debtor—Purchaser of property attached under a simple money-decree*—A purchaser by private sale of immoveable property from a judgment debtor is not a representative of the judgment debtor within the meaning of s 244 of the Code of Civil Procedure where the decree against the judgment debtor is a simple money decree and creates no charge upon specific property MADHO DAS *v* RAMJI PATAK

[I. L. R. 16 All. 286

225 ——————— *Representative of judgment debtor—Purchaser at execution sale—Purchaser's right to be heard in support of his objections to the sale*—The term representatives as used in s 244 of the Code of Civil Procedure when taken with reference to the judgment debtor does not mean only his legal representative that is his heir executor or administrator but it means his representative in interest and includes a purchaser of his interest who so far as such interest is concerned is bound by the decree There is no reason for excluding from its signification an execution purchaser of the judgment debtor's interest *Held* therefore by the Full Bench that the cases of *Gour Sundar Lahiri* v *Hem Chunder Choudhury I L R 16 Calc 355* and *Narain Acharjee* v *Gregory 8 W R 304* so far as they decide that a purchaser at an auction sale of the equity of redemption in mortgaged properties cannot come in in execution proceedings under a decree upon the mortgage as a representative of the judgment debtor under s 244 of the Code are not rightly decided. ISHAN CHUNDER SIRKAR *v* BENI MADHUB SIRKAR

[I L R 24 Calc 62
1 C W N 36

226 ——————— *Representative of a party to the suit—Purchaser of property under attachment in execution of a decree—Objection to execution under Civil Procedure Code s 278*—The purchaser of property which is under attachment in execution of a decree is a representative of the judgment debtor under that decree within the meaning of s 244 of the Code of Civil Procedure *Madho Das* v *Ramji Patak I L R 16 All 286* referred to A person to whom s 244 of the Code of Civil Procedure applies cannot avoid the application of that section by filing his objection to execution under s 278 *Shankar Dat Dube* v *Harman & Co I L R 17 All 245* and *Imdad Ali* v *Jagan Lal I L R 17 All 478* referred to LALJI MAL *v* NAND KISHORE I. L. R. 19 All. 332

227 ——————— *Representative of a party to the suit—Purchaser of property under attachment in execution of a decree*—*Held* that the purchaser of property which is at the time of the purchase under attachment in execution of a decree is a representative of the judgment debtor vendor within the meaning of s 244 of the Code of Civil Procedure *Lalji Mal* v *Nand Kishore I L R 19 All 332* followed. *Madho Das* v *Ramji Patak I L R 16 All 286* explained. GUR PRASAD *v* RAM LAL I L R. 21 All. 20

228 ——————— *Order in execution of decree—Surplus of sale proceeds*—One *S P* executed four mortgages of a certain mouzah. The first mortgagee got a decree on his mortgage and in execution thereof caused the mouzah to be sold The sale realized more than enough to satisfy his decree The third mortgagee also obtained a decree on his mortgage and sold the same to defendant No 2 who in the course of the execution of the decree of the first mortgagee applied under s 295 of the Civil Procedure Code for payment to him of the surplus sale proceeds and obtained an order for the payment. The plaintiff as purchaser of the equity of redemption of *S P* brought the present suit to set aside the aforesaid order and to recover the surplus sale proceeds from defendant No 2 The Subordinate Judge held that defendant No 2 was a benamidar for defendant No 1 that the plaintiff made good his

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

title to the surplus sale proceeds and gave him a decree On appeal by defendant No 2 —*Held* that the order under s 295 in favour of defendant No 2 was one coming under s 244 cl (*c*) and that the present suit was not maintainable *Ishan Chunder Sirkar* v *Beni Madhub Sirkar* I L R 24 Calc 62 referred to *Held* further that the fact of the sale proceeds being realized in execution of the decree not of the third but of first mortgagee made no difference inasmuch as the two execution cases were amalgamated and disposed of simultaneously HURDWAR SINGH *v* BHAWANI PERSHAD [2 C W N 429

229 ———— *Application by Collector in pauper suit—Civil Procedure Code s 411—Recovery of Court fees by Government —Held* that a Collector applying on behalf of Government under s 411 of the Civil Procedure Code for recovery of Court fees by attachment of a sum of money payable under a decree to a plaintiff suing *in forma pauperis* might be deemed to have been a party to the suit in which the decree was passed within the meaning of s 244 (*c*) of the Code and that an appeal would therefore lie from an order granting such application JANKI *v* COLLECTOR OF ALLAHABAD I. L. R 9 All. 64

230 ———— *Civil Procedure Code s 291—Sale in execution of decree—Tender of debt by transferee of property—Separate suit —Held* that the assignees of a purchaser from a judgment debtor of property the subject matter of a decree for enforcement of hypothecation were entitled to come in and protect the property from sale in execution of the decree by tendering the debt and costs under s 291 of the Civil Procedure Code and that the executing Court was bound to accept the money and stop the sale *Held* also where the executing Court had refused to accept the money and the sale had taken place that a suit by the assignees to set aside the sale and for a declaration of their right to come in under s 291 was not barred by s. 244 of the Code BEHARI LAL *v* GANPAT RAI [I. L. R., 10 All 1

231. ———— *Money paid into Court by pre emptor—Suit for pre-emption dismissed on appeal—Suit for refund of money paid into Court* —A suit for pre emption was decreed conditionally on the plaintiff paying R1 595 which the Court determined was the amount of the sale consideration He paid the amount to the vendees and the payment was certified under s 258 of the Civil Procedure Code Subsequently the decree was modified on appeal by increasing the amount of sale-consideration to R1 995 which the plaintiff was required to pay as the condition of pre emption He never paid the difference between the amount fixed by the first Court and the sum fixed as the true price by the Appellate Court and the suit consequently stood dismissed. He then assigned to the plaintiff in the suit his right to recover the amount R1 595 from the vendees who after unsuccessful application made to the Court of first instance under s 244 of the Civil Procedure Code to recover the amount, instituted this suit *Held* that the assignee was a representative of the plaintiff in the pre emption suit within the meaning of s 244 of the Civil Procedure Code and the suit was therefore barred under the provisions of that section ISHUR DAS *v* KOJI PAM [I. L. R., 10 All 354

232 ———— *Civil Procedure Code 1882 ss 293 306—Liability of defaulting purchaser—Appeal from order under s 293—Re sale* —At a sale in execution of a decree a decree holder who had obtained leave to bid was alleged to have made a bid through his agent of R90 000 but he shortly afterwards repudiated the bid and did not pay the deposit The property was put up for sale again on the following day under s 306 of the Code of Civil Procedure and was in due course knocked down for a smaller sum The judgment debtor filed a petition under s 293 to recover from the decree holder the loss by re sale the petition was rejected On appeal —*Held* that the question at issue was one arising between the parties to the suit and that an appeal lay against the order rejecting the petition VALLABHAN *v* PANGUNNI I L R. 12 Mad, 454

233 ———— *Application by purchaser to set aside sale or for compensation for deficiency in area of land—Purchaser adverse in interest to judgment debtor* —A purchaser at an execution sale of immoveable property held by the Sheriff applied to set aside the sale or for compensation on the ground of deficiency in the area of the land sold. *Held* that as the interest of the purchaser was adverse to the interest of the judgment debtor the former was not the representative in interest of the latter and therefore even if the Civil Procedure Code was applicable at all s 244 of that Code did not apply *Ishan Chunder Sirkar* v *Beni Madhub Sirkar I L R 24 Calc 62* applied RAM NARAIN *v* DWARKA NATH KHETTRY [I. L R 27 Calc 364 4 C W N., 13

234. ———— *Decree against mortgagor for mortgage money and directing sale of mortgaged property as against him and a third party—Attachment of other property in possession of third party as that of the mortgagor—Claim by third party to ownership of such property—Suit by decree holder to establish mortgagor's right to property* —In a suit upon a hypothecation bond a third party was made defendant as she claimed the hypothecated property The mortgagee obtained a decree for recovery of the amount of the bond and for enforcement of the mortgage In execution of the decree the debt not being satisfied by sale of the mortgaged property the decree holder caused certain other immoveable property in the possession of the third

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

party to be attached. She objected to the attachment on the ground that this property was her own and was not liable to sal in executi n of the decree The objection was allowed and the decree holder then sued for a d claration that the property belonged to the mortgager judgment debtor and was liable to attachment and sale in executi n of the decree *Held* that, as no claim in the former suit was mad against the objector personally or in a r presentative character but as regards her the only claim was virtually for a declarati n that she was not entitled to the hypothecated property the decree aff cted her only so far as it negatived her alleged interest in that property and so far as it was sought to be enforced against other property she was a stranger to that suit and her objection must be taken to have been decided under ss . 8 and 280 of the Civil Procedure Code and the present suit was rightly brought under s 283 and was not barred by s 244 *Kameshwar Pershad* v *Run Bahadur Singh I L R 12 Calc 458* referred to *Mulmantri* v *Ashfal Ahmad I L R 9 All 605* and *Nimba Harishet* v *Sitaram Paraji I L R 9 Bom 458* distinguished. JANGI NATH v PHUNDO

[I. L. R. 11 All, 74

235 ———— *Persons made parties to suit but exempted from operation of decree —Civil Procedure Code (1882) s 278—Objection to attachment —Held* that persons who had originally been made parties to a suit but had been expressly exempted from the operation of the decree were not parties to the suit within the meaning of s 244 of the Code of Civil Procedure with regard to an objecti n taken by them in respect of the attachment of their property by the decree holder but that such objecti n must be considered to b an objection under s 278 of the Code *Jangi Nath* v *Phundo I L R 11 All 74* referred to MUKARRAB HUSAIN v HURMAT UN NISSA

[I. L. R 18 All. 52

236 ———— *Defendant exonerated from a suit* —A defendant who had been exonerated from a suit is not a party within the meaning of Civil Procedure Code s 244 (c) and a suit by the plaintiff for contribution for his share of the costs of execution is not barred under that section GADICHERLA CHINA SEETAYYA v GADICHERLA SEETAYYA I. L. R. 21 Mad. 45

See RAMASAMI SASTRALU v KAMESWARAMMA

[I L. R. 23 Mad 361

where the above case is explained

237 ———— *Parties to the suit in which the decree was passed—Dismissal of application for sale of property of next friend in suit in forma pauperis—Appeal against order of dismissal—Civil Procedure Code ss 411 412* —An order having been made in a decree dismissing a suit against the next friend of a minor plaintiff to pay the Court fee due to Government in respect of the suit the Collector attached the property belonging to the said next friend with view to bringing it to sale While the attachment was subsisting the next friend died and his son was thereupon brought upon the record An application for an order for sale of the property of the son as the legal representative of his father having been dismissed the Collector appealed against the order of dismissal *Held* that the Collector was not a party to the suit in which the decree was passed within the meaning of s 244 (c) of the Code of Civil Procedure and that he had therefore no right of appeal also that in proceedings relating to the enforcement of an order under s 412 against a next friend the next friend cannot be considered to be a party to the suit and that in consequence there is no appeal under s 244 ( ) of the Code of Civil Procedure from an order passed in such proceedings COLLECTOR OF TRICHINOPOLY v SIVA RAMAKRISHNA SASTRIGAL I. L. R. 23 Mad. 73

———— s 245 (Act XXIII of 1861 s 15)

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT ETC I L. R. 8 Calc 479
[I L. R 17 Calc 631
I L. R 17 Mad 67

See LIMITATION ACT 1877 ART 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS
[I L. R. 14 Calc 124
I L. R. 17 Calc 631
I. L. R. 23 Calc 594
2 C W N 556
I L. R. 20 All. 478

1 ———— Investigation of title—*Execution of decree—Act VIII of 1859 s 214*—Neither s 214 Act VIII of 1859 nor s 15 Act XXIII of 1861 contemplated any enquiry before the Court whether the property belongs to the judgment debtor or n t SUBJAN BIBI v SARIATULLA

[3 B L R. A C 413 12 W R. 329

2 ———— Filing decree—*Civil Procedure Code 1859 s 215* —S 15 Act XXIII of 1861 (*Act VIII of 1859 s 215*) did not make it essential that the decree itself sh uld be filed but only required certain particulars specified in s. 215 Act VIII of 1859 on which the Judge is empowered to pass orders for execution SUFUR ALI v MOHESH CHUNDER KAUG 4 W R. Mis 16

3 ———— Irregularity in application for execution—*Procedure* —S 15 Act XXIII of 1861 did not authorize a Judge to reject an application for the execution of a decree on the ground of an irregularity in form Where the application is irregular the Judge should either return it immediately to the applicant for correction or with his consent cause the necessary correction to be made CHOWDHRY PURLADH MAHAPATTAR v CHOWDHRY JONARDON MAHAPATTAR

[6 W R. Mis. 15

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

4 ———— Application in terms of decree—*Decree needing correction*—Under s 15 Act XXIII of 1861 if an application for execution corresponds with the terms of a decree it should be admitted If the decree needs correction the Court executing cannot correct it but it is for the defendant to apply to the Court which made the decree BISHESHUR ROY CHOWDHRY *v* BISHESHUR BOSE
8 W R., 277

———— s 245B

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES
[I. L. R 15 Bom, 216

———— s 246 (1859 ss 209 247)

See CASES UNDER SET OFF—CROSS DECREES

———— s 248 (1859 s 216)

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
[I. L. R. 16 Bom. 636
I. L. R. 18 Bom. 224
I. L R 22 Calc 558
I. L. R. 21 Bom. 314

See CASES UNDER EXECUTION OF DECREE—NOTICE OF EXECUTION

See CASES UNDER LIMITATION ACT 1877 ART 179 (1871 ART 167 1859 s 20)—NOTICE OF EXECUTION

See LIMITATION ACT 1877 ART 180
[I. L R. 6 Calc 504
I. L. R. 20 Calc 551
I. L. R. 22 Calc. 821
I. L. R., 24 Calc 244

1. ———— s 249 (1859 s 217)—*Dismissal for non appearance when no day was fixed for hearing*—Against an application for execution of a decree after notice under s 216 Act VIII of 1859 the judgment debtor presented by his pleader certain grounds of objection and the petition was ordered to be placed on the record. No day for hearing was fixed, but the case was called on and on account of the absence of his pleader the objections of the judgment-debtor were disallowed *Held* that notwithstanding the absence of the pleader the Judge should have taken the objections into consideration and passed an order under s 217 RAJBALLAB SHAHA *v* RAMSADAY GHOSE
[5 B L. R. Ap 65 14 W R. 155

2. ———— *Petition under section Requisites of*—A petition under s 217 Act VIII of 1859 is not required to be verified. GOPAL CHUNDER *v* JUGUT INDUR BUNWAREE GOBIND
[8 W R. 200

———— s. 251 (1859 s 22)

See PENAL CODE s 186
[I. L. R. 22 Calc. 1...

CIVIL PROCEDURE CODE AC[T XIV] OF 1882 (ACT X OF 1877)—*cont[inued]*

See WARRANT OF EXECUTION
[I. L. R. 7 A...
I. L. R. 10 C...

———— s. 252 (1859 s 203)

See REPRESENTATIVE OF DECEAS[ED PER]SON
6 B L. R. A...
[14 W ...
2 Ma...
2 C L. ...
I. L. R. 22 Cal...
I. L. R. 20 Mad...
I. L. R. 8 Bom...
I. L. R., 4 Cal...

———— s 253 (1859 s 204)

See CASES UNDER SURETY

———— s 254 (1859 ss 201 204)

See ATTACHMENT—ATTACHMENT O[F PER]SON
I. L. R. 4 Calc...
[8 W R...

———— s 257—*Practice—Order for pa[yment] of costs of day—Payment into Court or to pa[rty]*—Where a party to a suit was directed by the Court to pay the costs of the day and his so[licitor] paid the money into Court under s 257 of the [Code] of Civil Procedure—*Held* that section wa[s not] applicable as the order was not a decree SHAN... *v* SECRETARY OF STATE FOR INDIA
[I. L. R. 12 Mad., ...

———— s. 257 A

See COMPROMISE—COMPROMISE OF S[UITS] UNDER CIVIL PROCEDURE CODE
[I. L R. 11 All. ...

1. ———— Agreement mod[ify]ing decree—*Agreement to pay by instalmen[ts]—Guarantee to indemnify surety who pays judgm[ent] debt*—The provisions of s 257A of the Code [of] Civil Procedure 1877 apply only as between par[ties] to the decree YELLA *v* MUNISAMI
[I. L. R., 6 Mad., ...

2. ———— *Arrangement* [to] *pay decree by instalments*—The decree-holder a[nd] judgment debtor of a decree filed a petition (sule[h]nama) in the Court executing the decree praying th[at] the Court would sanction an arrangement providing f[or] the payment of the decree by instalments and enhan[c]ing the rate of interest made payable by the decre[e]. Th[e] Court sanctioned the arrangement *Held* th[at] the 'sulehnama' was within s 257A of the Civ[il] Procedure Code and the decree might be executed i[n] accordance with its provisions SITA RAM *v* DA[S]... RATH DAS
I. L. R., 5 All. 49...

3 ———— *Bond for sat[isfac]tion of judgment debt without sanction of Court*—G the father of the plaintiff obtained two decrees one against the defendant A and his father and th...

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

these decrees obtained a bond without the sanction of the Court and brought a suit to recover the sum due under the said bond. *Held* that the bond was void under the second clause of s 257A of the Civil Procedure Code (Act XIV of 1882) GANESH SHIVRAM v ABDULA BEG I. L. R. 8 Bom. 538

4. ———————— *Transfer of Property Act (IV of 1882) ss 88 89 and 94—Agreement for payment by instalments with enhanced interest—Execution of decree for sale* —A decree for sale under s. 88 of the Transfer of Property Act 1882 can only be executed for the amount decreed or found on an account being taken to be due and the order for sale cannot except with regard to any additional costs which may be provided for by an order under s 94 extend in any way the liability of the judgment debtor or his property under the decree *Sita Ram v Dasrath Das I L R 5 All 492* distinguished KASHI PRASAD v SHEO SAHAI [I. L. R. 19 All. 186

5 ———————— *Agreement or adjusting satisfying decree—Mortgage bond in satisfaction of decree—Sanction of mortgage by Court—Sufficiency of sanction* —Where mortgage bonds were passed for debts due on decrees and the execution of the bonds (which had been sanctioned by the Court) and the amounts for which they were passed were certified to the Court and the Court recorded the adjustment without objection and the decrees by reason of such adjustment became incapable of execution —*Held* that sufficient had been done by the Court to satisfy the requirements of s 257A of the Civil Procedure Code (Act XIV of 1882) although no formal sanction had been recorded KRISHNA RAMAYA NAIK v VASUDEV VENKATESH PAI VASUDEV VENKATESH PAI v MHASTI [I. L R, 21 Bom 808

6 ———————— *Judgment debt—Sanction of Court—Contract void—Principal—Surety* —An agreement entered into to pay interest not awarded by a decree in addition to the sum decreed without the sanction of the Court which passed the decree is void under s 257A of the Code of Civil Procedure Act XIV of 1882 so far as it operates in satisfaction of the judgment debt When the void part of an agreement can be properly separated from the rest the latter does not become invalid but where the parties themselves treat debts—void as well as valid—as a lump sum the Court will regard the contract as an integral one and wholly void, upon which neither the principal nor the sureties can be sued DAVLATSING v PANDU [I. L. R. 9 Bom. 176

7 ———————— *Adjustment of decree out of Court—Instalment bond—Consideration—Execution of decree* —The provisions of s. 257A of Act XIV of 1882 are intended to prevent binding agreements between judgment debtors and judgment-creditors for extending the time for enforcing decrees by execution without consideration and without the sanction of the Court and are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment debt by instalments or otherwise JHABAR MAHOMED v MODAN SONAHAR I. L. R 11 Calc, 671

8 ———————— *Compromise—Civil Procedure Code s 210* —The parties to a decree for money dated the 14th July 1871 entered into a compromise whereby in lieu of a portion of the decretal money the decree holder was placed in possession of certain property and the remainder of the decretal money was to be paid by fixed annual instalments and in case of default in the payment of any instalment it was agreed that the entire amount should become immediately realizable by execution of the decree On the 11th December 1882 the decree holder alleging default in payment of the instalments applied for the execution of compromise *Held* that such an agreement could not be treated as an instalment decree and as such capable of execution. *Debi Rai v Gokal Prasad I L R 3 All 585* followed RAMLAKHAN RAI v BAKHTAUR RAI [I. L. R. 6 All. 623

9 ———————— *Adjustment of decree out of Court—Instalment bond—Consideration—Execution of decree—Right of suit* —An instalment bond executed by a judgment debtor in favour of the decree holder and in consideration of the benefit of the decree being given up is not void as an agreement falling under s 257A of the Civil Procedure Code Such an agreement is void only as far as it affects the right to execute the decree and may be the foundation of a fresh suit *Sellamayyan v Muthan I L R 12 Mad 61 Jhabar Mahomed v Modan Sonahar I L R 11 Calc 671* and *Hukum Chand Oswal v Taharunnessa Bibi I L R 16 Calc 504* followed. JUJI KAMTI v ANNAI BHATTA I. L. R. 17 Mad. 382

10 ———————— *Settlement of decree without sanction by giving promissory note payable on demand—Note renewed from time to time—Suit on note* —On the 4th December 1889 the plaintiffs obtained a decree against the defendants for R941 The decree was made payable in eight days i e on or before the 12th December 1889 On the 9th December 1889 i e before the decree was capable of execution it was settled by the defendants paying R600 in cash and passing a promissory note for R341 payable on demand and carrying interest at 3 per cent per mensem The decree was satisfied and handed over to defendants and plaintiffs also endorsed the summons to that effect That compromise was not sanctioned by the Court On the 9th November 1892 and again on the 4th November 1895 the plaintiffs made up their account with defendants and obtained new promissory notes from them for the amount found due in renewal of the note passed in 1889 The present suit was brought on the note passed on the 4th November 1895 which was for R815 and carried interest at 3 per cent per mensem *Held* that the

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

note sued on fell within the purview of s 257A of the Civil Procedure Code and was void and unenforceable under the provisions of that section The consideration for the note given in 1889 was the agreement of the plaintiffs to accept it in satisfaction of the decretal balance due to them If that agreement was void the note given for the void consideration was void also The note was not in fact the agreement but was given in performance of the agreement HEERA NEMA v PESTONJI DOSSABHOY I L R 22 Bom. 693

11 ——————— *Havala or undertaking by a third party to pay decreed debt for the judgment debtor—Agreement incorporating the havala in substitution of the decree capable of execution at the date of the agreement—Suit on such agreement* —The plaintiff obtained a money decree against the defendant *H P* and in execution thereof attached his property Thereupon at *H P*'s request five persons gave a havala or oral undertaking to pay the amount of the decree and the attachment was removed It appeared that some payment was made under the havala. Subsequently *H P* and the defendants Nos. 2 and 3 executed a bond to the plaintiff reciting the havala the payment thereunder and agreeing to pay the amount of the decree with interest Neither the havala nor the bond was brought to the notice of the Court for sanction and the decree which was capable of execution was then destroyed. The plaintiff now sued to recover the debt due under the bond. The District Judge was of opinion that the part of the bond which contained a promise to pay interest was void but that in respect of the principal amount of the decree it was not void. On reference to the High Court —*Held* that the whole bond was void. The havala was an agreement such as is contemplated in para 1 of s 257A of the Civil Procedure Code and was void for want of the sanction of the Court under that section The bond regarded as one in consideration of the havala or as an agreement for satisfaction of the decree was also void under para 2 of the same sections for a similar reason VISHNU VISHWANATH v HUR PATEL I. L. R 12 Bom. 499

12 ——————— *Agreement extending time of payment under decree without sanction of Court—Application for such sanction after the decree was barred* —The decree in a redemption suit directed that the lands mortgaged should be allowed to be redeemed on payment of R30 7 0 by the plaintiff to the defendant The decree was subsequently modified by substituting R91 2 6 for R30-7 0 On the 3rd October 1885 the parties entered into an agreement whereby (*inter alia*) the time to pay the decreed debt was extended to five years from that date but no sanction of the Court was obtained On the 18th February 1888 the parties applied to the Court to sanction the agreement of 1885 On reference to the High Court —*Held* that the agreement in question required the Court's sanction under s. 257A of the Civil Procedure Code for want of which it was void so far as it related to the judgment debt and that the sanction could not be given at the date it was applied for NARU KOLI v CHIMA BHOSLE I L R. 13 Bom, 54

13 ——————— *Agreement for or to give time for satisfaction of judgment-debt—Agreement without sanction of Court—Illegal contract—Contract Act (IX of 1872) s 23—Consideration* —The plaintiff obtained a decree against the defendant under which the judgment debtor was liable to pay the amount by instalments with interest at 4 per cent. Eventually the defendant failing to pay the plaintiff accepted a bond executed jointly by the defendant and *T* his father by which they both became liable for the amount of the decree with interest at 18¾ per cent In a suit on the bond it was contended that the bond was void under s 257A of the Civil Procedure Code as being an agreement to give time for the satisfaction of the judgment debt made for no consideration and without the sanction of the Court and also without such sanction providing for payment of a sum in excess of the amount due under the decree that it was void within the meaning of s 23 of the Contract Act as being forbidden by or of a nature to defeat the provisions of s 257A of the Civil Procedure Code and that consequently the suit on it was not maintainable *Held* that s 257A of the Code was not applicable That section was framed to prohibit the enforcement of an agreement of the kind mentioned therein if made without the sanction of the Court in execution of the decree but was not intended to take away the right of parties of entering into a fresh contract either for payment of the judgment debt to give time for such payment or for the payment of a larger sum than may be covered by the decree if it be for a proper consideration In this case the consideration for the bond was a lawful consideration it could not be said that because satisfaction of the decree was not certified to the Court there was no consideration. *Held* also the bond was not void under s 23 of the Contract Act *Semble*—The words any law in that section refer to some substantive law and not to an adjective law, such as the Procedure Code is HUKUM CHAND OSWAL v TAHAR UNNESSA BIBI [I L. R. 16 Calc. 504

14 ——————— *Agreement not to execute decree—Execution—Breach of contract—Suit to recover damages* —The provisions of s 244 of the Civil Procedure Code are no bar to a suit to recover damages for breach of a contract not to execute a decree HANMANT SANTAYA PRABHU v SUBBABHAT I. L. R. 23 Bom., 394

15 ——————— *Adjustment of a decree barred by limitation* —The plaintiff's father had in his lifetime obtained a decree against the first defendant and two other persons. This decree having been partly satisfied the first defendant and his son who was no party to the decree executed a bond for the amount still remaining due At the date of this bond the decree was barred by limitation

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

No sanction for the bond was obtained under s 257A of the Civil Procedure Code The adjustment was secured under s 258 The plaintiff now sued upon the bond. On reference to the High Court —*Held* that the bond did not require the sanction of the Court under s. 257A of the Civil Procedure Code That section relates to judgment-debts which are still enforceable SHRIPATRAV v GOVIND NARAYAN

[I. L. R. 14 Bom 390

16 ——— *Civil Procedure Code Amendment Act (VII of 1888) s 2—Adjustment of a decree Suit upon—Agreement to extend time for enforcing decree by execution* —On the 16th July 1886 *S* obtained a decree against *K* for R315 with costs. On the next day *K* paid *S* R200 in part satisfaction of the decree and induced *K* to accept a bond by which he (S) gave up the costs and by which *K* was to pay the balance of the decree with interest at the end of eight months *S* sued upon the bond. *K* contended that the bond was void under *s 257A of the Civil Procedure Code and that the suit* would not lie *Held* that the suit would lie Since the amendment made in s. 258 by Act VII of 1888 such payments or adjustments may be recognized by a Civil Court except when executing the decree and therefore a suit based upon such a payment or adjustment should be admitted The concluding clause of s 258 has no direct bearing on s 257A as it relates to a different subject matter *Quære*—Whether s 257A relates exclusively to agreements to extend the time for enforcing decrees by execution as ruled by the Calcutta High Court or is applicable to all agreements according to the view taken by the Bombay High Court? *Jhabar Mahomed* v *Modan Sonahar I L R 11 Calc 671 Madhavrav Anant* v *Chhu P J for 1881 p 315 Ganesh Sitaram* v *Abdullabeg I L R 8 Bom 538 Pandurang Ramchandra* v *Narayan I L R 8 Bom 300* and *Davlatsing* v *Pandu I L R 9 Bom 176* referred to SWAMIRAO NARAYAN DESHPANDE v KASHINATH KRISHNA MUTALIK DESAI

[I. L. R. 15 Bom. 419

17 ——— *Agreement to give time for the satisfaction of a judgment-debt—Agreement not enforceable without sanction by the Court* —S 257A of the Civil Procedure Code when it provides that every agreement to give time for the satisfaction of a judgment debt shall be void unless made for consideration and with the sanction of the Court etc does not make such agreements illegal in the sense prohibited by law It only prevents such agreements being enforced in a Court of Law Where such an agreement to give time never sanctioned by the Court as required by s 257A formed part of the consideration for a bond and had actually been enjoyed by the obligee of the bond —*Held*, that such consideration not being in its nature illegal and not having as a fact failed there was no reason why the obligor should not enforce the terms of the bond BANK OF BENGAL v VYABHOY GANGJI

[I L R. 16 Bom 618

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

18 ——— *Alteration of decree* —*Per* EDGE C J —An agreement sanctioned under s 257A cannot be treated without anything more as a decree of the Court and cannot operate as an order under s 210 though an order under s 210 would operate as a sanction under s 257A GANDHARAP SINGH v SHEODARSHAN SINGH

[I. L. R. 12 All. 571

19 ——— *Agreement sanctioned by Court executing decree—Enforcement of agreement in execution* —An agreement which has received the sanction of the Court of execution under s 257A of the Civil Procedure Code that money due under it should be realized as in execution of decree rather than by recourse to a separate suit may be enforced in execution the Court which would try the regular suit brought upon such an agreement being the same Court which would execute the decree to enforce its own terms *Sadasiva Pillai* v *Ramalinga Pillai 5 B L R 383 24 W R 193* relied on THAKOOR DYAL SINGH v SARJU PERSHAD MISSER I. L. R. 20 Calc 22

20 ——— *Agreement between a judgment creditor and a person other than judgment debtor—Postponement of execution* —The provisions of s 257A of the Civil Procedure Code do not include within their scope an agreement between a judgment creditor and a person other than the judgment debtor whereby such person in consideration of the postponement of the execution of the decree against the judgment debtor undertakes to pay to the judgment creditor a certain sum of money Such agreements are therefore enforceable although made without the sanction of the Court KESU SHIVRAM MARWADI GENU BABAJI POWAR

[I L R 23 Bom 502

21 ——— *Decree adjustment of by strangers—Consideration—Bond on such adjustment* —*P* having obtained a decree against *B* the son of the latter gave the son of the former an instalment bond for the judgment debt without the sanction of the Court In a suit by *P*'s son to recover the debt on the bond,—*Held* that the suit would lie S 257A of the Civil Procedure Code applies only to agreements between the parties to the suit or decree RAMJI PANDU v MAHOMED WALLI

[I. L. R. 13 Bom. 671

22 ——— *Adjustment of decree out of Court—Agreement not certified to Court—Res judicata—Suit to enforce agreement or for damages for breach of it* —A decree for partition of family property was passed in favour of two plaintiffs. One of the plaintiffs having died before execution a question arose between the survivor and one of the defendants as to the devolution of his interest and the decision was in favour of the surviving plaintiff The contending parties made an arrangement according to which some of the land representing the share of the deceased plaintiff should be given to the defendant This agreement was not

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

certified to the Court and the decree was executed at the instance of the surviving plaintiff who subsequently refused to give effect to the arrangement The then defendant now sued in the alternative for possession of the land awarded to him or for damages *Held* (1) that the plaintiff's claim for the land was not maintainable (2) that the claim for damages for breach of the agreement was maintainable KRISHNASAMI AYYANGAR *v* RANGA AYYANGAR

[I. L. R. 20 Mad. 369

23 ———— *Agreement for satisfaction of judgment debt*—A money decree was passed against a zamindar by the High Court in 1883 and it was transferred to the District Court for execution The decree holder attached and prepared to bring to sale certain villages of the judgment debtor These villages were included in a mortgage subsequently executed by the judgment debtor in favour of third parties Both before and after the mortgage the decree holder received from the zamindar certain sums in consideration of his agreeing to postponements of the sale also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree Subsequently the decree holder sought to bring the land to sale and in computing the amount then due gave credit for none of the sums so received and calculated interest at the enhanced rate The mortgagee objected that the computation was erroneous in both these respects and the District Judge upheld his objection The judgment debtor took no part in the contest *Held* that the District Court not being the Court which passed the decree had no power to sanction the agreements under s 257A and that the decision was right PARAMANANDA DAS *v* MAHABEER DOSSJI

[I. L. R. 20 Mad. 378

24. ———— *Agreement to give time to the judgment debtor—Agreement not sanctioned by the Court*—A judgment debtor asked for time to pay the decretal amount The decree holders agreed to give time on condition that the judgment debtor gave them a hundi for R1 500 that sum representing a portion of the decree holder's claim which had been dismissed as barred by limitation The judgment debtor gave the hundi but the sanction of the Court was not obtained to the transaction In a suit by the decree-holders to recover the money secured by the hundi given under the circumstances mentioned above it was *held* that the transaction was one contemplated by s. 257A of the Code of Civil Procedure and that as it had not been made with the sanction of the Court it could not be enforced and the suit should be dismissed. *Hukum Chand Oswal v Taharunnessa Bibi I L R 16 Calc. 504* dissented from DAN BAHADUR SINGH *v* ANANDI PRASAD I. L. R. 18 All. 435

25 ———— *Agreement as to payment of decretal money—Void agreement*—An agreement between the decree holder and the judgment-debtor for the satisfaction of a decree by which any sum in excess of the decretal amount is payable and which has not been sanctioned by the Court which passed the decree cannot be made the basis of a subsequent suit *Dan Bahadur Singh v Anandi Prasad I L R 18 All 435 Ganesh Shivram v Abdulla Beg I L R 8 Bom 538 Daulatsing v Pandu I L R 9 Bom 176 Vishnu Vishwanath v Hur Patel I L R 17 Bom 499* and *Narayan Deshpande v Kashinath Krishna Mutalik Desai I L R 15 Bom 419* referred to DALU MAL WAHI *v* PALAKDHARI SINGH

[I. L. R., 18 All, 479

26 ———— *Want of sanction of Court to agreements for satisfaction of decree*—Agreements for the satisfaction of a judgment debt not sanctioned under s 257A of the Civil Procedure Code are void but if sanctioned they may be carried out in execution DURGA PRASAD BANERJEE *v* LALIT MOHUN SINGH ROY

[I. L. R. 25 Calc., 86

———— s 258 (1859 s 206).

See CASES UNDER s 244 (ACT XXIII OF 1861 s 11)—QUESTIONS IN EXECUTION DECREE

See LIMITATION ACT 1877 ART 179 (1871 ART 167)—ORDER FOR PAYMENT AT SPECIFIED DATES

[I. L. R. 2 All., 291
I. L. R. 4 All. 316
I. L. R. 7 All 327
I. L. R. 12 All. 569
I. L. R. 21 Calc. 542
I. L. R. 19 Mad. 182

See PENAL CODE s 210

[I. L. R., 16 Calc. 126
I. L. R. 10 Bom. 288

1. ———— Adjustment of decree—*Beng Reg VII of 1799 Decrees under*—s 206 of Act VIII of 1859 did not apply to decrees under Regulation VII of 1799 GOPAL CHANDRA DEY *v* PEMU BIBI 1 B L R. A C 76

2. ———— *Enquiry by Court as to satisfaction out of Court—Proceedings in execution of decree*—Act VIII of 1859 s. 206 applied only to proceedings which were taken while the decree was in execution and did not preclude the Court before putting the decree in execution from enquiring if it has been satisfied out of Court OBHOY CHURN MOOKERJEE *v* PEAREE DOSSIA

[23 W R., 270

3 ———— *Inquiry as to satisfaction of decree between judgment debtor and transferee of decree*—On an application for execution of a decree being presented by a transferee decree holder the judgment debtor opposed alleging in his petition that he had transferred certain immoveable property to the petitioner in consideration of his paying the judgment-debt to the original decree holder and that the petitioner had discharged the debt

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but subsequently having got the decree transferred to himself instead of entering up satisfaction of the decree fraudulently applied for execution. Satisfaction had not been entered up under s 258 Civil Procedure Code *Held* that s. 258 Civil Procedure Code was inapplicable to the case since that section applies only to the case of parties who stand in the relation of judgment-debtor and judgment-creditor at the date of the transaction. RAMA AYYAN v SREENIVASA PATTAR [I. L. R., 19 Mad. 230

4. ——————— *Decree holder —Execution of decree—General Clauses Consolidation Act* —Regard being had to the General Clauses Consolidation Act (I of 1868) the word decree holder in s. 258 of the Civil Procedure Code 1882 should be read in the plural TARRUCK CHUNDER BHUTTACHARJEE v DINENDRO NATH SANYAL I. L. R. 9 Calc., 831 [12 C L. R. 566

5 ——————— *Money decree* — S 258 of the Civil Procedure Code 1877 deals with the adjustment of any decree and not merely with the adjustment of a money decree BABA MOHAMED v WEBB I. L. R. 6 Calc 786 8 C L R. 36

6 ——————— *Civil Procedure Code Amendment Act (VII of 1888) s 27—Changes of law relating to procedure—Adjustment or satisfaction of decrees* —The change effected in the language of s 258 of the Civil Procedure Code (Act XIV of 1882) by s. 27 of the amending Act (VII of 1888) by which uncertified adjustments can now be recognized by other Courts than the Court executing the decree applies to adjustments previous to the amending Act Changes of law relating to procedure have retrospective effect BALKRISHNA PANDHARINATH v BAPU YESAJI [I. L. R. 19 Bom 204

7 ——————— *Execution of decrees—Money decree—Limitation Act (XV of 1877) sch II art 173A* —S 258 Civil Procedure Code 1882 refers only to the execution of decrees under which money is payable and is not applicable to decrees for possession of immoveable property SANKARAN NAMBIAR v KANARA KURUP [I. L. R. 22 Mad. 162

8 ——————— *Adjustment out of Court* —According to s 206 Act VIII of 1859 no adjustments made out of Court were admissible by the Court in execution MOTEE LALL v RAM DASS [W R. 1864 Mis 38

BHYA BHOOPNATH SAHEE v KUNWAN [7 W R., 134

GUNGA GOBIND GOOPTOO v MAKHUN LALL HATTEE 9 W R. 362

9 ——————— *Letter from decree holder to vakeel* —A letter from a decree holder to his vakeel to put in an acknowledgment into Court is not a settlement out of Court certified to the Court in the manner required by s 206 Act VIII of 1859 to warrant further investigation in the matter THAKOOR LALL MISSREE v KANTE LALL TEWAREE [7 W R. 510

10 ——————— *Voluntary adjustments* —Where a judgment debtor pays the amount decreed to the officer of the Court under the authority and pressure of the Court s process he is entitled to protection the latter clause of s 206 Act VIII of 1859 relating not to such payments but to voluntary adjustment BIDHOO BEEBEE v KESHUB CHUNDER 9 W R. 462

11 ——————— *Adjustment out of Court* —Where several of the acts required to be done in execution of a decree are such as can be done through a Court and where all of them are acts the doing of which may be certified to the Court by the person in whose favour the decree was made the policy of s 206 of the Code of Civil Procedure is to exclude the reception of evidence upon the point or any question arising out of evidence before the Court No adjustment can be recognized unless made through the Court or certified by the person in whose favour the decree was made DWARKANATH DASS BISWAS v UNNODACHURN DASS 8 W R. 319

12 ——————— *Adjustment out of Court—Decree holder becoming purchaser* —A decree holder who was not barred by lapse of time in seeking to execute his decree was opposed by the judgment debtor on the ground that the decree had been seized and sold by the Deputy Collector in execution of the decree of that functionary s Court and that he himself (the judgment debtor) had become the purchaser thereof *Held* that these proceedings amounted to an adjustment out of Court which under s 206 Act VIII of 1859 could not be recognized by the Court unless certified to by the judgment creditor himself BHARUT CHUNDER ROY v NAZIR ALI KHAN 10 W R 354

13 ——————— *Adjustment out of Court—Sufficiency of certificate of payment* —A petition signed and filed in Court by a judgment creditor certifying payment of the amount due to him by his judgment debtor is a sufficient certificate of payment under the decree in the terms of s 206 Code of Civil Procedure SAADOOLLAH SHAIKH v KALEECHURN 12 W R. 358

14 ——————— *Adjustment out of Court—Duty of execution creditor—Presumption* —*K* an execution creditor of *C* applied to the Court by which the decree was passed and caused *C* to be imprisoned under it *C* then entered into a compromise upon certain terms with *K* for the adjustment of the decree and *K* thereupon but without certifying the terms of such adjustment to the Court petitioned for the release of *C* who was accordingly released Subsequently *K* again applied to the Court to compel satisfaction of the whole amount of the decree against *C* This application was opposed by C on the ground that an adjustment of the decree had

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taken place between him and *K* The Judge however refused to enter into the question of the adjustment as the terms of it had not been certified to the Court under s 206 of the Civil Procedure Code *Held* that the Judge was in error that it was the duty of *K* on applying for the release of *C* to certify the adjustment to the Court that it would be unjust to allow him to take advantage of his own omission to do so and that not having done so the presumption against him was that the decree had been satisfied in full but that under the circumstances it would be the most equitable course to direct the Judge to enquire into the terms of the adjustment Case remanded for that purpose CHANGO VALAD DUVHA MAHAJAN v KALURAM NARAYANDAS [4 Bom., A C, 120

15 ——— *Adjustment out of Court—Compromise*—*H* sued *B* to recover possession of a certain house *B* answered that the house was his own that *H* having fraudulently got possession of it he (*B*) had filed a suit to recover possession that a decree was passed in his favour in the lower Court which however was reversed on appeal that pending a special appeal a compromise had been entered into between him and *H* in pursuance of which he (*B*) was put in possession of the house The terms of this compromise were not certified to the Court under s 206 of the Civil Procedure Code *Held* that this compromise having been effected after the decree in favour of *B* had been reversed did not come within the meaning of s 206 and was therefore a good defence to the suit of *H* HARI SADASHIV DIKSHIT v BAPU BULVANT 5 Bom., A C 78

16 ——— *Adjustment made out of Court—Payment into Court*—Under the Civil Procedure Code s 206 a debtor under a money decree can at any time bring the amount of his debt into Court to be paid to the judgment creditor and by analogy any other person against whom a decree is made for the delivery of moveable or immoveable property has an equal right to relieve himself from further vexation by making satisfaction with the knowledge of the Court in such mode as the circumstances of the special case admit of By the same section all adjustments of decrees whatever be the nature of the subject of those decrees must be made with the knowledge of the Court *Quære* (by MARKBY J)—Where a party simply acts in obedience to a decree is he debarred from showing that he has done so by the words no adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred? RAJ LUCKHEE CHOWDHRAIN v TEWAREE CHOWDHRY 18 W R. 520

17 ——— *Splitting decree into shares—Payments by judgment debtor*—Payments by a judgment debtor in satisfaction of a decree which is afterwards split up into shares if made

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through the Court and while the decree is entire ought to be taken into account and set off as in satisfaction of the whole decree BHYRUB NATH SHAHA v KUNHYA LAL ROY 20 W R. 131

18 ——— *Suit on kistbundi—Adjustment through Court*—The suing on a kistbundi in Court does not necessarily make it the instrument of a public adjustment through the Court within the meaning of s 206 Act VIII of 1859 MUDDON MOHUN MITTER v PEER BUKSHUN 7 W R., 485

19 ——— *Part payments not certified to Court*—*Quære*—Whether part payments under a decree may not be proved although they have not been made through the Court or certified to the Court under s 206 of Act VIII of 1859 BHUBONESWARI DEBI v DINANATH SANDYAL [2 B L R., A C 320 11 W R. 232

20 ——— *Bond payable by instalments—Execution of decree—Limitation*—A judgment creditor is entitled to prove payments made according to the terms of a kistbundi for the purpose of showing that his right to sue out execution under the kistbundi was not barred by limitation BHUBONESWARI DEBI v DINANATH SANDYAL [2 B L R. A C 320 11 W R. 232

BISHTO CHUNDER CHUCKERBUTTY v WOOMANATH ROY CHOWDHRY 15 W R. 459

21 ——— *Decree payable by instalments—Execution of decree—Limitation*—Where a creditor has obtained a decree for money payable by instalments the whole amount to become due on failure by the debtor to pay one of the instalments he is upon failure entitled notwithstanding s 206 of Act VIII of 1859 to come into Court and certify to the Court and prove payment of the earlier instalments to show that execution of his decree is not barred FAKIR CHAND BOSE v MADAN MOHUN GHOSE [4 B L R F B 130 13 W R F B 40

JUGGUT MOHINEE DOSSEE v MADHUB CHUNDER KUR 15 W R. 66

22 ——— *Payment not certified to Court—Civil Procedure Code (Act VIII of 1859) s 206—Decree payable by instalments*—A decree dated 22nd Cheyt 129[illegible] (18th April 18[illegible]) provided that the defendants do pay the decretal money as per instalments given below otherwise the plaintiff will have the power to cancel the instalments and realize the entire amount The first instalment was made payable on 30th Cheyt 1[illegible] (20th April 1888) and the other six instalments on the 30th of the months of Magh and Bysack in the three following years In an application made on 9th February 189[illegible] for execution of the decree the decree holder stated that only the first instalment had been paid and asked for execution for the amount remaining due under the decree and the judgment debtors denied having paid any of the instalments Payment even if made had not been certified to the

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Court. *Held* that, although under the provisions of s. 258 of the Civil Procedure Code the payment in question, if made could not be recognized as a payment or adjustment of the decree yet it was competent to the decree holder to prove such payment for the purpose of showing that the execution of the decree was not barred. There is no material difference in this respect between s 258 of the Civil Procedure Code (Act XIV of 1882) and s 206 of the old Code (Act VIII of 1859) on which the case of *Fakir Chand Bose v Madan Mohan Ghose 4 B L R F B 130* was decided. HURRI PERSHAD CHOWDHRY *v* NASIB SINGH I. L. R. 21 Calc 542

23 ———— *Limitation*—The Court cannot recognize any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees or which alters the terms of the decree KRISHNA KAMAL SING *v* HIRU SIRDAR 4 B L R. F B 101

KISTO KOMUL SINGH *v* HUREE SIRDAR [13 W R., F B 44

MEHEROONNISSA *v* POUSHAN JEHAN [17 W. R. 396

RAM RUNJUN CHUCKERBUTTY *v* JOWHURUJUMAH KHAN 23 W. R. 129

24. ———— *Civil Procedure Code (1882) s 302—Limitation Act (XV of 1877) ss 19 and 20—Execution transferred to Collector—Acknowledgment in the Court of the Collector of part payment of decretal money*—Where after a decree had been sent to the Collector for execution under the provisions of s 320 of the Code of Civil Procedure the decree holder and judgment debtor joined in an application to the Collector in which they stated, on the one hand that the decree holder had received R2 900 in part payment of the decretal amount and on the other that there was a certain balance due from the judgment debtor under the decree and that arrangements had been made between the parties for the payment of such balance —*Held* that the above application was properly made to the Collector as being within the meaning of s. 258 of the Code of Civil Procedure the Court whose duty it is to execute the decree and that the application was a valid acknowledgment for all purposes and sufficient under ss 19 and 20 of the Limitation Act 1877 to save limitation in respect of the execution of the decree MUHAMMAD SAID KHAN *v* PAYAG SAHU I. L. R. 16 All. 228

25 ———— *Uncertified payment of part of decretal amount—Plea of limitation raised by judgment-debtor*—S 258 of the Code of Civil Procedure will not debar a decree-holder from giving evidence of uncertified payments made to him out of Court in partial satisfaction of the decree by the judgment-debtor where the judgment debtor has in answer to an application for execution of the decree against him put forward a plea of limitation *Fakir Chand Bose v Madan Mohan Ghose 4 B L R F B 130 Purmananddas Jiwandas v Vallabdas Wallji I L R 11 Bom. 506 Sham Lal v Kanahia Lal I L R 4 All 316 Zahur Khan v Bakhtawar I L R 7 All 327* and *Hurri Pershad Chowdhry v Nasib Singh I L R 21 Calc 542* referred to KISHAN SINGH *v* AMAN SINGH I. L. R. 17 All, 42

26 ———— *Civil Procedure Code Amendment Act (VII of 1888) s 27—Payment not certified to Court—Proof of such payment for the purpose of determining the question of limitation*—Under s 258 of the Code of Civil Procedure (as amended by Act VII of 1888) as there is no time fixed within which the decree holder is bound to certify a payment made out of Court such payment may be certified at any time And although such payment until certified cannot be recognized by a Court executing a decree as a payment or adjustment of the decree it is still open to the Court to take evidence about the payment in order to determine whether an application for execution is barred by limitation *Hurri Pershad Chowdhry v Nasib Singh I L R 21 Calc., 542* followed TUKARAM *v* BABAJI I. L. R. 21 Bom 122

27. ———— *Kistbundi—Execution of decree*—Where a decree had been obtained for a certain sum of money without interest and afterwards a kistbundi was filed by which the decree-holder and the judgment debtor agreed that the amount of the decree should be paid by instalments with interest and the judgment-debtor had by his conduct for several years treated the kistbundi as if it were a decree—*Held* that under the circumstances of the case the judgment debtor could not afterwards object that the kistbundi could not be executed as a decree and that a fresh suit should be brought upon the kistbundi but the decree holder was entitled to take proceedings on the kistbundi as if it were part of the original decree DINONATH SEN *v* GURUCHURN PAL 14 B L R. 287 21 W R. 310

JANKEE *v* SREENATH ROY CHOWDHRY [5 W R. Mis 10

28 ———— *Kistbundi*—There is no procedure under Act VIII of 1859 under which execution can be taken out upon a kistbundi filed in Court after decree which has not been incorporated with the decree MADHUB CHUNDER DHUNPUT *v* MADHUB LALL KHAN [14 B L R. 288 note 15 W R. 542

29 ———— *Kistbundi*—Where a decree was obtained for a sum of money, and afterwards by an arrangement between the judgment debtor and the decree holder it was agreed that the decree should be payable by instalments with interest at a very high rate and payments had subsequently been made of large sums of money in the terms of the arrangement and a balance remained due it was held that the decree holder could not recover in execution of the decree any sum beyond

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what was stated in the decree. KANHYALAL PUNDIT v. COLLECTOR OF CUTTACK [14 B. L. R. 291 note 16 W. R., 275

DWARKNATH SADHOO KHAN v. DOORGA CHURN SAHA 6 W. R., S. C. C. Ref., 1

30. ——— *Bond given in satisfaction—Default in paying.*—Where a judgment debtor executed a kistbundi or instalment bond providing for the satisfaction of the decree which had been obtained against him and subsequently failed to pay according to the terms of the kistbundi,—*Held* that the decree holder could enforce his claim under the terms of the kistbundi by proceeding in execution and need not file a fresh suit. TARIF BISWAS v. KALIDASS BANERJEE [2 B. L. R. A. C. 223 11 W. R. 86

31. ——— *Release without consideration—Adjustment otherwise than through the Court.*—*A* had obtained a decree against *B*, *C* and *D* in execution of which the sheriff attached certain property belonging to *B*, *C* and *D*, who were carrying on business in partnership. The property was sold and the proceeds paid into Court and by order of Court *A* received a sum in part satisfaction of his decree. Subsequently *A* at the request of *B* and without receiving any consideration gave him a letter in Bengali purporting to be a release to him of the remainder of his decree but such adjustment was not made through the Court. *A* afterwards applied for execution of his decree against *B*, *C* and *D* but his application was refused the Court treating the letter as a release. *A* appealed. *Held* on appeal that the letter was not a release, there was no consideration for it. The adjustment of the decree should have been made through the Court or certified to it in accordance with s. 206 Act VIII of 1859. BHUBUN MOHAN BONNERJEE v. SADU CHARAN SARKAR 6 B. L. R. 339 15 W. R. O. C. 5

32. ——— *Agreement between parties for payment of decree by instalments—Subsequent application for execution.*—*C* obtained a decree against *N* for payment of a certain sum of money. Various applications were made to execute the decree and on one of them in September 1869 the sum of R1,000 was paid. Subsequently on December 16th 1870 it was arranged upon a petition of *N* and the consent of *A* that a further payment of R1,000 should be made and that the balance of the debt should be paid with interest at the rate of 1 per cent. per month by monthly instalments of R125. In May 1872 *C* applied for execution for recovery of the balance due on the decree deducting the amount received under the arrangement. *Held* he was not entitled to execution in supersession of the agreement. CHUNDER NATH MISSER v. COOKEE KOMUL BHUTTACHARJEE [10 B. L. R. Ap. 28 19 W. R., 155

33. ——— *Kistbundi—Effect of on decree.*—A kistbundi or arrangement to pay by instalments the amount of a decree obtained upon a bond does not effect an extinction of the original debt or the mortgagee's lien upon property mortgaged to him by the bond. RAMCHURN LALL v. KOONDUN KOOMAREE 14 B. L. R., 428 note

RAM CHURN LALL v. RUGHOOBEER SINGH [11 W. R., 481

34. ——— *Kistbundi—Postpone petition—Execution of decree.*—Plaintiff sued in the Munsif's Court of Ellore for recovery of certain moneys claimed as due under a "postpone-petition." In execution of a decree in a former suit between the same parties a petition was presented by them to the Munsif's Court stating an arrangement between them for the payment of the amount decreed by instalments with a provision that in default of payment "the Court may on the application of the plaintiff issue a warrant and collect the amount with costs of the petition from the produce of my share of the agraharam lands which are held liable by the razinama decree of this suit from the said lands from my other property and from myself and pay the same to plaintiff." The petition concluded thus: "We both the parties present this postpone petition with our free will and consent and pray for its being enforced according to its terms." *Held* on second appeal by the Full Court affirming the decree of both the lower Courts that as it was clear that no intention existed between the parties to create new rights enforcible by suit in supersession of those acquired or declared by the decree a suit on the postpone petition was not maintainable. DARBHA VENKAMMA v. RAMA SUBBARAYADU [I. L. R. 1 Mad. 387

See DEBI RAI v. GOKUL PRASAD [I. L. R. 3 All. 585

and GANGA v. MURLIDHAR [I. L. R. 4 All. 240

35. ——— *Kistbundi, Substitution of, for decree—Consent of parties—Execution of decree.*—The consent of parties cannot give jurisdiction nor can it alter the nature of the decree. An agreement introducing fresh parties cannot be substituted for the decree or become capable of execution as if it was the original decree. BHOOPENDRONATH CHOWDHRY v. KALEE PROSUNNO GHOSE [24 W. R. 205

36. ——— *Instalment bond intended to revive barred decree.*—An instalment bond by a judgment-debtor acknowledging a balance to be due under the decree but executed without consideration and after the decree is barred by limitation cannot either revive a decree or be legally binding on his representatives. HEERA LALL MOOKERJEE v. POY DHUNPUT SINGH 24 W. R., 283

37. ——— *Agreement to pay by instalments—Enforcing kistbundi or instalment bond by execution.*—An agreement between the parties to a decree to reduce its amount or to give time for his payment or that the amount shall be paid by

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instalments, does not amount to a varying of the decree itself *A* having obtained against *B* a decree for the payment of money a kistbundi was inserted in the decree by which it was arranged that the amount of the decree should be paid by instalments of R5 000 A considerable remission was allowed to the judgment-debtor and some reduction was made in the amount of interest payable The kistbundi contained an express proviso that in default of payment of three consecutive kists, the whole amount due under the bond was to become at once realizable and it also provided that in case of default the amounts due were to be recovered by execution to which the judgment-debtor was to make no objection Certain instalments having fallen due the judgment-creditor sought to enforce the kistbundi by execution *Held* that he was entitled to do so that he was not bound to bring a regular suit and that a provision in the bond by which payment might be enforced against property which could not have been attached and sold in execution of the decree did not prevent the decree holder from proceeding by execution so long as he did not seek to enforce that provision AMEER UNNISSA KHATOON *v* MEER MAHOMED HOSSEIN [2 C L R 143

38 ———— *Agreement to pay by instalments—Civil Procedure Code 1882 s 258* —A decree passed against the defendant in a suit dated 13th March 1877 directed that the plaintiff should recover the decree money by instalments agreeably to the term of the deed of compromise and he in case of default should recover in a lump sum The compromise mentioned in the decree provided that the amount in dispute should be paid in ten instalments, from 1284 to 1294 Fusli the first to be paid on the 27th May 1877 (1284 Fusli) and the remaining nine instalments on Jaith Puranmashi of each succeeding Fusli year On the last September 1883 the decree holder applied for execution of the decree alleging that the first four instalments had been paid, but not any of the succeeding instalments and they claimed to recover under the terms of the decree the fifth and all the remaining instalments in a lump sum The judgment-debtors contended that the application was barred by limitation as they had not paid a single instalment and more than three years had elapsed from the date of the first default and that even if the first four instalments had been paid, such payments could not be recognized by the Court as they had not been certified *Held* that recognition of such instalments was not barred by the terms of s 258 of the Civil Procedure Code *Sham Lal* v *Kanhia Lal I L R, 4 All 316* and *Fakir Chand Bose* v *Madan Mohun Ghose 4 B L R F B 130* followed ZAHUR KHAN *v* BAKHTAWAR I L R 7 All. 327

39 ———— *Contract superseding decree—Civil Procedure Code s 258—Certification* —In the course of proceedings in execution of a decree dated the 14th June 1878 the parties, on the 11th January 1881 entered into an agreement which was registered and filed in the Court executing the decree The deed recited that the decree was under execution and that a mortgage bond dated the 1st December 1873 in favour of the judgment debtor by a third party had been attached and advertised for sale and that the decree holder and judgment debtor had arranged the following method of satisfying the decree that the judgment-debtor should make over the said bond to the decree holder in order that he might bring a suit thereon at his own expense against the obligor and realize the amount secured by the bond and out of the amount realized satisfy the decree under execution with costs and future interest together with all costs of the suit to be brought against the obligor and together with a sum due by the judgment debtor to the decree holder under a note of hand for R250 with interest and other details which need not be stated On the same day that this deed was executed the decree-holder filed a petition in the Court to the effect that under the agreement an arrangement had been made for payment of the judgment debt by which the judgment-debtor made over to him the bond advertised for sale in order that the petitioner should file a suit under it at his own cost against the obligor and realize the debt due under the decree in execution with interest and costs and he prayed that the sale to be held that day might be postponed and the application for execution struck off for the present and the previous attachment maintained and stating that after realization of the amount entered in the bond advertised for sale an application for execution would be duly filed On this the order was that the execution case be struck off the file and the attachment maintained On the 24th December 1883 the decree holder applied for execution of the decree alleging that the judgment debtor had failed to make over the bond to him according to the agreement The judgment-debtor objected that the decree was no longer capable of execution having been superseded by the agreement of the 11th January 1881 and that the application was barred by limitation the previous application being dated the 9th November 1880 *Per* OLDFIELD *J*—That the agreement of the 11th January 1881 did not contemplate and had not the effect of cancelling the decree and substituting for it a new contract inasmuch as the deed contained nothing to the effect that the decree was superseded and all it did was to provide means by which the decree together with another small sum due by the judgment-debtor to the decree holder might be satisfied without having recourse to the sale of the bond attached and the effect would be that on realization satisfaction would be certified in whole or in part to the Court executing the decree Further if the arrangement was to be regarded as within the meaning of an adjustment of the decree under s 258 of the Civil Procedure Code it could only be recognized by the Court when certified by the decree holder or judgment-debtor and in this case the only certification which was made was by the decree holder by his petition of the 11th January 1881 which was in

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

respect of a temporary arrangement under which the decree remained in force *Per* MAHMOOD *J*—That the agreement of the 11th January 1881 was intended by the parties as a performance of the obligation created by the decree by substituting a fresh obligation founded upon contract but that the deed could not be regarded as such an adjustment of the decree as satisfied the requirements of s 258 of the Civil Procedure Code because the creditors whilst admitting the creation of a separate contract took care to say that the decree was to be kept alive and the attachment thereunder was to subsist and that therefore the certification of the adjustment was inadequate and could not be recognized in executing the decree FATEH MUHAMMAD *v* GOPAL DAS [I. L. R., 7 All 424

40 ——————— *Adjustment by parties out of Court—Subsequent application for execution of decree—Refusal to certify payment to Court*—When a decree has been adjusted between the parties by a contract binding upon them a Court is not bound to issue process of execution on the original decree in violation of the terms of the contract although the decree holder refuses to certify the adjustment of the decree under s. 206 of the Procedure Code especially where the Court executing the decree is the Court to which the parties would go for the purpose of enforcing the contract KRISHNAJI KESAVA PUNDIT *v* SUBBARAYA TAKKER [7 Mad 387

41 ——————— *Certifying part payment of decree— To show cause Meaning of*—In determining under s 258 of Act XIV of 1882 whether or no the cause shown by the decree-holder is sufficient it is incumbent upon the Court to investigate and decide any questions of fact upon which the parties may not be agreed In such an investigation evidence may be given either orally or by affidavit The term to show cause does not mean merely to allege causes nor even to make out that there is room for argument but both to allege cause and to prove it to the satisfaction of the Court PUNO LALL *v* HEM NARAIN GIR I. L. R., 11 Calc. 186

42 ——————— *Power of Court to examine parties as to satisfaction of decree made out of Court*—A Court executing decrees whilst giving effect to s. 206 of Act VIII of 1859 should also take reasonable care that its process is not about to be abused for fraudulent purposes It may by examining the judgment-debtor and others having knowledge inform itself of the position of the decree and whether it has or has not been satisfied. This however is merely an enquiry to inform the Court and it need not frame and decide an issue PAREECHUT *v* RUGHO GOORDEO 2 N W 48

43 ——————— *Payment out of Court—Power of Court to go into question of satisfaction of decree*—If a judgment debtor after receiving notice that the right title and interest of the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

decree holders in the decree has been attached pays the decree holders the money due under the decree the payment is not a valid payment and the Court whose duty it is to execute the decree is competent to enter into that question and to determine whether the alleged satisfaction is binding upon the auction purchaser of the attached right title and interest above mentioned BYJNATH SAHOO *v* DOOLAR CHAND SAHOO 24 W R., 245

44. ——————— *Injunction to restrain execution after agreement out of Court not to execute*—Where a decree holder agrees for a good consideration not to enforce his decree the Court may legitimately on the suit of the opposite party issue an injunction against the former not to do what he has agreed not to do Act VIII of 1859 s 206 notwithstanding NUBO KISHEN MOOKERJEE *v* DEB NATH ROY CHOWDHRY 22 W R. 194

45 ——————— *Refusal to certify to Court*—Where a payment alleged to have been made in satisfaction of a decree is not certified to the Court executing the decree the Court is bound to proceed as if such payment had never been made If such payment has in fact been made to the judgment creditor and he dishonestly refuses to certify it to the Court when called upon to do so he can be made liable to refund it in an action MAHOMED KAZEM JOWHURRY *v* KATOO BEBEE [20 W R. 150

46 ——————— *Contract to certify satisfaction of decree Breach of—Suit for damages*—The provision in s. 258 of the Code of Civil Procedure 1882 which forbids any Court to recognize a payment under, or an adjustment of a decree unless certified to the Court executing the decree does not debar a suit for damages for a breach of a contract to certify MALLAMA *v* VENKAPPA [I. L. R., 8 Mad. 277

47 ——————— *Act XII of 1879 s 30—Suit to recover money paid out of Court in satisfaction of decree*—The provisions of s. 206 of the Civil Procedure Code (Act VIII) of 1859 only prevent the Court executing the decree from recognizing a payment made out of Court and do not bar a suit for the refund of such payment *G* held a decree against *D* who satisfied it out of Court and obtained a receipt from *G* to the effect that it was satisfied. Notwithstanding this, *G* executed the decree and recovered the amount of it through the Court although *D* pleaded satisfaction in the execution proceedings and produced the receipt In a suit brought by *D* against *G* for refund of the money received by *G* out of Court the defendant contended that the suit was not maintainable *Held* that it was maintainable according to the law as it stood before the passing of Act XII of 1879 *Gunamas Das v Prankishori Dasi* 5 B L. R., 223 and *Gulirad v Fakirmulli* 4 Bom A C 76 followed. *Quære*—Whether such a suit is maintainable under s 30 of Act XII of 1879 which has been substituted for

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

s 208 of the Civil Procedure Code (Act X) of 1877 DAYLATA v GANESH SHASTRI

[I. L. R, 4 Bom, 295

48 ———— *Suit for money paid in execution of decree after payment not through the Court*—Plaintiff owed defendant a judgment debt He paid the debt but not through the Court Defendant then fraudulently applied to the Court to execute the decree and the Court being debarred by s. 206 of the Code of Civil Procedure from recognizing payments made otherwise than through it executed the decree by making the plaintiff pay again the sum decreed. Plaintiff sued to recover the amount overpaid. *Held* by the majority of the Court (SCOTLAND *C J* and INNES *J* dissenting) that such a suit is not maintainable VENKACHELLA PILLAI v APPAYA PILLAI 3 Mad 188

KUNHI MOIDIN KUTTI v RAMEN UNNI

[I. L. R, 1 Mad 203

49 ———— *Payments made into Court in execution of decree*—S 206 Act VIII of 1859 does not bar a suit brought to recover money paid into the Collectorate as Government revenue although the person on whose behalf the money was paid had an Act X decree against the person paying the money as the entire amount of the decree was eventually recovered by taking out execution of the whole decree MOHIMA CHUNDER GHOSE v NOBINCHUNDER ADHIKAREE 8 W. R 449

50 ———— *Part satisfaction of decree not certified to the Court—Suit to recover money so paid after execution of entire decree—Act XXIII of 1861 s 11*—*A* a judgment debtor paid to *B* the decree holder a sum of money by way of compromise in full satisfaction of the decree *B* failed to certify this payment to the Court and afterwards executed her decree for the full amount In a suit by *A* against *B* for recovery of the amount previously paid out of Court in satisfaction of the decree—*Held* that notwithstanding s 11 of Act XXIII of 1861 the suit was maintainable GUNAMANI DASI v PRANKISHORI DASI

[5 B L R 223 13 W R F B 69

Overruling ALUNGA BEBEE v GOOROO CHURN ROY [3 W R, S C C Ref, 3

BHUGOBAN TANTEE v GOBIND CHUNDER ROY [9 W R. 210

where it was held that a suit would lie for damages for breach of contract in not certifying the payments

51 ———— *Suit to enforce adjustment under contract*—A suit to enforce a contract by which a dispute was adjusted between a decree holder and judgment debtor is not barred by Act VIII of 1859 s 206 NUJEENI MULLICK v ERFAN MOLLAH 22 W R. 298

52 ———— *Rejection of objection that decree had been satisfied out of Court—Suit to recover thing given in satisfaction*—*Held* that the rejection under s 206 of Act VIII of 1859 of a defendant's objection in a mofussil Small Cause Court to the execution of a decree on the ground that it had been adjusted out of Court did not bar his right to bring a suit against the execution creditor to recover the thing alleged to have been given in satisfaction of the decree GULAWAD CHANDABHAI v RAHIMTULLA JAMALBHAI

[4 Bom. A C 76

53 ———— *Suit for breach of contract in not certifying payment to Court*—A suit will notwithstanding s 206 of Act VIII of 1859 lie for damages for an alleged breach of contract in not certifying to the Court a payment of money in satisfaction of a decree made out of and not through the Court in consequence of which the same was fraudulently recovered a second time by the person omitting to certify the said payment MOTEE LALL MOOKERJEE v KANDHAI LALL

[1 N W 155 Ed. 1873 237
Agra, F B Ed. 1874 185

54 ———— *Uncertified adjustment out of Court with a decree holder—Subsequent execution—Fraud of decree holder—Power of Court to refuse to confirm sale and to set it aside*—An adjustment was made out of Court between a decree holder and a judgment debtor in August 1893 but it was not certified to the Court The decree holder falsely stated to the judgment debtor's agent that the requisite petition certifying the adjustment had been presented but nevertheless he proceeded with execution applied for and obtained leave to bid at the Court sale and himself purchased the property in September The judgment debtor preferred petitions in September and November praying that the sale be set aside *Held* that the judgment debtor was entitled to prove the adjustment and to have the sale set aside RAMAYYAR v RAMAYYAR

[I L R. 21 Mad 356

55 ———— *Satisfaction of decree not certified—Fraudulent execution—Charge under Penal Code s 210—Proof of payment*—S 258 of the Code of Civil Procedure which provides that no payment or adjustment of a decree not certified to the Court as in the said section provided shall be recognized by any Court does not debar a Criminal Court from recognizing such payment where the decree holder is charged with fraudulently executing a satisfied decree QUEEN EMPRESS v PILLALA I L R. 9 Mad. 101

56 ———— *Fraudulent execution of decree—Duty of the decree holder to inform the Court of private adjustment or satisfaction of a decree—Construction of Penal Code ss 193 210 406*—The rule of civil procedure contained in the last clause of s. 258 of the Civil Procedure Code (Act XIV of 1882)—that uncertified adjustments of a decree are not to be recognized by any Court —does not affect the substantive criminal law The words any Court in that

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under s 210 of the Penal Code Those words do not bar any criminal remedy which an injured judgment debtor may have against a fraudulent decree holder whether by a prosecution under ss 193 210 406 or any other section of the Penal Code In s 210 of the Penal Code the word satisfied is to be understood in its ordinary meaning and not as referring to decrees the satisfaction of which has been certified to the Court. QUEEN EMPRESS *v* BAPUJI DAYARAM I L R 10 Bom 288

57 ——— *Adjustment of decree without certifying—Proof of payment of decree otherwise than by certificate—Fraudulent execution of decree after adjustment* —Where a decree has been satisfied out of Court and the payment has not been recorded in accordance with s 258 of the Civil Procedure Code it is nevertheless open to the *quondam* judgment debtor when suing to have a sale made by the *quondam* decree-holder after satisfaction of the decree set aside to prove the payment of the decretal money otherwise than by a certificate under that section PAT DASI *v* SHARUP CHAND MALA I L R 14 Calc 376

But *see* MOTHURA MOHUN GHOSE MONDUL *v* AKKOY KUMAR MITTER I L R 15 Calc 557

58 ——— *Suit to recover instalments due under a mortgage made in adjustment of a decree* —Under s. 258 of the Civil Procedure Code no Court can recognize an uncertified adjustment of a decree for any judicial purpose what ever *Pattankar* v *Derji I L R 6 Bom 146* overruled. A suit will not lie to enforce an uncertified agreement of adjustment of a decree against a judgment debtor the consideration for which is that it shall operate in satisfaction of the decree as there is in that case no consideration which the Court can recognize and therefore no valid consideration for the judgment debtor's agreement. The plaintiff was the assignee of a decree obtained by one *O K* against the defendants on the 5th May 1883 By that decree *O K* was declared entitled to recover R9 961 5 6 with interest at nine per cent. from the defendants and payment was ordered to be made to him of the said sum by weekly instalments of R200 In order to secure the payment of the said instalments the defendants were required to execute a mortgage to *O K* of certain property with power to him to sell the same and to execute the decree for the whole amount in case of default for six months *O K* assigned the decree to the plaintiff in the present suit and subsequently to the assignment (*viz.* on the 21st July 1883) the defendants executed to the plaintiff the mortgage on which the present suit was brought The mortgage-deed after reciting the above facts stated that the defendants had agreed to satisfy the amount of the decree and it contained a covenant by the defendants that they would pay R9 961 5-6 with interest at six per cent. by monthly instalments of R400 from the 21st August 1883 The mortgage therefore differed from the decree both with regard to the instalments and the rate of interest The plaintiff sued to recover the sum of R4 207 being the amount of instalments due to him under the said mortgage *Held* that the suit would not lie as the mortgage was an adjustment of the decree and had not been certified to the Court as required by s 258 of the Civil Procedure Code ABDUL RAHIMAN *v* KHOJA KHAKI ARUTH [I L R 11 Bom. 6

59 ——— *Payment made towards decree but uncertified—Effect of such payments on limitation for application for execution of decree* —Where certain payments had been made on account of a decree but such payments had not been certified to the Court under s 258 of the Civil Procedure Code it was *held* following *Fakir Chand Bose* v *Madan Mohan Ghose 4 B L R F B 130* that such payments although not certified to the Court were effectual to prevent the appellant's application for execution from being barred by limitation. It would however be necessary for the appellant to certify these payments PURMANANDAS JIWANDAS *v* VALLABDAS WALLJI [I L R. 11 Bom., 506

60 ——— *Sanction of Court to agreements for satisfaction of decree—Payments by judgment debtor under void agreement—Effect of uncertified payments to decree holder* —A sum paid under an agreement void under s 257A of the Civil Procedure Code cannot be acknowledged or recognized in execution of a decree under s. 258 of the Code unless it has been certified within the proper time Agreements for the satisfaction of a judgment debt not sanctioned under s 257A of the Civil Procedure Code are void; but if sanctioned they may be carried out in execution DURGA PRASAD BANERJEE *v* LALIT MOHUN SINGH ROY I L R. 25 Calc., 86

61 ——— *Payment made by defendant in satisfaction of decree not certified —Subsequent reversal of decree on appeal—Application by defendant for refund of money paid in satisfaction.*—The plaintiff obtained a decree against the defendant for R60 and costs R29-10-1 against which the defendant immediately appealed. Shortly afterwards the defendant sent R 0 to the plaintiff's vakil intimating by a letter that the remittance was in part payment of the decree and that an arrangement would be made to pay the balance The plaintiff did not take out execution of the decree but the part payment was not certified to the Court. On appeal the decree was reversed and the defendant applied for the refund of the amount which he had paid to the plaintiff The Court of first instance granted the application The plaintiff appealed, and the Appellate Court reversed the order holding that under the provisions of s. 258 of the Civil Procedure Code the payment made by the defendant not having been certified, could not

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

be recovered. *Held* by the High Court that the defendant was entitled to recover the amount paid to the plaintiff The decree having been reversed on appeal the payment whether certified to the Court or not could only be regarded as made without consideration and the defendant was entitled to have it restored The Court accordingly under s 622 of the Civil Procedure Code discharged the order of the lower Appellate Court and restored the order of the Court of first instance VASUDEV GOVIND v VISHNU VITHAL I. L. R. 11 Bom., 724

62. ——————— *Judgment debtor as part purchaser of a decree Suit by*—*H D* and *R D* owned a 6 anna share in certain decrees The other decree-holders subsequently sold their 10 anna share to *H S* and *S M* two of the judgment-debtors *H D* and *R D* then proceeded to execute the decrees and in satisfaction thereof were allowed to receive upon giving security under s 231 of the Code the full 16 anna share of the decretal amount from *H S* and *S M* notwithstanding the objection of the latter on the ground of their purchase Thereupon *H S* and *S M* brought a suit for declaration of their right of purchase and the recovery of a 10 anna share of the money in the hands of *H D* and *R D* *Held* that the plaintiffs were entitled to the relief sought for *Held* also that the provisions of s. 258 of the Civil Procedure Code did not affect the suit which was brought not upon the allegation that the decrees were satisfied by the plaintiff s purchase but, on the contrary was founded upon the proposition that the decrees were not so satisfied *Abdul Rahiman* v *Khoja Khaki Aruth I L R 11 Bom. 6* referred to *Held* further that the claim was not within the words relating to the execution of the decree in s 244 of the Civil Procedure Code inasmuch as it did not raise any question in respect to the furtherance of or hindrance to or the manner of carrying out the execution of the decrees HARAGOBIND DAS KOIBURTO v ISSURI DASI [I L. R. 15 Calc 187

63 ——————— *Mortgage in satisfaction of decree*—*Adjustment not certified*—In a suit brought by a Hindu to recover certain land defendant pleaded that he held the same under a mortgage granted to him by plaintiff s mother and guardian in satisfaction of a decree obtained against plaintiff s deceased father Plaintiff contended that as the mortgage was in adjustment of a decree and the adjustment had not been certified to the Court the mortgage could not be recognized by virtue of s 258 of the Code of Civil Procedure *Held* that as there had been no certified adjustment of the decree the mortgage could not prevail against plaintiff s claim *Abdul Rahiman* v *Khoja Khaki Aruth I L R 11 Bom 6* followed and *Mallamma* v *Venkappa I L R 8 Mad 277* distinguished. THIRUMALAI v SUNDARA [I. L. R 11 Mad. 469

64. ——————— *Purchase by mortgagee holding decree for sale of portion of mortgaged property subject to mortgage*—*Right of mortgagor to redeem*—A mortgagee having obtained a decree against his mortgagor for the sale of the mortgaged property a portion of the latter was subsequently sold subject to the said decree in execution of a money decree obtained by a third party against the mortgagor The mortgagee purchased the portion so sold whereupon the mortgagor presented a petition under s 258 of the Code of Civil Procedure claiming that the mortgagee was bound to discharge his mortgage debt and should be called upon to certify satisfaction of his decree *Held* that petitioner was not entitled to the relief prayed for but only to proceed upon the footing that the portion of the mortgaged property which had been purchased by the mortgagee remained notwithstanding such purchase redeemable by petitioner together with the remainder of the property *Quære*—Whether the subject matter of the petition was an adjustment of the decree within the meaning of s 258 of the Code of Civil Procedure ERUSAPPA MUDALIAR v COMMERCIAL AND LAND MORTGAGE BANK I L. R 23 Mad. 377

65 ——————— *Decree*—*Satisfaction of decree out of Court*—*Payment uncertified*—*Suit to recover money paid in satisfaction of decree*—The plaintiff had been a surety for the defendant on a bond for R50 passed to *G* by the defendant *G* obtained a decree against the plaintiff on this bond and the plaintiff satisfied the decree by paying *G* R38 in full satisfaction The payment was made out of Court and was not certified to the Court The plaintiff now sued the defendant to recover the money so paid by him to *G* He called *G* as a witness who acknowledged he had received R38 from the plaintiff in full satisfaction of the decree *Held* that the last clause of s 258 of the Civil Procedure Code did not apply to such a case and that the payment made by the plaintiff to *G* might be proved BALAJI LAKSHMAN v DADA JOTI [I. L. R. 12 Bom. 235

66 ——————— *Omission to certify satisfaction of decree*—*Suit to enforce mortgage*—In 1877 *M* executed a mortgage to *S* in consideration of a sum paid in cash and a debt due by *M* to *S* under a decree *S* did not certify satisfaction of the decree to the Court under s. 258 of the Code of Civil Procedure nor was this stipulated for in the instrument of mortgage *Held* in a suit to enforce the mortgage that s 258 was no bar to the plaintiff's right to recover SELLAMAYYAN v MUTHAN I. L. R., 2 Mad. 611

67 ——————— *Decree adjustment or satisfaction of*—*Adjustment after attachment*—*Civil Procedure Code (Act XIV of 1882) s 273*—A decree being attached as directed by s. 273 of the Civil Procedure Code its adjustment subsequent to such attachment cannot be recognized by the Court GOPAL NANASHET v JOHARIMAL DADA BALSHET v JOHARIMAL I. L. R. 16 Bom. 522

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

68 ———————— *Adjustment or satisfaction of decree—Civil Procedure Code Amendment Act (VII of 1888) s 27—Recognition of adjustment by a Civil Court except in execution* —Where under a bond a decree was adjusted by making a small deduction and by providing for the payment of the balance as part of the entire amount of the bond —*Held* that since the amendment made in s 258 of the Civil Procedure Code by s. 27 of Act VII of 1888 (Act amending the Civil Procedure Code of 1882) such adjustment may be recognized by a Civil Court except in execution GHANASHAM LAKSHMANDAS *v* KASHIRAM NARODA

[I L. R., 18 Bom, 589

69 ———————— *Decree payable by instalments—Limitation—Waiver by decree holder—Payment out of Court—Limitation Act (XV of 1877) sch II art 179 (6)* —An application for execution of a decree payable by instalments was resisted by the judgment debtor as barred by limitation on the ground that nothing had been paid under the decree and that the application was made more than three years after the first instalment fell due The decree holder pleaded that he had waived the default in payment of the first instalment by accepting such payment shortly afterwards and that the application was in time having been made within three years from the date when the second instalment was due *Held* that the decree holder could not raise this plea as the payment in question had not been certified to the Court executing the decree and therefore could not under s 258 of the Civil Procedure Code be recognized *Sham Lal v Kanahia Lal I L R 4 All 316* and *Zahur Husain v Bakhtawar I L R 7 All 317* not followed MITTHU LAL *v* KHAIRATI LAL

[I. L. R. 12 All., 569

70 ———————— *Execution of decree—Attachment—Previous assignment in satisfaction of decree of third party—Suit by assignee to establish right to attached property* —Where a regular suit under s 283 of the Code of Civil Procedure was brought to establish the plaintiff's right to certain attached property on the allegation that the property attached had been transferred to him in satisfaction of a decree held by him against the judgment debtor —*Held* that it was not necessary that such transfer should be certified under the provisions of s. 258 of the Code of Civil Procedure The prohibition to take cognizance of adjustments and payments referred to in s 258 above mentioned relates only to the Court executing the decree KALYAN SINGH *v* KAMTA PRASAD

I. L. R., 13 All., 339

71 ———————— *Landlord and tenant—Mirasi tenure declared in decree—Subsequent payment of rent by defendants not a payment under decree but under the tenure—Payment not certified to Court* —The plaintiff sued the defendants to recover possession of certain land The defendants pleaded they were mirasi tenants and entitled to possession as long as they paid the rent. The suit was compromised and by a consent decree it was declared that the defendants held by mirasi tenure and they were directed to pay rent as before or in default the plaintiff should take possession The plaintiff afterwards applied in execution for possession alleging that the rent had not been paid The defendants pleaded that it had been paid and the plaintiff rejoined that even if it had been paid, the Court could not recognize the payment, as it had not been certified under s 258 of the Civil Procedure Code *Held* that under the circumstances the rent, when paid was to be deemed as paid under the mirasi tenure and not under the decree and, therefore s. 258 of the Civil Procedure Code did not apply and payment need not be certified KEDARI *v* GAJAI

[I L. R. 18 Bom, 690

———— ss 259 260 (1859 s 200)

See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS

1. ———————— **Decree for performance of a particular act.**—A decree had been obtained that the defendants do within six weeks after the service upon them of this decree remove the obstruction and reopen the pathway or lane leading from the north west end of the plaintiff's house northwards to a public road as the same existed before the commencement of the suit and as described in the plaint *Held* that this was a decree for the performance of a particular act on the part of the defendants and must be executed under the provisions of s 200 Act VIII of 1859 —*i.e* by imprisonment of the party or attachment of his property or by both therefore an order for execution of the decree by causing the obstruction to be removed was set aside as illegal BHOOBUN MOHUN MUNDUL *v* NOBIN CHUNDER BULLUB

(10 B L. R. Ap, 12 18 W R, 282

2 ———————— *Execution of decree for restitution of conjugal rights* —*A* who had been directed by a decree to refrain from preventing her daughter returning to her husband after the date of the decree permitted her daughter who was of age to reside in her house *Held* that such conduct on the part of *A* was no such evidence of interference with her daughter's return as would justify the execution of the decree against her under the provisions of s. 200 of Act VIII of 1859 AJIAI KUAR *v* SURAJ PRASAD

I. L. R. 1 All., 501

3 ———————— **Decree for possession of wife**—*Enforcing execution of decree* —Where there has been a decree in favour of an applicant for special possession of his wife and application made for execution the process under the ordinary sections will not be enforced. AKBARALLY *v* HOSSAIN ALLY

[1 Ind. Jur N S., 101 5 W R., Mis., 29

4. ———————— **Decree ordering wife to return to husband**—*Enforcing decree under a suit for restitution of conjugal rights against*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

wife—*Quære*—Whether under the present procedure the Court can enforce its order upon a wife to return to her husband s by giving her over bodily into her husband s hands. Such disobedience would seem to fall within s. 200 of the Code and to be enforceable only by imprisonment or attachment of property or both. JUDOONATH BOSE *v* SHUMSOONNISSA BEGUM BUZLOOR RUHEEM *v* SHUMSOONNISSA BEGUM

[8 W R P C, 3 11 Moore s I A. 551

5 ——————— **Opportunity of and refusal to obey decree**—*Enforcing execution of decree*—No order for enforcing a decree by imprisonment under s. 200 of the Code of Civil Procedure should be made until the defendant has had an opportunity of obeying the decree or has contumaciously refused to obey it. UMED KIKA *v* NAGINDAS NOROTAMDAS 7 Bom. O C., 122

6 ——————— **Decree for joint possession and management of property**—*Attachment for disobedience to decree*—*Civil Procedure Code 1877 s 260*—By a decree relating to certain joint property belonging to the plaintiff and defendant but which had previously been held in the sole name of the defendant it was directed that the plaintiff and defendant should jointly manage the property and that the names of both should appear in all papers connected with such property The plaintiff subsequently applied to have his name registered in the Collectorate but was opposed by the defendant who it appeared also allowed the amlahs of the estate to continue to use his sole name *Held* that the Court had under the circumstances jurisdiction under s. 260 of the Civil Procedure Code to attach the defendant s property until he had obeyed the decree by having the joint names of himself and the plaintiff inserted in all documents belonging to the estate GOURI PROSAD MOITRA *v* BHOLA NATH SANYAL 8 C L. R. 487

——————— **s. 260**

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT [I. L. R. 19 Bom 84

See EXECUTION OF DECREE—MODE OF EXECUTION—DECLARATORY DECREES [I. L. R. 21 Calc 784 L. R. 21 I. A, 89

See EXECUTION OF DECREE—MODE OF EXECUTION—REMOVAL OF BUILDINGS [I. L. R. 8 Calc 174 9 C L. R. 458

——————— **ss 261 262**

See REGISTRAR OF HIGH COURT [I. L. R. 16 Calc 330

——————— **s 263 (1859 s 223)**

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION

——————— **s 264 (1859 s 224)**

See CASES UNDER POSSESSION—NATURE OF POSSESSION

——————— **s 265 (1859 s 225)**

See COLLECTOR I L R 11 Bom. 662 [I L. R 12 Bom 371

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION [I. L R 6 All. 452

See CASES UNDER PARTITION

——————— **s 266 (1859 s 205)**

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT

——————— **ss 266 276**

See CASES UNDER ATTACHMENT

——————— **s 268 (1859 ss 234 236 239 241)**

See LIMITATION ACT 1877 s 15 [I L R 13 All 78 I L R 14 All. 162 I L R 17 All. 198 L R 22 I A 31

——————— **Attachment and sale of bonds**—Under the provisions of s 268 of the Code of Civil Procedure (Act X of 1877) bonds cannot be sold till the end of six months from the date of attachment NURSING DAS RAGHUNATH DAS *v* TULSIRAM BIN DOULATRAM I. L R 2 Bom, 558

1 ——————— **s 272—Court of Justice—***Deputy Collector's Court*—The Court of a Deputy Collector was a Court of Justice within the meaning of s 237 Act VIII of 1859 COWIE *v* ELIAS [10 W R. 43

2. ——————— **Application for money deposited in Court**—*Question for Court executing decree*—*Separate suit*—The plaintiffs, having obtained decrees on certain hundis against *K* and *P* applied under Act VIII of 1859 s 237 for payment of certain moneys which had been deposited in Court in a suit in which one *D* was the plaintiff and which had been attached by them The ground of their application was that *D* had recovered a decree on certain hundis which had been fraudulently transferred to him by *K* and *P* The Munsif holding that the question of the ownership of the decree could not be determined in the miscellaneous department referred the applicants to regular suits These were accordingly instituted and the transfer to *D* declared to be fraudulent and colourable *Held* that the question of the title of the plaintiffs as against *D* to have their debt paid out of the money in deposit ought to have been decided in the Court in which the money was in deposit The Munsif was in error in directing the applicants to a regular suit PERSHAD *v* GUJADHUR RAM 20 W

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 273

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES I. L R. 2 All. 290
[I. L. R 6 Mad 418
I L R. 10 Bom 444
I L R. 16 Bom. 522
I. L R 20 Calc. 111
I. L R 21 All, 405

——— s 274 (1859 s 235)

See CASES UNDER ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT

See PROCESS SERVICE OF
[1 B L. R. S N 20
10 W R 264
10 B L R, Ap 12

——— s 275 (1859 s 245)—Tender of amount of decree—*Stay of execution*—Under s 21of Act VIII of 1859 the mere tender of money before the Judge is not sufficient to entitle the judgment debtor to have the sale of his property stayed and the law contemplates that payments should be made in accordance with the rules and forms of Courts HURONAUTH ROY *v* INDOOBOOSHUN DEB ROY
2 Hay, 302

——— s 276 (1859 s 240)

See CASES UNDER ATTACHMENT—ALIENATION DURING ATTACHMENT

——— s 278 (1859 s 246)

See CASES UNDER CLAIM TO ATTACHED PROPERTY

See COURT FEES ACT SCH II ART 17 CL 1 I. L R 4 Bom. 515 535
[15 B L. R. Ap 1
I. L. R. 13 Calc 162
I L R 2 All. 63
I. L. R 6 All. 341 466

See ESTOPPEL—ESTOPPEL BY JUDGMENT
[I L R. 4 Mad 302
I. L. R. 8 Mad 506
I. L. R. 11 Calc 673
I L R 17 Mad. 17

See CASES UNDER LIMITATION ACT 1877 ART 11

See CASES UNDER LIMITATION ACT 1877 ART 13

See CASES UNDER ONUS OF PROOF—CLAIMS TO ATTACHED PROPERTY

——— ss. 278-283

See CASES UNDER CLAIM TO ATTACHED PROPERTY

——— s 280 (1859 s 240)

See CASES UNDER CLAIM TO ATTACHED PROPERTY

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CLAIMS TO PROPERTY SEIZED IN EXECUTION

——— s 281 (1859, s. 246)

See CASES UNDER CLAIMS TO ATTACHED PROPERTY

See CASES UNDER LIMITATION ACT 1877 ART 11

——— s 283 (1859 s 246)

See CASES UNDER CLAIMS TO ATTACHED PROPERTY

See ESTOPPEL—ESTOPPEL BY JUDGMENT
[I. L R, 4 Mad. 302
I. L R. 11 Calc, 673
I L R, 8 Mad. 506
I. L. R 17 Mad. 17

See CASES UNDER LIMITATION ACT 1877 ART 11

See CASES UNDER ONUS OF PROOF—CLAIM TO ATTACHED PROPERTY

See CASES UNDER RIGHT OF SUIT—EXECUTION OF DECREE

See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CLAIMS TO PROPERTY SEIZED IN EXECUTION

——— s 285

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION

——— ss 286 and 296 (1859 s 248)—Construction of—In s 248 Act VIII of 1859 the words whom the Court may appoint apply not only to the words any other person but also the officers of the Court. In the absence of the Subordinate Judge it is not competent to the Judge because he is a superior officer to perform the duties required by s 248 JUDOONATH ROY *v* RAM BUKSH CHATTERJEE
12 W R. 238

——— ss 287-320

See CASES UNDER SALE IN EXECUTION OF DECREE

——— ss 287 289 and 290 (1859 s 249)

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY

1. ——— Part of an estate—The part of an estate in s 249 Act VIII of 1859 meant the aliquot part of an estate KALLYPROSONNO BOSE *v* DINONATH MULLICK
[11 B L. R., 56 10 W R., 434

2 ——— Proclamation under—The object of the proclamation under s. 249

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

to give notice to intending purchasers not to the judgment debtors. LAKE I AM v MOHESH DASS [12 W R. 488

——— s 290 (1859 s 249 last para)

See SALE IN EXECUTION OF DECREE—BIDDERS I. L. R 14 Mad 235

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY

——— s 293

See SALE IN EXECUTION OF DECREE—RESALES I. L. R. 5 Bom. 575
[I. L R 7 Calc. 337
I. L. R 16 Calc 535
I L. R., 12 Mad. 454
I. L R 19 All. 22
2 C W N 411

——— ss 293 307 and 308 (1859 s 254)

See APPEAL—SALE IN EXECUTION OF DECREE I. L. R. 1 All. 181
[I. L R. 13 All. 564
I. L. R 14 All. 201

See CASES UNDER SALE IN EXECUTION OF DECREE—RE SALE 3 W R 3
[6 W R. Mis 82 126
7 W R. 110
I. L R 1 All, 181

——— s 294

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[6 B L. R. Ap 37 14 W R. 405
I. L R. 5 Calc 308
I. L. R. 5 Bom 130 575
5 C L. R. 181
I. L. R. 10 Calc 757
I. L. R. 11 Calc 731
I. L. R. 14 Mad. 408
I. L. R. 11 Bom. 588
I. L. R. 22 Bom 271
4 C W N 474

——— s 295 (1859 ss 270 271)

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—SALE PROCEEDS
[I. L. R. 9 Mad. 250

——— s 306 (1859, s 253)

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R. 5 All. 316
5 C L. R. 181
I. L R. 16 Calc. 33
I. L. R. 14 Mad., 227

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 307

See PAYMENT INTO COURT
[I L R. 22 Bom 415

——— Vacation—*Holiday—Days on which the office is open—Office day—Payment of purchase money for property bought at Court sale*—The time during which a Court is closed for the vacation is not a holiday within the meaning of s 307 of the Civil Procedure Code (Act XIV of 1882) Days on which the office is open and the purchase money for property bought at a Court sale could have been paid are office days. MOTIRAM RAGHUNATH v BHIVRAJ I. L. R., 20 Bom. 745

——— ss 307 308 (1859 s 254)

See CASES UNDER SALE IN EXECUTION OF DECREE—RE SALE

——— s 310 (Act XXIII of 1861 s 14)

See CASES UNDER PRE EMPTION

——— s 310A.

See APPEAL—ORDERS
[I. L R 19 All 140

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION
[I L. R. 21 Calc 940
I. L R. 22 Calc 767
I L R 18 Mad 477

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES
[I. L. R. 23 Calc 393 396 note
1 C W N 114
2 C W N 127

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[I. L R. 20 Mad. 158
I. L. R. 22 Mad. 286
I. L. R. 23 Bom 723
I. L. R. 24 Calc. 682
I. L. R 25 Calc 218 609
1 C W N., 695 703
I. L R. 26 Calc. 449
3 C W N 283

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R 21 Mad. 416
I. L. R. 23 Bom 181 450
I. L. R. 23 Calc. 682 958
I. L. R. 25 Calc. 703
1 C W N., 135 279
2 C W N 353

——— ss 311 312 (1859 ss 256 257)

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY

——— The word disallowed in s 312 of the Civil Procedure Code has no reference to an

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

order passed on an appeal but refers to the dis allowance of the objection by the Court before which the proceedings under s 311 are taken MAHOMED HOSSEIN v PURUNDUR MAHTO
[I. L. R., 11 Calc, 287

——— **s 312 (1859 s 257)**

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE 11 W R 297
[12 W R 41
I. L. R., 3 All., 112 206 554, 701
I. L. R 14 Calc. 1 9
I L R. 19 Bom, 216

1 ——— **Letters Patent 1865, ss 15 and 36** —Cls. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s 257 of Act VIII of 1859 ROY NANDIPAT MAHATA v URQUHART
[4 B L. R. A C 181 13 W R., 209

2 ——— **Application of** —S 257 Act VIII of 1859 applied only to sales held after that Act came into operation ABDOOL HYD v LALLA NOWAH ROY 1 W R 204

——— **s 313**

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF SALEABLE INTEREST

——— **s 315 (1859 s 258)**

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—PURCHASE MONEY
[I L R. 11 Mad., 269

——— **s 316 (1859 s 259)**

See REGISTRATION ACT 1877 s 17 (1866 1871 s. 17) I L. R. 3 Mad 37
[10 Bom., 435
12 Bom. 247
7 C L R. 115
21 W R., 349
11 Bom., 218
I. L. R. 2 All., 392
I. L. R. 5 All., 84 568
I. L. R. 5 Calc., 226
I. L. R. 9 Calc. 83
I. L. R. 4 Bom 155
I. L. R. 8 Bom. 377

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION I. L. R. 7 Calc. 91
[I. L. R. 11 Calc 376

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF—CERTIFICATES OF SALE.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— **Certificate of sale Application for**—*Court Fees Act 1870 s 6*—An application by an auction purchaser for a certificate of sale need bear no stamp since by s 316 of the Civil Procedure Code it is not even required to be in writing HIRA AMBAIDAS v TEKCHAND AMBAIDAS
[I L R. 13 Bom., 670

——— **s 317**

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE, s 317

——— **s 320**

See COLLECTOR I L R., 11 Bom. 478
[I L R., 9 All 43
I. L R. 16 All. 1

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT ETC I L R. 7 Bom. 332
[I L R 7 All. 407
I L R. 8 Bom 301
I. L. R, 11 Bom 478

See RULES MADE UNDER ACTS.
[I L. R. 15 Bom. 322
I L R. 12 All. 564
I L R 23 Bom., 531

——— **ss 322, 322A and 322B**

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR I. L R. 18 All. 313
[I. L. R 20 All, 423

——— **ss 325A, 326—Execution of decree**—*Limitation—Execution as to immoveable property of judgment debtor stayed by reason of such property being in charge of the Collector*—The plaintiffs obtained in 1874 a decree for money against the defendant In 1879 by an order under s. 326 of the Code of Civil Procedure, the immoveable property of the judgment debtor was placed under the management of the Collector Before this order was made and during the period when the judgment-debtor's property was in charge of the Collector various applications for execution were made by the decree-holders. Finally, in 1896 about ten years after the last preceding application the decree-holders applied for execution of their decree shortly after the property had been released by the Collector *Held* that as regards the immoveable property of the judgment debtors against which execution was sought, the application was not barred by limitation inasmuch as the decree holders had no remedy by execution against that property until the Collector's management had ceased GIRDHAR DAS v HAR SHANKAR PRASAD
[I. L. R. 20 All., 383

——— **s 326 (1859 s 244)**.

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR I. L. R., 18 All. 313

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See EXECUTION OF DECREE—STAY OF EXECUTION I. L. R. 2 All. 856
[I. L. R. 9 Calc 290

1. ——— Arrangement leaving property in execution in possession of judgment-debtor—*Act VIII of 1859 s 244*—S 244 of Act VIII of 1859 admits only of a temporary alienation of land, and not of an arrangement by which possession is left with the judgment-debtor subject to a payment by yearly instalments. KASHEE LAL *v* AMEER JAN 2 N W., 347

2. ——— Arrangement for instalments extending over twelve years.—Where a Collector recommended that the lands of a judgment debtor should be exempted from auction sale and that the judgment-debt should be satisfied by money instalments extending over a period of twelve years and the Judge on the matter being referred to the Civil Courts for sanction and approval, in sending the proceedings to the Munsif intimated that the arrangement was a proper one and the Munsif in his order referred to this opinion of the Judge—*Held* that the recommendation of the Collector should have been dealt with by the Court executing the decree in the exercise of its own judgment and not in deference to the opinion expressed by the Judge who exceeded his jurisdiction in interfering in the matter The arrangement proposed by the Collector was not one which could be proposed or accepted under the terms of s 244 of the Civil Procedure Code MUTTRA PERSHAD *v* RAMPERSHAD
[6 N W 39

——— ss 328-335

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— s 328 (1859 s 226)

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— s 332 (1859 s 230)

See CASES UNDER ONUS OF PROOF—POSSESSION AND PROOF OF TITLE

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— Application under—

See COURT FEES—ACT XXVI OF 1867
[4 B L R F B 94

——— Order rejecting application under—

See APPEAL—ORDERS
[2 B L. R. A C 303 note
W R., 1864 Mis 24
1 W R. 140
5 Mad., 183
13 W R 264
21 W R., 39
I L R 16 Mad., 127
I L R 21 Bom 392
I L R 22 Calc 830

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 336

See ATTACHMENT—ATTACHMENT OF PERSON I L R 7 Calc 19
[I L R 11 Calc 527
I L R. 8 Mad. 276 503
I. L. R. 16 Calc 85
I L R. 9 Mad 99

See SURETY—LIABILITY OF SURETY
[I. L. R 13 All. 100
I. L. R. 14 Calc., 757
I. L. R. 15 Calc. 171
I. L. R. 16 All 37
I. L R. 19 Bom., 210

——— s 337A

See ARREST—CIVIL ARREST
[I. L. R 22 Bom. 731 961
2 C W N 588

See APPEAL—DECREES
[I. L R. 21 Mad. 39

——— s 339 (1859 s 276)

See CASES UNDER SUBSISTENCE MONEY

——— s 341 (1859 s 278)

See ATTACHMENT—ATTACHMENT OF PERSON I L R 7 Bom 106
[I. L. R. 8 Mad. 21 503
I L. R. 12 Calc 652
I L R 20 Calc 874
I L R, 23 Calc 128

See CONTEMPT OF COURT—CONTEMPTS GENERALLY I. L. R. 4 Calc 655

See CASES UNDER SUBSISTENCE MONEY

1 ——— Release of judgment-debtor—*Confinement in Court house*—Where the warrant of committal to jail has been made out the discharge of the defendant whilst in confinement in the Court house for non-payment of the instalment of subsistence allowance is a discharge from jail within the meaning of s 341 of the Code of Civil Procedure Act XIV of 1882 TIMAPA SHANBHOG *v* MANESHVAR KASHI I L R. 9 Bom 181

2 ——— Decree—*Execution—Arrest—Non payment of subsistence money—Discharge—Re-arrest*—The discharge of a judgment-debtor before imprisonment on account of the non payment of the subsistence money for the debtor is no bar to the debtor being re-arrested. SUBBA *v* VENKATA
[I. L. R. 8 Mad. 21

——— s 342 (1859 s 278)

See CONTEMPT OF COURT—CONTEMPTS GENERALLY I. L. R. 4 Calc 655

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION
[I. L. R. 2 Bom 148

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See IMPRISONMENT
[I. L. R. 13 Mad. 141

See CASES UNDER SUBSISTENCE MONEY

——— s 344 (1859 ss 273 280)

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

——— ss 344 360 (Ch XX)

See DEPUTY COMMISSIONER OF AKYAB
[I L R. 4 Calc 94

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

——— s 349

See ATTACHMENT—ATTACHMENT OF PERSON I. L. R. 11 Calc 451
[I L R. 12 Calc 652
I L R 8 Mad 503
I L R., 12 Bom 46

——— s 350 (1859 s 281)

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

——— s 351 (1859 s 281)

See APPEAL—ORDERS
[I. L. R 2 Mad 219
I L R 4 Calc 888
I. L. R. 6 Calc. 168 7 C L. R 282
I L R 5 Calc 719 6 C L R 135
I L R. 11 Mad 136
I L R., 15 Mad. 89

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

——— s 357—Insolvency—*Execution of decree—Limitation* —S 357 of the Code of Civil Procedure provides a limitation of its own and in substitution for the limitation provided for the execution of decrees by the Limitation Act 1877 LALMAN *v* GOPI NATH I. L. R. 19 All 144

——— s 364 (1859 s 101).

See LIMITATION—QUESTION OF LIMITATION I. L. R. 12 Calc , 642

See PARTIES—ADDING PARTIES TO SUITS—DEFENDANTS
[I. L. R. 12 Calc 642

——— s 365 (1859 ss 102 377)

See CASES UNDER ABATEMENT OF SUIT

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See CASES UNDER LIMITATION ACT 1877 ARTS 171 171A 171B

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES

——— s 367 (1859 s 103)—*Dispute as to claim to represent deceased plaintiff—Per Curiam* (SHEPHERD and BEST JJ) —A dispute within the meaning of Civil Procedure Code s 367 need not be between persons claiming to represent the deceased plaintiff SUBBAYYA *v* SAMINADAYYAR
[I L R., 18 Mad., 496

——— s 368 (1859 s 104).

See LIMITATION ACT 1877 ARTS 171 171A 171B I. L. R. 6 Bom. 26
[I L R. 11 Calc., 694
I L R 7 All., 734
I. L. R. 10 Bom., 663
I. L. R. 7 Bom., 373
I. L. R. 9 All. 118
I. L. R., 10 All., 260, 264

See LIMITATION ACT 1877 ART 175C
[I. L. R., 16 Bom. 27

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS I. L. R. 4 Bom., 654
[I. L. R., 9 Bom. 56
I. L. R., 8 Mad., 300
I. L. R. 11 Calc., 694
I. L. R., 9 Bom., 151
I. L. R. 9 All. 447
I. L. R. 10 All. 233
I L R. 11 All., 408

——— s 372—Construction of—*Per* PONTIFEX *J* —The words pending the suit in s. 372 relate to a suit in which no final order has been made GOCOOL CHUNDER GOSSAMEE *v* ADMINISTRATOR GENERAL OF BENGAL
[I. L. R., 5 Calc. 726 5 C L. R., 560

——— s 373 (1859 s 97)

See APPEAL—DECREES
[I. L. R., 8 All., 82
I. L. R. 18 Calc 323
I. L. R 15 All., 109
I. L. R. 16 All., 19
I. L. R. 17 All., 97
I. L. R. 27 Calc 363
4 C W N., 41

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT
[I. L. R., 18 Calc., 462 515 635
I. L. R. 15 Mad., 240
I. L. R., 13 All. 179 392
I. L. R. 15 Bom., 370
I. L. R. 17 All., 106
L. R. 23 I. A., 44

See CASES UNDER WITHDRAWAL OF SUIT

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 374 (1859 s 97)

See LIMITATION ACT 1877 ART 179—NATURE OF APPLICATION—GENERALLY
[I L R 6 Bom 681
I L R 7 All 359
25 W R 106
I L R 10 Bom., 62
I L R 10 All 71

See CASES UNDER WITHDRAWAL OF SUIT

——— s 375 (1859 s 98)

See CASES UNDER COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE

See PRACTICE—CIVIL CASES—AFFIDAVITS
[I L R 7 Bom 304

See PRACTICE—CIVIL CASES—CONSENT DECREE 5 C L R 464

See SPECIFIC PERFORMANCE—SPECIAL CASES I L R 13 Mad 316

——— ss 377 379

See PRACTICE—CIVIL CASES—PAYMENT OUT OF MONEY DEPOSITED IN COURT
[I L R 26 Calc 766

——— s 380 (1859 ss 34 35)

See CASES UNDER SECURITY FOR COSTS—SUITS

——— ss 383 384 385 (1859 s 175)

See COMMISSION—CIVIL CASES
[1 Hyde 68
20 W R 253

——— ss 387 391 (1859 s 177)—*Act VIII of 1859 s 177—Native Prince or State in alliance—Kingdom of Ava*—The kingdom of Ava was not the territory of a Native Prince or State in alliance with the British Government within the meaning of s 177 of Act VIII of 1859 AGA MOHAMMED JAFFER TEHRANI *v* MIRZA NAZIRULLA
[2 B L R A C 73 10 W R 385

——— ss 389 390 (1859 s 179)

See COMMISSION—CIVIL CASES
[2 B L R A C 73
5 B L R 252
8 B L R Ap 102
I L R 26 Calc 591

——— ss 392 393 398 399 (1859 s 180)

See CASES UNDER AMEEN

See CASES UNDER EVIDENCE—CIVIL CASES—REPORTS OF AMEEN AND OTHER OFFICERS

See CASES UNDER LOCAL INVESTIGATION

See LIGHT OF SUIT—COSTS
[I L R, 4 Mad 309

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— ss 394, 395 (1859 s 181)

See ACCOUNT SUIT FOR
[I L R 6 Calc 754
I L R 7 Calc 654

See APPEAL—DECREES
[I L R 12 Calc 209 273 275
I L R 19 Calc 463
I L R 18 Mad 73
I L R 23 Calc 279
I L R 24 Calc 725
1 C W N 374

See COMMISSIONER FOR TAKING ACCOUNTS
[6 Bom A C 149
1 Mad 1 418
3 N W 217
I L R 3 Mad 259
19 W R 14
L R 1 I A 346

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION
[I L R 19 All 194

See CASES UNDER PARTITION

——— ss 401-415 (1859, ss 297-310)

See CASES UNDER LIMITATION ACT 1877 s 4

See CASES UNDER PAUPER SUIT

——— s 417 (1859 s 17)

See CASES UNDER ss 37 38

——— s 418 (1859 s 26)

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT

——— s 424

See COLLECTOR I L R 3 All 20
[I L R 11 Mad., 317
I L R 13 Bom 343

See PARTIES—PARTIES TO SUITS—GOVERNMENT I L R 9 Calc., 271

See PUBLIC OFFICER
[I L R 14 Bom 395

See SUBORDINATE JUDGE JURISDICTION OF I L R 21 Bom 754 778
[I L R 22 Bom 170

1. ——— **Suit against public officer**—*Notice of action Form of*—In a suit against the Deputy Magistrate of A and the Deputy Magistrate of B for damages for having in bad faith and maliciously caused the plaintiff to be confined in hajut, the plaintiff served a notice under s. 424 of the Civil Procedure Code on the defendants to the effect that the Deputy Magistrate acting in concert with the intention of oppressing the plaintiff had wilfully improperly and illegally kept him in hajut and thereby caused him injury *Held* that the notice sufficiently stated the cause of action within the terms of s. 424 of the Civil Procedure Code it not being

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

necessary that a notice under that section should be read with the strictness with which a plaint should be read in regard to the statement of the cause of action PARBUTTI CHURUN MOZOOMDAR *v* NOBIN CHUNDER SEN 13 C L R 195

2 ———————**Suit against an officer of Government**—*Bombay Civil Courts Act (XIV of 1869) s 32—Suit ex contractu—Notice of suit*—S 424 of the Civil Procedure Code (Act XIV of 1882) which requires notice to be given to a public officer two months before the institution of a suit against him does not apply where the suit is one *ex contractu*. *Shahunshah Begum* v *Fergusson I L R 7 Calc 499* and *Maneklal* v *Municipal Commissioner for the City of Bombay I L R 19 Bom 407* referred to RAJMAL MANIKCHAND *v* HANMANT ANYABA I. L. R. 20 Bom, 697

3 ———————**Suit against public officer in respect of acts done by him in his official capacity**—*Notice of suit—Suit for damages against a public officer—Trespass—Misjoinder of causes of action—Amendment of plaint*—The plaintiff sued the defendant a public officer to recover damages for two distinct acts (*viz* wrongful arrest and trespass) alleged to have been illegally and maliciously done by the defendant on two different occasions and claimed one lump sum as damages for both the acts no permission to amend the plaint was asked for in the lower Court On the 21st of October 1895 the plaintiff instituted this suit having on the 18th of September 1895 served the defendant with a notice under s 424 of the Civil Procedure Code (Act XIV of 1882) *Held* that the former act (*viz* the plaintiff s arrest) was an act done by the defendant in his official capacity and was clearly of the kind contemplated by s 424 of the Civil Procedure Code under which two months notice to the defendant would be necessary previous to the institution of the suit and that the suit was rightly dismissed by the lower Court for want of such notice *Shahunshah Begum* v *Fergusson I L R 7 Calc 499* distinguished. *Quære*—Whether the latter act (*viz* the trespass into the plaintiff s house) on the allegations in the plaint was an act done by the Magistrate in his official capacity and whether a notice under s. 424 of the Civil Procedure Code would be necessary previous to suing for damages for such an act *Held* further that as the two acts were mixed up together in the plaint and one lump sum claimed as damages for both and as no permission to amend the plaint was asked for in the lower Court so as to convert the suit into one for damages with reference to the trespass only the plaint ought not to be allowed to be amended on appeal to the High Court JOGENDRA NATH ROY *v* PRICE I. L. R. 24 Calc, 584

4 ———————**Suit against the Secretary of State for India in Council**—*Notice—Public Demands Recovery Act (Bengal Act VII of 1880) ss 8 9 20—Sale for default in payment of costs of realising Government revenue*—S 424 of the Civil Procedure Code provides that No suit shall be instituted against the Secretary of State in Council or against a public officer in respect of an act purporting to be done by him in his official capacity until the expiration of two months next after notice in writing has been in the case of the Secretary of State in Council delivered to or left at the office of a Secretary to the Local Government or the Collector of the District etc. The plaintiff had instituted a suit against the Secretary of State for India in Council to set aside a certain sale of the plaintiff s property (possession of which had been given to the purchaser) but had not given him the notice prescribed by s. 424 of the Civil Procedure Code The first Court (AMEER ALI J) gave the plaintiff a decree *Held* on appeal (reversing the decision of AMEER ALI J) that whether or not the words in respect of an act purporting to be done by him in his official capacity relate only to a public officer and not to the Secretary of State no suit whatever is maintainable against the Secretary of State unless the notice prescribed by s 424 of the Code of Civil Procedure has been given and that therefore the present suit could not be maintained SECRETARY OF STATE FOR INDIA IN COUNCIL *v* RAJLUCKI DEBI I. L. R., 25 Calc. 239

——— s 431.

See FOREIGN COURT JUDGMENT OF I. L. R. 22 Calc. 222
L. R. 21 I. A., 171

See FOREIGN STATE I. L. R. 11 Calc 17

——— s. 432 (1859 s 17 para 4)—*Suit by independent Prince in Court in British India—Recognized agent for institution of suit—Civil Procedure Code s 37—Signature and verification of plaint*—S 432 of the Civil Procedure Code does not prevent the institution by an independent prince of a suit in a Court in British India in his own name and through a recognized agent other than one appointed under that section BEER CHUNDER MANIKYA *v* ISHAN CHUNDER BURDHUN I. L. R. 10 Calc. 136

MAHARAJA OF BHARTPUR *v* KACHERU I. L. R. 19 All. 510

——— ss 432 433

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS I. L. R. 8 Bom., 415

——— s 433

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS I L R. 9 Calc 535
3 C L R. 417
25 W R., 404 407
12 C L R. 473
I. L. R, 8 Bom., 415

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

See RES JUDICATA—COMPETENT COURT—GENERAL CASES
[I L. R., 15 Mad. 494

——— s 434.

See FOREIGN COURT JUDGMENT OF
[I. L. R 6 Bom. 292
I. L. R. 14 Calc 546
I. L. R. 22 Calc 222
L. R 21 I A 171

——— s. 435 (1859 s 26 para 6 and s. 28 para. 2)

See PLAINT—VERIFICATION AND SIGNATURE I. L. R. 21 Calc 60
[L. R. 20 I. A 139
I. L. R. 16 All 420

——— ss 440-464

See CASES UNDER MINOR

——— s 443—*Effect of section on ss 74 and 76 of the Code of Civil Procedure—Service of summons on a minor* —Ss. 74 and 76 of the Code of Civil Procedure are controlled by s 443 of that Code JATINDRA MOHAN PODDAR *v* SRINATH ROY
[I. L. R. 26 Calc 267

——— s 462.

See CASES UNDER COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE

——— s 483 (1859 s 81)

See CASES UNDER ATTACHMENT—ATTACHMENT BEFORE JUDGMENT

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT
[I. L. R 17 Calc 436
L. R 17 I. A 17

——— ss 484 487 (1859 s 83)

See CASES UNDER ATTACHMENT—ATTACHMENT BEFORE JUDGMENT

——— ss 485 486

See LIMITATION ACT 1877 s 15
[I. L. R 14 All. 162
I L. R 17 All. 198
L R., 22 I. A 31

——— s 489 (1859 s 89)

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT Bourke O C., 139
[6 Mad. 135
1 N W 172
2 N W., 365
I. L. R. 26 Calc. 531

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

2 PARTIES TO SUIT—*continued*

——— s 491 (1859 s 88)

See COMPENSATION—CIVIL CASES
[3 W R Mis 28
6 W R Mis 24
I L. R 18 Bom. 717

——— s 492 (1859 s 92)

See CASES UNDER INJUNCTION—UNDER CIVIL PROCEDURE CODE

——— s 493—*Temporary injunction—Other injury* —The words or other injury in s 493 of the Code of Civil Procedure do not include acts of trespass upon property DARAB KUAR *v* GOMTI KUAR I. L R 22 All. 449

——— s 503 (1859 s 243)

See CASES UNDER APPEAL—MANAGEMENT OF ATTACHED PROPERTY

See CASES UNDER APPEAL—RECEIVERS

See CASES UNDER MANAGER OF ATTACHED PROPERTY

See CASES UNDER RECEIVER

——— s 505

See CASES UNDER APPEAL—RECEIVERS

See CASES UNDER RECEIVER

——— s 506 (1859 s 313)

See CASES UNDER APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—ARBITRATION REFERENCE TO

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION
[1 Ind. Jur O S 136
1 Mad 106
2 N W., 419
1 Agra Rev 49 63
1 B L R S N 11 10 W R. 171
I. L. R 23 Bom. 629
I. L. R 27 Calc. 61
4 C W N., 92

——— ss 506 526 (1859 ss 312 327)

See CASES UNDER ARBITRATION

——— s 521

See CASES UNDER ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE

——— s 522 (1859 s 325)

See CASES UNDER APPEAL—ARBITRATION

See CASES UNDER ARBITRATION—AWARDS

——— ss 525 526 (1859 s 327).

See CASES UNDER ARBITRATION—PRIVATE ARBITRATION

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

been dismissed one of the plaintiffs appealed and the sale was set aside *Held* that the decision must be considered as setting the sale aside as to the whole of that share although the other parties did not appeal NAGAR v SHURIUTOOLLAH 20 W R. 77

16 ———————— *Appeal by alienee of Hindu widow—Suit by reversioner*—In a suit by the reversioners against a Hindu widow and her patnidar impugning the act of the widow in granting the patni as an act of waste prejudicial to their interests and claiming to set aside the patni as invalid and obtain immediate possession a decree was granted against both defendants *Held* that under s 337 of the Civil Procedure Code the patnidar had such an interest as would entitle him to appeal against that part of the decree which regarded the rights of the widow as well as that part which affected himself HURRY KISSEN DOSS v LALL SOONDER DOSS 1 Ind. Jur O S 32

LALL SOONDER DOSS v HURRY KISSEN DOSS [Marsh. 113 1 Hay 339

17 ———————— *Power of Appellate Court to reverse decision as regards person not party to the appeal*—In a suit against *A* and *B* for the recovery of the possession of property the Court gave a decree against *A* and in favour of *B* The plaintiff appealed from that part of the decision which was in *B*s favour *Held* that the Judge on appeal had no jurisdiction to reverse the decision of the Court below against *A* he being no party to the appeal HURRO CHUNDER ROY v LALLCHUND BANERJEE Marsh. 256 2 Hay 48

LALLA RAMSURUN LALL v LOKEBAS KOOER [18 W R 39

18 ———————— *Original decree making liable one defendant out of several*—In a suit by *A* against *B* and *C* in which a decree was given against *B* alone—*Held* that *C* could not be made liable either on the appeal of *B* or on the cross appeal of *A* to *B*s appeal GREESH CHUNDER SINGH v GOURMOHUN BANERJEE 7 W R. 49

19 ———————— *Reversal of decree on appeal by one defendant*—*A* and *B* were sued on a joint liability to pay rent *A* did not defend *B* did and a decree passed against both *B* appealed. *Held* that it was competent to the Judge on appeal to reverse the decree on the ground that there was no joint liability but that *B* occupied a separate estate at a separate rent LUKHEE KANT SEIN v RAMDEYAL DOSS [Marsh. 281 2 Hay 288

20 ———————— *Main ground of decree affecting all defendants*—The plaintiff sued on a mortgage bond executed by the first defendant The second defendant who claimed the property under a mortgage from the first defendant was admitted a defendant on his own application but afterwards excluded from the suit Before this was done he had incurred certain costs which by the Munsif's

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

decree he was ordered to bear himself Upon appeal by the first defendant the Civil Judge found that the mortgage bond sued upon was not proved dismissed the suit and ordered the plaintiff to pay all costs those of the second defendant included. *Held* that under s 337 of the Civil Procedure Code it was competent to the Civil Judge so to modify the Munsif's decree as the main ground of the whole decision—viz the validity of the mortgage bond—affected all the defendants in common, and the appeal of the first defendant and the decision of the Appellate Court had reference to that common ground. YERRA BALU VIRARAGAVA REDDI v ABDUL KHADIR [4 Mad. 26

21 ———————— *Suit on bond—Appeal by one of several defendants*—In a suit for recovery of R300 due on a bond the defendants denied the execution of the bond and the receipt of the consideration The Court of first instance decreed the suit which on appeal by one of the defendants was dismissed. *Held* that under s 337 Act VIII of 1859 the Judge had no power on appeal by one defendant to set aside a decree against the other SRIRAM GHATAK v BRAJAMOHAN GHOSAL [3 B L R. App 41 11 W R. 449

RUGGHOONAUTH NEWGY v SUDHAMOYEE DABEA [Marsh., 106 1 Hay 183

22 ———————— *Any ground common to all the plaintiffs or to all the defendants—Appellate Court Power of*—S 544 of the Civil Procedure Code presupposes a common ground of decision affecting property in which both those who have appealed and those who have not appealed have an interest direct or indirect Thus a District Judge has no power under this section to reverse the decree of a lower Court given for a plaintiff in favour of a defendant who did not appeal and in respect to property in which the other defendants who did appeal disclaim all interest *Sriram Ghatak* v *Braja Mohan Ghosal 3 B L R App 41* and *Appa Rau* v *Ratnam I L R 13 Mad 249* cited and followed *Seshadri* v *Krishnan I L R 8 Mad 192* and *Nagamma* v *Subba I L R 11 Mad 197* distinguished HUSSAIN v MADAN KHAN I L R 17 Mad. 265

23 ———————— *Intervenor—Parties—Appeal—Decree set aside on appeal by one defendant*—*D C S* the zamindar brought a suit against *B* a raiyat for recovery of arrears of rent valued below R100 *B* set up in defence that the rent was not payable to *D C S* but to *N C A* the mokurraridar *N C A* who claimed under a mokurari title and alleged that he was in receipt of the rents from the raiyats was made a party under s 73 Act VIII of 1869 The Munsif passed a decree in favour of the plaintiff On appeal by *N C A* which was heard and decided by the Subordinate Judge on reference by the District Judge the decree of the first Court was reversed and the suit dismissed. On appeal to the High Court—*Held* that *N C A* was properly

made a defendant to the suit and that he could prefer an appeal from the decree of the Court of first instance and that the Court of Appeal could on his appeal set aside the whole decree DAYAL CHAND SAHOY *v* NABIN CHANDRA ADHIKARI

[8 B L R 180 16 W R 235

24. ——————— *Suit against agent and surety* —In a suit for collection papers and moneys against a gomastah and his surety a decree was given against the gomastah and the surety was absolved from liability Plaintiff appealed to make the surety liable and the Judge on appeal dismissed the claim against both defendants *Held* that as the decision of the first Court did not proceed on a ground common to the two defendants the Judge was wrong in reversing it as against the gomastah RAM MOHINEE DEBIA *v* JABED SIRCAR

[6 W R Act X 62

25 ——————— *Substantial change in suit —Alteration or reversal of decree where only some defendants are made parties* —Where a suit at the time of institution within the jurisdiction of the Court in which it is brought has undergone a substantial change and become a suit which by law requires the order of a superior tribunal for its hearing in the original Court and such order has not been obtained plaintiff cannot subsequently on appeal be allowed to revert to the original form of the suit for the purpose of upholding the lower Court s judgment as far as regards the original defendant so that in an appeal to which only the original defendants were made parties the Court refused to reverse or alter the decree BULDEO DASS *v* BULDEO DASS 3 N W, 199

26 ——————— *Persons not parties to proceedings in appeal not bound by the result of those proceedings* —Decrees in three separate suits for the partition of a certain estate having been referred to the Collector of Patnagiri for execution under the Civil Procedure Code (Act XIV of 1882) s 265 *B* and *R* (brothers of the first appellant) who were parties to the suits objected to the Collector's mode of partition and applied to the Court to set aside the Collector's scheme and to direct a fresh partition The Subordinate Judge of Vengurla granted the application and set aside the partition ordered by the Collector Against this order *V* who was plaintiff in one of the suits appealed to the District Court and in the appeal he made *B* alone the respondent The District Court reversed the order of the Subordinate Judge and upheld the order of the Collector Thereupon *B* preferred a second appeal to the High Court against the decision of the District Court To this appeal neither *R* nor his brother the present appellant were made parties The High Court having confirmed the decision of the District Court proceedings were taken to carry out the partition according to the Collector s original scheme The appellant objected on the ground that the Collector's scheme had been set aside by the Subordinate Judge and that the appellant had not been a party to the proceedings in either of the Appellate Courts He contended that he was therefore not bound by the decisions of the Appellate Courts and that the order of the Subordinate Judge setting aside the partition ordered by the Collector was still in force so far as he was concerned He therefore applied that the property should be divided in accordance with that order His application was rejected by the Court of first instance as time barred inasmuch as more than a year had elapsed since the date of the order of the Subordinate Judge and during that time the applicant had taken no steps to enforce the order On appeal the Acting District Judge confirmed the order of the lower Court holding that the order of the Subordinate Judge was no longer in force having been set aside by the High Court On second appeal to the High Court —*Held* that the appellant was not bound by the final decision of the High Court The original order being in his favour he could not be deprived of the benefit of that order without having the opportunity to defend it Not having been a party to the proceedings in appeal he was not affected by the result of those proceedings Where there are several respondents before the Court of first appeal though one of them may represent his fellows in a further appeal he cannot represent a person who was not his co respondent and against whom therefore no decree could have been made on a point common to the two or on any point at all DEV GOPAL SAVANT *v* VASUDEV VITHAL SAVANT I L R 12 Bom 371

27 ——————— *Appeal on full Court fee from decree dismissing suit in part— Remand of whole case though no cross appeal or objections preferred—Dismissal of whole suit on remand—High Court competent in second appeal to consider validity of remand order not specially appealed—Civil Procedure Code ss 544 561* — A plaintiff whose suit had been decreed in part appealed from so much of the first Court s decree as was adverse to him and stamped his memorandum of appeal with a stamp which would have covered an appeal from the whole decree The defendant did not appeal or file cross-objections The lower Appellate Court remanded the whole case to the first Court under s 562 of the Civil Procedure Code the plaintiff not appealing under s 588 (28) from the order of remand The first Court then dismissed the whole suit and on appeal by the plaintiff the lower Appellate Court confirmed the decree On a second appeal to the High Court —*Held* (i) that the High Court was competent to consider the validity or propriety of the order or remand though it had not been specifically appealed against; (ii) that the order of remand was *ultra vires* so far as it related to that part of the first Court s decree which was favourable to the plaintiff the lower Appellate Court not having jurisdiction in the absence of any appeal or objections by the defendant to disturb that part of the decree

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

Per MAHMOOD J—S 544 had no application to the case that section relating only to cases where one or more of the parties arrayed on the same side appealed against a decree passed on a ground common to all and not to cases where either of two opposite parties appealed from a part of the decree upon a Court fee sufficient for an appeal from the whole *Moheshur Sing* v *Bengal Government 7 Moore's I A 283* *Forbes* v *Ameeroonissa Begum 10 Moore's I A 340* and *Mukkun Lal* v *Sree Kishen Sing 12 Moore's I A 157* referred to CHEDA LAL v BADULLAH [I. L R. 11 All 35

28 ———— *Appeal by one of several plaintiffs claiming under a joint right—Decree in such appeal binds other co plaintiffs although not parties to the appeal—Procedure*—*A* and *B* brought a suit against *C* and obtained a decree awarding a part of their claim *B* appealed and the Appellate Court reversed the decree and rejected the plaintiff s claim altogether Subsequently *A* who had not joined in the appeal applied for execution of the original decree *Held* that although *A* had not been a party to the appeal he was bound by the decision of the Appellate Court and was not entitled to take out execution BABAJI DHONDSHET v COLLECTOR OF SALT REVENUE [I L R. 11 Bom. 596

29 ———— *Power of Appellate Court to alter decree on appeal by one party—Madras Civil Courts Act 1873—Jurisdiction of Munsif—Suit for partition and mesne profits*—*N* sued *S* and others for partition of a share of certain land and claimed mesne profits from other defendants who were tenants of the land. *S* obtained a decree by consent for her share and a sum of R93 was decreed to her against the tenants for mesne profits Against this decree the tenants appealed. The Subordinate Judge finding that the subject matter of the suit the land of which partition was claimed exceeded the jurisdiction of the Munsif reversed the decree of the Munsif and directed the plaint to be returned for presentation in the proper Court It was contended, on appeal to the High Court that the Subordinate Judge could not set aside the decree against the tenants for mesne profits *Held* that as the Munsif s Court had no jurisdiction to entertain the suit for partition it could make no decree for mesne profits and therefore the Subordinate Judge had power to set it aside NAGAMMA v SUBBA [I. L. R. 11 Mad. 197

30 ———— *Appeal—Ground of appeal common to all the judgment debtors—Reversal or modification of the decree as against all on appeal by one only*—S 544 of the Code of Civil Procedure does not enable an Appellate Court to decide upon a ground which it considers to be common to all the defendants an appeal preferred by one only of such defendants and to reverse or modify the decree of the Court below in favour of all the defendants unless the lower Court has proceeded upon a ground common to all the defendants It is only when the decree appealed against has proceeded upon a ground common to all the defendants that is when the Court below has made a decree against several defendants upon a finding which applies equally to all of them that under s 544 any one of the defendants may appeal against the whole decree and the Appellate Court may reverse or modify that decree in favour of all the defendants. *Protap Chunder Dutt* v *Koorbanissa Bibee 14 W R., 150* referred to. PURAN MAL v KRANT SINGH I. L. R. 20 All. 8

31. ———— *Decree proceeding upon ground common to several defendants—Decree upset in appeal but restored on appeal by one only of the defendants—Execution for costs by other defendants—Decree to be executed when there has been an appeal*—A suit brought against several defendants was dismissed with costs The plaintiffs appealed and the case was remanded to the Court of first instance under s 562 of the Code of Civil Procedure One of the defendants appealed against the order of remand to the High Court which set aside the order of remand and restored the decree of the first Court. *Held* that the decree of the first Court being restored in its entirety the defendants who had not appealed were entitled to take out execution of that decree for the costs awarded to them by it notwithstanding that they were not parties to the decree of the High Court *Muhammad Sulaiman Khan* v *Muhammad Yar Khan I L R 11 All 267* distinguished *Sohrat Singh* v *Bridgman I L R., 4 All, 376* referred to MUL CHAND v RAM RATAN [I. L. R., 20 All, 493

32 ———— *Appeal by only some of several defendants—Power of Court as to reversing decree as to all the defendants—Ground not common to all*—S 544 of the Code of Civil Procedure does not unless the decree itself proceeds on the ground common to all the defendants enable an Appellate Court to decide upon a ground which it considers to be common to all the defendants an appeal preferred by some only of such defendants and to reverse the decree of the Court below in favour of all the defendants *Puran Mal* v *Krant Singh I L R, 20 All 8* referred to CHAJJU v UMRAO SINGH I. L R 22 All, 386

33 ———— *Reversal of whole decree on appeal by one party—Appeal by two persons—Withdrawal of one appellant from appeal*—A decree was passed for the plaintiff in a suit to redeem a kanom brought against various persons most of whom disclaimed all interest An appeal was preferred by one of the defendants who claimed to be the jenmi of the premises comprised in the kanom and another who held a kanom from him The first mentioned appellant withdrew from the appeal which however was prosecuted by the other *Held* and the Appellate Court reversed the decree that since the appell[illegible] were the only substantial defendants the Appellate Court was right in allowing

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

the appeal to proceed SRIMANA VIKRAMAN v. NAYAN I. L. R. 16 Mad. 293

——— s 545 (1859 s. 338)

See CASES UNDER EXECUTION OF DECREE—STAY OF EXECUTION

See SALE IN EXECUTION OF DECREE—INVALID SALES—SALE PENDING APPEAL. [I. L. R 6 Mad. 93

See SURETY—ENFORCEMENT OF SECURITY
[I L R 12 Bom 71
I. L. R. 22 Calc 25
I. L. R 17 All 99
I. L. R 23 Calc 212

See SURETY—LIABILITY OF SURETY
[I L R 2 Bom 654
I. L. R. 3 Bom. 204

——— s 546 (Act XXIII of 1861 s 36)

See CASES UNDER EXECUTION OF DECREE—STAY OF EXECUTION

See SURETY—ENFORCEMENT OF SECURITY
[I L. R 8 All 639
I. L. R, 12 Bom 411
I. L. R 13 Mad 1
I. L. R 23 Calc 212

1. ——— s 548 (1859 s 341)—*Registration of petition of appeal*—The registration of a petition of appeal under s. 341 Act VIII of 1859 is a proceeding of a purely ministerial character JAFFER HOSSEIN v. MAHOMED AMIR [4 B L R. Ap 103 13 W R. 351

2 ——— *Appeal preferred after time—Power of Appellate Court*—*Held* by the majority of the Court (GLOVER J dissenting) that an Appellate Court after admitting and registering an appeal and serving notice on the opposite party has no power at the hearing to reject the appeal upon the ground that it was not preferred within the prescribed period. BHARUTCHUNDER ROY v. ISSURCHUNDER SIRCAR 8 W R. 141

——— s 549 (1859 s 342)

See CASES UNDER SECURITY FOR COSTS—APPEALS

——— *Restoration of appeal rejected for neglect to give security for costs*—An appeal although it may have been rejected by the Appellate Court under s 549 of the Code of Civil Procedure upon failure by the appellant to furnish security demanded under that section may be restored on sufficient grounds at the Court s discretion. The High Court having apparently treated an appeal as though after rejection of it under the above section a petition tendering security to the amount demanded and asking restoration of the appeal was not entertainable and could not be considered —*Held* by the Judicial Committee that restoration was within the Court s discretion and that there were grounds for it upon the appellant s giving approved security within such time as the Court might fix BALWANT SINGH v DAULAT SINGH I L R 8 All. 315

——— s 551

See APPEAL—DISMISSAL OF APPEAL
[I L R. 21 Bom 548
I. L. R. 24 Calc, 759
I. L R. 22 Mad. 293

See SPECIAL OR SECOND APPEAL—ADMISSION OR SUMMARY REJECTION OF APPEAL
[I L R 15 All. 367
I L. R, 22 Mad 293

1. ——— *Hearing of appeal ex parte*—The plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant a Hindu widow The second defendant answered that his father and the first defendant s husband were undivided brothers and that as a childless widow she had no right to sell the property Both the lower Courts upheld the sale as absolute on the ground that she was competent to make it as widow of a separate Hindu The District Judge heard the appeal *ex parte* under s 551 of the Civil Procedure Code The High Court on second appeal held that the decrees of the lower Courts were unsustainable as they did not contain the limitation pointed out above and remanded the case for the trial of the issue whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff The High Court were also of opinion that the District Judge ought not to have disposed of the appeal *ex parte* under s 551 of Act X of 1877 GURUNATH NILKANTH v KRISHNAJI [I. L. R. 4 Bom., 462

2 ——— *Order of adjudication—Decree—Judgment*—The order of adjudication made under s 551 of the Civil Procedure Code is a decree and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment ROYAL REDDI v LINGA REDDI [I. L. R 3 Mad. 1

——— s 553 (1859 s 345)—*Notice of appeal—Time for deposit of talabana*—When a notice of appeal is transmitted by the High Court to a Court below with instructions to make a return within a specified time the appellant is entitled to the whole of the time allowed and may deposit his talabana and cause service of the notice any time within the period limited Where the appellant is denied this liberty by the lower Court he ought to come before the High Court with a substantial application for orders PUNGO DEBEE BOISTOBEE v HURRE NARAIN OOPADHYA 11 W R. 138

——— s 556 (1859 s 346).

See APPEAL—DEFAULT IN APPEARANCE
[I. L. R. 2 All., 616
I. L. R. 3 All. 382 519
I L. R 12 Calc 605
I. L. R. 16 Bom., 23
I L R 15 All. 359

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See LETTERS PATENT HIGH COURT N W P CL. 10 I L R 14 All, 361 [I. L. R. 15 All. 359

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL [3 Mad 109 6 Mad 1 I L R. 27 Calc 529 4 C W N, 237

1 ———— *Dismissal of appeal for non appearance* —Where both parties make default in appearing at the hearing of an appeal the Court must dismiss the appeal and not go into the merits and reverse the decree MANICKRAM *v* ROOPNARAIN SINGH Marsh 5 1 Ind Jur O S 36

2 ———— *Miscellaneous cases—Notice of hearing* —S 346 Act VIII of 1859 (providing for the dismissal of an appeal for default) even if it applies to miscellaneous cases does not apply to a case in which it is not shown distinctly that the appellant had any notice that his appeal would be heard on the day to which the case was adjourned and on which the Judge disposed of it SHIB CHUNDER GOOPTO *v* ALLAD MONEE DASSIA [5 W R Mis 22

3 ———— *Dismissal on non appearance of appellant—Application for re admission* —Where a Judge on the non-appearance of the appellant in person or by pleader instead of observing the direction of the law Act VIII of 1859 s 349 goes into the merits of the case and gives a judgment against the appellant the appeal must be considered as dismissed for default of the appellant in appearing and an application for re admission and re hearing cannot be treated as one for review but must be entertained under s 347 MOHESH CHUNDER BOSE *v* THAKOOR DOSS GOSSAMEE 20 W R 425

4 ———— *Appearance of pleader without instructions* —Where the appellant himself does not appear and the pleader appears and states he is not instructed a judgment of dismissal for default is a proper judgment TRILOKE CHUNDER SEN *v* AUKHIL CHUNDER SEN 21 W R. 65

5 ———— s 556 and s 558—*Non attendance of appellant at hearing of appeal—Dismissal of appeal on the merits—Application for re admission* —In an appeal before an Appellate Court the appellant did not attend in person or by pleader and the Court instead of dismissing the appeal for default tried and dismissed it upon the merits. Subsequently the appellant applied to the Court under s 558 of the Civil Procedure Code to re-admit the appeal explaining her absence when the appeal was called on for hearing The Court rejected the application on the ground that the appeal had been decided on the merits and reasons had been recorded for its dismissal which there were no apparent grounds for setting aside *Held* that the Court should have dismissed the appeal for default and it was illegal to try it on the merits and the judgment was consequently a nullity the existence of which was no bar to the re admission of the appeal ZAINAB BEGAM *v* MANAWAR HUSAIN KHAN I L R 8 All, 277

———— s 558 (1859 s 347)

See CASES UNDER APPEAL—DEFAULT IN APPEARANCE

See LETTERS PATENT HIGH COURT N W P CL. 10 I. L. R 14 All 381 [I. L. R., 15 All., 359

See LIMITATION ACT ART 168 [8 W R. 61 15 W R. 80 I. L. R 23 Calc 339

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 62? [I L R 18 All. 119

1 ———— *Re admission of appeal struck off for default—Ground for re admission* —On an application under s 558 of the Code of Civil Procedure for the re admission of an appeal which had been decided *ex parte* against the applicant it appeared that he had been misled by reason of the appeal having been transferred from the file of one Court to another no notice of the transfer having been given to him by the pleaders in the case *Held* that under the circumstances, the applicant was entitled to have the appeal re admitted NARAIN SINGH *v* BHETRAB CHUNDER PANDA 8 C L. R., 350

2 ———— *Dismissal of appeal for default—Pleader present but unprepared to go on with case—Civil Procedure Code 1882 ss 556 558* —Where when an appeal is called on the pleader is not absent but is unprepared to go on with the case the dismissal is a dismissal for default within s 556 of Act XIV of 1882 and the appeal can therefore be re admitted under s 558 *Buldeo Misser v Ahmed Hossein, 15 W R 143* followed SHIB ENDRA NARAIN CHOWDHURI *v* KINOO RAM DASS [I L. R. 12 Calc 605

3 ———— *Dismissal of appeal for default—Pleader asking for time to go on with a case—Civil Procedure Code s 556* —The provisions of ss 556 and 558 of the Civil Procedure Code do not apply when the pleader for the appellant not merely informs the Court that he has no instructions but makes an application for postponement which is refused and the appeal is thereupon dismissed A second appeal does not therefore lie in such a case from an order of the first Appellate Court refusing to re admit an appeal under the provisions of s 558 of the Code of Civil Procedure WATSON & CO *v* AMBICA DASI [I. L. R, 27 Calc. 529

See RAM CHANDRA PANDURANG *v* MADHEO PURUSHOTTAM I L R., 16 Bom., 23

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

4. ———— *Dismissal of appeal for default of appearance—Civil Procedure Code s 556*—Where on an appeal being called on for hearing the vakil who held the brief for the appellant stated that he was unable to argue the case the fact being that the brief had come into his hands too late for him to prepare himself in the case and the appeal was in consequence dismissed it was *held* that this was not a dismissal for default of appearance *Shankar Dat Dube v Radha Krishna I L R 20 All 195* distinguished *Ram Chandra Pandurang Naik v Madhav Purushottam Naik I L R 16 Bom 23* referred to *Shibendra Narain Chowdhuri v Kinoo Ram Dass I L R 12 Calc 605* dissented from CHIRANJI LAL v KUNDAN LAL I. L. R. 20 All, 294

———— s 559

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS

1. ———— s 560—*Appeal ex parte—Application for re hearing*—An applicant presenting a petition for the re-hearing of an appeal decided *ex parte* must at the time of making such application be prepared to satisfy the Court that the notice of appeal was not duly served upon him or that he was prevented by sufficient cause from attending when the appeal was called on for hearing ANUNDA SHAHA BISWAS *alias* NYOMUDDIN SHA BISWAS v KEMA BEBEE I. L. R 6 Calc 548

2 ———— *Re hearing of appeal—Grounds for re hearing*—When an appeal has been heard *ex parte* a re hearing cannot be granted by the Court on an application under s. 560 of the Civil Procedure Code except upon legal evidence produced by the respondent of the facts necessary to entitle him to such re-hearing MAHOMED KALUN v DINOMOYEE DASHYA 8 C L. R. 112

3 ———— *Re hearing of appeal ex parte—Absence of respondent for sufficient cause*—S 560 of the Civil Procedure Code applies to a case in which the respondent has been prevented by sufficient cause from attending when the appeal was called on whether appearance has been entered for him or not ESAB v KRISHNA NARAIN DEY [11 C L R. 164

4. ———— *Re hearing of an appeal heard ex parte— Sufficient cause*—Where a party (respondent in an appeal) had received no intimation of the date of hearing of an appeal from his pleader's clerk who owing to his own illness had been compelled to go home the papers of the case being with him and who did not give information to the clients of the day fixed for hearing and the appeal was heard *ex parte* on the date of hearing—*Held* that it was sufficient cause within the meaning of s 560 Civil Procedure Code for the re hearing of the appeal KAILASH CHUNDER DAS v RAMA NATH CHAUDHURI 2 C W N 414

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

5 ———— *Non appearance of respondent on appeal—Appearance by pleader*—An appeal from a decree dismissing a suit having been heard and allowed in the absence of the defendant and his pleaders an application was made under s 560 of Act X of 1877 on the ground that the defendant had engaged pleaders to appear for him but that they were unavoidably prevented from appearing The application was granted and the appeal having been re heard the original decree was reversed. *Held* that although the vakalutnamahs had been filed by the defendant s pleaders the defendant could not be said to have appeared in person or by pleader and that the order made under s 560 of Act X of 1877 was correct *Haloo v Atwaro 7 W R 81* followed. SHEO CHURN LALL v HEERA LALL [11 C L R 537

———— s 561 (1859 s. 348)

See CASES UNDER APPEAL—OBJECTIONS BY RESPONDENT

See LIMITATION ACT 1877 s 5
[10 Bom. 397
I L. R. 4 All. 430
I. L. R. 7 Calc 654
I. L R. 9 Calc. 631

See PRIVY COUNCIL PRACTICE OF—OBJECTIONS BY RESPONDENT
[I L R 23 Calc 922

———— s 562 (1859 s 351)—s 568 (1859, s 355)

See CASES UNDER REMAND

———— s 568 (1859 s 355)

See CASES UNDER APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

———— s 574 (1859 s 359)

See CASES UNDER JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT

———— s 575 (Act XXIII of 1861 s. 23)

See LETTERS PATENT HIGH COURT CL. 15
[4 B L. R. A. C 181

See LETTERS PATENT HIGH COURT CL. 36
[I L R 3 Bom. 204

See REVIEW—GROUND FOR REVIEW
[I. L. R. 11 All. 176

1 ———— *Act XXIII of 1861 s 23—Judges sitting in appeal from original civil jurisdiction*—S 23 of Act XXIII of 1861 referred only to the late Sudder Court and although this Act formed part of the Code of Civil Procedure it is clear that s 23 could not apply to Judges sitting in appeal from the original civil jurisdiction for this reason that all the Judges of the Court so sitting in appeal are supposed in law to be equal whereas s 23 of Act XXIII of 1861 only contemplated an appeal from a Court of inferior jurisdiction to the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

late Sudder Court and had nothing at all to do with the Court of Appeal from the original civil jurisdiction as that Court is now constituted GREENWAY *v* HOGG **Bourke A O C, 139**

2 ——— *Difference of opinion between two Judges*—It was held under this section that if the Judges differed in opinion on points of law and did not state the points on which they differed there was no determination of the case so that if the case were then referred to other Judges for final determination they would have jurisdiction to go into the whole case KHELUT CHUNDER GHOSE *v* TARACHURN KOONDOO CHOWDHRY **[6 W R. 269**

3 ——— *Order in execution of decree—Appeal—Party to suit—Semble*—S 23 applied to orders made in execution of decrees but the right of appeal was given only as between the parties to the suit in which the decree or order was made ANNAMALAI CHETTI *v* MUTHULINGA PILLAI **6 Mad. 360**

4. ——— s 575—*Rules made by High Court N W P—Reference of appeal to other Judges of same Court—Composition of Bench hearing referred appeal—Presence of referring Judges necessary*—The only Bench which can legally deal with an appeal which has been referred under the provisions of s 575 of the Civil Procedure Code is one which includes the Judges who first heard the appeal and whose difference in opinion on a point of law necessitated the reference *Khelat Chunder Ghose* v *Tara Churn Kundoo Choudhry 6 W R 269 Mahomed Akil* v *Asad un nissa Bibi B L R Sup Vol 774* and *Brand* v *Hammersmith and City Railway Company 36 L J Q B 137* referred to The word judgment as used in Rule II of the Rules made by the High Court North Western Provinces to regulate references under s 575 of the Civil Procedure Code must not be understood in its strict sense but merely as an expression of opinion containing reasons for a contemplated or proposed judgment ROHILKHAND AND KUMAON BANK *v* ROW **I L R 6 All. 468**

5 ——— *Difference of opinion between Judges hearing appeal— Judgment —Reference to Full Bench after delivery of dissentient judgments on the appeal—Reference ultra vires*—Where a Bench of two Judges hearing an appeal and differing in opinion have delivered judgments on the appeal as judgments of the Court without any reservation they are not competent to refer the appeal to other Judges of the Court under s 575 of the Civil Procedure Code *Rohilkhand and Kumaon Bank* v *Row I L R 6 All 468* referred to LAL SINGH *v* GHANSHAM SINGH **I. L. R 9 All. 625**

6 ——— *Practice—Appeal—Difference of opinion on Division Bench regarding preliminary objection as to limitation—Letters Patent N W P s 627*—S 27 of the Letters Patent for the High Court of the N W Provinces has been superseded in those cases only to which s 575 of the Civil Procedure Code properly and without straining language applies There are many cases to which s 575 even with the aid of s 647 does not apply and to these s 27 of the Letters Patent is still applicable One of the cases to which s 575 of the Code does not apply is where a preliminary objection being taken to the hearing of a first appeal before the High Court on the ground that the appeal is time barred the Judges of the Division Bench differ in opinion as to whether the appellant has shown sufficient cause within the meaning of s 5 of the Limitation Act (XV of 1877) for not presenting the appeal within the prescribed period. The decision of such a preliminary objection is not a hearing of the appeal but precedes the hearing or determines that there is no appeal which the Court can hear or decide Where such a preliminary objection is allowed it cannot be said that the Court which by reason of the Limitation Act has no jurisdiction to hear the appeal should nevertheless affirm the decree of the Court below In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided) the opinion of the senior Judge should under s 27 of the Letters Patent prevail *Appaji Bhivrav* v *Chirlal Khubchand I L R 3 Bom 204* and *Gridhari Maharaj Tickait* v *Porushotum Gassami I L R 10 Calc 814* distinguished HUSAINI BEGAM *v* COLLECTOR OF MUZUFFARNAGAR **[I. L R., 11 All. 176**

7 ——— *Composition of Bench to hear appeal referred to a third Judge under s 575 of the Civil Procedure Code—Judges differing in opinion —Quære*—Whether where there is a difference of opinion between the two Judges of a Divisional Bench who have delivered judgment on the matter of the appeal the reference to a third Judge under s 575 of the Civil Procedure Code should be heard by the third Judge sitting separately or by a Bench composed of the third Judge and the two Judges who first heard the appeal and differed in opinion *Rohilkhand and Kumaon Bank* v *Row I L R 6 All 468* referred to *Per* WEIR *J*—The language of s 575 does not imply that the appeal must necessarily be heard again at the reference by the two Judges who first heard it and differed. SUBBAYYA *v* KRISHNA **[I. L R. 14 Mad, 186**

8 ——— *Appeal referred owing to a difference of opinion on a point of law*—Where owing to the difference of opinion between two Judges an appeal was referred to the Chief Justice under Civil Procedure Code s. 575 and was heard by him sitting with the two other Judges—*Held* that the whole appeal was open for argument and not only the point of law on which the Judges had differed in opinion SESHADRI AYYANGAR *v* NATARAJA AYYAR **[I. L. R, 21 Mad., 179**

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877) *continued*

9 ———— *Decision when appeal heard by two or more Judges—Letters Patent of 1865 cl 15* s 575 of Act XIV of 1882 does not take away the right of appeal which is given by cl 15 of the Letters Patent When the judgment of a lower Court has been confirmed under s 575 of the Code of Civil Procedure by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below an appeal will lie against such judgment notwithstanding the terms of s 575 *Appaji Bhivrav v Shiblal Khubchand I L R 3 Bom 204* approved. GRIDHARIJI MAHARAJ TICKAIT v PORUSHOTUM GOSAMI I. L. R. 10 Cal. 814

———— ss 577 578 (1859 s 350)

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW

See CASES UNDER APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE

———— ss 579 580 (1859 s 360 Act XXIII of 1861 s 26)

See CASES UNDER DECREE—FORM OF DECREE—COSTS

———— s 582 (Act XXIII of 1861 s 37)

See ABATEMENT OF SUIT—APPEALS
[I. L R. 7 All. 693 734
3 Bom A C 81
12 C L R. 45
I. L. R. 11 All. 408

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL
[1 B L R A C 155
10 W R. 160
4 W R 109
14 W R O C 17

See CASES UNDER APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—ARBITRATION REFERENCE TO

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—PLAINT AMENDMENT OF
[I. L. R. 19 Bom 303

See CASES UNDER LIMITATION ACT 1877 ARTS 171 171A AND 171B

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS

See WITHDRAWAL OF SUIT
[Bourke A O C 99
14 W R. O C 17
I. L. R 8 All. 62

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

———— s 582A

See LIMITATION ACT s 4
[I. L R 22 Bom. 849
I. L R 26 Calc 925

———— s 583 (1859 s 362)

See s 244—QUESTIONS IN EXECUTION OF DECREE I. L. R. 7 All. 432
[I. L R. 22 Calc 501

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT
[I L R 11 Mad. 258
I L. R. 13 Bom 485

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR
[I L R 7 All. 197
I L. R 11 Mad. 261
I. L. R. 21 Calc 989

See PRE EMPTION—PURCHASE MONEY
[I L R. 10 All. 400
I. L R 18 All. 262

See RESTITUTION OF RIGHTS BY MOTION
[I. L R. 21 Calc 340
I. L R. 19 All 136
I L R 20 All. 139 430
I L. R 21 All 1
I. L R 23 Mad., 306

See SURETY—ENFORCEMENT OF SECURITY I L R 12 Bom 411
[I L R, 13 Mad 1
I L R 17 All 99

———— *Act VIII of 1859 s 362—Application for execution of decree*—An application for execution of the decree of an Appellate Court should be made to the Court which passes the first decree in the suit irrespective of any previous order referring the case for execution RAM JADUB SIRCAR v AMEEROONISSA BIBEE 13 W R, 27

———— s 584 (1859 s 372)

See CASES UNDER SPECIAL OR SECOND APPEAL.

1.———— *Decision Interpretation of—Appeal*—By the word decision in s 372 of Act VIII of 1859 was meant the decree and judgment taken together and not simply the decree unexplained by the judgment INDRAJIT KOONWARI v CHOKOWRI SAHU B L R. Sup Vol. 1

2 ———— *Construction of—May*—The word may in Act VIII of 1859 s 3 . does not imply by some possibility but means may not improbably LAL CHUNDER CHOWDHRY v KASHEE MOHUN 21 W R. 57

———— s 585

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL
[I. L R 17 Calc 291
L R 16 I A 233
I L. R, 15 All, 123

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 586 (Act XXIII of 1861 s 27)

See APPEAL—ORDERS
[I L R, 3 All 18
I L R 7 Bom. 292
I L R 10 Calc 523
I L R 22 Calc 734
I L R 19 Mad. 391

See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION

See CASES UNDER SPECIAL OR SECOND APPEALS—SMALL CAUSE COURT SUITS

——— s 587 (1859, ss 373, 374 Act XXIII of 1861 s 25)

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL 1 Mad. 250
[I L R 4 Mad 419
Agra F B 100 Ed 1874 75
I L R 9 All. 147
I L R 15All. 123

1 ——— *Act VIII of 1859 s 374 —Ground of appeal not taken in petition* —S 374 leaves it in the discretion of the Court to admit any new ground of appeal arising out of the proceedings though it may have been omitted in the petition of special appeal JOYKISHEN MOOKERJEE *v* RAJ KISHEN MOOKERJEE 5 W R, 147

2 ——— and s 567—*Appeal from appellate decree—Issue of fact referred to Appellate Court—Objection—Finality of finding* —A District Court on appeal having reversed the decree of a District Munsif s Court and dismissed the suit upon a preliminary point of law the High Court on appeal from the District Court s decree reversed it and directed the District Court to submit its finding to the High Court upon an issue of fact which had been framed and tried by the District Munsif but had not been decided by the District Court Upon the return of the finding upon this issue to the High Court a memorandum of objections to the finding was presented under s 567 of the Code of Civil Procedure *Held* that as the words as far as may be in s 587 (by which the provisions of Ch XLI are made applicable to appeals from appellate decrees) must be taken to mean as far as is consistent with the principles on which appeals from appellate decrees are admitted and determined no objections could be taken to the finding of the District Court under s 567 of the Code of Civil Procedure HINDE *v* PONNATH BRAYAN
[I L R 7 Mad. 52

——— s 588 (1859 ss 363 364 365)

See CASES UNDER APPEAL

See LETTERS PATENT HIGH COURT CL. 15
[I L R 9 Mad. 447
I L R 19 Mad 422
I L R 20 Mad 152, 407

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

See LETTERS PATENT HIGH COURT N W P CL 10 I L R, 11 All 375
[I L R 14 All, 361
I L R 15 All 359
I L R 16 All 443

See REMAND—CASES OF APPEAL AFTER REMAND I L R 5 Calc 144
[I L R 7 All. 136
I L R 14 Bom 232
I L R 12 All. 510
I L R 17 Calc 169
I L R 19 Mad 422
I L R 18 All. 19

See CASES UNDER SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL

——— s 590

See INSOLVENT ACT S 73
[I L R 12 Calc 629

——— ss 590 591

See REMAND—CASES OF APPEAL AFTER REMAND I L R, 7 All 136
[I L R 14 Bom, 232
I L R, 12 All 510
I L R 15 All 119
I L R 18 Mad. 421
I L R 18 All. 19
I L R 22 All 366

——— ss 592 593 (1859 ss 367 370)

See PAUPER SUIT—APPEALS
[I L R 8 Mad, 504
1 N W 167 Ed. 1873 246
17 W R, 68

——— ss 595 608 (Act VI of 1874 s 4)

See CASES UNDER APPEAL TO PRIVY COUNCIL.

——— ss 596 600

See CASES UNDER LIMITATION ACT 1877 ART 177

——— s 608

See LETTERS PATENT HIGH COURT CL. 15
[I L R 21 Calc 473

See PRIVY COUNCIL, PRACTICE OF—STAY OF PROCEEDINGS IN INDIA PENDING APPEAL.
[I L R 14 Calc 290
L R 4 I A. 1
I L R 22 Calc. 1
L R 21 I A., 170
I L R 27 Calc., 1
4 C W N 34

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s. 610

See Execution of Decree—Orders and Decrees of Privy Council.
[I. L. R 5 Calc 329
I. L. R. 9 Calc. 482
I. L. R 8 All. 650
I. L. R. 20 Calc 105
I. L. R 22 Calc. 960
I. L. R 23 Calc. 283
2 C W N 89

See Surety—Enforcement of Security
[I. L. R. 2 All 604
I. L. R., 12 Calc. 402

s 617 (Act XXIII of 1861, s 28).

See Cases under Reference to High Court—Civil Cases

——— ss 617 618 and 619 620

See Cases under Small Cause Court Presidency Towns—Practice and Procedure—Reference to High Court

s 620

See Costs—Special Cases—Reference to High Court
[I. L R 15 Calc 507

s 622 (Act XXIII of 1861 s 35)

See Cases under Superintendence of High Court—Civil Procedure Code s. 622

s 623 (1859 s 376)

See Cases under Review

See Small Cause Court Mofussil—Practice and Procedure—New Trials
I. L. R 6 Calc 236
[I. L. R 10 Calc 297
I L R 8 Calc 287
I L R 5 Calc 699
I. L. R. 13 Mad. 178

ss 624 and 626C

See Review—Review by Judge other than Judge in Original Case

s 626 (1859 s 378)

See Cases under Review

629 (1859 s 378)

See Appeal—Orders
[I. L R 12 Bom 171
I. L. R 13 Bom 496
I. L R 16 Cal 788
I L R 18 All 44
I. L. R 22 Calc. 3 734 984
1 C W N 338
I. L. R 21 Bom 328
I. L. R 24 Calc. 879
4 C W N 30

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[I L. R. 11 Calc 296
I L R 16 Calc 788
I. L R 13 Bom 496
I. L. R. 12 Mad. 125
I. L. R. 11 All. 383
I L R 24 Calc 319 319 note 878

——— s 632

See Letters Patent High Court N W P cl 10 I. L. R. 11 All 375
[I. L. R 14 All., 226
I L. R 15 All 359

——— s 640 (1859 s 21)

See Commission—Civil Cases
[I L R 14 Bom 584

See Parda nashin Women
[8 W R 282
24 W R 375
3 C W N 750 751 753
I L R 26 Calc 650 651 note

——— s 642

See Arrest—Civil Arrest
[I. L R 5 Calc 106
I L R 4 Mad 317
I. L R 4 All 27
5 C L R 170
I L R 13 Mad 150

See Attachment—Attachment of Person I. L R 23 Calc 128

——— s 643 (Act XXIII of 1861 ss 16 and 19)

See Criminal Procedure Code 1882 s 476 I. L R 1 Calc 450
[7 Bom Cr 29
I L R 16 Calc 730

See Division Bench of High Court
[I L R 23 Calc 532

See Sanction to Prosecution—Nature Form and Sufficiency of Sanction
[I L R 7 All 871

1 ——— *Act XXIII of 1861 ss 16 and 19—Power of Civil Court to send case to Magistrate for trial of perjury and forgery* — Under ss 16 and 19 Act XXIII of 1861 Civil Courts had power to refer to Magistrates or to make commitments to the Sessions in cases of perjury or forgery only when they had come to some conclusion in respect of the guilt of the party concerned or the truth or otherwise of the document or evidence In the matter of the petition of Huronath Roy
[7 W R 482

2 ——— *Fraudulent execution of decree—Penal Code s 210—Civil Procedure Code 1877 s 258* —The fact that the provisions of s 258 of the Code of Civil Procedure have not been complied with does not render a commitment to a Magistrate

CIVIL PROCEDURE CODE ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s 586 (Act XXIII of 1861, s 27)

See APPEAL—ORDERS
[I L R 3 All 18
I L R 7 Bom. 292
I L R 10 Calc 523
I L R 22 Calc 734
I L R, 19 Mad. 391

See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION

See CASES UNDER SPECIAL OR SECOND APPEALS—SMALL CAUSE COURT SUITS

——— s 587 (1859 ss 373, 374, Act XXIII of 1861 s 25)

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL 1 Mad. 250
[I L R 4 Mad 419
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I L R 9 All. 147
I L R 15All, 123

1 ——— *Act VIII of 1859 s 374—Ground of appeal not taken in petition*—S 374 leaves it in the discretion of the Court to admit any new ground of appeal arising out of the proceedings though it may have been omitted in the petition of special appeal JOYKISHEN MOOKERJEE *v* RAJKISHEN MOOKERJEE 5 W R, 147

2 ——— and s 567—*Appeal from appellate decree—Issue of fact referred to Appellate Court—Objection—Finality of finding*—A District Court on appeal having reversed the decree of a District Munsif s Court and dismissed the suit upon a preliminary point of law the High Court on appeal from the District Court s decree reversed it and directed the District Court to submit its finding to the High Court upon an issue of fact which had been framed and tried by the District Munsif but had not been decided by the District Court Upon the return of the finding upon this issue to the High Court a memorandum of objections to the finding was presented under s 567 of the Code of Civil Procedure *Held* that as the words as far as may be in s 587 (by which the provisions of Ch XLI are made applicable to appeals from appellate decrees) must be taken to mean as far as is consistent with the principles on which appeals from appellate decrees are admitted and determined no objections could be taken to the finding of the District Court under s. 567 of the Code of Civil Procedure HINDE *v* PONNATH BRAYAN
[I L R 7 Mad. 52

——— s 588 (1859 ss 363 364 365)

See CASES UNDER APPEAL.

See LETTERS PATENT HIGH COURT CL. 15
[I L R. 9 Mad. 447
I L R 19 Mad 422
I L R 20 Mad. 152, 407

See LETTERS PATENT HIGH COURT N W P CL 10 I L R., 11 All 375
[I L R. 14 All, 361
I L R. 15 All. 359
I L R 16 All 443

See REMAND—CASES OF APPEAL AFTER REMAND I L R 5 Calc 144
[I L R 7 All. 136
I L R 14 Bom 233
I L R 12 All. 510
I L R 17 Calc 168
I L R 19 Mad 493
I L R 18 All. 19

See CASES UNDER SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL

——— s 590

See INSOLVENT ACT s 73
[I L R 13 Calc, 829

——— ss 590 591

See REMAND—CASES OF APPEAL AFTER REMAND I L R 7 All 136
[I L R 14 Bom. 232
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——— ss 592 593 (1859 ss 367, 370).

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[I. L. R. 8 Mad., 504
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——— ss 595 608 (Act VI of 1874 s 4)

See CASES UNDER APPEAL TO PRIVY COUNCIL.

——— ss 598 600

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——— s 608

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[I L. R., 21 Calc 473

See PRIVY COUNCIL, PRACTICE OF—STAY OF PROCEEDINGS IN INDIA PENDING APPEAL.
[I L R. 14 Calc. 230
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I. L. R. 22 Calc. 1
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4 C W N., 34

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (ACT X OF 1877)—*continued*

——— s. 610

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.
[I L R 5 Calc. 329
I L R., 9 Calc., 482
I L R 8 All. 650
I L R. 20 Calc. 105
I L R. 22 Calc. 960
I L R 23 Calc. 283
2 C. W N 89

See SURETY—ENFORCEMENT OF SECURITY
[I. L. R. 2 All 604
I. L. R., 12 Calc., 402

——— s 617 (Act XXIII of 1861 s 28).

See CASES UNDER REFERENCE TO HIGH COURT—CIVIL CASES

——— ss 617 618 and 619 620

See CASES UNDER SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT

——— s 620

See COSTS—SPECIAL CASES—REFERENCE TO HIGH COURT
[I. L R 15 Calc 507

s 622 (Act XXIII of 1861, s 35)

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s 623 (1859 s 376)

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See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS I. L. R 6 Calc 236
[I. L R 10 Calc 297
I L R 8 Calc 287
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——— ss 624 and 626C

See REVIEW—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE

s 626 (1859 s 378)

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——— s 629 (1859 s 378)

See APPEAL—ORDERS
[I. L R 12 Bom 171
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1 C W N 338
I. L. R 21 Bom. 328
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4 C 30

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[I L. R. 11 Calc 296
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I L R., 24 Calc., 310 310 note 878

——— s. 632.

See LETTERS PATENT HIGH COURT N W P cl. 10 I. L. R., 11 All., 375
[I. L. R., 14 All., 226
I L. R 15 All., 359

——— s 640 (1859 s 21)

See COMMISSION—CIVIL CASES
[I L R 14 Bom 584

See PARDA NASHIN WOMEN
[8 W R 282
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3 C W N 750 751 753
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——— s 642

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[I L R 5 Calc 106
I L R 4 Mad 317
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5 C L R 170
I L R 13 Mad 150

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——— s 643 (Act XXIII of 1861 ss 16 and 19)

See CRIMINAL PROCEDURE CODE 1882 s 476 I L R 1 Calc 450
[7 Bom Cr 29
I L R 16 Calc 730

See DIVISION BENCH OF HIGH COURT
[I L R 23 Calc 532

See SANCTION TO PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION
[I L R 7 All 871

1 ——— *Act XXIII of 1861 ss 16 and 19—Power of Civil Court to send case to Magistrate for trial of perjury and forgery*—Under ss 16 and 19 Act XXIII of 1861 Civil Courts had power to refer to Magistrates or to make commitments to the Sessions in cases of perjury or forgery only when they had come to some conclusion in respect of the guilt of the party concerned or the truth or otherwise of the docu ... IN THE MATTER OF THE PET ... URONATH ROY
[7 W R 482

2 ——— *Fraudulent execution of d ... — enal Code s 210—Civil Procedure Code s 7 s 2 8*—The fact that the provisions of s 2 8 of the Code of Civil Procedure have not been complied with does not render a commitment to a Magistrate

CIVIL PROCEDURE CODE AMENDMENT ACT (VII OF 1888)

——— s. 46

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION [I. L. R., 16 Calc 323

——— s. 48

See APPEAL—OBJECTIONS BY RESPONDENT I. L. R. 13 Mad., 492

——— s 49

See REMAND—POWER OF REMAND [I. L. R 16 Mad 207

——— ss. 53 66

See ABATEMENT OF SUIT—APPEALS [I L. R. 11 All. 408

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——— ss 55 56

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See DISTRICT JUDGE JURISDICTION OF [I. L. R 17 Mad. 377

——— s 57

See LIMITATION ACT 1877 ART 177 [I L. R, 15 All, 14

——— s 59

See REVIEW—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE [I. L R. 16 Bom., 603

——— s. 60

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See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—GENERAL CASES [I L R 21 Calc 249

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See DISTRICT JUDGE JURISDICTION OF [I. L R 18 Calc 496

——— s 3

See APPEAL—ORDERS [I L R, 12 Mad 472

See DISTRICT JUDGE JURISDICTION OF [I L R 17 Mad 377

CIVIL PROCEDURE CODE AMENDMENT ACT (VI OF 1892)

——— s 3

See COURT FEES ACT s 5 [I. L. R. 15 All 117

——— s 4.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT
[I L R. 15 All 84
I L R 18 Bom. 429
I L R 18 Mad 131
I L R. 17 All 106
I L R. 20 Bom 198

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT ETC [I. L R 18 Bom, 61

See LIMITATION ACT ART 179—STEP IN AID OF EXECUTION [I. L. R. 16 All. 75

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS
[I. L R 15 All 49 84
I. L R 18 Mad. 131

——— s. 5

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT
[I L R 17 All 106
L. R. 21 I. A 44

CIVIL PROCEDURE CODE AMENDMENT ACT (V OF 1894)

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION
[I L R. 21 Calc 940
I. L. R 22 Calc 787
I L R 18 Mad 477

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I L R. 23 Calc 682 958
I. L. R. 21 Mad 416
I. L. R 25 Calc 703
1 C W N 135 279
2 C W N 353
I. L. R. 23 Bom., 181, 450

CLAIM.

——— Abandonment of part of—

See CASES UNDER RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

——— Adjustment of—

See DEBTOR AND CREDITOR. [2 B L R. P C 98

CLAIM TO ATTACHED PROPERTY
—continued

brought a suit under that section for a declaration that M's interest in the property was that of a tenant and not that of a usufructuary mortgagee It appeare' that on the termination of M s tenancy the plaintiff let the land to another person *Held* that the suit would not lie AMJAD ALI v KUNKU SHAW

[9 B L R Ap 28 17 W R 304

36 ———————— *Claim by mortgagor in execution proceedings in Small Cause Court—Civil Procedure Code (Act XIV of 1882) ss 278 279 280 281 282 and 293—Presidency Towns Small Cause Courts Act (XV of 1882) s 37*—An order made upon a claim to attached property filed in the Small Cause Court of Calcutta in a proceeding under s 278 of the Civil Procedure Code is an order made in suit ' within the meaning of s 37 of the Presidency Small Cause Courts Act (Act XV of 1882) and is final subject only to the right to apply for a new trial *Ismail Solomon Bhamji v Mahomed Khan I L R 18 Calc 296* followed DENO NATH BATABYAL v NUFFER CHUNDER NUNDY

[I L R 26 Calc, 778
3 C W N 590

On appeal 4 C W N 470

37 ———————— *Effect on suit of satisfaction of decree and release of property—Intervenor—Cause of action—Civil Procedure Code (Act VIII of 1859) ss 246 247*—Where a person whose property has been attached in execution of a decree against another person and whose claim under s 246 of Act VIII of 1859 has been rejected brings a suit under the provisions of s 247 of Act VIII of 1859 it is no objection to that suit that previously to the filing thereof the decree (in execution of which the property had been attached) was satisfied by the judgment debtor and the property released from attachment SREEPUTTY MIRDHA v KARTICK SINGHA

[I. L. R 9 Calc 10 11 C L R 181

38 ———————— *Civil Procedure Code 1882 s 278—Claim to property directed to be sold under a mortgage decree—Attachment*—Proceedings by way of claim under s 278 of the Civil Procedure Code are applicable only to cases of money decrees where property has been attached and not to claims preferred to properties directed to be sold under mortgage decrees IN THE MATTER OF DEEFHOLTS DEEFHOLTS v PETERS I. L. R. 14 Calc 631

39 ———————— *Civil Procedure Code (Act XIV of 1882) ss 278 283—Mortgage decree Attachment*—If an executing Court does in the case of a mortgage decree for sale take action under s 278 Civil Procedure Code it applies a procedure which is inapplicable and the statutory bar contained in s 283 Civil Procedure Code does not operate to exclude a suit by either party *Bad Imam ali v Mahamad Yusuf I L R 1 All 391* and *Vithal Pandurang v Rama Pallaj I L R 9 Bom 35* distinguished. *Deefholts v Peters I L R 14 Calc 631* referred to. JOY PROKASH SINGH v ABHOY KUMAR CHUND 1 C W N, 701

40 ———————— *Claim on property ordered to be sold under a mortgage decree—Civil Procedure Code (1882) ss 278 and 287—Stay of sale in execution of decree*—H obtained a decree upon a mortgage against D in 1891 and applied in execution for the sale of the mortgaged property On the proclamation of the sale being issued K intervened alleging that the property had been sold to him by D in 1883 at a private sale The Subordinate Judge allowed his claim and stopped the sale being of opinion that he had power under s 287 of the Civil Procedure Code to make this order *Held* that the order was made without jurisdiction and must be discharged Proceedings by way of claim as provided by s 278 of the Civil Procedure Code (Act XIV of 1882) are not applicable where the property is directed to be sold under a mortgage decree and s 287 had no application *Deefholts v Peters I L R 14 Calc 631* followed HIMATRAM v KHUSHAL JETHIRAM GUJAR

[I. L. R, 18 Bom 93

41 ———————— *Order of attachment—Judgment debtor declared insolvent—Appointment of receiver—Vesting of insolvent's property in receiver—Objection to attachment—Jurisdiction to entertain objection—Civil Procedure Code s 278*—Where property has been made the subject of attachment under Ch. XIX of the Civil Procedure Code, the right of an objector to assert his claim to be the true owner of the property under s 278 and the jurisdiction of the Court to entertain the objection are not ousted by the mere circumstance that the judgment-debtor has been declared an insolvent and his property vested in a receiver under Ch XX It is the judgment debtor's property only not that of the objector that is thus vested PARAS RAM v KARAM SINGH

[I. L. R. 9 All. 232

42 ———————— *Claim to attached property in Calcutta Court of Small Causes—Attachment—Suit in High Court by unsuccessful claimant—Right of suit—Res judicata Code of Civil Procedure (XIV of 1882) ss 278 283—Presidency Small Cause Courts Act (XV of 1882) ss 9 23 and 37—Act X of 1859 s 2*—An order made upon a claim to attached property filed in the Small Cause Court of Calcutta under s 278 of the Civil Procedure Code 1882 is an order in the suit within the meaning of the Presidency Small Cause Courts Act 1882 s 37 and is final subject only to the right to apply for a new trial Where such a claim has been disallowed a suit brought under s. 283 of the Civil Procedure Code by the person against whom that order has been passed to establish the right which he claims to the property in dispute is not maintainable in any Court The exclusion by the Small Cause Court under the powers conferred on it by s. 23 of the Presidency Small Cause Courts Act 188_ of s 283 of the Civil Procedure Code has not been affected by Act X of 1888. ISMAIL SOLOMON BHAMJI v MAHOMED KHAN

[I. L. R. 18 Calc. 296

43 ———————— *Code of Civil Procedure ss 278 280 283—Investigation of claim to attached property*—The extent to which the investigation required by s. 280 should be carried

CLAIM TO ATTACHED PROPERTY
—continued

depends upon the circumstances of the case SAR DHARI LAL v AMBICA PERSHAD [I L R. 15 Calc 521 L. R. 15 I. A. 123

44. *Civil Procedure Code 1882 s 281—Order disallowing claim to attached property*—The effect of an order made under s. 281 of the Civil Procedure Code disallowing a claim to attached property is to give the auction purchaser a title as against the claimant unless the order is set aside by a suit KHUB LAL v RAM LOCHUN KOER I. L. R. 17 Calc 260

45 ——— — — — *Application by third party for removal of attachment—Order refusing to remove attachment—Omission by third party to bring subsequent suit to establish right to attached property—Subsequent withdrawal of attachment by attaching party Effect of—Subsequent claim to property by the party who had failed to remove attachment—Civil Procedure Code (1882) ss 2 8 and 283 – Title*—The plaintiff was the assignee of a mortgage decree dated the 2nd May 1885 In 1888 he attached the mortgaged property in execution of the decree whereupon the defendant intervened and applied to have the attachment removed on the ground that prior to the attachment she had purchased the land under a registered deed of sale dated the 23rd June 1888 Her application was rejected on the 27th September 1888 Subsequently the judgment debtors applied and obtained the Court s permission to sell the land by private contract and on the 1st November 1888 the plaintiff purchased it and withdrew his application for execution on the 20th November 1888 In 1889 the plaintiff brought this suit against the defendant to obtain the removal of certain portions of a culvert erected by her on the land The defendant pleaded that she was the owner of the property having purchased it on the 23rd June 1888 The Subordinate Judge passed a decree for the plaintiff on the ground that though the plaintiff s sale deed was not entitled to preference over the defendant s still as she had taken no steps to establish her right to the property in a regular suit after application for the removal of the plaintiff s attachment had been rejected effect could not be given to her purchase On appeal by the defendant the decree was reversed and the plaintiff preferred a second appeal *Held* confirming the appellate decree that when the plaintiff withdrew his attachment on the 20th November 1888 the parties were restored to the *status quo ante* The object of the claim which was preferred by the defendant was as contemplated by s 278 of the Civil Procedure Code (Act XIV of 1882) to obtain the removal of the attachment and when that attachment was removed by the judgment creditor's own act there was no longer an attachment or any proceeding in execution of which the order could operate to the prejudice of the claimant and therefore there was no necessity for her to bring a suit to set aside the order The defendant s title to the property having been acquired on the 23rd June 18 8 was superior to the plaintiff s which was not acquired before November 1888 GOPAL PURSHOTAM v BAI DIVALI I. L. R. 18 Bom 241

46 ——— *Suit to set aside order removing attachment—Suit for declaration of title—Adverse possession—Civil Procedure Code (1882) s 283*—The plaintiff obtained a decree against *I* and in execution attached the property in dispute The defendants intervened and obtained an order for the removal of the attachment on the 11th August 1888 On the 13th August 1889 the plaintiff instituted this suit for a declaration that the property belonged to his judgment debtor (*I*) and as such was liable to attachment and sale The defendants pleaded that they had been in possession of the property for more than twelve years prior to the institution of the suit and that the suit was therefore barred The Judge rejected the plaintiff s claim *Held* reversing the decree that the suit being brought under s 283 of the Civil Procedure Code (Act XIV of 1882) it was a suit to set aside the order of 11th August 1888 directing the removal of the attachment and should be determined by ascertaining the rights of the parties at the date of that order As the defendants had not at that date acquired a title to the property by adverse possession for twelve years the plaintiff was entitled to a decree HARISHANKAR JEBHAI v NARAN KARSAN I. L. R 18 Bom 260

47 ——— *Goods consigned to agent for sale on commission—Equitable assignment of goods by consignor—Goods attached by judgment creditor of consignor—Claim by agent—Civil Procedure Code (1882) s 280*—One *P* at Viramgam consigned certain bags of seed to *V H & Co* at Bombay for sale on commission and drew hundis against the goods for R3 200 which at his request *V H & Co* accepted and paid on receiving the railway receipts by post The goods were to be sold on arrival on *P* s account and the proceeds credited to him as against the advances made by the payment of the hundis On the arrival of goods at Bombay they were attached by *B S & Co* who had obtained decrees against *P* *Held* that *V H & Co* were entitled to the goods They had made specific advances against the goods *B S & Co* as attaching creditors occupied the same position as *P* himself and had no better claim to the goods than he had and if he had attempted to prevent the goods reaching the hands of *V H & Co* who at his request had made specific advances against them he would have been restrained by injunction *Held* also that at the date of attachment the goods were in possession of *P* by the railway company on account of or in trust for *V H & Co* in the sense in which that expression is used in s 280 of the Civil Procedure Code VELJI HIRJI v BHARMAL SHRIPAL [I L R 21 Bom., 287

48 ——— *Application by person holding claim—Form of application—Circular Order of High Court Bombay No 90 (c) —Court Fees Act Sch II cl 1—Notices to judgment-debtor*—A person holding a claim on property ordered to be sold in execution of a decree is required

CLAIM TO ATTACHED PROPERTY
—continued

to make the application contemplated in the High Court's Civil Circular No 90 ( ) page 40 of the Circular Orders The application must be in writing and bear the proper fee prescribed by sch II No 1 of the Court Fees Act (VII of 1870) The circular does not require any notice to be served on the judgment debtor Whether he is bound by the order passed in the proceedings must depend on the facts of each case LACHMICHAND HIRACHAND *v* TUKARAM **I L R 16 Bom 700**

49 ——— — *Civil Procedure Code (1882) ss 278 and 283 —Suit to have attached property declared not liable to attachment and sale—Suit without bringing claim under s 278—Right of suit* —The provisions of s 278 of the Code of Civil Procedure and the sections immediately succeeding are not exclusive of the remedy provided by s 283 of the Code *Man Kuar v Tara Singh I L R 7 All 583* considered SUNDAR SINGH *v* GHASI **[I L R, 18 All 410**

50 ——————— *Civil Procedure Code (1882) s 278 et seq —Effect of order under s 278* —An order in favour of one of several decree holders on an objection under s. 278 of the Code of Civil Procedure does not enure for the benefit of other decree holders who are not parties to the proceedings under s 278 *Badr Prasad v Muhammad Yusuf I L R 1 All 382* referred to JAGANNATH *v* GANESH **I. L R. 18 All 413**

51 ——————— *Civil Procedure Code (Act XIV of 1882) ss 278 283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s 278—Order made under s 281—Suit by claimant to establish right* —The first and second defendants obtained a decree in suit No 1548 of 1897 against *R* described as the owner of the Wahalin Mills and attached property on the mill premises Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons who were also described as owners of the Wahalin Mills and attached the same property In suit No 1548 of 1897 *F M* (the present plaintiff) under s 278 of the Civil Procedure Code claimed the property His claim was disallowed and he was ordered to bring a suit under s. 283 No claim or order was made in the case of the other twelve suits *F M* now sued in pursuance of the above order to recover his property and he included as defendants not merely those defendants (Nos 1 and 2) who had been plaintiffs in suit No. 1548 of 1897 but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. It was objected that no suit would lie against the latter as in their suits no claim had been made to the goods which they had attached, and no order made under s. 281 Civil Procedure Code *Held* that the suit lay against the defendants (other than Nos. 1 and 2) although no claim had been made or order passed under s 281 of the Civil Procedure Code The summary remedy given by s 278 of the Civil Procedure Code is alternative to the remedy by way of suit The object of s. 278 is not to deprive a claimant of

his remedy by suit but to give him if he is diligent a more speedy and summary remedy RAGHUNATH MUKUND *v* SAROSH RAMA **[I. L. R., 23 Bom 266**

52 ——————— *Civil Procedure Code (1882) ss 279 280 281—Attachment—Striking off—Execution proceedings—Question of nature of possession in claim suit* —*B* instituted a suit in the Subordinate Judge's Court Cuttack on the 24th of November 1887 against *R* for possession of the Dakhin Paresh Muth at Puri with the properties appertaining thereto and obtained a decree on the 30th April 1889 Execution having been applied for by *B* it was stayed pending the appeal to the High Court upon *R* giving security The decree of the Subordinate Judge's Court was set aside by the High Court but restored by the Privy Council and *B* was put in possession of the Muth with its properties in execution of the last mentioned decree between the 23rd of April and the 3rd of June 1895 Subsequent to the institution of the above suit *A* instituted a suit for recovery of a certain sum of money against *R* and obtained a decree and in execution thereof caused the attachment of the immoveable properties now in dispute on the 18th September 1890 and the application was dismissed for default and subsequently after the institution and dismissal of various proceedings in execution an order for sale of the properties attached on the 18th of September 1890 was applied for and obtained by *K* on the 15th of April 1895 *B* then put in his claim on the 23rd of May 1895 and it was disallowed on the 9th of September following *B* moved the High Court under s 15 of the Charter Act (24 & 25 Vict c 104) and s 622 Civil Procedure Code *Held* that the striking off an execution proceeding off the file is an act which may admit of different interpretations according to the circumstances under which it is done and no general rule can be laid down which would govern all cases of that kind but having regard to the circumstances of the present case that the Court below had no opportunity of considering the circumstances under which the several execution proceedings were dismissed it could not be held that there was no subsisting attachment and that the order of the Court below was bad in law *Held* further that the lower Court was wrong in holding that the decree obtained by *B* in the Subordinate Judge's Court did not show that he had an interest in the attached property merely because it was not final but had been appealed against To ree ncle s. 279 Civil Procedure Code with ss 280 and 281 the words some interest must be taken to imply such interest as would make the possession of the judgment-debtor possession not on his own account but on account of or in trust for the claimant *Held* also that it cannot be said that the properties in dispute which were admittedly in the possession of the judgment-debtor at the date of the attachment were in his possession not as his own property but on account of the claimant although the claimant obtained a decree against him and execution of such decree was stayed upon his giving security In the ... to claim

CLAIM TO ATTACHED PROPERTY —*concluded*

to attached property what the Code of Civil Procedure provides is a summary investigation into the question of possession and the question of title is required to be gone into only so far as it may be necessary to determine whether the person in possession holds such possession as agent of or as trustee for another Having regard to the facts that *K* the creditor brought her suit after the institution of the suit by *B* the claimant and also that the money covered by *K*'s decree was borrowed by *B* for the purpose of paying Government revenue due on account of the properties of the muth the questions that arise are whether the doctrine of *lis pendens* applies and whether the decree-holder can succeed upon the principle that a debt contracted for legal necessity by a mohunt *de facto* is recoverable from the endowed property in the hands of the mohunt *de jure?* These questions do not come within the scope of an investigation under the provisions of the Code of Civil Procedure relating to claims to attached property BHAGWAN RAMANUJ DAS *v* KHETTU MONI DASSI [1 C W N 617

——— Consolidation of—

See PRACTICE—CIVIL CASES—ADMIRALTY COURTS I. L. R. 22 Calc 511 [3 C W N 67

CLERK OF THE COURT

——— Functions of—*Ministerial officer*—It is not within the province of the Clerk of a Court to issue judicial orders on any subject He is merely a ministerial officer of the Court and any act which he is competent to perform must be of that character only and therefore not one to be judicially dealt with or rescinded by the Court GOSHAIN JAG ROOP GEER *v* CHINGUN LALL 2 N W 46

CLERK OF SMALL CAUSE COURT

See PRINCIPAL AND SURETY—LIABILITY OF SURETY I L R. 1 All 87

CLUB

1. ——— Expulsion of member by committee—*Maxim Audi alteram partem* — *G* having been expelled from a club by the committee on the ground that he had published a certain pamphlet which was considered to be a libel by the committee sued the members of the committee for damages and to have his name replaced on the list of members It was proved that in considering *G*'s conduct with reference to the publication of the pamphlet the committee took into consideration certain letters which *G* had written to certain members of the committee and that his expulsion was partly for printing the pamphlet and partly for writing the letters *Held* that as the decision of the committee was arrived at *bonâ fide* the Court had no right to decide whether the pamphlet was or was not a libel *Held* further that as *G* had no opportunity of defending himself on the charge of writing the letters his expulsion was illegal GOMPERTZ *v* GOLDINGHAM I L R 9 Mad 319

2 ——— Suit for price of goods supplied by club to a member—*Right of suit—Secretary of club*—An action to recover the price of goods supplied to a member of a non proprietary club or on his responsibility cannot be brought in the name of the secretary of the club MICHAEL *v* BRIGGS I. L. R. 14 Mad. 362

3 ——— Liability of the secretary of a club in respect of a contract entered into for the benefit of the members of the club —*Held* that the secretary of a club could not unless he specially accepted a personal liability be sued personally on a contract entered into on behalf of the members of the club by his predecessor in office nor could the members of a club collectively be sued through their secretary as their representative NORTH WESTERN PROVINCES CLUB *v* SADULLAH [I. L. R. 20 All. 497

CO DEFENDANT

See INSPECTION OF DOCUMENTS [I L. R. 17 Bom 384

See CASES UNDER RES JUDICATA—PARTIES —CO DEFENDANTS

CODICIL

See WILL—FORM OF WILL [I. L R 4 Calc 721

CODIFYING THE LAW OBJECT OF—

See STATUTES CONSTRUCTION OF [I L. R 23 Calc 563 L R 23 I A, 18

COERCION

See ACCOMPLICE [I L R 14 Bom, 115

See CONTRACT ACT SS 15 AND 16 [I L R. 13 Mad. 214

See CONTRACT ACT S 25 [I. L. R. 4 All. 352

See DURESS

COHABITATION

——— Agreement in consideration of—

See CONTRACT ACT S 23—ILLEGAL CONTRACT—GENERALLY [I L R 2 All, 433 I L R 6 All 313 L R 11 I A, 44 I. L. R 1 All. 478

See CONTRACT ACT S 25 [I L R 3 All, 787

COIN

See COUNTERFEITING COIN

See GAMBLING I. L. R. 6 Bom. 19
[I. L. R. 16 Bom. 283

COLLECTOR

See APPEAL—MEASUREMENT OF LANDS

See CASES UNDER EXECUTION OF DECREE—DECREES UNDER RENT LAW

See CASES UNDER EXECUTION OF DECREE—EXECUTION BY COLLECTOR

See FALSE EVIDENCE—GENERALLY
[I. L. R. 27 Calc 820

See MADRAS BOUNDARY ACT SS 21 25 28 I. L. R 12 Mad 1

See CASES UNDER MEASUREMENT OF LANDS

See CASES UNDER PARTIES—PARTIES TO SUITS—GOVERNMENT

See CASES UNDER PARTITION

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I. L. R. 17 Calc 872

——— **as Agent of Court of Wards**

See PLEADER—APPOINTMENT AND APPEARANCE I L R 15 Mad 135

——— **Application by where not party to suit.**

See PAUPER SUIT—SUITS
[I. L. R., 15 Bom 77

——— **Certificate of—**

See BENGAL TENANCY ACT s 84
[I. L. R. 18 Calc 271

See CASES UNDER HEREDITARY OFFICES ACT s 10

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS BOMBAY
[I. L. R. 18 Bom 525

See CASES UNDER PENSIONS ACT

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT

——— **Jurisdiction of—**

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS

See CASES UNDER JURISDICTION OF REVENUE COURTS

——— **of Sea Customs Madras**

See JUDICIAL OFFICERS LIABILITY OF
[I. L. R., 1 Mad. 89

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——— **Order of—**

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS

See RULES MADE UNDER ACTS
[I L R 12 All. 564
I L R 15 Bom 322

——— **Power of—**

See CASES UNDER COURT OF WARDS

See CASES UNDER SALE IN EXECUTION OF DECREE—RE SALES

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION 7 Bom Cr 64
[I L. R. 2 All. 533
I. L. R. 10 All 583
I L R, 19 All 121

See VILLAGE CHOWKIDAR ACT SS 48 AND 64 I. L. R., 21 Calc. 626

——— **Reference by—**

See BOMBAY CIVIL COURTS ACT s 16
[I. L. R., 16 Bom 277

See LAND ACQUISITION ACT
[I L R. 7 All 817
I L. R 19 All. 339

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT
[I. L. R. 14 Bom, 371
I L. R. 21 Bom. 806

See STAMP ACT 1879 s 50
[I L. R. 15 Mad. 259

1 ——— **Duty of Collector**—*Sale by Government through Collector—Giving possession to purchaser*—When a Collector by order of the Board of Revenue sells a khas mehal as of a specified area and jumma, and borne on the town under a certain number and name it is the duty of the Collector to point out and give possession of that which he has professed to sell WATSON & Co *v* SHURNOMOYEE
[9 W R. 259

2 ——— *Position and duties in executing decree of Civil Court—Civil Procedure Code 1882 ss 320 325—Execution of decree—Decree transferred to the Collector for execution—Civil Collector's duties and powers in execution—Civil Court's jurisdiction to revise Collector's proceedings in execution*—A decree was transferred to the Collector for execution The Mamlatdar under the orders of the Collector put up for sale certain immoveable property belonging to the judgment-debtors The sale was confirmed by the Mamlatdar with the sanction of the Collector Some time afterwards the auction purchaser applied to the Collector for a certificate of sale but the Collector refused the certificate and set aside the sale on the ground that the purchaser was a relative of the decree-holder and had really purchased the property on his behalf without the permission of the Court. Against this proceeding of the Collector the purchaser made an application first to the Subordinate Judge who had transferred

COLLECTOR—*continued*

the decree to the Collector for execution and then to the District Court But both Courts declined to entertain his application on the ground of want of jurisdiction *Held* on an application to the High Court that the Subordinate Judge had jurisdiction to deal with the application and to revise the Collector's proceedings in execution *Held* also that the Collector having through his subordinate put up for sale the judgment-debtor's property and confirmed the sale had in that way completely executed the decree so far as he could and was so far *functus officio* His duty was to make a return to the Court of what he had done After confirmation of the sale he could not set it aside *Per* WEST J —The Collector like the Nazir in India is a ministerial officer when he executes a decree He like the Nazir must carry out the decree of a Civil Court in general subjection to the judicial direction of the Court on whose authority the coercive power exercised by him rests and which alone can deal judicially with the questions that arise in execution His proceedings and orders are subject accordingly to revision and correction on the application of a party aggrieved whenever he misconceives the decree or acts illegally in giving effect to it He is limited strictly to the precise line of activity laid down for him in the Code and the orders under it and in cases of error or doubt it is the Court that must determine whether he as its ministerial officer has or has not transgressed his powers *Per* BIRDWOOD J —A sale made by a Collector under Ch. XIX of the Civil Procedure Code is subject to confirmation by the Civil Court under s. 312 As soon as the Collector has exercised or performed the power or duties conferred or imposed upon him by ss 321 to 325 of the Code he is *functus officio* if he has sold the property or resold it under the power given by cl (c) of s 325 he has completed the execution of the decree so far as he can legally complete it and it is then his duty to retransmit the decree to the Court under rules prescribed in that behalf by Government under the second paragraph of s 320 Where the property has been sold or re sold the sale or re sale cannot be set aside by the Collector Any application for setting it aside must be made to the Civil Court under s. 311 and dealt with by it under s 312 and if no application is made to the Court the sale must be confirmed by it under that section. LALU TRIKAM *v* BHAYLA MITHIA I L R 11 Bom 478

See KESHARDEO *v* RADHA PRASAD
[I L R 11 All 94

MADHO PRASAD *v* HANSA KUAR
[I L R 5 All 314

NATHU MAL *v* LACHMI NARAIN
[I L R 9 All 43

3 ———————— *Civil Procedure Code 1882 s 265—Execution—Decree for partition referred to Collector—Collector bound to partition and deliver over possession to several allottees under decree—Practice* —The duty of the Collector to whom a decree has been referred under s 265 of the Civil Procedure Code (Act XIV of 1882) for partition is not confined to mere division of the land decreed to be divided but includes the delivery of the shares to their respective allottees LARBHUDAS LAKHMIDAS *v* SHANKARBHAI
[I L R 11 Bom 662

4 ———————— *Civil Procedure Code ss 313 320—Transfer of execution of decree to Collector—Jurisdiction of Civil Courts to entertain application under s 313—Rules prescribed by Local Government under s 320—Notification No 671 of 1880 dated the 30th August* —*Held* that an application under s 313 of the Civil Procedure Code by the purchaser at a sale in execution of a decree which had been transferred for execution to the Collector in accordance with the rules prescribed by the Local Government was entertainable by the Civil Courts and the Collector had no jurisdiction under the Code or under Notification No 671 of 1880 to entertain it *Madho Prasad* v *Hansa Kuar I L R 5 All 314* referred to NATHU MAL *v* LACHMI NARAIN I L R 9 All 43

5 ———————— *Civil Procedure Code 1882 s 265—Execution of decree—Decree for partition—Land Revenue Code (Bombay Act V of 1879) s 113—Collector's power in executing partition decree—Civil Court's jurisdiction to control Collector's action* —Decrees in three separate suits for the partition of a certain estate having been referred to the Collector of Ratnagiri for execution under the Civil Procedure Code (Act XIV of 1882) s 265 *B* and *R* (brothers of the first appellant) who were parties to the suits objected to the Collector's mode of partition and applied to the Court to set aside the Collector's scheme and to direct a fresh partition The Subordinate Judge of Vengurla granted the application and set aside the partition ordered by the Collector Against this order *V* who was plaintiff in one of the suits appealed to the District Court and in the appeal he made *B* alone the respondent The District Court reversed the order of the Subordinate Judge and upheld the order of the Collector Thereupon *B* preferred a second appeal to the High Court against the decision of the District Court To this appeal neither *R* nor his brother the present appellant were made parties The High Court having confirmed the decision of the District Court proceedings were taken to carry out the partition according to the Collector's original scheme The appellant objected on the ground that the Collector's scheme had been set aside by the Subordinate Judge and that he (the appellant) had not been a party to the proceedings in either of the Appellate Courts He contended that he was therefore not bound by the decisions of the Appellate Courts and that the order of the Subordinate Judge setting aside the partition ordered by the Collector was still in force so far as he was concerned He therefore applied that the property should be divided in accordance with that order His application was rejected by the Court of first instance as time barred inasmuch as more than a year had elapsed since the date of the order of the Subordinate Judge and during that time the applicant had taken no steps to enforce the order On appeal the Acting District Judge confirmed the order of the lower Court holding that the order of

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the Subordinate Judge was no longer in force having been et aside by the High Court On second appeal to the High Court —*Held* that the appellant could not succeed in the present appeal the object of which was to revive the order of the Subordinate Judge That order was one which the Subordinate Judge had no power to make It involved taking the execution of the decree for partition out of the Collector s hands into his own in direct contradiction of the law In case of partition of lands s 265 of the Civil Procedure Code (XIV of 1882) and s 113 of the Bombay Revenue Code (Bombay Act V of 1879) place the execution of the decree entirely in the Collector's hands This does not deprive the Court of judicial control of its decree as for instance if it should appear to have been obtained by fraud or surprise but in the present case nothing of that kind was relied on Nor was it asserted that the Collector had acted in bad faith or contravened the command of the Court or transgressed the law What was alleged was that he had made an objectionable partition This was not a ground on which the Subordinate Judge could interfere LEV GOPAL SAVANT v VASUDEV VITHAL SAVANT I. L. R 12 Bom 371

6 ——————— —*Execution of decree for partition—Collector Power of to refuse execution—Ultra vires*—The plaintiffs obtained a decree against the defendants for partition and possession of their share in the lands in the village of Kasu That decree was sent for execution to the Collector In the meantime a revision survey had been introduced into the village under which th designation of some of the lands directed to be partitioned was changed from khoti to dhara lands The Collector proposed to partition them as described by the survey but the plaintiffs having declined the proposal he refused to partition the lands and returned unexecuted the decree to the Court On reference to the High Court —*Held* that the Collector had acted *ultra vires* The plaintiffs were entitled to have the lands partitioned quite independent of the result of the new survey as regards the character of the lands The proposal of the Collector was virtually to contravene the command of the Court which as a purely ministerial officer it was not in his power to do either directly or indirectly GANOJI UTEKAR v DHONDU

[I. L. R. 14 Bom. 450

7 ——————— *N W P Land Revenue Act (XIX of 1873) ss 3 sub s (1) 107—Partition—Wajib ul urz—Power of Collector on constituting a new mehal by partition to frame a fresh wajib ul urz for such mehal*—It is within the implied though not within the specified powers of a Collector while constituting new mehals by partition of a previously existing single mehal to frame a new wajib ul urz for each of the new mehals so constituted KEDAR NATH v RAM DIAL

[I L. R 15 All. 410

8 ——— Power of Collector—*Officer acting in two capacities—Criminal Procedure Code 1861 s 168*—A Collector who entertains a charge under s 168 of the Code of Criminal Procedure of an offence against any Court or public servant should not try the case himself as a Magistrate nor unless under very exceptional circumstances give evidence as a witness before himself as Magistrate QUEEN v NEHAL MAHTEE

[9 W R. Cr 13

9 ——————— *Power to authorise manager to sue—Beng Act IV of 1870 s 11—Quære*—Whether where the estate and effects of minors are by an order of the Civil Court vested in the Collector who appointed a manager under Act XL of 1858 the Collector has power under Bengal Act IV of 1870 s 11 to give authority to the manager to bring a suit in the Civil Court The point being a technical one and no substantial injury having been done the High Court refused to interfere IN THE MATTER OF KALEE DOSS ROY 18 W R 468

10 ——————— *Collector as manager of a minor's estate—Act XX of 1864 ss 11 and 15—Officer of Government—Act XIV of 1869 s 32—Jurisdiction*—Ss 11 and 15 of Act XX of 1864 taken together show that a Collector when appointed to take charge of the estate of a minor is so appointed in his capacity as Collector and therefore as an officer of Government within the meaning of Act XIV of 1869 s 32 NARSINGRAO RAMACHANDRA v LUXUMANRAO I. L. R. 1 Bom 318

11. ——————— *Civil Procedure Code 1882 s 424—Collector as guardian of ward—Notice in suit to recover money from estate of ward*—In a suit to recover money due on a promissory note executed by the deceased zamindar out of the estate of the deceased and of his son the defendant, a minor under the Court of Wards the Collector being appointed guardian *ad litem* of the defendant pleaded that under s 424 of the Code of Civil Procedure he was entitled to notice before suit and the suit was dismissed on the ground of want of notice *Held* on appeal that s 424 was not applicable to the case ANANTHARAMAN v RAMASAMI

[I L R. 11 Mad. 371

12 ——————— *Civil Procedure Code 1882 s 424—Notice to Collector—Collector joined a party in respect of minor s property administered by him to protect minor's title*—The plaintiff sued as purchaser at a Court sale of the interest of defendant No 1 to redeem and recover possession of the land in dispute alleging that it had been mortgaged by defendant No 1 to defendant No Defendant No 1 denied the mortgage and that he had any title to the land which he said belonged to E R and formed a part of R s desmukhi vatan E having died leaving a minor widow sued as defendant No 4 in the suit the estate was administered by the Collector On the application of the minor's personal guardians the Collector was joined as a party The Collector contended on the minor's behalf that the suit having been brought without notice to him as required by s 424 of the Civil Procedure Code (Act XIV of 1882) it was not maintainable The District Judge was of opinion that notice was necessary He therefore rejected the plaintiff's claim and ordered the sale to be set aside On appeal by the plaintiff to the High Court —*Held* that notice under s. 424 of the

COLLECTOR—*continued*

Civil Procedure Code (Act XIV of 1882) was not necessary. The Collector was made a party not in respect of any alleged illegal act by him but on the application of the minor's petitional guardians in order to protect the minor's title as set up by the first defendant. BHAU BALAPA *v.* NANA [I. L. R., 13 Bom. 343

13 ———— *Suit to cancel pottah of Government waste issued by Collector—Power of Collector to cancel pottah granted by him—Standing order—Mistake—Pottah granted by—* The plaintiff having obtained from the Revenue officers of the district a pottah of Government waste land sued for the cancellation of a pottah for the same land subsequently granted to other persons by the Collector who considered that the issue of the plaintiff's pottah was not in accordance with the darkhast rules. *Held* (1) it was not competent to the Collector even if the first pottah was granted by mistake to issue the second pottah in supersession of that issued to plaintiff (2) it was competent to a Civil Court to pass a decree declaring the second pottah null and void and the plaintiff was entitled to such a decree. *Kullappa Naik v. Ramanuja Chariyar* 4 *Mad.* 429 followed. COLLECTOR OF SALEM *v.* RANGAPPA I. L. R. 12 Mad. 404

14. ———— *Power of Collector as agent to Court of Wards—Contract Act s. 25 cl. 3—Promise to pay a time-barred debt—Mad. Reg. V of 1804 s. 17*—A Collector as agent to the Court of Wards has no authority to bind a ward of the Court of Wards by a promise under the Contract Act s. 25 cl. 3 to pay a debt which is barred by limitation. SURYANARAYA *v.* NARENDRA THATRAZ I. L. R. 19 Mad., 255

15 ———— *Civil Procedure Code (1882) ss. 295 and 320—Execution of decree—Power of Collector to deal with money realised through his Court in execution of a Civil Court's decree—Sale proceeds Distribution of—* Where a decree has been sent to the Collector for execution under s. 320 of the Code of Civil Procedure he holds any money which may be realized in execution of such decree at the disposal of the Civil Court by which the decree has been sent to him for execution and he is not competent to distribute such money in contravention of an order from the Civil Court. TAPESRI LAL *v.* DEOKINANDAN LAL I. L. R. 16 All. 1

16 ———— *Office of kazi—Hereditary office—Watan—Hereditary Offices Act (Bom. Act III of 1874) s. 9—Grant for public purposes—Resolution of Government—Possession Delivery of*—The office of kazi is not an hereditary office unless perhaps by special custom of the locality. Where such a custom is not established property attached to the office is not watan property and the Collector has no power to make an order with respect to it under s. 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamal valad Ahmed v. Jamal valad Jallal* I. L. R. 1 *Bom.* 633 and *Daudshaw Ismalsha* I. L. R. 8 *Bom.* 72 followed. A resolution of Government empowering a Collector to levy full assessment from the person other than the grantee in possession of land granted for public service does not authorize him to order the delivery of possession of the land to the grantee. BABA KAKAJI SHET SHIMPI *v.* NASSARUDDIN [I. L. R. 18 Bom. 103

17 ———— **Collector as Municipal Commissioner**—*District Magistrate—Act XIV of 1869 s. 32—Bom. Act VI of 1873—Jurisdiction—Acts done in public capacity*—Where the acts complained of by the plaintiff were committed by the Collector of a district appointed Municipal Commissioner under Act XXVI of 1850 s. 6 in his official capacity of District Magistrate and before Bombay Act VI of 1873 came into force—*Held* that the Municipal Commissioner was an officer of Government within the meaning of s. 32 of Act XIV of 1869 and ought to be sued in the Court of the District Judge and not in that of a Subordinate Judge. *Quære*—Whether a suit under Bombay Act VI of 1873 must be commenced in the District Court. GANGADHAR SHIVKARN *v.* COLLECTOR OF AHMEDNAGAR I. L. R. 1 Bom. 628

18 ———— **Decree for sale sent to Collector for execution**—*Power of Collector to vary decree—Responsibility of Collector to judgment creditor*—A Collector to whom a decree for sale of mortgaged property has been transferred for execution under s. 320 of the Civil Procedure Code is limited to one of the three courses specified in s. 321 and may not depart from them much less may he do what the Court itself could not do in such a case—allow payment of the debt to be made by instalments. A Collector to whom a decree has been so transferred for execution acts ministerially and, when he delegates his functions to an assistant or a mamlatdar incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment and this risk attaches independently of malice or negligence. MAHADAJI KARANDIKAR *v.* HARI D. CHIKNE [I. L. R. 7 Bom. 332

19 ———— **Order prohibiting receiving transit duties in British territory for Foreign State**—*Power of Collector*—*Held* that it was beyond the power of a Collector to issue an order prohibiting the receiving of transit duties for Holkar's Government in British territory. REG. *v.* VITHAL LAKSHUMAN 5 Bom. Cr. 13

20 ———— **Modification of orders of Assistant Collector**—*Mad. Regs. IX of 1822 and VII of 1828 s. 3—Power of Collector*—The authority of a Collector to modify confirm or reverse the decision of the Head Assistant Collector under s. 3 of Regulation VII of 1828 is not confined to cases decided under Regulation IX of 1822 only and the decision of the Collector under Regulation VII of 1828 is final. CHUNIA AIYAN *v.* MAHOMED FAKIRUDDIN SAIB 2 Mad. 322

21. ———— *Power to set aside decision under Mad. Act VIII of 1865*—A Collector has no power to set aside the decision of a Head Assistant Collector when the latter is exercising the

COLLECTOR—*continued*

the Subordinate Judge was no longer in force having been set aside by the High Court On second appeal to the High Court —*Held* that the appellant could not succeed in the present appeal the object of which was to revive the order of the Subordinate Judge That order was one which the Subordinate Judge had no power to make It involved taking the execution of the decree for partition out of the Collector s hands into his own in direct contradiction of the law In case of partition of lands s 265 of the Civil Procedure Code (XIV of 1882) and s 113 of the Bombay Revenue Code (Bombay Act V of 1879) place the execution of the decree entirely in the Collector's hands This does not deprive the Court of judicial control of its decree as for instance if it should appear to have been obtained by fraud or surprise but in the present case nothing of that kind was relied on Nor was it asserted that the Collector had acted in bad faith or contravened the command of the Court or transgressed the law What was alleged was that he had made an objectionable partition This was not a ground on which the Subordinate Judge could interfere LEV GOPAL SAVANT *v* VASUDEV VITHAL SAVANT I. L. R. 12 Bom 371

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COLLECTOR—*continued*

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service does not authorize him to order the delivery of possession of the land to the grantee. BABA KAKAJI SHET SHIMPI v. NASSARUDDIN [I. L. R. 18 Bom. 103

17 ———— **Collector as Municipal Commissioner**—*District Magistrate—Act XIV of 1869 s 32—Bom Act VI of 1873—Jurisdiction—Acts done in public capacity*—Where the acts complained of by the plaintiff were committed by the Collector of a district appointed Municipal Commissioner under Act XXVI of 1850 s 6 in his official capacity of District Magistrate and before Bombay Act VI of 1873 came into force—*Held* that the Municipal Commissioner was an officer of Government within the meaning of s 32 of Act XIV of 1869 and ought to be sued in the Court of the District Judge and not in that of a Subordinate Judge *Quære*—Whether a suit under Bombay Act VI of 1873 must be commenced in the District Court. GANGADHAR SHIVKARN v. COLLECTOR OF AHMEDNAGAR I. L. R. 1 Bom. 628

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19 ———— **Order prohibiting receiving transit duties in British territory for Foreign State**—*Power of Collector*—*Held* that it was beyond the power of a Collector to issue an order prohibiting the receiving of transit duties for Holkar's Government in British territory. REG v. VITHAL LAKSHUMAN 5 Bom. Cr. 13

20 ———— **Modification of orders of Assistant Collector**—*Mad Regs IX of 1822 and VII of 1828 s 3—Power of Collector*—The authority of a Collector to modify confirm or reverse the decision of the Head Assistant Collector under s 3 of Regulation VII of 1828 is not confined to cases decided under Regulation IX of 1822 only and the decision of the Collector under Regulation VII of 1828 is final. CHUNIA AIYAN v. MAHOMED FAKIRUDDIN SAIB 2 Mad. 322

21 ———— *Power to set aside decision under Mad Act VIII of 1865*—A Collector has no power to set aside the decision of a Head Assistant Collector when the latter is exercising the

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powers conferred on a Collector by Madras Act VIII of 1865 RAJARAM LALA v KALIAPPEN [5 Mad., 129

22 ——— **Objection to register and assess land transferred in accordance with Mad. Reg XXV of 1802** —A Collector is bound to register and sub assess a portion of a zamindari transferred in accordance with the provisions of Regulation XXV of 1802 such transfer not being opposed to Hindu or Mahomedan law or the existing law PONNUSAMY TEVAR v COLLECTOR OF MADURA [3 Mad. 35

23 ——— **Issue of summons to attend departmental enquiry**—*Mad Act III of 1869* —A Collector who in order to draw up a report for the information of Government holds a departmental enquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties is authorized under the provisions of Madras Act III of 1869 to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation SRINIVASA AYANGAR v QUEEN [I L R. 4 Mad 393

24 ——— **Power of Collector to transfer suits under the Rent Recovery Act**—*Mad Reg VII of 1828* —The Collector of a district is competent to transfer suits under the Rent Recovery Act filed before an Assistant Collector in his district to the file of any other Assistant Collector in the same district KAILASANATHA v TIRUVENGADA [I L R, 7 Mad. 420

25 ——— **Reference to district panchayet**—*Mad Reg XII of 1816—Village panchayet—Power of Collector* —A Collector cannot order a reference to a district panchayet under Regulation XII of 1816 unless there has been (1) an enquiry as to whether the parties will submit to the jurisdiction of a village panchayet (2) an objection from either party to such reference and a request in writing by one of the parties that the matter be referred to a district panchayet CHIKATI v PEDDAKIMEDI [I L R., 8 Mad. 569

26 ——— **Deputy Collector**—*Reference of cases to Munsif—Mad Reg XII of 1816—Act VII of 1857* —A Deputy Collector invested by a Collector with all the powers of a Covenanted Assistant or with the special power to determine claims under Regulation XII of 1816 is competent to refer cases under that Regulation for disposal to a District Munsif The authority must be delegated under s 3 Act VII of 1857 ANONYMOUS [4 Mad. Ap 1

27 ——— *Suit for resumption—Beng Reg II of 1819 s 30* —Under s 30 Regulation II of 1819 a Deputy Collector although authorized to put the case in such a state of preparation as to facilitate the hearing and decision by the Collector had no authority to pronounce a decision himself RADHAMADHUB GHOSE v KHIRUDNAUTH ROY 1 Ind. Jur O S 84

28 ——— *Suit under Beng Reg II of 1819* —A Deputy Collector has no jurisdiction to try a suit under s 30 Regulation II of 1819 but should return the plaint and refer the party to the Collector who has jurisdiction GOCREEKANT BANERJEE v LALL MAHOMED MOLLAH [W R F B 70 Marsh. 265 2 Hay 107

KALLY DASS BANERJEE v MUTTY LALL CHUCKERBUTTY Marsh. 483

29 ——— *Act XXII of 1872—Act XIV of 1863 s 8—Collector in charge of sub division* —A Deputy Collector who by virtue of Act XXII of 1872 must be deemed to have been a Deputy Collector in charge of a sub division within the meaning of Act X of 1859 and Act XIV of 1863 and whose powers for the decision of suits were therefore the powers of a Collector was transferred to the settlement department and heard and determined a suit under Act X of 1859 for enhancement of rent *Held* that his powers continued in him notwithstanding his transfer and that therefore he did not need to be re invested under s 8 of Act XIV of 1863 GIRDHAREE v DILSOOKH LAL [5 N W, 221

30 ——— *Deputy Collector whether a Court under Land Acquisition Act—Judicial Officer—Revenue Court—Prosecution for false evidence—Criminal Procedure Code 1898 s 476—Penal Code s 193* —The expression the Court in the Land Acquisition Act does not include a Collector nor is there any authority given to the Collector to administer an oath or to require a verification It is a false statement made under a verification that constitutes an offence under s 193 of the Penal Code not a verification oath or solemn affirmation The Deputy Collector acting under the Land Acquisition Act is not a judicial officer he cannot properly be regarded as a Revenue Court within the terms of s. 476 of the Code of Criminal Procedure his proceedings under the former Act are not regulated by the Code of Civil Procedure nor is he right in requiring a petition put in before him to be verified in accordance with that Code so as to make any false statement punishable as perjury The Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed a party dissatisfied can claim a reference to the Civil Court whose duty it is to settle the matter in dispute judicially therefore to subject parties who claimed the right to such a reference to a criminal prosecution when the matters on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act must be submitted to the determination of a Court is obviously premature and improper and is almost certain to operate very prejudicially towards them in the trial before the Civil Court of the same matter DURGA DAS RUKHIT v QUEEN EMPRESS [I L R., 27 Calc. 820

31 ——— **Deputy Collector not acting as Settlement Officer**—*Act XXII of 1872—Act I of 1874 ss 7 8* —The provisions of s. 2 of Act XXII of 1872 applied only to suits in which the proceedings of Deputy Collectors were liable

COLLECTOR—*continued*

to be set aside for want of jurisdiction and did not have the effect of reviving decrees passed by them which had been annulled in appeal or of annulling the decrees in appeal by which those decrees were annulled. Except in the cases of Deputy Collectors employed in making or revising a settlement Act I of 1854 made no provision for the validation of decrees of Deputy Collectors set aside for want of jurisdiction or for the invalidation of the decrees of the Appellate Courts which annulled those decrees *Quære—Whether the provisos to s 8 of Act I of 1854 that the provisions of the section should not apply to any case in which the holder of a decree made by an officer employed in making or revising a settlement and treated as invalid for want of authority in such officer had, before the passing of the Act obtained a decree in a competent Court in another suit on the same cause of action would have applied to a case where the holder of the decree brought another suit the decree in which was against him.* JEEWA RAM *v* ISREE 6 N W 153

32 ———— Deputy Collector acting as Settlement Officer—*Reg IX of 1825 ss 5 and 6*—Any Deputy Collector deputed and authorized under s. 6 of Regulation IX of 1825 to make an enquiry with the same powers and authority in regard to all lands held free of assessment and for the investigation of all claims touching such lands as by s 5 of the Regulation were vested in Collectors making settlements prescribed by Regulation VII of 1822 is justified in taking the initiative in cases in which the Government has no interest as in plots under 50 bighas with respect to which it has waived its right to resume in favour of the proprietor of the mehal BHOLAN MISSER *v* KANHIYA LAL 7 N W 302

33 ———— Transfer of case to Assistant Collector to record evidence —A Collector is incompetent to send a case to the Assistant Collector merely to record the evidence therein and when this is done all subsequent proceedings will be annulled. ZAIB-OONNISSA *v* ADJOODHYA PERSHAD [2 N W 98

BHOWANEE DUTT SINGH *v* BEER SINGH [2 N W 196

34. ———— Offence against the Stamp Laws—*Act XVIII of 1869 s 43*—The Collector being primarily responsible for the prosecution of offences against the Stamp Acts of 1869 and 1879 should not himself try as a Magistrate a person accused of an offence against either of those Acts EMPRESS OF INDIA *v* DEOKI NANDAN LAL [I L R. 2 All 808

35 ———— Agent of Court of Wards for disqualified proprietor—*N W P Land Revenue Act (XIX of 1873) s 204—Public officer—Civil Procedure Code 1877 ss 2 and 424*—A Collector when acting under s 204 of Act XIX of 1873 as the agent of the Court of Wards in respect of the estate of a disqualified person is *a public officer within the meaning of ss 2 and 424* of Act X of 1877 and consequently when sued for acts done in that capacity is entitled to the notice of suit required by the latter section COLLECTOR OF BIJNOR *v* MUNUVAR [I L R 3 All 20

36 ———— *Power to set aside sale under s 311 Civil Procedure Code (1882)—Rules made by Bombay Government*—Under the rules made by the Local Government of the Bombay Presidency a Collector has not the power of the Court under s. 311 of the Civil Procedure Code to set aside a sale NARAYAN *v* RASULKHAN [I L R. 23 Bom 531

37 ———— Power of Collector—*Reference by Collector—Jurisdiction of District Court—Land Acquisition Act s 55*—A Collector is not competent to refer to a District Judge to decide any question arising under Land Acquisition Act s 55 RAMALAKSAMI *v* COLLECTOR OF KISTNA [I L R. 16 Mad. 321

COLLISION

See JURISDICTION—ADMIRALTY AND VICE ADMIRALTY JURISDICTION [10 Bom 110
1 Hyde 275
4 Bom O C 149

See CASES UNDER SHIPPING LAW—COLLISION

———— Damage done to ship by—

See LIMITATION ACT 1877 ART 36 [I. L. R 11 Bom 133

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See DIVORCE ACT s 13 [I L R 11 Calc 651

See CASES UNDER FRAUD

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COMMISSION

See RECEIVER I L R 15 Mad 233

———— Order disallowing to Administrator General

See LETTERS PATENT HIGH COURT CL 15 [I L R 1 Mad 148

———— Payment of—

See INSOLVENT ACT s 40 [I. L R 14 Mad, 133

———— Right to—

See BROKER I L R, 20 Bom, 124

———— Rule as to rate of—

See ADMINISTRATOR GENERAL s ACT 1874 s 27 I. L R. 1 Mad 148

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——— to Ameen to fix mesne profits

See COURT FEES ACT s 20
[I L R 17 Calc 281

——— to Executor

See EXECUTOR I L R, 23 Calc, 14
See MAHOMEDAN LAW—WILL.
[I L R 25 Calc 9

——— to Mooktears Practice of giving—

See PLEADER—REMOVAL SUSPENSION AND DISMISSAL OF 11 B L R. 312

——— to Official Assignee

See INSOLVENT ACT s 19
[I L R 8 Mad. 79
I L R, 13 Calc, 66

——— to take evidence

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE
[I L R 25 Calc, 807
2 C W N 566

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—NON PRODUCTION FOR OTHER CAUSES I L R 9 Calc 939

See PARDANASHIN WOMEN
[I L R 4 Calc 20 3 C L R 93
18 W R 230
I L R 26 Calc 650 551 note
3 C W N 750 751 753

See PRACTICE—CIVIL CASES—COMMISSION
[I L R 23 Calc 404

——— to Trustees

See WILL—CONSTRUCTION
[I L R 24 Calc 44

1 CIVIL CASES

1. ——— Case on peremptory board—*Practice*—A commission for the examination of witnesses will be issued even though the cause is entered upon the peremptory board of the day if the issuing of such commission is not calculated to prejudice the defendants or to subject them to loss or inconvenience JANSSEN *v* DUNDAS 1 Hyde 269

2 ——— Witness out of jurisdiction—*Power of granting commission to examine a party to suit*—A commission will be granted merely as a matter of course to examine a material witness who is out of the jurisdiction of the Court if the witness cannot be brought into Court by its ordinary process But the commission will not be granted at the instance of either party to enable him to give evidence himself under a commission except under very strong circumstances indeed such as where he is seriously ill DOUCETT *v* WISE
[1 Ind. Jur N S. 357

3 ——— Obligation to issue—As to the obligation on the Court to issue a commission see *per* AINSLIE J in HARIDAS BAISAKH *v* MOAZAM HOSEIN
[8 B L R. Ap, 16 15 W R, 447

COMMISSION—*continued*

1 CIVIL CASES—*continued*

4. ——— Non resident witnesses—*Civil Procedure Code 1859 s 175*—The Court is invested with discretionary power to grant or to refuse applications made under s 175 Act VIII of 1859 for the examination by commission of witnesses resident more than 100 miles distant from Calcutta. BURNEY *v* EYRE 1 Hyde 68

5 ——— Commission to examine witnesses—*Grounds for granting commission*—A plaintiff applied under s 640 of the Civil Procedure Code (Act XIV of 1882) for a commission to issue for the examination of three female witnesses (*P B* and *A*) at the residence of one of them (*P*) The grounds upon which he based his application were the following —(1) That *P* had lost her husband ten months previously and was in mourning that according to Parsi usage a widow observed mourning for two or three years and during that time did not leave her house (2) that *B* was fifty eight years of age and sickly and physically unable to attend the Court (3) that *A* was about to go up country and could not stay in Bombay until the hearing *Held* the circumstances alleged were not such as to justify the issue of a commission RUSTOMJI FRAMJI *v* BANOOBAI
[I. L R. 14 Bom 584

6 ——— Application by a defendant (caveator) to examine witnesses on commission—*Civil Procedure Code (Act XIV of 1882) Ch XXV*—*Practice*—Where a defendant (caveator) applied for the issue of a commission to examine witnesses the Judge having regard to the circumstances of the case and to the principles laid down in *Berdan v Greenwoods L R 20 Ch D 764 foot note 3* refused the application MOWJI DHARAMSEY *v* NEMCHAND NARANJI I. L. R, 23 Bom 626

7 ——— Power of Deputy Collector—A Deputy Collector is competent to depute an officer of his Court to take evidence on commission if the place where the witness is examined is within his jurisdiction RAM CHAND MOOKERJEE *v* KAMINEE DABEA 10 W R 236

8 ——— Examination of infant.—The Court will not issue a commission for the examination of an infant of tender years IN THE MATTER OF BEENODEENY DOSSEE 2 Hyde 153 Cor. 78

9 ——— Witness servant of party applying—*Civil Procedure Code 1859 s 175*—An application for the issue of a commission under Act VIII of 1859 s 175 should be supported by some reason other than the mere distance of place of residence of the witness If the witness is a stranger a commission will be right and reasonable but not if he is a servant of the party applying AMRITH NATH JHA *v* DHUNPUT SINGH 20 W R. 253

10 ——— Notice to opposite party—The issue of a commission for the examination of an absent witness without notice to the opposite party

COMMISSION—*continued*

1 CIVIL CASES—*continued*

even if not illegal is objectionable TARUCKNATH MOOKERJEE *v* GOUREE CHURN MOOKERJEE [3 W R 147

11 ———— **Witnesses residing out of British territories** —Where the application of a party to a suit to have the evidence of witnesses residing beyond the British territories taken under a commission failed owing to circumstances beyond his control a subsequent application to have other witnesses examined within the British territories ought to have been complied with MULLUK ALI SHAH *v* MEHER BANOO 8 W R 448

12 ———— **Commission to England to take evidence**—*Costs of such commission Party and party taxation Principle of—Onus of proof in respect to item objected to—Production of vouchers in case of commissions to England—Costs of obtaining transcript of evidence given and of perusing it—Allowances to witnesses—Commissioner s fees—Practice* —Where in a suit in India a commission to take evidence has been issued to England the bill of costs with respect to such commission is to be taxed by the Taxing Master of the Court in India and not in England It is to be taxed on the same scale and on the same principle as would be adopted in England, and if the Taxing Master finds any difficulty he must refer to England for information Where an item is objected to in taxation the Taxing Master should reconsider and review his taxation and in doing so he should throw the onus of proof as to the necessity of the item upon such party as having regard to its particular nature he considers ought to bear it As to the production of vouchers in case of commissions to England no rule can be laid down Upon objections being brought in it is in the discretion of the Taxing Master either on his own motion or on the application of the party objecting to require vouchers for or further proof of all or any of the items objected to and, failing the production of the vouchers or proof which he may require to disallow the item. *Quære* —Whether in taxation as between party and party the costs of obtaining a transcript of the evidence given and of perusing it ought to be allowed. Payments made to witnesses are discretionary allowances and the Court is averse to review such allowances The Court in appointing a commissioner to take evidence in England expects that the fees of such commissioner will not exceed those which the Supreme Court in England would allow to a special examiner or commissioner acting in England under its orders If the parties desire that higher fees should be allowed to the commissioner whom they name they should obtain an order from the Judge appointing the commissioner GOCULDAS BULABDAS MANUFACTURING COMPANY *v* SCOTT [I L R 15 Bom 209

13 ———— **Examination under commission**—*Practice* – *Counsel* The examination of witnesses under a commission is of the same nature as an examination in open Court and should be conducted by counsel and not by attorneys The return should show on the face of it that the oath was administered to the commissioner as well as to the interpreter PRANKRISHNA CHANDRA *v* BISSONATH CHANDRA 8 B L R Ap 101

14 ———— **Examination de bene esse**—*Practice—Act VIII of 1859 ss 175 179* —*A de bene esse* examination of a witness about to leave the jurisdiction of the Court must be taken by the Court unless the parties consent to the evidence being taken under a commission EDWARDS *v* MULLER [5 B L R 252

15 ———— *Counsel* —An examination *de bene esse* being on the same footing as the examination of a witness in a cause can only be conducted by counsel HOFFMAN *v* FRAMJEE [Cor 7

16 ———— **Attendance of witnesses for examination** —It is the duty of the party obtaining a commission for the examination of witnesses to take such steps as may be necessary to secure the attendance before the commissioner of the witnesses he desires to examine LEKHRAJ *v* PALEE RAM [2 N W 310

17 ———— **Right of person not joining to cross examine witnesses** —A party who has not joined in a commission is entitled to cross examine the witnesses who are examined under the commission GREGORY *v* DOOLEY CHUND [14 W R, O C 17

18 ———— **Commission issued without jurisdiction**—*Obligation to execute* —A Magistrate is not bound to execute a commission of a Small Cause Court directing him to take the evidence of prisoners in jail in a case in which none of the circumstances existed authorizing that Court to issue the commission GOPAL CHUNDER SIRCAR *v* KURNODHAR MOOCHEE 7 W R 349

19 ———— **Charge by judicial officer for executing commission**—*Commission from Insolvent Court—Taxation of costs—Counsel s fees* – *Practice* —In the course of insolvency proceedings the Official Assignee obtained a rule *nisi* calling on one *D* alleged to have been gomastah to the insolvent to show cause why he should not hand over to the Official Assignee certain goods and moneys claimed as part of the insolvent s estate *D* applied for and obtained a commission to issue to the Judge of Agra as commissioner to examine witnesses on his behalf but the Judge of Agra refused to execute the commission without being paid his fees which *D* accordingly paid On the hearing of the rule it was discharged with costs including costs of the commission On the taxation of the bill of costs as between party and party the taxing officer disallowed the sum paid to the Judge of Agra and allowed certain fees and additional fees to the counsel for *D* Exceptions were filed by both parties and eventually the exceptions came on for argument *Held* the Judge of Agra was not bound to execute a commission issuing from the Insolvent Court without making a charge for so doing, the amount of the charge is in the discretion of the taxing officer As to allowing fees to the counsel for *D* the taxing officer

COMMISSION—*continued*

1 CIVIL CASES—*continued*

should consider what was fair and reasonable regard being had to the nature and circumstances of the case they are not necessarily to be measured by the amount allowed by the Official Assignee for his counsel IN RE GHASEERAM 12 B L R Ap 4

20 Pardanashin women—*Costs* —The Court will not order the costs of a commission to examine a defendant who is a pardanashin lady to be paid by her or order the estimated cost of the commission to be paid into Court although the application for the commission is made by the lady herself MOHINDROBHOOSUN BISWAS v SHOSHEE BHOOSUN BISWAS I L R 5 Calc 866

21 ——— Difference between arbitrators and commissioners —Commissioners appointed by the Court are officers of the Court and act by a majority therefore where two of the commissioners were agreed —*Held* that they had power to make a valid return of the commission notwithstanding the dissent of the third RAJENDRA MATILAL v RAMNARAIN MATILAL 3 B L R Ap 3

22 ——— Evidence taken on commission Admissibility of—*Act VIII of 1859 ss 177 176 and 179—Powers of High Court to issue commission* —A commission for the examination of a witness at Mandalay can only issue from the High Court The consent of parties is not requisite to the admissibility of evidence taken under such commission if the examination have been upon oath or affirmation AGA MAHOMED JAFEER TEHARANI v NAZIRULLAH 2 B L R A C 73 [10 W R 385

23 ——— *Act VIII of 1859 s 179—Evidence on record—Use by one party of evidence under a commission issued at the instance of another party* – The evidence of the defendant taken under a commission was allowed to be read on the plaintiff s behalf without the deposition being put in as part of the plaintiff s case as being part of the record under s. 179 Act VIII of 1859 DWARKANATH DUTT v GUNGA DAYI [8 B L R Ap 102

24 ——— *Evidence taken on commission on behalf of defendant—Right of plaintiff to refer to such evidence as part of record of suit —Civil Procedure Code (Act XIV of 1882) ss 339 and 360—Act VIII of 1859 s 179* —Defendant examined a witness on commission The commission was returned to the Court The plaintiff in opening his case claimed the right to refer to the evidence taken on commission as part of the record of the suit Defendant objected contending that if plaintiff read it he must read it as his own evidence *Held* that the plaintiff was entitled to refer to the evidence as part of the record *Dwarkanath Dutt v Gunga Day 8 B L R Ap 102* followed NISTARINI DASSEE v NUNDO LAL BOSE I. L. R 26 Calc 591

25 ——— *Evidence taken in absence of other side*—That the evidence was given in the absence of the other side is not enough to make the deposition of a witness taken on commission

COMMISSION—*continued*

1 CIVIL CASES—*concluded*

inadmissible RAM CHAND MOOKERJEE v KAMINEE DABIA 10 W R. 236

26 ——— A Court may legally refuse to hear read in evidence the deposition of a defendant taken by commission where there is no evidence to prove that the defendant was from sickness unable to attend personally at the time of the trial and the Court declines to dispense with the proof of such circumstance PRITHEE BULLUBH PAL SREE CHUNDUM MABI SULTAN v HARA DHUN SHOME [22 W R. 331

27 ——— *Documents attached to return of commission* —Documents attached to the return of a commission and mentioned with the documents referred to in the evidence may be read at the hearing of the suit in which the commission issued unless they have been objected to on being tendered in evidence before the commissioner Objections to the admissibility of such documents cannot be taken at the hearing of the suit. STRUTHERS v WHEELER 6 C L. R. 109

2 CRIMINAL CASES

28 ——— Evidence of Government servant ordered on service taken by commission previously to departure—*High Courts Criminal Procedure Act (X of 1875) s 76* —Where a Government servant who had executed his recognizance to appear and give evidence for the prosecution at a criminal trial to take place in the High Court of Bombay was subsequently ordered to a distant station on the public service and could not, with due regard to the public interest return to Bombay in time for the trial —*Held* on the application of Government that his evidence might be taken by commission before his departure from Bombay under the provisions of s 76 of the High Courts Criminal Procedure Act (X of 1875) EMPRESS v BAL GANGADHAR TILAK I. L. R. 6 Bom. 285

29 ——— Ground for refusing commission—*Prejudicing prisoner—High Courts Criminal Procedure Act (X of 1875) s 76*—The High Court refused to issue a commission in a criminal case on the ground that such a course would be unsatisfactory and dangerous to the interests of the prisoner EMPRESS v COWELL [I. L. R. 8 Calc. 896

30 ——— Pardanashin woman—*Examination by commission—Personal appearance in Court—Criminal Procedure Code (Act X of 1872) s 330 — Semble*—That in criminal cases pardanashin women are not of right exempted from personal attendance at Court Also that the word "inconvenience" in s. 330 of the Criminal Procedure Code (Act X of 1872) empowers the Courts to allow examination by commission in criminal cases where a witness, according to the manners and customs of the country ought not to appear in public The complainant in a case of defamation alleging that she was a pardanashin applied to be examined by commission *Held* that the fact that she was a complainant and not

COMMISSION—*continued*

2 CRIMINAL CASES—*continued*

merely a witness materially altered her position as regards the question whether she ought not to be exempted from personal appearance in Court and that under the circumstances she ought not to be examined by commission but ought to attend personally to be examined in Court Direction to the Magistrate to make such arrangements for the examination of the complainant in Court as should secure her privacy consistent with the recording of her evidence according to law in the presence of the accused. Witnesses in criminal cases should not be examined by commission except in extreme cases of delay expense or inconvenience IN THE MATTER OF THE PETITION OF FARID UN NISSA I L R., 5 All. 92

31. ——— *Criminal Procedure Code 1882 s 503—Examination by commission—Personal appearance in Court*—A Hindu lady having been summoned as a witness on behalf of an accused applied under s 503 of the Code of Criminal Procedure to be examined by commission on the ground (*inter alia*) that she was a parda nashin and that her enforced appearance in a Criminal Court would entail a forfeiture of her dignity and position in Hindu society *Held* that such application was properly made under the section and that under the circumstance of the case the order prayed for could be made IN THE MATTER OF THE PETITION OF DIN TARINI DEBI I L R. 15 Calc 775

32 ——— *Examination of parda nashin lady—Code of Criminal Procedure (1882) ss 6 7 503 504 505 506 and 507—Presidency Magistrate Power of*—It is doubtful if a Presidency Magistrate in the Town of Calcutta has power to issue a commission under ss 503 to 507 of the Code of Criminal Procedure to examine a witness residing within his own jurisdiction but there is nothing in the Code to prevent a Presidency Magistrate examining a witness within his jurisdiction at some place other than the Court house Where a Presidency Magistrate refused on the ground of want of jurisdiction to grant a commission for the examination of a parda nashin lady but offered to take her evidence in his Court when cleared for the purpose or in his private room and she applied to the High Court for a commission being granted or for such other order as they might deem proper the High Court on revision directed that if the lady would take a house or suite of rooms not far from the Magistrate s Court and pay all the costs which the Magistrate deemed reasonable and proper he should not enforce her attendance in Court but examine her in the place so appointed in the presence of the parties concerned and in the manner in which parda-nashin ladies are ordinarily examined HEM COOMAREE DASSEE v QUEEN EMPRESS [I. L. R. 24 Calc 551
1 C W N 333

33 ——— Grounds for granting commission—*Inconvenience—Expense*—At the trial of a person for an offence under s 411 Penal Code the Court of Session under s 33 of the Evidence Act used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the enquiry and the evidence of the servant of those persons taken at the enquiry and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s 503 of the Criminal Procedure Code The grounds upon which the Sessions Judge admitted the evidence taken during the enquiry were that the attendance of the witnesses could not be procured without an expense of Rs 500 an amount which he considered unreasonable that the witnesses would be inconvenienced and that their evidence did not concern the accused personally having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence Inconvenience to witnesses is no ground allowed under s 33 of the Evidence Act and the question of identification was a most material one and the evidence of the witnesses in question was of the utmost moment the whole case resting on it and as regards the ground of expense it was impossible to consider the amount unreasonable considering that the entire case rested on the evidence of those witnesses and that the accused had not cross examined those whose evidence had been taken by commission nor looking at his position could he arrange for their cross examination *Held* that on these grounds the Sessions Judge was not justified in issuing a commission under s 503 of the Criminal Procedure Code QUEEN EMPRESS v BURKE I L R 6 All. 224

34 ——— Application by prisoner for commission to place out of the jurisdiction—Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf The application was refused on the ground that the High Court had no authority to issue a commission in such a case but the learned Judge (WEST J) reserved the question for the full Court *Held* that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused. EMPRESS v MOORGA CHETTY [I. L. R., 5 Bom 338

35 ——— Evidence taken on commission—*Criminal Procedure Code 1882 ss 503—507—Evidence Act 1872 s 33—Practice*—Evidence taken under commission issuing from the Court of the Chief Presidency Magistrate during the course of an enquiry before him cannot be used in evidence at the trial before the High Court under s. 507 of the Criminal Procedure Code *Held* further that on the facts before the High Court it was also inadmissible under s 33 of the Evidence Act QUEEN EMPRESS v JACOB I. L. R. 19 Calc. 113

36 ——— Evidence taken on commission Admissibility of in evidence—*Evidence Act (I of 1872) s 33—Right and opportunity to cross examine—Criminal Procedure Code (1882) Ch XL ss 503 and 507—Interrogatories Evidence taken by*—Depositions taken on commission in criminal cases although inadmissible under Ch XL of the Criminal Procedure

COMMISSION—*concluded*

2 CRIMINAL CASES—*concluded*

Code (Act X of 1882) may be admitted under s 33 of the Evidence Act (I of 1872) if the requirements of the proviso to that section have been complied with The words opportunity to cross-examine in the proviso to s 33 do not imply that the actual presence of the cross-examining party or his agent before the tribunal taking the evidence is necessary To make evidence admissible against an accused person under s 33 of the Evidence Act the fact that he had full opportunity of cross examination if not admitted must be proved. *Quære*—Whether the opportunity to administer cross interrogatories under a commission is an opportunity to cross examine within the meaning of the proviso to s 33 of the Evidence Act so as to render the evidence taken on interrogatories admissible QUEEN EMPRESS v RAM CHANDRA GOVIND HERSHE

[I L R., 19 Bom 749

COMMISSION AGENT

See CONTRACT—CONSTRUCTION OF CONTRACTS

[I. L. R , 13 Bom 470

See PRINCIPAL AND AGENT—COMMISSION AGENTS I. L. R 16 Mad 238

[I. L. R. 17 Bom 520

COMMISSION SALE

——— Goods remaining with Insolvent on—

See INSOLVENCY—ORDER AND DEPOSITION

[I. L. R. 3 Calc 58

COMMISSIONER

——— Award of—

See NAWAB NAZIM S DEBTS ACT

[I. L R 19 Calc 584 742

——— Dismissal of suit for non payment of fee of—

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS

[I. L R. 13 Mad. 510

——— Fee of—

See COMMISSION—CIVIL CASES

[I. L R 15 Bom 209

——— for partition Appointment of—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION

[I. L. R. 23 Calc 679

——— in Insolvency

See INSOLVENT ACT s 51

[I. L R. 13 Mad. 150

I. L. R. 26 Calc. 973

4 C W N 32

See INSOLVENT ACT s 73

[1 B L R O C 130

3 B L R. Ap 14

5 B L. R 179

15 B L. R Ap 10

9 Bom 319

COMMISSIONER—*concluded*

——— Lien of, for fees—*Lien of commissioners on return for fees*—Certain commissioners who had acted under a commission of partition refused to give up the return they had made until they were paid their fees On application to the Court they were ordered to send in the return *Held* that commissioners under a commission of partition have no lien on their return thereunder for their fees PAJMOHEENEY DABEE v MUDDOOSOODUN DEY Bourke O C, 24

——— Power of—

See VILLAGE CHOWKIDARS ACT ss 45 AND 64 I. L. R., 21 Calc 626

——— Reference to—

See LOCAL INVESTIGATION

[I L. R. 16 Mad. 350

——— Suit by for his costs

See RIGHT OF SUIT—COSTS

[I. L R. 4 Mad., 399

——— under Bengal Act VI of 1870

See VILLAGE CHOWKIDARS ACT ss 58 61

[I. L. R. 11 Calc. 632

COMMISSIONER FOR TAKING ACCOUNTS

See CASES UNDER PRACTICE—CIVIL CASES —COMMISSIONER FOR TAKING ACCOUNTS.

1. ——— Dismissal of suit on failure to pay fee—*Civil Procedure Code 1877 s 394—Remuneration of commissioner*—The Code of Civil Procedure does not authorize the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a commissioner appointed under s 394 to examine accounts The remuneration of a commissioner appointed by the Court to examine accounts should as a rule be a definite amount and not at a monthly allowance RAGAVA CHARIAR v VEDANTA CHARIAR

[I. L. R., 3 Mad. 259

2 ——— Enquiry into correctness of report—*Civil Procedure Code 1859 s 181—Power of High Court to examine accounts—Act XXIII of 1861 s 37*—An error in the principle on which an account is taken is not the only ground on which a Court should enquire into the correctness of a report of a commissioner appointed under s 181 of the Code of Civil Procedure It is competent to an Appellate Court under the powers conferred by s 37 of Act XXIII of 1861 to examine the accounts even if no exception has been taken to them in the Court appointing the commissioner Madras rulings dissented from AHMED VALAD NANHUBHAI v KHASAJI VALAD KARIMBHAI 6 Bom. A C, 140

3 ——— Power of High Court to deal with commissioner's report—*Civil Procedure Code 1859 s 181*—Where a commissioner appointed under s 181 of Act VIII of 1859 to investigate the state of accounts between a debtor

COMMISSIONER FOR TAKING ACCOUNTS—*continued*

and creditor mad his report on which the judgment appealed against was f und d the High Court on regular appeal refused to take a fresh account SARAPU VENKADESAN v MALAI ISVARAIYYA [1 Mad. 1

4. ———— *Objection not taken in Court below—Error in taking account*—The Appellate Court will n t enter into the details of the account of a commissioner appointed und r s. 181 of the Code of Civil Procedure A party cannot be heard in the Appellate Court upon items to which he took no objection in the Court below But where there has been error in the principle upon which such account has been taken the Appellate Court will correct such error if excepted to in the Court below VENKATA REDDI v VENKATARAMAIYA. CHINNAMALLAIYA v VENKATARAMAIYA 1 Mad. 418

5 ———— Effect of commissioner s report.—Although a commissioner's report should have very great weight attached to it it is not absolutely binding *Venkata Peddi v Venkata Rama ya 1 Mad 418* dissented from. KANKATALA CHELLAMAIYA v POLESHETTI PAPAIYA [6 Mad. 36

6 ———— Swearing or affirming commissioner—*Civil Procedure Code 1859 s 181*—There is nothing in the Code of Civil Procedure making it necessary that a commissioner appointed to take accounts should be sworn or affirmed NUR SINGH DASS v NARAIN DASS 3 N W 217

7 ———— Investigation of accounts—*Civil Procedure Code 1859 s 181—Taking depositions of witnesses*—Where the plaintiff had filed his khatta-books in Court and did not allege that they had been falsified he should have balanced the account himself and the lower Court should not have deputed an ameen under s 181 of Act VIII of 1859 to investigate the acc unts. Such an investigation does not include or allow the taking the d positi ns of witnesses and such depositions are not legally admissible as evidence in the case CHAND RAM v BROJO GOBIND DOSS 19 W R. 14

8 ———— Power of Court to deal with facts found by commissioner—*Civil Procedure Code 1859 s 181—Reference to examine accounts*—In a suit for an account it was ordered by consent of parties that the case should be referred to a commissioner to take accounts who in taking them was to decide upon all questions of fact whether as to the delivery of certain merchandise or the value of such merchandise delivered or otherwise with full powers for the purposes of the investigation and that if questions of law should arise and could not be settled or disposed of before the commissioner they were to be submitted to the Court *Held* that this reference was different from the ordinary reference to a commissioner to examine accounts under s 181 of the Code of Civil Procedure *Quære*—Whether it would be competent to the Court to re-open a question of account against a clear finding upon a question of fact relating to the account

COMMISSIONER FOR TAKING ACCOUNTS—*concluded*

and made by the commissioner under the evidence properly before him WATSON v AGA MEHEDEE SHEBAZEE L R., 1 I. A. 346

COMMISSIONERS OF REVENUE AND CIRCUIT

———— The law relating to Commissioners of Revenue and Circuit reviewed IN RE PARBHU NARAYAN SINGH [3 B L.R. A.C 370 S C, 12 W R 323

COMMITMENT

———— Irregularity in—

See CRIMINAL PROCEEDINGS [I. L R., 17 Mad. 402

See CASES UNDER MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT

See CASES UNDER REVISION—CRIMINAL CASES—COMMITMENTS

———— Trial without—

See SESSIONS JUDGE JURISDICTION OF [I L R. 22 Calc 50

1. ———— Discretion as to commitment—*Proper exercise of discretion*—The power of commitment given to a Court of Session by s 435 Code of Criminal Procedure must be exercised judicially upon the evid nce before the Court and such Court ought not to order a commitment unless the evidence appear to it sufficient for a conviction within the terms of s. 226 QUEEN v SHAMA SUNKER BISWAS [10 W R Cr 25

2 ———— *Discretion of Sessions Judge to comm t d scharged person*—A Sessions Judge has a discretion to order or not to order the commitment to the Sessions Court of any accused person discharged by the Magistrate with which the High Court will not interfere QUEEN v SHEETARAM CHOWDHRY 2 W R. Cr 44

3 ———— Discharge of accused on withdrawal of prosecution after commitment—*Criminal Procedure Code (1882 ss 214 215) 1872 s 197—Commitment on a charge of adultery*—A Magistrate having committed a person for trial by the Court of Session on a charge of adultery immediately afterwards on the representation of the prosecutor that he wished to withdraw from the prosecution discharged the accused. *Held* that the order of discharge was bad as under ss. 196 and 197 Explanation Criminal Procedure Code a commitment once made can be quashed by the High Court only EMPRESS v JANGBIR I. L. R 4 All. 150

4 ———— Commitment after order of discharge—*Criminal Procedure Code 1872 s 197*—A Magistrate after examining four witnesses for the prosecution discharged the accused under s 195 Criminal Procedure Code 1872 Subsequently on becoming aware that there was a fifth witness

COMMITMENT—*continued*

present the Magistrate cancelled his order of discharge took further evidence and committed the accused for trial to the Court of Session *Held* on submission of the case with reference to Explanation 1 of s 197 Act X of 1872 that the commitment was good. ANONYMOUS 7 Mad. Ap 40

5 ———— **Commitment made without jurisdiction.**—Where a Magistrate without jurisdiction commits an accused person to the Sessions Court such commitment is void and no reference to the High Court is necessary to have it set aside IN THE MATTER OF EMPRESS v ALIM MUNDLE [11 C L R. 55

See however s. 532 of the Criminal Procedure Code 1882

6 ———— **Illegal commitment**—*Criminal Procedure Code 1872 s 197—Power to quash commitment*—Where the accused could not be found and the witnesses were examined in his absence under s 327 Criminal Procedure Code 1872 and he was on arrest committed and put on his trial without any re examination of the witnesses and pleaded not guilty —*Held* that having been committed and having pleaded to the charge the commitment could not be quashed. EMPRESS v SAGAMBUR [12 C L R., 120

7 ———— *Criminal Procedure Code 1882 s 215—Defect in law*—Where a person was committed on a charge of using certain evidence known to be false —*Held* that the fact that there was not any evidence to connect such person with the use of such false evidence was defect in law sufficient to justify the quashing of the commitment EMPRESS v NAROTAM DAS [I L R., 6 All 98

8 ———— *Order for further enquiry and commitment passed simultaneously*—Where the order of the Sessions Judge amounted to simultaneously directing further enquiry into the alleged offence and to ordering commitment of the accused —*Held* that the commitment was premature and illegal and must be set aside ADYAN SING v QUEEN EMPRESS I L R, 13 Calc 121

9 ———— **Power of the Court of Session to commit a discharged person for trial without the intervention of a Magistrate**—*Criminal Procedure Code ss 193 436 and 537*—In cases exclusively triable by the Court of Session s 436 of the Code of Criminal Procedure (Act X of 1882) empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by such Court There is nothing in that section to show that when such order is made the commitment thereupon must necessarily be made by the Magistrate who has discharged him whilst the first proviso to it shows that it may be made by the Court of Session or by the District Magistrate according as the power under that section happens to be exercised by one or the other Meaning of the expression a Court of competent jurisdiction in s 537 of the Criminal Procedure Code (X of 1882) considered. A Court of Session may try a prisoner so committed and charged by itself QUEEN EMPRESS v KRISHNABHAT [I L R. 10 Bom 319

COMMITMENT—*concluded*

10 ———— **Appellate Court, Powers of, as to commitment**—*Criminal Procedure Code ss 423 436 439*—The Appellate Court referred to in s 423 of the Criminal Procedure Code can in an appeal from a conviction only order an accused person to be committed for trial when it considers that the accused is triable exclusively by the Court of Session The meaning of the words in s 423 (*b*) of the Criminal Procedure Code or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial is as follows If on an appeal from a conviction the Appellate Court finds that the accused person who was triable only by a Magistrate of the first class or by a Court of Session has by an oversight or under a misapprehension been tried convicted, and sentenced by a Magistrate of the second class the Appellate Court may in that case reverse the finding and sentence and order the accused to be re tried by a Magistrate of the first class or by the Court of Session and in like manner when the appellant who was triable solely by the Court of Session has been tried convicted and sentenced by a Magistrate of the first class the Sessions Judge in disposing of the appeal is empowered to reverse the finding and sentence and to order that the accused be committed for trial QUEEN EMPRESS v SUKHA I L R. 8 All 14

11 ———— *Criminal Procedure Code ss 423 439—Sessions Judge Powers of as a Court of Appeal*—It is competent to a Sessions Judge acting as a Court of Appeal under s 423 of the Code of Criminal Procedure 1882 having reversed the finding and sentence to order the appellant to be committed for trial to the Court of Session *Queen Empress* v *Sukha I L R 8 All., 14* dissented from. QUEEN EMPRESS v MAULA BAKSH [I L R 15 All, 205

See QUEEN EMPRESS v JAHANULLA [I. L R. 23 Calc. 975

and SATIS CHANDRA DAS BOSE v QUEEN EMPRESS [I L R. 27 Calc 172
4 C W N 166

12 ———— *Criminal Procedure Code (1882) s 423—Power of Appellate Court—Commitment to the Court of Session—Offences triable exclusively by the Court of Session*—S 423 of the Criminal Procedure Code is not limited to cases triable exclusively by the Court of Session An Appellate Court has under that section the power to order an accused person to be committed for trial by the Court of Session in cases which are not exclusively triable by the Court of Session. *Queen Empress* v *Sukha I L R 8 All 14* dissented from *Queen Empress* v *Abdul Rahiman I L R 16 Bom 580* followed. MISRI LAL v LACHMI NARAIN BAJPIE [I L R 23 Calc. 350

COMMON RIGHTS OF—

See ENGLISH LAW [I L R., 14 Bom. 213

———— s 130—*Meaning of Court — Jurisdiction of District Judge and Subordinate Judge —Held* that with regard to a company the registered office of which was at Mussooree the Court as that term is used in Part IV of the Indian Companies Act (VI of 1882) means the Court of the District Judge of Saharanpur and not that of the Subordinate and Small Cause Court Judge sitting at Mussooree or Dehra HIMALAYA BANK *v* QUARRY [I L R 17 All 252

———— s 169— *Re hearing Meaning of— Application to set aside an ex parte order* —S 169 of the Indian Companies Act (VI of 1882) does not apply to an application to set asid an *ex parte* order The term re hearing in s 169 of the Act means a re hearing in the nature of an appeal PARVATISHANKAR *v* ISHVARDAS JAGJIVANDAS [I. L. R. 19 Bom. 208

COMPANIES ACT (VI OF 1882)—*concluded*

——— Order under—

See COURT FEES ACT SCH II ART 11 [I. L. R., 17 All. 238

——— Proceeding under—

See LIMITATION ACT ART 36 [I. L. R. 18 All 12
I L R 19 Mad 149

——— s 215

See BANKERS I. L. R., 16 All. 88

COMPANY

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS [I. L. R. 6 Bom 266

See LIEN I. L. R., 13 Bom 314

See LIMITATION ACT 1877 ART 120 [I. L R., 10 Bom 483

See CASES UNDER RAILWAY COMPANY

——— Manager of—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS I. L. R. 21 Calc 915

——— Principal Officer of—

See PLAINT—VERIFICATION AND SIGNATURE I. L. R 21 Calc. 60
[L. R 20 I. A., 139
I. L. R. 16 All., 420

See WRITTEN STATEMENT [I. L. R., 22 Calc., 268

——— Suit by—

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS
[I L. R. 12 Calc 41
I. L. R., 17 All., 292
I. L. R 18 All., 198
I. L. R. 20 All., 167

COMPANY—*continued*

——— Suit against—

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS
[8 W R. 45
2 B L R. S N 6 10 W R., 366
15 W R., 534
I. L. R. 21 All. 346

——— Winding up—

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT I. L. R 21 Bom., 273

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS I L. R., 18 Bom., 65

See TRANSFER OF CIVIL CASE—GENERAL CASES I. L. R. 9 All., 180

——— Transfer by old to new—

See STAMP ACT 1879 SCH I ART 21 [I. L. R., 20 Bom., 432

1 FORMATION AND REGISTRATION

1.——— Association of artizans for acquisition of gain—*Registration of Association*—An association of artizans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill is an association that has for its object the acquisition of gain and if consisting of more than twenty persons must be registered BHIKAJI SABAJI *v* BAPU SAJU [I. L. R. 1 Bom 550

2 ——— Evidence of registration—*Evidence of registration of shareholders*—The register of shareholders required by s 14 of Act XIX of 1857 may consist of particulars entered in different books which taken together substantially contain all the information which the Act requires If there be a substantial compliance with the requisitions of the Act the register is not invalidated by reason of slight deviations from its directions or by unimportant omissions or defects in particulars of information specified in s. 14 If the certificate of registration be not forthcoming the fact of incorporation may be proved *aliunde* IN RE ALLIANCE FINANCIAL CORPORATION BLANEY'S CASE [3 Bom., O C 106

3 ——— Suit to recover debts arising from transaction before registration—*Company not authorized to sue by officers—Act X of 1866*—A society which came into existence after Act X of 1866, but was not registered until some time afterwards under the provisions of that Act sued by some of its officers to recover debts arising out of transactions entered into before registration *Held* that such society could not recover in the suits in their present form as it was not before registration an association authorized to sue in the name of an officer SENNAY POORASAY HINDU JANOPOOKOOLA NIDHI *v* THAYAR AMMAL 8 Mad., 193

COMPANY—*continued*

1 FORMATION AND REGISTRATION —*continued*

4. ———— Application for registration —*Act X of 1866 (Indian Companies Act)—Application received while Act X of 1866 was in force—Delay in office of Registrar—Certificate purporting to be issued under Act X of 1866 but issued after repeal thereof by Act VI of 1882—General Clauses Consolidation Act (I of 1868) s 6—Proceedings commenced"*—Prior to the 1st May 1882 the secretary and manager of a projected company (which was to be limited by shares) applied to the Registrar of joint stock companies for a certificate of incorporation of the company intending that it should be registered under Act X of 1866 the Indian Companies Act then in force and forwarded the memorandum and articles of association with the necessary stamp-fees and did everything that was required to be done by or on behalf of the company to obtain a certificate under that Act No order was passed by the Registrar upon this application until 6th May and owing to delay for which the applicants were not responsible registration was not effected and the certificate was not issued until the 3rd July when a certificate was given purporting to be granted in pursuance of Act X of 1866 Meanwhile on the 1st May 1882 the Indian Companies Act (VI of 1882) repealing Act X of 1866 came into force s. 28 of which provided that every share in any company should be deemed to have been taken and held subject to payment of the whole amount thereof in cash unless the same had been otherwise determined by a contract in writing filed with the Registrar No such provision existed in Act X of 1866. The shareholders of the company paid nothing upon their shares in cash but had agreed (not in writing filed with the Registrar) that in consideration of certain property conveyed by them to the company at the time of its formation fully paid up shares were to be allotted to them Subsequently the company having gone into liquidation the official liquidator sought to make the shareholders contributories to the assets of the company as the holders of shares upon which nothing had been paid with reference to s. 28 of the Indian Companies Act (VI of 1882) *Held* that the proceedings for obtaining registration of the company and a grant of a certificate of such registration commenced within the meaning of s 6 of the General Clauses Act when the memorandum and articles of association were received in the Registrar's office in April 1882 while Act X of 1866 was in force that therefore the repeal of that Act by Act VI of 1882 did not affect those proceedings that consequently the company must be taken to have been incorporated under the former Act and that the provisions of s 28 of Act VI of 1882 not being applicable the shareholders were not liable to be placed on the list of contributories as not having paid the full amount of their shares. IN THE MATTER OF WEST HOPETOWN TEA COMPANY

[I. L. R. 11 All. 349

5 ———— Registration of association —*Companies Act (VI of 1882) s 4—Gain—Mutual Assurance Society*—In 1870 a fund was formed by a number of persons over 20 in number the object being according to the prospectus and rules to provide for the widows children and other relatives of the subscribers The management was vested in a board of directors elected by the subscribers from amongst their own number Subscriptions at fixed rates according to tables were paid by the subscribers to secure the provision of pensions for their widows children and relatives The moneys subscribed were invested in Government 4 per cent securities and in the course of management a large reserve fund was accumulated and so invested the interest annually payable in respect of which amounted in the year 1888 to upwards of R46 000 but there was nothing to show that such reserve was larger than sound principles of management required The rules provided for abatements of subscriptions according to a graduated scale which might be granted or withheld from year to year by the directors according to their opinion as to the condition of the fund. A subscriber to the fund was under no obligation to continue his subscription but might stop it at pleasure subject in certain contingencies to forfeiture of the benefit of past payments. Fines were also provided for unpunctuality in payments of subscriptions It was contended that the subscribers formed an association which required registration under s 4 of the Indian Companies Act inasmuch as they carried on business having for its object the acquisition of gain by the association or the individual members thereof as the subscribers must be taken to contemplate the ordinary consequences of their acts and the forfeitures fines and large and increasing reserve fund constituted gain *Semble*—that these did not constitute gain But *held* that whether they did or not no business was carried on having for its object the acquisition of gain by the association or the individual members thereof The subscribers to the General Family Pension Fund are not a company association or partnership formed for the purpose of carrying on business that has for its object the acquisition of gain by the company association or partnership or by the individual members thereof within the meaning of s 4 of the Indian Companies Act Where the substantial purpose of an association is not to carry on a business for gain, the fact that gain may accrue incidentally or may arise from merely subsidiary provisions does not make registration necessary KRAAL *v* WHYMPER

[I L R. 17 Calc 786

6 ———— Unregistered association—*Companies Act (VI of 1882) s 4—Mortgage Illegality of—Right of suit—Estoppel*—In 1868 the Madras Hindu Mutual Benefit Permanent Fund was created for the purpose of enabling Hindus to assist one another and invest their savings chiefly in landed property and the doing all such other things as are incidental or conducive to the attainment of the above objects. By the rules of the said fund which was not registered under the Indian Companies Act (X of 1866) it was provided that the members should pay subscriptions at the rate of R2 8-0 per share per

COMPANY—*continued*

1 FORMATION AND REGISTRATION —*continued*

mensem for seven years from the date of admission and that at the end of the seven years R250 should be paid in full discharge of each share It was further provided that subscribers should be entitled to borrow money from the said fund at interest that a reserve fund be formed and distributed once every five years to the subscribers and that surplus collections be distributed among the subscribers annually In 1868 defendants father borrowed money on mortgage from the fund in accordance with the rules and the amount was admittedly due at the time of suit The fund was wound up under an order of the High Court dated 15th September 1877 during the life time of defendants father who however took no active part in those proceedings It further appeared that on the execution of the mortgage the defendants father (the mortgagor) took a lease from the mortgagees of the houses mortgaged and retained possession of them as tenant *Held* that the association had for its object the acquisition of gain and that as the association consisted of more than twenty members and was not registered its formation was forbidden by the Indian Companies Act (X of 1866) s. 4 that the mortgage suit having for its object the carrying out of the illegal purpose of the association was an illegal transaction and that the suit must fail *Held* further that the defendants were not estopped from setting up the plea of illegality either by the order of 1877 or by reason of their predecessor in title having attorned to the fund MADRAS HINDU MUTUAL BENEFIT PERMANENT FUND *v* RAGAVA CHETTI I. L. R., 19 Mad. 200

7 ———— **Illegal association**—*Companies Act (VI of 1882) s 4—Business carried on by unregistered association for the purpose of gain—Right of suit*—Persons more than twenty in number paid each a certain sum monthly to a stakeholder The sum total of the subscriptions was then paid over as a loan free of interest to one of the subscribers chosen by casting lots and he was thereupon required to execute a bond with a surety obliging him to continue his monthly subscriptions to the end of the period for which the arrangement was agreed to hold good—that period being as many months as there were subscribers The bonds in question were executed in favour of the stakeholder and the subscribers *The business was not registered A suit was brought* on one of such bonds to recover the amount payable for subscription on account of the period subsequent to its execution *Held* that the obligees carried on business which had for its object the acquisition of gain within the meaning of Companies Act 1882 s 4 and accordingly constituted an illegal association and that the suit was not maintainable RAMASAMI BHAGAVATHAR *v* NAGENDRAYYAN

[I. L. R. 10 Mad., 31

8 ———— **Unregistered association for gain**—*Companies Act (VI of 1882) s 4—Illegal contract—Lottery company*—The prize winners in a lottery in which more than twenty persons took tickets covenanted with the promoters of the lottery to continue their subscriptions in respect of the successful ticket for two more years in accordance with the arrangement under which the lottery was established. The money not having been paid the promoters brought a suit on the covenant *Held* that there was no association of twenty persons for the purpose of gain or at all and consequently that the plaintiffs were not precluded from suing for want of registration under the Companies Act s 4 PANCHENA MANCHU NAYAR *v* GADINHARE KUNHANCHATH PADMANABHAN NAYAR

[I. L. R., 20 Mad. 68

COMPANY—*continued*

1 FORMATION AND REGISTRATION —*concluded*

2 ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

9 ———— **Objections outside scope of articles of association**—*Companies Act X of 1866 ss 16 and 208*—S 16 of Act X of 1866 does not refer to obligations contracted with a company in accordance with the purpose of its formation other than those directly implied by the articles of association S 208 of the Act has no application to companies formed but not registered after the Act came into force PURSEWALKUM HINDU JANOBACARA NIDHI *v* NARAYANA ACHARRY 8 Mad. 198

10 ———— **Articles of association Variation in**—*Liability of shareholders*—Where a clause in the articles of association provided that the existing shareholders for the time being should have the option of taking and subscribing for the shares in the additional capital rateably and in proportion to their respective shares in the existing capital of the company—*Held* that the clause being imperative and not merely directory a deviation from it could not be made unless with the assent of every shareholder EASTERN FINANCIAL ASSOCIATION *v* PESTANJI CURSETJI 3 Bom. O C 9

11 ———— **Material variance between prospectus and memorandum of association**—*Illegal powers—Shareholders*—Distinction pointed out between the case of a person who agrees to take shares in a projected company upon the faith of a prospectus and one who does so upon the faith of a document purporting to be the proposed memorandum of association of such a company The defendant on being shown a document purporting to be the memorandum of association of a projected company signed his name to it as having taken four shares This document was not registered as the memorandum of association of the company but another was which differed from it in omitting in its 4th clause the word *yearly* before the word *profits* on which the company were to pay a certain commission to the secretaries agents and treasurers and in adding to its 6th clause a provision empowering the company by special resolution in general meeting to subdivide the shares. *Held* that the first was not but the second was a material variance *Quære*—Whether the provision empowering the company to subdivide the shares was illegal But even if it was —*Held* that the effect of it being practically

COMPANY—*continued*

2 ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*continued*

to alter the position of the defendant from what it would have been had the document signed by him been registered as the memorandum of association of the company the defendant was not a shareholder in the company registered *In re the Financial Corporation L R 2 Ch Ap 714* commented on ANANDJI VIRAM v NARIAD SPINNING AND WEAVING COMPANY LIMITED

[I. L. R. 1 Bom 320

12. ———— Contributories—*Act X of 1866 ss 6 11 18 22 36 37 and 101—Liability of registered shareholders—Appeal from Recorder* — In June 1865 was projected the Pegu Saw Mills Company Limited appellants being amongst the projectors and having signed the prospectus and entered their names in a list (attached to the prospectus) of intending shareholders each to a specified extent. Their names were also entered as such shareholders in the registration of the company under Act X of 1866 In January 1867 certain contributors (amongst whom appellants were not) and certain creditors applied to the Recorder of Rangoon under cls 4 and 5 s 101 to have the company wound up and an official liquidator appointed A liquidator having been appointed he applied to the Court to call upon each of the contributories named in a list which he presented to pay up his contribution Accordingly the Recorder declared the appellants to be contributories and directed each of them to pay the amount appearing against his name *Held* that this was a suit by the official liquidator to have appellants declared contributories and an appeal therefore lay from the Recorder's decision so declaring them *Held* that the liability under ss. 6 11 18 22 36 and 37 of a registered shareholder as member of a company to contribute is a *primâ facie* liability only it being open to him to show that although his name was on the register yet he did not agree to become a member; and that as appellants were not cognizant of (much less did they assent to) the registration of their names as shareholders, whilst they refused to receive any shares or pay up any calls or deposits the sole step taken by them of joining others in putting forth the prospectus and affixing their names therein to a certain number of shares could not be said to be an agreement to become members of the company and therefore they were not contributories COTTON v PEGU SAW MILLS COMPANY 9 W R. 539

13 ———— Name on register—*Refusal to sign articles of association—Shareholder* — Defendant applied for 100 shares in a company and on their being allotted to him paid R1 000 in deposit His name was placed upon the register of shareholders but he refused to sign the articles of association. *Held* that he was not liable as a shareholder GOOSERY COTTON MILLS COMPANY v STEEL

[2 Hyde 238

14. ———— Share in company Signification of—*Name on register* —A share in a company signifies a definite portion of its capital and does not necessarily mean the right of a person whose name is then actually on a register of shareholders PARBHUDAS PRANJIVANDAS v RAMLAL BHAGIRATH

[3 Bom O C 69

15 ———— Shareholder whose shares are forfeited Position of—*Contributories* —A member of a duly registered company whose shares have been forfeited is as much a past member as a member whose shares have been surrendered or transferred but he is not liable to be placed on the list of contributories until it is established that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Indian Companies Act and that the debts in respect of which he is called upon to contribute were incurred prior to the date on which he ceased to be member of the company IN RE ALLAHABAD TRADING COMPANY

[1 N W Part 6 p 101 Ed. 1873 190

16 ———— Constituting person a member of company—*Companies Act X of 1866 s 22—Member of company— Subscriber of the memorandum — Agreement to become a member—Company not in existence—Rescission—Liability for calls* —The defendant amongst others subscribed (for 101 shares) a copy of the memorandum and articles of association of the plaintiff company then in process of formation but subsequently and before registration gave notice to the persons most active in the promotion of the said company that he would withdraw his signature and would have no connection thenceforth with the proposed company His withdrawal however was not accepted Subsequently to the receipt of the said notice the memorandum and articles of association so signed by the defendant and others were presented for registration; but registration was refused on the ground that the said documents were not printed. A printed copy of each was then procured and registered. The registered copies differed in respect of the signatures subscribed thereto from the copies signed by the defendant The defendant's name was put upon the register of the company as the holder of 101 shares, but without the defendant's assent or knowledge and two calls were made upon him in respect of the said shares The defendant denied that he was a member of the said company or liable for calls *Held* that the defendant was not a member of the plaintiff company either (i) as a subscriber of the memorandum of association under the earlier part of s. 22 of the Indian Companies Act inasmuch as the memorandum there referred to was the registered memorandum of which the document signed by the defendant was not even a true copy or (ii) by reason of an agreement to take shares under the latter part of that section inasmuch as the agreement there alluded to was an agreement with the company and the agreement (if any) entered into by the defendant was not and could not have been an agreement with the company the company not being at that time in existence *Quære*—Whether it is enough to constitute a person a member of a company under

COMPANY—*continued*

2 ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*continued*

his services could not be pleaded as a payment of the calls on shares as no definite sum had been found due when the shares were accepted by him Where the circumstances relied on would in an action for money due on the shares be evidence only in support of a plea of accord and satisfaction it would not be a good defence of a payment in cash within the meaning of s 28 of the Indian Companies Act (VI of 1882) but otherwise if the circumstances would support a plea of payment PARSHOTUMDAS v ISHVARDAS I. L. R 16 Bom 161

24 ———— Shares issued as fully paid up—*Companies Act (VI of 1882) s 28—Rights of a purchaser with notice taking from a purchaser without notice—Contributory*—Twenty shares of the Beyla Spinning Weaving and Manufacturing Company Limited were originally allotted to *A* as fully paid up shares partly for work done and partly for work to be done for the Company The agreement under which the shares were so allotted was not registered as required by s 28 of Act VI of 1882 *A* sold three of these shares to *D* who had no notice that they were not fully paid up *D* sold the three shares to *G* who was the Managing Director of the Company The Company was wound up by the Court At the date of the winding up *G* was holder of the three shares. In settling the list of contributories the Court ordered *G* s name to be placed on the list in respect of the three shares *Held* that *G* was not liable as a contributory Though *G* was a Managing Director of the Company and as such must have known that the shares had been issued as fully paid up shares without complying with s 28 of Act VI of 1882 he was not on that account estopped from taking advantage of the equitable rule which protects a purchaser with notice taking from a purchaser without notice IN RE GULABDAS BHAIDAS I. L. R. 17 Bom., 672

25 ———— Contributory—*Increase of capital—Illegal issue of shares—Reduction of capital—Companies Act (VI of 1882) s 13.*—The Nawab of the Beyla Spinning Weaving and Manufacturing Company Limited was registered under the Indian Companies Act (X of 1866) The original capital of the company consisted of R4 00 000 divided into 1 600 shares of R250 each. In 1882 the capital of the company was increased by R1 00 000 divided into 1 600 shares of R62 8 The resolution to increase the capital was not passed in accordance with the articles of association i e with the sanction of a special resolution of the company passed at a general meeting On the 5th November 1884 a resolution was passed at a general meeting of the company that the shareholders should take up 4 9 shares of the original capital and 1 027 shares of the increased capital which were then in the hands of the company in the proportion of one share to every two shares already held by them In pursuance of this resolution the appellants took up several shares of the original capital as well as of the new capital On 19th October 1885 a general meeting of the company was held at which it was resolved that the resolution of the 5th November 1884 and all acts done in connection with it should be set aside that the shares taken by the shareholders in pursuance of that resolution should be taken back by the company and such amounts as had been paid by them on those shares should be credited to their names in the company s books This was accordingly done and the shares were transferred to the name of the company In October 1886 the company was wound up by order of the Court In settling the list of contributories the District Judge of Surat held that the appellants were liable as contributories in respect of all the shares which they had taken up in pursuance of the resolution of 5th November 1884 On appeal from this decision —*Held* that with respect to the shares of the original capital the resolution of the 19th October 1885 was illegal and invalid. It operated not as an investment by the company of its funds in its own shares but as an extinguishment of the shares and such extinguishment was virtually a reduction of the capital which could not be done without complying with the provisions of s 13 of the Indian Companies Act (VI of 188) The holders of such shares were therefore properly placed on the list of contributories *Held* also that the issue of the shares of the new capital was illegal as the resolution to increase the capital had not been come to in accordance with the articles of association It was therefore open to the Company to set aside the resolution of 5th November 1884 When it was set aside the persons who held the new shares ceased to be shareholders and could not therefore be held liable as contributories. BHIMBHAI v ISHWARDAS JUGJIWANDAS I. L. R. 18 Bom. 153

26 ———— Liability of the heirs of a deceased contributory—*Companies Act (VI of 1882) ss 61 126 and 144 cl (g)—Calls made before the winding up—Limitation—Settlement by Official Liquidator of list of contributories—Shares duly issued cancellation of—Reduction of capital*—S 61 Indian Companies Act (VI of 1882) corresponding with s 38 of the English Companies Act of 1862 creates a new liability in the shareholders and that liability includes contribution not only in respect of calls made since the winding up but also in respect of unpaid calls made before the date of the winding up whether barred by limitation at that date or not The Official Liquidator need not take out letters of administration to the estate of a deceased shareholder before settling the list of contributories. There is nothing in ss 126 and 144 requiring the Official Liquidator to place on the list all the persons who may as representatives be liable to contribute in discharge of the liability of a deceased shareholder as contemplated by s. 126 Nor can the liability under that section of a person who has been placed on the list as his representative be affected by omission of the Official Liquidator to do so. Directors have no power to cancel shares duly issued to a shareholder at his request and so reduce the capital of the company *Bhimbhai v Ishwardas Jagjiwandas I L. R. 18*

COMPANY—*continued*

2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*concluded*

Bom 152 followed. SORABJI JAMSETJI *v* ISHWARDAS JUGJIWANDAS I L R., 20 Bom., 654

27 ——— Suit by liquidator—*Limitation—Allotment of shares—Commencement of shareholder's liability—Companies Act (VI of 1882) s 125*—The liquidator of the Gujrat Company in *September 1889 sued the defendant as a* registered shareholder of the Company to recover a sum of R2 483 due from him in respect of his shares The plaint set forth the particulars of demand one of which was R250 being the amount of deposit payable before allotment on 15th July 1886 and another a sum of R250 payable on allotment on 15th July 1886. This suit was brought on 10th September 1889 and the defendant contended that the above two items of claim were barred by limitation The lower Courts notwithstanding the statement in the plaint found as a fact that the allotment of the shares was really made in November 1886 *Held* therefore assuming three years to be the period of limitation that the claim was not barred The debt due from the defendant did not become recoverable until he was registered as a shareholder MALICHAND DHARAMCHAND *v* DALSUKHRAM HARGOVINDAS [I. L. R., 17 Bom 469

28 ——— Suit by liquidator against shareholder—*Limitation—Commencement of liability of shareholder in respect of shares—Memorandum of Association—Attestation of signature of subscriber—Companies Act (VI of 1882) s 11*—A suit against a shareholder to enforce liability in respect of his shares if brought within three years from the date at which his name is inscribed in the register as the holder of such shares is not barred by limitation Where a Memorandum of Association of a company has been registered a subscriber cannot divest himself of his liability as a member of the company although his signature to the memorandum may not have been properly attested The transaction may be irregular but it is not void CHHOTALAL CHHAGANLAL *v* DALSUKHRAM HARGOVINDAS [I. L. R., 17 Bom. 472

3 RIGHTS OF SHAREHOLDERS

29 ——— Preferential dividend payable to holder of one set of shares—*Construction of contract by the company to pay it to the shareholder and to his executor holding the same—Death of the shareholder—Holder of shares—Legal title to shares—Meaning of the word "hold"—Administration effect of*—The good will of a business which a merchant had carried on and the capital property and assets with it were transferred by him in 1864 to a joint stock limited company who agreed with him that in consideration of the transfer by him of property referred to in the contract as the fixed assets one hundred paid up shares of R2 500 each of which any assignment by him during the next five years from the registration of the company should not be recognized by them as valid should be allotted to him It

COMPANY—*continued*

3 RIGHTS OF SHAREHOLDERS—*concluded*

was also agreed that in consideration of the transfer he and his executors or administrators shall be entitled so long as they hold the said hundred shares to an extra or preferential dividend. On this agreement the parties acted and the shareholder held the shares till he died in England in 1888 having by will directed that his executors or administrators should hold the hundred shares in trust for his surviving brothers of whom the executor who proved the will was one Administration with the will annexed was granted in India to the plaintiff in this suit as the attorney of the executor A note of this was made in the register of the company leaving the hundred shares still in the name of the testator The company then discontinued to pay the preferential dividend and contended that it was no longer payable inasmuch as the testator's estate had been administered and that the executor no longer held the shares as executor but as trustee for the beneficiaries under the will *Held* that the contract was still in operation the executor still holding the shares within its meaning; and that the preferential dividend continued payable to the estate of the testator the company being only concerned with the legal title to the shares and not with any claims if there were any that might be made by beneficiaries under the will against the executor as trustee BOMBAY BURMAH TRADING CORPORATION *v* SMITH [I. L. R. 19 Bom. 1
L R 21 I. A 139

Affirming decision of High Court in BOMBAY BURMA TRADING CORPORATION *v* SMITH [I. L. R. 17 Bom., 197

4 TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES

30 ——— Blank transfer—*Right of transferee under blank transfer to registration—Discretion of Directors—Companies Act 1866 s 34—Discretion of the Court to refuse to hear the case under s 34*—The power given to the Court by s 34 of the Indian Companies Act of 1866 is discretionary and the Court will not order a transfer to be registered where the alleged transferor is not before the Court and there is any real doubt as to the validity or *bona fides* of the transaction IN THE MATTER OF THE PETITION OF LUCHMEE CHUND LUCHMEE CHUND *v* BENGAL COAL COMPANY [I. L. R. 8 Calc, 317

31. ——— Refusal of company to register purchase at sale in execution of decree—*Mandamus*—Where shares in the East Indian Railway Company belonging to an execution debtor who had absconded with the share certificates were sold in execution the transfer being executed by a Judge under the provisions of Act VIII of 1859 s 267—*Held* that although the Company's deed of settlement under which their Act of Parliament declared that the company should be regulated gave to the Board of Directors a power of approval or disapproval of intending shareholders they had no option as to registering a shareholder

COMPANY—*continued*

4 TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—*continued*

who purchased shares in execution and that they were also bound to grant him under the circumstances, new share certificates. REG v EAST INDIAN RAILWAY COMPANY

[1 Ind. Jur., N S 258 Bourke O C, 395

32. ———— Suit to compel Directors to register transfer—*Persons entitled to require registration of transfer—Insolvency of shareholder—Official Assignee right of to sell shares and obtain transfer* —One of the Articles of Association of the Coorla Spinning and Weaving Company provided that the Board of Directors might decline to register any transfer of shares unless the transferee were approved by the Board. A shareholder holding 423 shares became insolvent and his shares thereupon vested in the Official Assignee who sold them. The purchaser required the Official Assignee to transfer the shares into the names of two nominees, *viz* 200 shares to the name of one nominee and 223 shares to the name of the other The Official Assignee executed the necessary transfer deeds and sent them to the company with a request that the shares might be transferred accordingly The proposed nominees were already members of the company and registered holders of shares in it and no objection was taken to them in their personal capacity The Directors however declined to approve of the transferees and to register the transfer unless the transferees would pledge themselves not to approve a certain change in the mode of remunerating the agents of the company which the Directors desired to effect and which they believed would be very advantageous to the company The transferees refused to pledge themselves in any way as to their future action and brought this suit to enforce registration of the transfer *Held* following *Moffatt v Farquhar L R., 7 Ch D., 591* that the Directors were bound to register the transfers. It was contended that neither the Official Assignee nor the transferees had any legal right to call on the company to register the transfers *Held* that, having regard to the provision of the Articles of Association of the company the Official Assignee was entitled to have the shares registered in the names of his vendees. KAIKHOSRO MUNCHERJI HEERAMANECK v COORLA SPINNING AND WEAVING COMPANY I. L. R., 16 Bom., 80

33 ———— Sanction to transfer not obtained from directors—*Application for registration by transferee—Refusal of Directors to register—Specific Relief Act I of 1877 s 45—Companies Act (VI of 1882) s 58* —G bought some shares in the Bombay Fire Insurance Company and applied to the directors for registration as a shareholder in respect of the shares bought. The directors refused the application giving no reason for so doing G now applied to the Court under s. 45 of the Specific Relief Act and under s. 58 of the Indian Companies Act for an order compelling the directors to register him as a shareholder The articles of association of the company provided (*inter alia*) that any shareholder might with the sanction of the board of directors sell or dispose of and transfer all or any of his shares to any other person approved by the board who shall not be bound to assign any reason for the withholding of such sanction. *Held* that the application should be refused, for s. 45 of the Specific Relief Act did not apply (there being another "specific and adequate legal remedy) and under the Companies Act the proper procedure had not been adopted. *G* was a transferee whose title was not complete inasmuch as the requisite sanction to the transfer had not been obtained, and, therefore there was no privity between him and the directors of the company and he had no right to complain. IN THE MATTER OF BOMBAY FIRE INSURANCE COMPANY EX PARTE GILBERT

[I. L. R., 16 Bom., 393

34. ———— Approval of transfer by directors—*Such power of approval a fiduciary power—Resolution of directors to approve of future transfers ultra vires* —By the articles of association of the New Great Eastern Spinning and Weaving Company transfers of shares in the company were subject to the approval of the directors. On the 18th October 1898 the directors passed a resolution that up to the time of the next ordinary general meeting the board approve of all transfers of shares made by Dwarkadas Shamji and Ramdas Kessowji (two of the shareholders) or either of them, and will *transfer shares* standing in the name of Dwarkadas Shamji and in the name of Ramdas Kessowji to their or his transferees without claiming any lien or raising any objection. *Held* that the above resolution was *ultra vires* and not binding on the company The power conferred on the directors by the articles of association was a fiduciary power to be exercised for the benefit of the company and could not be exercised until the question of each transfer together with the names of the transferer and the transferee was before them and they had an opportunity of considering each case. IN RE NEW GREAT EASTERN SPINNING AND WEAVING CO. EX PARTE RAMDAS KESSOWJI

[I. L. R., 23 Bom., 685

35 ———— Application to compel registration of transfers of shares—*Companies Act (VI of 1882) ss 29 58 92—Discretionary power of directors to refuse registration—Articles of association—Interference of the Courts* —Where the directors of a company (the Muir Mills) refused to register the transfer of shares and relied on article 21 of the articles of association which empowered the directors to decline to register any transfer of shares to any person of whom they may for any reason disapprove" *Held* (1) that it is not necessary under s. 58 for the applicants to join their vendors in their applications. *Ex parte Fraser v C* ... *L R 8 Ch 446* distinguished. *Slinner v C* ... *L R* ... *of London Marine Insurance Company L R* ... *Q B D 882 London Founders Association v Clarke L R 20 Q B D., 576 Pained v Hutchinson L R., 3 Ch., 388 Ex parte Gilbert I L R 16 Bom 393* referred to *Ex parte Shaw L R*

COMPANY—*continued*

4. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—*concluded*

4 Q B D 473 followed. (2) Where it was found that there was a defect in the constitution of the board of directors which was not cured by the Articles of association—*Held* that the Court was not bound to dismiss the application under s 58 on the ground of its being premature there having been no refusal to register by a properly constituted Board but might treat the defence set up as a refusal and deal with the application on the merits (3) Where it was found that the real objections entertained by the directors to the various transferees were (1) their connection as employés of the Cawnpore Woollen Mills with *M* (the managing director of the Cawnpore Woollen Mills) and the personal animosity existing between *J* (the managing director of the Muir Mills) and *M* and ( ) the desire of the directors (of the Muir Mills) that *M* should not add to his voting power at the meetings of the company and (3) that therefore the objections were not personal to the applicants themselves. *Held* that where the articles of association give a discretionary power to the directors to refuse to register a transfer and it appears that the directors have *bonâ fide* considered the matter the Courts will not compel them to disclose their reasons but if they do disclose their reasons or evidence is produced as to their reasons the Courts will consider whether those reasons proceeded on a right or wrong principle *Held* further applying the principle of English cases that object ons not personal to the transferees do not constitute legitimate reasons. *Poole* v *Middleton 29 Beav 646 In re Bell Bros 7 L T Rep 689 Ex parte Penney L R 8 Ch 446 Moffat* v *Farquhar L R 7 Ch D 591 Katkhosro* v *Coorla Spinning and Weaving Co I L R 16 Bom 80 In re Coalport China Co L R., 2 Ch 404* referred to MUIR MILLS COMPANY *v* CONDON I. L. R 22 All. 410

5 MEETINGS AND VOTING

36 ———— Meeting of shareholders—*Power of chairman—Poll—Time for taking a poll—Right of shareholder to vote at meeting—Articles of association*—At common law and where the taking of a poll is not governed by statute or special rule the chairman of a meeting is the proper authority to fix the time and place for the taking of a poll and a poll is properly and correctly taken immediately after the termination of the meeting The same rule applies to meetings of registered companies unless their articles prescribe some other procedure The object of a poll in the case of a meeting of members of a registered company as of other meetings is to ascertain the true sense of the meeting and is not to give absent members a further opportunity of voting unless a contrary intention is expressly or impliedly to be gathered from the articles of the company There is no presumption in construing a doubtful article in the latter sense One of the articles of association of a joint stock company provided as follows — Every shareholder not disqualified by the preceding article or article No 17 and who has been duly registered for three months previous to the general meeting shall be entitled to vote at such meeting and shall have one vote in respect of every share held by him *Held* that the meaning of the above article was merely that a shareholder should be registered for three months before he could vote but that having thus once acquired the right to vote he had one vote in respect of every share held by him It was not necessary under the article that every such share should have been held by him for three months LILADHAR SHAMJI *v* PEHMUBHOY ALLANA

I. L. R. 15 Bom 164

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS

37 ———— Director—*Qualification—Qualification shares not paid for by director but transferred to him by a third person*—Shares taken as a qualification for a directorship of a company need not be taken from the company It is enough if they are taken in open market or from a friend within a reasonable time after acceptance of the office They need not be shares for which the qualifying director has paid IN RE BOMBAY ELECTRICAL COMPANY NASSERVANJI DADABHOY KATRUCK'S CASE I. L. R. 13 Bom. 1

38 ———— Power to appoint solicitor to company—*Suit by agents of company to restrain it from carrying into effect a resolution of directors—Injunction—Right to sue Survival of*—By the memorandum and articles of association of the New Dhurumsey Poonjabhoy Spinning and Weaving Company the plaintiff's firm of *M F & Co* were appointed agents of the company for twenty five years and it was provided that they should have the general control and management of the company Clause 98 of the articles provided that the said firm as such agents should have full power and authority (*inter aliâ*) to appoint and employ in or for the purposes of the transaction and management of the affairs and business of the company such solicitors as they should think proper An agreement dated 26th August 1874 was also entered into between the company and the partners in the firm of *M F & Co.*, their executors administrators and assigns for the time being constituting the partnership firm of *M F & Co* whereby it was agreed that the said firm should be agents to the company for twenty five years to buy and sell etc and particularly to exercise all the powers contained in cl 98 of the articles of association *Messrs C and B* were duly appointed solicitors to the company and acted as such for a considerable time Merwanji Framji one of the members of the said firm of *M F & Co* died in the middle of March 1876 The plaintiffs complained that *G* one of the shareholders in the company became desirous of ousting the plaintiffs from the position of agents of the company and of becoming the managing director of the company that in July 1881 he procured his own election and that of certain nominees of his as directors of the company

COMPANY—*continued*

4 TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—*continued*

who purchased shares in execution ; and that they were also bound to grant him under the circumstances new share certificates REG v EAST INDIAN RAILWAY COMPANY

[1 Ind. Jur, N S 258 Bourke O C 395

32 ———— **Suit to compel Directors to register transfer**—*Persons entitled to require registration of transfer—Insolvency of shareholder—Official Assignee right of to sell shares and obtain transfer* —One of the Articles of Association of the Coorla Spinning and Weaving Company provided that the Board of Directors might decline to register any transfer of shares unless the transferee were approved by the Board. A shareholder holding 423 shares became insolvent and his shares thereupon vested in the Official Assignee who sold them The purchaser required the Official Assignee to transfer the shares into the names of two nominees viz 200 shares to the name of one nominee and 223 shares to the name of the other The Official Assignee executed the necessary transfer deeds and sent them to the company with a request that the shares might be transferred accordingly The proposed nominees were already members of the company and registered holders of shares in it and no objection was taken to them in their personal capacity The Directors however declined to approve of the transferees and to register the transfer unless the transferees would pledge themselves not to approve a certain change in the mode of remunerating the agents of the company which the Directors desired to effect and which they believed would be very advantageous to the company The transferees refused to pledge themselves in any way as to their future action and brought this suit to enforce registration of the transfer *Held* following *Moffatt v Farquhar L R 7 Ch D 591* that the Directors were bound to register the transfers It was contended that neither the Official Assignee nor the transferees had any legal right to call on the company to register the transfers *Held* that having regard to the provision of th Articles of Association of the company the Official Assignee was entitled to have the shares registered in the names of his vendees KAIKHOSRO MUNCHERJI HEERAMANECK v COORLA SPINNING AND WEAVING COMPANY I L. R. 16 Bom. 80

33 ———— **Sanction to transfer not obtained from directors**—*Application for registration by transferee—Refusal of Directors to register—Specific Relief Act I of 1877 s 45—Companies Act (VI of 1882) s 58* —*G* bought some shares in the Bombay Fire Insurance Company and applied to the directors for registrati n as a share h lder in respect of the shares bought. The directors refused the appl cation giving no reason for so doing *G* n w applied to the Court under s 45 of the Specific Relief Act and un ler s. 58 of the Indian C mpanies Act f r an order compelling the direct rs to reg ter him as a shareholder The arti les of associati n of the company provided (*inter alia*) that any sharel lder might with the sancti n of the board of direct rs sell or dispose of and transfer all or any of this shares to any other person approved by the board who shall not be bound to assign any reason for the withholding of such sanction *Held* that the application should be refused for s. 45 of the Specific Relief Act did not apply (there being another specific and adequate legal remedy) and under the Companies Act the proper procedure had not been adopted. *G* was a transferee whose title was not complete inasmuch as the requisite sanction to the transfer had not been obtained and therefore there was no privity between him and the directors of the company and he had no right to complain. IN THE MATTER OF BOMBAY FIRE INSURANCE COMPANY EX PARTE GILBERT

[I. L. R. 16 Bom., 398

34. ———— **Approval of transfer by directors**—*Such power of approval a fiduciary power—Resolution of directors to approve of future transfers ultra vires* —By the articles of association of the New Great Eastern Spinning and Weaving Company transfers of shares in the company were subject to the approval of the directors On the 18th October 1898 the directors passed a resolution that up to the time of the next ordinary general meeting the board approve of all transfers of shares made by Dwarkadas Shamji and Pamdas Kessowji (two of the shareholders) or either of *them* and will transfer shares standing in the name of Dwarkadas Shamji and in the name of Pamdas Kessowji to their or his transferees without claiming any lien or raising any objection. *Held* that the above resolution was *ultra vires* and not binding on the company The power conferred on the directors by the articles of association was a fiduciary power to be exercised for the benefit of the company and could not be exercised until the question of each transfer together with the names of the transferor and the transferee was before them and they had an opportunity of considering each case IN RE NEW GREAT EASTERN SPINNING AND WEAVING CO EX PARTE PAMDAS KESSOWJI

[I. L. R. 23 Bom., 685

35 ———— **Application to compel registration of transfers of shares**—*Companies Act (VI of 1882) ss 29 58 92—Discretionary power of directors to refuse registration—Articles of association—Interference of the Courts* — Where the directors of a company (the Muir Mills) refused to register the transfer of shares and relied on article 21 of the articles of association which empowered the directors to decline to register any transfer of shares to any person of whom they may for any reason disapprove *Held* (1) that it is not necessary under s 58 for the applicants to j in their vend rs in their appl cations. *Ex parte Penn v Cut L R 8 Ch 416* distinguished *Skinner v City of London Marine Insurance Company L R 11 Q B D 882 London Founders Association v Clarke L R 20 Q B D 576 Paine v Hutchinson L J 3 Ch 388 Ex parte Gilbert I L R 16 Bom, 398* referred to *Ex parte Shaw L R*

COMPANY—*continued*

4 TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—*concluded*

4 Q B D 463 followed. (2) Where it was found that there was a defect in the constitution of the board of directors, which was not cured by the Articles of association —*Held* that the Court was not bound to dismiss the application under s 58 on the ground of its being premature there having been no refusal to register by a properly constituted Board but might treat the defence set up as a refusal and deal with the application on the merits (3) Where it was found that the real objections entertained by the directors to the various transferees were (1) their connection as employés of the Cawnpore Woollen Mills with *M* (the managing director of the Cawnpore Woollen Mills) and the personal animosity existing between *J* (the managing director of the Muir Mills) and *M* and (2) the desire of the directors (of the Muir Mills) that *M* should not add to his voting power at the meetings of the company and (3) that therefore the objections were not personal to the applicants themselves. *Held* that where the articles of association give a discretionary power to the directors to refuse to register a transfer and it appears that the directors have *bonâ fide* considered the matter the Courts will not compel them to disclose their reasons but if they do disclose their reasons or evidence is produced as to their reasons the Courts will consider whether those reasons proceeded on a right or wrong principle *Held* further applying the principle of English cases that objections not personal to the transferees do not constitute legitimate reasons. *Poole* v *Middleton 29 Beav 646 In re Bell Bros 7 L T Rep 689 Ex parte Penney L R 8 Ch 446 Moffat* v *Farquhar L R 7 Ch D 591 Kaikhosro* v *Coorla Spinning and Weaving Co I L R 16 Bom 80 In re Coalport China Co L R 2 Ch 404* referred to MUIR MILLS COMPANY *v* CONDON **I. L. R 22 All., 410**

5 MEETINGS AND VOTING

36 ———— **Meeting of shareholders**—*Power of chairman—Poll—Time for taking a poll—Right of shareholder to vote at meeting—Articles of association*—At common law and where the taking of a poll is not governed by statute or special rule the chairman of a meeting is the proper authority to fix the time and place for the taking of a poll and a poll is properly and correctly taken immediately after the termination of the meeting The same rule applies to meetings of registered companies unless their articles prescribe some other procedure The object of a poll in the case of a meeting of members of a registered company as of other meetings is to ascertain the true sense of the meeting and is not to give absent members a further opportunity of voting unless a contrary intention is expressly or impliedly to be gathered from the articles of the company There is no presumption in construing a doubtful article in the latter sense One of the articles of association of a joint stock company provided as follows — Every shareholder not disqualified by the preceding article or article No 17 and who has been duly registered for three months previous to the general meeting shall be entitled to vote at such meeting and shall have one vote in respect of every share held by him *Held* that the meaning of the above article was merely that a shareholder should be registered for three months before he could vote but that having thus once acquired the right to vote he had one vote in respect of every share held by him It was not necessary under the article that every such share should have been held by him for three months LILADHAR SHAMJI *v* REHMUBHOY ALLANA **[I. L. R. 15 Bom. 164**

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS

37. ———— **Director**—*Qualification—Qualification shares not paid for by director but transferred to him by a third person*—Shares taken as a qualification for a directorship of a company need not be taken from the company It is enough if they are taken in open market or from a friend within a reasonable time after acceptance of the office They need not be shares for which the qualifying director has paid IN RE BOMBAY ELECTRICAL COMPANY NASSERVANJI DADABHOY KATRUCK'S CASE **I. L. R. 13 Bom., 1**

38 ———— **Power to appoint solicitor to company**—*Suit by agents of company to restrain it from carrying into effect a resolution of directors—Injunction—Right to sue Survival of*—By the memorandum and articles of association of the New Dhurumsey Poonjabhoy Spinning and Weaving Company the plaintiffs firm of *M F & Co* were appointed agents of the company for twenty five years and it was provided that they should have the general control and management of the company Clause 98 of the articles provided that the said firm as such agents should have full power and authority (*inter alia*) to appoint and employ in or for the purposes of the transaction and management of the affairs and business of the company such solicitors as they should think proper An agreement dated 26th August 1874 was also entered into between the company and the partners in the firm of *M F & Co* their executors administrators and assigns for the time being constituting the partnership firm of *M F & Co* whereby it was agreed that the said firm should be agents to the company for twenty five years to buy and sell etc and particularly to exercise all the powers contained in cl 98 of the articles of association *Messrs C and B* were duly appointed solicitors to the company and acted as such for a considerable time Merwanji Framji one of the members of the said firm of *M F & Co* died in the middle of March 1876 The plaintiffs complained that *G* one of the shareholders in the company became desirous of ousting the plaintiffs from the position of agents of the company and of becoming the managing director of the company that in July 1881 he procured his own election and that of certain nominees of his as directors of the company;

COMPANY—*continued*

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

and on the 8th August 1881 procured the passing of a resolution at a board meeting to the effect that as *Messrs C and B* the company s solicitors were also the solicitors of the agents it was desirable for the interests of the company that a change should be made and that *Messrs H C and L* be appointed solicitors of the company The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of *G* of ousting the plaintiffs from their agency and getting the management of the company for himself that *Messrs H C and L* had been for a long time the solicitors of *G* and had been advising him in his designs upon the company and upon the plaintiffs and they contended that the resolution was a breach of the contract between the company and the plaintiffs and a violation of the articles of association of the company The plaintiffs sued *G* and two other directors of the company and the company itself and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874 and in particular from carrying into effect the resolution appointing *Messrs H C and L* as solicitors for the company and to restrain them from doing anything inconsistent with the memorandum and articles of association The defendants contended that the contract of the 26th August 1874 had been determined by the death of Merwanji Framji and that the powers conferred on the agents by cl 98 of the articles were subject to the general powers of management vested in the directors by the articles and that the case was not one in which an injunction could be granted *Held* that having regard to the memorandum and articles of association the contract was that the firm of *M F & Co* for the time being should be the agents of the company for twenty five years and that the right to sue on the contract by its nature survived to the plaintiffs after the death of Merwanji Framji *Held* also that there being no provision either in the articles of association or the agreement of 26th August 1874 that the power thereby conferred on the agents should be subject to the control or assent of the directors there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than as representing the company in virtue of their general powers of management NUSSERWANJEE *v* GORDON I. L. R. 6 Bom. 266

39 ———— **Appointment of partner of director to do work for company as solicitor**—*Director of public company—Trustee*—Although a director of a public company is always clothed with a fiduciary character in regard to any dealings with property of the company in his capacity of director the rule that a trustee is not allowed to make a profit of his trust does not apply to such a director *quâ* director only When a partner of one of the directors of the company did work for the directors as solicitor and there was nothing to show that he had not been duly appointed by the directors his claim in respect of such work was allowed. Distinction drawn between a trustee and a director of a public company IN THE MATTER OF PORT CANNING COMPANY LIMITED 6 B. L. R. 278

40 ———— **Authority of agent**—*Corporation—Contract under seal—Companies Clauses Consolidation Act 8 & 9 Vic c 16 s 97*—The Scinde Railway Company was incorporated by 18 & 19 Vic c 115 for the purpose of making and maintaining railways in India and for other purposes This was repealed by 20 & 21 Vic c 160 which authorized the company to extend their operations and also their capital etc This Act by s. 3 declared the Companies Clauses Consolidation Act 1845 to be incorporated with it By s 18 the company have a seal for use in India in lieu of the common seal of the company and from time to time may vary and renew it and make regulations for its use and except as by this Act otherwise expressly provided every document sealed with such seal in conformity with such regulations or in pursuance of any order of the directors or of any authority given by the company under their common seal shall be as valid and effectual as if the common seal were affixed thereto By s 54 the company from time to time may appoint and remove such committees, persons or person as the company think fit to act on behalf of the company in India or elsewhere with respect to the making maintaining managing working and using of the railways and other works of the company and the control and conduct of any of the affairs in India or elsewhere of the company; and may delegate to any such committee persons and person respectively all or any of the powers of the company and of the directors and officers thereof which the company thinks it expedient that such committee persons and person respectively should possess for the purposes of his or their respective appointment In January 1867 *E* was the agent of the company in India and he entered it was alleged on their behalf into a contract with the plaintiffs for sixty sets of iron work for low sided waggons The plaintiffs firm did not deal in iron work and they had to get the goods manufactured for them in England The Board of Directors were at the time supplying iron work for the company There was nothing to show that *E* had been appointed under the provisions of s. 54 of the Act 20 & 21 Vic c 160, nor was there any evidence of the extent of his power or authority A specification of the contract differed from it in that it stated the waggons to be covered waggons and not low sided waggons. The contract was not made under seal of the company nor was the iron work the subject of the contract ever accepted by the company The defendants admitted that at the date of the alleged contract *E* was the agent of the company in India but denied that his power extended to the making of such contract; they further stated that the contract if entered into had been afterwards cancelled. *Held* by PHEAR J that there was no evidence to show that *E* had authority to make the contract The contract was one which *F* would have had power to make in writing only under s. 97 of the

COMPANY—*continued*

6. POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

Companies Clauses Consolidation Act had he been appointed under s. 54 20 & 21 Vic. c. 100 but there was no proof of such appointment. *Held* on appeal that, assuming that *E* had been appointed under s. 54 with powers as large as in the ordinary course could be conferred upon him under that section the contract was not one by which acting as such agent, he had power to bind the company STEWART v SCINDE PUNJAB AND DELHI RAILWAY COMPANY 5 B. L. R. 195

41. ——— Duties of promoters and directors—*Trustees* —*A* and *M* at the request of *B* agreed to get up a company which should purchase from *B* the good will stock and furniture of Spence's Hotel and all outstandings due to *B* for four lakhs of rupees. The scheme was made public and shares were applied for in excess of the intended capital On the 1st May 1863 the memorandum of association was registered signed, *inter alid* by *A* and *M* On the same day the prospectus was issued which stated *inter alid* that the company have purchased from the former proprietors for the sum of R4 00 000 the entire stock of hotel and shop together with the outstandings on the 30th April 1863 the latter amounting to about R50 000 The dividend of 10 per cent per annum for two years is guaranteed to the shareholders. The prospectus was signed by *A* and *M* and another as directors but the last took no active part On the same day an agreement was signed by *B* whereby he agreed in consideration of R4 00 000 paid by *A* and *M* as therein mentioned —or R1 0 000 in paid up shares of the company —to transfer to them or Spence s Hotel Company Limited all his right title and interest in Spence s Hotel the good will furniture outstandings etc The articles of association were dated 7th September 1863 *A* and *M* with two others formed the first board of directors These directors at an extraordinary meeting on August 1st presented a report which was adopted by the meetin in which they said *B* has deposited with *M* and *A* security sufficient to ensure the payment of the 10 per cent dividend guaranteed to him by the company On the 5th December 1863 a deed was executed with the approval of the company s solicitors by *B* on the one part and *A* and *M* on the other which after reciting that as security for the guarantee of the 10 per cent dividend *B* had deposited with *A* and *M* 400 fully paid up shares in the company witnessed that *B* would pay to *A* and *M* such sums as would be necessary to make up and pay half yearly a dividend of 10 per cent per annum and that he constituted *A* and *M* his attorneys to sell the 400 shares and out of the proceeds to make good the yearly dividend of 10 per cent and after such payment towards the guaranteed dividend to hold the remaining shares or balance of money in trust for *B* absolutely On the same day another deed prepared by *A* s private solicitor was executed by *B* on one part and *A* and *M* on the other which after reciting an agreement by *B* with *A* and *M* in April that if they would assist him in forming such company for the purchase of Spence s Hotel and as they had in fact since formed he *B* would pay or secure to them *A* and *M* such fitting and proper remuneration for their trouble and risk as might be ultimately arranged and after reciting the first deed of 5th December 1863 witnessed that *B* covenanted with *A* and *M* that notwithstanding the trust contained in the before mentioned indenture whereby the surplus mentioned was declared to belong to *B* absolutely the same surplus should belong to and be the exclusive property of *A* and *M* in equal shares and that if the net profits of the Hotel Company should prove sufficient to pay the whole 10 per cent then the whole of the 400 shares deposited with *A* and *M* should be retained by them for their own benefit in equal shares This deed was undisclosed until the filing of their written statement by *A* and *M* in the present suit There was no actual deposit of the 400 shares by *B* but *A* and *M* respectively took 200 shares in their own names R10 947 9 6 were paid by *A* and *M* to make up the deficit on the guaranteed dividend up to December 1861 Also on the 5th December 1863 *B* executed another deed in which after reciting that he had guaranteed that the outstanding debts of the Hotel should realize before May 1863 R50 000 at least and that he had deposited with the company 50 fully paid up shares as security for this guarantee he *B* covenanted to pay any deficit and appointed the company his attorneys to realize these shares and out of the proceeds to pay themselves the deficit and subject to this to hold the shares or the proceeds in trust for him *B* Fifty shares were received from *B* by *A* under the trusts of this deed. The outstandings fell short of the guaranteed amount by R19 253 In a suit by the company to recover the 400 shares and for an account of the profits of the same —*Held* in the Court below and on appeal that the suit was rightly brought by the company as plaintiffs That *A* and *M* were the agents of the company to effect the purchase and as such were bound to make for the company the best bargain which they reasonably could, and forbidden to obtain personal profit or benefit out of the matter *A* and *M* as regards the beneficial interest in the 400 shares were trustees thereof for the benefit of the company from the date when that interest arose and *A* and *M* were jointly as well as severally responsible for the 400 shares after satisfying the trust of the guarantee In the lower Court it was decreed that *A* should make over the 50 shares or their value to the company and account for the interim receipts and profits. *A* and *M* to account for the 400 shares at par value at least and for dividends and profits thereon including profits if any made by sale at a premium *A* to account similarly for the 50 shares *B* to make good his two guarantees after being allowed the benefit of the trust of the 400 shares SPENCE S HOTEL COMPANY v ANDERSON

1 Ind. Jur N S 395

Held also on appeal that *A* and *M* were trustees of the 400 shares for the benefit of the company and jointly and severally responsible to make them good; and whatever benefit they took under the secret deed

COMPANY—*continued*

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

they must make good to the company *A* to be responsible for the 50 shares (but in this respect and in respect of the details of the accounts between the parties the decree of the Court below slightly modified) ANDERSON *v* SPENCE S HOTEL COMPANY

[1 Ind. Jur N S 378

42 ———— Liability of directors—*Companies' Act (VI of 1882) ss 55 56—Refusal to allow inspection of register of shareholders*— Where a person who is entitled under the provisions of s 55 of the Indian Companies Act 1882 to obtain inspection of the register of shareholders of a company applies for inspection during business hours and not at a time when inspection is prohibited either under s 56 or by reason of any rules framed by the company under s 55 such inspection must be granted and even a temporary refusal based upon grounds of convenience to the company s business will render a director responsible for such refusal liable to the penalty provided for by s 55 QUEEN EMPRESS *v* BEER

[I. L. R. 20 All. 126

43 ———— Liability of directors for negligence in management—*Employment of agent by directors—Acquiescence of shareholders—Liability of estate of deceased director—Banker Who is a*—The plaintiffs company went into liquidation early in the year 1879 in consequence of losses sustained by the failure of Nursey Kessowji & Co which firm had been the bankers of the said company The said firm had stopped payment on the 26th December 1878 having then in its hands the sum of R8 80 250 11 1 belonging to the company In this suit the official liquidators of the company sought to recover that sum from the defendants who had been directors of the company and a further sum of R2 48 670 14 0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji the agent of the company to deal with certain shares for his own purposes The first four defendants were the directors of the company the fifth defendant was the assignee of the estate of Nursey Kessowji whose firm of Nursey Kessowji & Co had become insolvent The plaintiffs company was registered on the 31st July 1878 and by the memorandum and articles of association the said Nursey Kessowji was appointed secretary treasurer and agent of the company for a period of twenty five years upon the terms and conditions contained in an agreement annexed to the articles of association whereby it was (*inter alia*) provided that Nursey Kessowji should deposit with such banker or bankers as the directors for the time being should appoint all the moneys due from him to the said company and exceeding in amount at any one time the sum of R5 000 On the 6th August 1878 the directors of the company appointed the firm of Nursey Kessowji & Co to be the bankers of the company It was further alleged by the plaintiff that immediately after the registration of the company the directors and Nursey Kessowji began to borrow money upon the credit of the company far in excess of the legitimate wants of the company and to pay over the money so borrowed to the firm of Nursey Kessowji & Co to be used by that firm in speculative business that the said loans were obtained by the directors not *bonâ fide* for the purposes of the company but for the purposes of supplying funds to the firm of Nursey Kessowji & Co to enable it to carry on its business At the end of the year 1878 the sum paid over by the directors to the firm of Nursey Kessowji had by reason of such borrowing amounted to the sum of R8 80,2 0 The plaintiffs alleged that the said loans were wholly unnecessary; and they charged the directors with gross negligence in raising the said loans or permitting them to be raised and in permitting the moneys so borrowed to remain in the hands of the firm of Nursey Kessowji & Co to be applied by that firm to its own purposes As to the R 48 670 14-0 the plaintiffs alleged that certain unallotted shares of the total value of R3 93 750 had been left in the hands of the directors to be disposed of the proceeds of which were to be applied in making certain payments due by the company that instead of applying these shares to such purposes the directors had filled up the said shares in the name of Nursey Kessowji and authorized him to mortgage the same in order to raise funds that the said Nursey Kessowji had accordingly dealt with the said shares and had applied the proceeds thereof to his own purposes The plaintiffs charged the directors with fraud and gross negligence as to these shares and claimed to recover R2 48 670-14-0 in respect thereof from the defendants. The defendants alleged that they had acted *bonâ fide* in all matters connected with the company that they had always believed the firm of Nursey Kessowji & Co to be in a solvent condition and had no reason to mistrust its management of the affairs of the company One of the defendants (No 3) died after the institution of the suit and his sons were made parties His representatives and Kessowji Naik (defendant No. 1) also claimed to set off against the plaintiffs claim certain payments made by them as guarantors for the company *Held* (1) that one of the directors knew as a fact that the agent was not in a solvent condition; and that the other directors in the circumstances of the case ought to have ascertained his financial condition (2) Directors are responsible for the management of their company where by the articles of association the business is to be conducted by the board with the assistance of an agent They cannot divest themselves of their responsibility by delegating the whole management to the agent and abstaining from all enquiry If he proves unfaithful under such circumstances the liability is theirs just as much as if they themselves had been unfaithful (3) That the directors had not used fair and reasonable diligence in the management of the company's affairs and were liable to refund the money entrusted by them to the agent Nursey Kessowji without proper knowledge as to whether it was needed, and without any subsequent investigation of a serious character with respect to its disposal Such conduct

COMPANY—*continued*

6. POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

amounted to gross negligence All the directors were equally responsible as all attended the directors meetings and all gave the same blind sanction to every act and proposal of the agent. *Held* also that the estate of the deceased director was liable on the ground that the misfeasance of a director is a breach of trust and not a mere personal default A separate debt cannot be set off against a joint and several debt and directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators NEW FLEMING SPINNING AND WEAVING COMPANY *v* KESOWJI NAIK I. L. R. 9 Bom., 373

44. ——— **Power of directors to deal with profits either by declaring a dividend or by appropriating to reserve fund**—*Power of shareholders to interfere with declaration of dividend*—The articles of association of the *B Co* provided (*a*) that the directors might with the sanction of the company in general meeting declare a dividend (*b*) that the directors might before recommending any dividend set aside out of the profits of the company such sum as they thought proper as a reserve fund to meet contingencies or for equalizing dividends etc The directors of the company added to the existing reserve fund a certain portion of the profits of the company for the year 1885 and thereby diminished the amount of dividend which they could otherwise have declared Some of the shareholders disapproved of the course taken by the directors and contended (1) that the shareholders of the company had a right by resolution to withdraw from the reserve fund a sum sufficient to enable the directors to declare a suitable dividend (2) that they had the right to direct the directors to declare a dividend greater or less than that recommended by the directors out of the amount standing to profit and loss including the amount so withdrawn. *Held* that under the articles of association the contention of the shareholders could not be sustained The reserve fund consisted of profits and by the articles the disposal of profits was expressly entrusted to the directors To allow the shareholders to deal with it would be a direct contravention of the articles which entrusted to the management of the *directors all the business of the company* *Nor could* the shareholders decide the question as to the amount of dividend By the articles they agreed that the directors should declare the dividend and only reserved to themselves the power to vote a dividend to which they objected. The remedy of the shareholders if they were dissatisfied with the directors was to remove them from office or to alter the articles of association BOMBAY BURMA TRADING CORPORATION *v* DORABJI CURSETJI I. L. R 10 Bom. 415

45 ——— **Sale and re purchase of shares for future delivery**—*Liability of company for acts of directors*—In January 1865 the plaintiffs purchased from the defendants 2 000 shares in the defendants company at 15 per cent premium for which they paid in cash R3,20 000 and the defendants simultaneously agreed to re purchase for future delivery and payment at a fixed time in July the same 2 000 shares at 29½ per cent premium The contracts for the re purchase were signed by three directors of the defendants company and on each was a memorandum initialled by two of them referring to a list of the Share Receipts delivered with the words we are duly to examine and receive the same at the fixed time One hundred and ninety letters of allotment in the names of several persons and for various numbers of shares endorsed by the original allottees and initialled by one of the three directors were together with receipts for the first call handed over to the persons who acted for the plaintiffs by the three directors of the defendants company who made the contracts In April the defendants company made a fresh call payable on the 4th May A list of the names and addresses of the original allottees of what were called shares in the market (*i e* other than those purchased by the company itself for cash or held by it on mortgage) was made out from the date of settlement and notices of forfeiture for non payment of the call were sent by post The original holders of the 190 letters of allotment were included in the list but no notice was sent to the plaintiffs On the 25th of May all shares upon which the second call was not paid were declared to be forfeited for the benefit of the company The defendants company as stated in the memorandum of association was established among other objects for the purchase and sale of debentures stocks shares of joint stock companies (including the shares of this company) and other securities the making loans and advances on such securities as the directors of the company might think fit *Held* that the contracts for the purchase of the 2 000 shares being within the scope of the authority of the directors the defendants were bound by them that the defendants were bound to treat the plaintiffs as the holders of those shares and to give them the notice required by the articles of association and that they were not at liberty to give that notice to the original allottees who by the admission of the defendants testified by the acts of their agents in making the contracts had parted with the shares that the shares were consequently not legally forfeited and the defendants having refused to accept them and they being then unsaleable the plaintiffs were entitled to recover the full price as damages ORIENTAL FINANCIAL ASSOCIATION *v* MERCANTILE CREDIT AND FINANCIAL ASSOCIATION 3 Bom O C 1

46 ——— **Purchases of shares by individual directors**—*Liability of directors—Absence of sanction of board*—*J S* an allottee of 25 shares in a company registered under Act XIX of 1857 signed the memorandum and articles of association and paid the first call on the 28th September 1863 on which he sold the 25 shares to *B P* the chairman of the company The purchase by *B P* was made in pursuance of an agreement entered into between *B P* and *P H* another director of the company and two other persons who were members of the firm of *B B & Co* and then managers of the company which they accordingly jointly purchased

COMPANY—*continued*

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

and subsequently divided among themselves B P taking for himself two fifths of the whole including the 25 shares of *J S* The fact of the joint purchase was not communicated to the other directors of the company nor was there any evidence to show that their attention had been called to certain entries in the books of the company relating to *B P* having paid the second call on his two-fifths of the joint purchase *J S* got no notice to pay the second call and never applied for or obtained a certificate for the 25 shares but such a certificate was obtained by *B P* on the 10th of October 1864 certifying that *J S* was the shareholder *J S* had signed a blank form of transfer and a blank form of request to the directors to transfer which were undated and without particulars but *B P* never executed the transfer as transferee and the shares never were transferred to his name on the register nor was the sale to him ever brought to the notice of the directors as a board or to any of his partners of any portion of the 2500 shares and the articles of association required the consent in writing of the directors to every transfer On application by *J S* that his name should be removed from the list of contributories as framed by the official liquidator and the names of *B P*s trustees under Act XXVIII of 1865 substituted therein in respect of the 25 shares —*Held* that *J S* was not exonerated under the circumstances from the duty of obeying the articles of association and the provision of Act XIX of 1857 that the act of an individual director in his private capacity ought not to bind the board which had never authorized or ratified his conduct and that the official liquidator as representing the body of shareholders rightly insisted upon keeping *J S*s name on the list of shareholders IN RE EAST INDIAN TRADING AND BANKING COMPANY JAMNADAS SAVAKLAL S CASE 3 Bom O C 113

47 ——— Purchase by company of its own shares—*Omission to register transfer —Contributories*—A company registered under Act XIX of 1857 and enabled by its memorandum of association to purchase its own shares purchased seven thousand of them which were in scrip share certificates having never been issued in respect of them The letters of allotment indorsed by the allottees and receipts for the first call were made over at the time of purchase to the company No transfers however were executed by the allottees nor were the shares registered by the company in their own name but they continued to stand in the names of the allottees Two thousand of the seven thousand shares had been re sold by the company, and the remaining five thousand were mentioned in a list kept by the company of shares purchased by them On application to the allottees to have their names removed from the list of contributories as framed by the official liquidator —*Held* that the company through its directors having as well by the act of purchase as by their subsequent conduct treated themselves as the owners of the shares could not be permitted to take advantage of their own neglect or that of their officers in not registering the shares in the name of the company and that the name of the company therefore be substituted as holders of the shares IN RE MERCANTILE CREDIT AND FINANCIAL ASSOCIATION EX PARTE DALVI [3 Bom., O C., 125

48 ——— Purchase of shares in other companies and their own shares—*Trustee shareholders—Parties—Acquiescence*—The purchase by the directors of a joint stock company, on behalf of the company of shares in other joint stock companies unless expressly authorized by the memorandum of association is *ultra vires* A joint stock company even though it be empowered by its memorandum of association to deal in the shares of other companies is not thereby empowered to deal in its own shares and a purchase by the directors of the company of its own shares on behalf of the company is therefore under such circumstances *ultra vires* A sharer in a joint-stock company can maintain an action against the directors of such company to compel them to restore to the company funds of the company that have by them been employed in transactions that the directors have no authority to enter into without making the company a party to the suit. Where a shareholder purchased shares in a joint stock company knowing at the time that similar companies were in the habit of dealing in their own shares and those of other companies and believing that the company in question adopted the same practice but made no enquiry to ascertain whether or not such was the case nor made any objections to such dealings of the company until it was discovered they had resulted in loss it was held that he had by his own conduct lost his right to hold the directors personally liable in respect of such dealing and the result was held to be the same whether the said shareholder was beneficially entitled to his shares or merely a trustee of them for others JEHANGIR RASTAMJI MODI v SHAMJI LADHA [4 Bom., O C. 185

49 ——— Misrepresentation in prospectus—*Companies Act 1866 s 154—Prospectus—Liability of directors for misrepresentation*—*R G* on the faith of statements in the prospectus of a company was induced to apply for fifty shares in the company which were allotted to him and he paid the deposit money thereon At the time of issuing the prospectus there were no other members of the company besides the directors Some of the material statements in the prospectus were untrue to the knowledge of the directors. The prospectus which was published on the 23rd June 1865 contained the following statements Capital fifty lakhs of rupees in 10 000 shares of R500 each with power to increase R50 per share to be paid on application and the balance by calls of R100 each to be made within not less than three months of each other The first call will not be made within less than three months after the closing of the share list Of these 10 000 shares 6 000 will be reserved for

COMPANY—*continued*

6. POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

England but the operations of the company will not be delayed until they can be sent home and taken up On 18th July 1865 the company advertised that all the Indian shares being subscribed for the share list is now closed and the letters of allotment will be issued at an early date In truth not half the number of "Indian shares were at any time subscribed for On the 22nd November 1865 the directors resolved that a call of R100 per share be made upon the shareholders payable at the National Bank of India on the 15th December proximo *R G* received notice of the call but did not pay it On 18th April 1866 the directors desired the secretary to write to shareholders who had not paid their first call in full asking them to do so at once *R G* who had not signed the articles of association on receipt of notice from the secretary requested to be allowed to withdraw his money forfeiting one fifth or to be allowed to hold five shares instead of fifty The request was refused by the directors who on 18th July 1866 passed a further resolution that the defaulters among whom *R G* was named have notice sent them that unless the amount of the calls due on their respective shares together with interest thereon at the rate of 12 per cent per annum from the 15th December 1865 be paid into the National Bank of India Calcutta on or before the 7th August 1866 legal proceedings will be adopted against them for the recovery without further notice *R G* on receiving notice of this resolution wrote through his attorneys informing the directors that he would apply to the High Court to have his name removed from the register of shareholders The directors thereupon declared the shares to be forfeited On 25th September 1866 a resolution to wind up the company voluntarily was passed at a general meeting of the shareholders and was afterwards confirmed In the course of the winding up the liquidator applied to the Court under s 154 Act X of 1866 to determine whether *R G* was entitled to a refund of the deposit money paid by him on the fifty shares allotted to him in the company or whether he was liable to pay as a contributory the call in respect of his shares made before the shares were forfeited. It was not until the hearing of this application that *R G* became aware of the facts which proved that the directors had published material statements which they knew to be untrue *Held* that the issuing of a prospectus is an act comprised within the term management and conduct of the company s business The statements made in the prospectus were the representations of the company *R G* was entitled to have his contract to take 50 shares set aside and to be repaid the amount of his deposit money IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 ROMANATH GOSSAIN S CASE

[2 Ind. Jur N S. 296

50 ———— Suit by company for price of shares allotted to defendant—*Misrepresentation by an alleged agent of a company not then in existence—Misrepresentation not alleged in the pleadings—Prospectus misstatements in before formation of company effect of—Laches effect of in a plea to avoid contract on the ground of misrepresentation—Contract Act (IX of 1872) ss 18 and 19 Exception (1)*—A misrepresentation was alleged to have been made by one *B* as agent of a company which was not then in existence *B* became the managing director of the company upon its formation *Quære*—Whether assuming that the representation was mad by *B* that it was material and had been relied on and that it was untrue in fact the company which was not then in existence could be held to be bound by such misrepresentation In a suit by the plaintiff company to recover money due upon certain shares taken by and allotted to the defendant the defendant in his pleadings set out and relied upon certain misrepresentations said to have been orally made by one *B* as the agent of the plaintiff company At the trial he also sought to rely upon a misrepresentation in the prospectus of the company *Held* that the defendant ought to be pinned down to the misrepresentations alleged in his pleadings and upon the faith of which he says he acted. It is not open to him to go into the question of misrepresentation in the prospectus That the prospectus although issued by the promoters before the formation of the company was the basis of the contract between the company and the defendant for the allotment of the shares and if the misstatements therein alleged by the defendant were relied upon by him and were material to the contract the defendant would be entitled to rescind the contract and to repudiate the shares in the absence of laches or conduct on his part which would deprive him of that right *In re Metropolitan Coal Consumers Association Karberg s Case L R 1892 Ch D 1* followed. When a person makes a positive assertion relying upon the statement of another that a certain third party would become a director he is not warranted in making that assertion within the meaning of s 18 of the Contract Act That under the Exception in s 19 of the Contract Act the contract even if caused by misrepresentation would not be voidable if the defendant had the means of discovering the truth with ordinary diligence The application of that Exception is not restricted to cases where the party is fixed with constructive notice of the true state of affairs MOHUN LALL *v* SRI GANGAJI COTTON MILLS CO

[4 C W N 360

51. ———— Misrepresentation—*Bills of exchange—Liability of company on bill drawn by directors—Contract Act (IX of 1872) ss 15 and 19*—On the 9th October 1878 the National Bank purchased from the *N Co* a bill of exchange for 4 000 dollars equivalent to RS 680 drawn by the *N Co* upon the firm of *N K & Co* of Hongkong The bill was in the following form Sixty days after sight of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of the National Bank of India the sum of dollars four thousand only value received and place the same to account of Nursey Kessowji Gholabhoy Pudumsey directors Nursey Kessowji secretary treasurer

COMPANY—*continued*

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

and agent. The Nursey Spinning and Weaving Company Limited. The bill was duly accepted and presented for payment but was dishonoured. On the 6th January 1879 the bank gave notice of dishonour and demanded payment from the company as drawers of the bill On the 18th January 1879 the N Co was ordered to be wound up and the bank sent in a claim against the company as drawers of the bill and subsequently sent in an alternative claim for RS 680 being the amount paid by the bank to and received by the company *Held* on the authority of *In re the New Fleming Spinning and Weaving Company Limited I L R 4 Bom 275* that having regard to the form of the bill the N Co could not be made liable as drawers but held, also that the bank was entitled to recover the amount of the bill from the N Co as money received to the use of the bank on the ground that the directors of the N Co while acting within their authority had sold to the bank on behalf of the company as a bill upon which the company was liable one upon which the company was not liable and had therefore been guilty of misrepresentation within the meaning of ss 18 and 19 of the Contract Act (IX of 1872) IN THE MATTER OF NURSEY SPINNING AND WEAVING COMPANY

[I. L. R., 5 Bom., 92

52 ———— **Power of directors as such to draw bills of exchange**—*Companies' Act (X of 1866) s 47—Winding up—Interest on debts subsequently to date of order to wind up—Rules of Bombay High Court of 3rd August 1866—Rule No 24*—The articles of association of the New Fleming Spinning and Weaving Company Limited authorized the directors to raise or borrow from time to time in the name or otherwise on behalf of the company such sums of money as they from time to time think expedient either by way of sale or mortgage of the whole or any part of the property of the company or by bonds debentures or promissory notes or in such other manner as they deem best and for the purpose of securing the repayment of any money so borrowed with interests to make and carry into effect any arrangement which they may deem expedient by conveying or assigning any property of the company to trustees or otherwise *Held* that though power to borrow money on bills of exchange was not specifically given yet bills of exchange being in many respects analogous to promissory notes and promissory notes having been specifically mentioned in the article the power to raise money by an equally well known and recognized mode —by drawing endorsing or accepting bills of exchange —must be deemed to be included in the general words or in such other manner as they deem best. Three of the directors of the above company one of whom was also the secretary treasurer and agent of the company drew a bill in favour of S in the following form Sixty days after the date of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of S the sum of rupees two lakhs only value received and place to account of *G P K V N K* secretary treasurer and agent The New Fleming Spinning and Weaving Company Limited directors. The bill was endorsed by *S* to the bank of Bombay was duly presented for payment to the drawee and protested for non payment. Subsequently to the date of the drawing of the bill the New Fleming Spinning and Weaving Company Limited, went into liquidation The Bank of Bombay claimed as endorsees of the bill to prove against the company as drawers *Held* that assuming that companies under the Indian Companies Act (X of 1866) are by s. 47 liable on bills of exchange drawn on their behalf or on account of persons acting under their authority the bill in question was not such a bill Whether or not a note or bill must on the face of it, express that it is made accepted or endorsed "by or on behalf or on account of the company yet there must be on the face of it that which shows that it was so made accepted or endorsed and which excludes the inference that it was made accepted or endorsed by or on behalf or on account of any other person. A bill or note may be in a certain sense on behalf of or on account of a company though there is upon its face no reference to the company even in the form of a description of the persons who actually make accept or endorse as being directors or secretary As between such persons and the company such a bill or note may well be on behalf of or on account of the company but it is not therefore so between the company and third parties So far as third parties are concerned a company under the Indian Companies Act (X of 1866) can be made liable on a bill or note only when such bill or note on the face of it expresses that it was made accepted or endorsed by or on behalf or on account of the company or where that fact appears by necessary inference from what the face of the instrument itself shows. The addition to the signatures of individuals as makers drawers acceptors or endorsers of notes or bills of their description as director or directors secretary treasurer and agent of a certain company is not considered to raise such inference as it does not exclude the supposition that though described as directors, etc they intended to make themselves personally liable to holders of the instrument though as between themselves and the company they may be entitled to be indemnified for anything they may have paid on account of the company in respect of such notes or bills *Dutton v Marsh L R 6 Q B 361* followed. Rule No 24 of the Rules dated the 3rd of August 1866, made by the High Court of Judicature at Bombay under the powers given by s. 189 of the Indian Companies Act (X of 1866) is *ultra vires* so far as it allows interest on debts or claims subsequent to the debt of the order to wind up a company to creditors whose debts or claims do not carry interest. IN THE MATTER OF NEW FLEMING SPINNING AND WEAVING COMPANY

[I. L. R., 3 Bom. 439

Held on appeal affirming the decision of GREEN J that the company was not liable In order to make a company liable on a bill or note it must appear on the face of such bill or note that it was

COMPANY—*continued*

6. POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

intended to be drawn accepted or made on behalf of the company and no evidence *dehors* the bill or note is admissible under s 47 of the Indian Companies Act (X of 1866) IN RE NEW FLEMING SPINNING AND WEAVING COMPANY

[I. L. R., 4 Bom. 275

53 ———— Trading by a company under its memorandum of association—*Memorandum of association—Ultra vires*.—The doctrine that a company can do nothing which is not expressly or impliedly warranted by its memorandum of association or other instrument of incorporation must be reasonably understood and applied A company therefore in carrying on the trade for which it is constituted and in whatever may be fairly regarded as incidental to or consequential upon that trade is free to enter into any transaction not expressly prohibited by its memorandum of association SHAMNUGGER JUTE FACTORY CO *v* RAM NARAIN CHATTERJEE I. L. R. 14 Calc. 189

54.———— Liability of directors for funds of company applied in transactions — *Ultra vires* —*Dealing in shares of other companies*.—The plaintiff company was formed in 1864 By its memorandum of association its object was declared to be commission agency and general trading in cotton and also in goods and commodities suited for the market in the interior of India The memorandum contained the following words — If found desirable the company may effect purchases of cotton and produce in Bombay and ship to England and carry on such local trade as may seem profitable The company went into liquidation in 1867 In April 1890 the present suit was filed against the defendant who had been one of the directors of the company and it was alleged that after the formation of the company the defendant and his co directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose which was not warranted by the memorandum of association The plaintiffs alleged that their dealings which were duly set forth in their plaint had resulted in a heavy loss to the company and they now sought to recover from the defendant the sum of R3 37 700 13 5 There had been originally five directors of the company but at the date of suit two of them were dead and two had become insolvent The plaint was filed in April 1890 *Held* (affirming the decision of PARSONS J) (1) that the memorandum of association did not justify the directors of the company in dealing in shares of other companies and that the transactions complained of by the plaintiffs were *ultra vires* (2) that the directors were liable to replace the moneys of the company which they had misapplied by applying them to a purpose which was *ultra vires* KATHIAWAR TRADING CO *v* VIRCHAND DIPCHAND

[I L R 18 Bom. 119

55 ———— Bills of exchange Issue of—*Transactions ultra vires*—*Re drafts*—A company was formed with the following objects as stated in the memorandum of association viz of securing valuable property in the new port and town of C and its immediate vicinity and of improving the property so acquired by building upon letting or selling it as may be deemed most advisable and of undertaking the construction of public works calculated to facilitate trade and also of constructing tramways roads docks wharves and jetties upon the lands so to be acquired and for all other purposes that may be essential or conducive to the attainment of or connected with the above objects Soon after the establishment of the company the directors were induced to take a share in and become liable for the cost of a mill for husking rice which it was intended to establish by a separate company and a considerable sum was advanced out of the funds of the company for the building of the mill and for machinery etc The undertaking failed and the directors to avoid losing the advances of the company resolved to take over the mill and carry it on as the property of the company They accordingly purchased a large quantity of rice which was husked at the mill and consigned to several firms in England *P M & Co* were appointed agents of the company in Calcutta for the purpose of shipping the rice under letters from the directors guaranteeing that the company would pay at maturity any re drafts which might be drawn on *P M & Co* as their agents in respect of the shipments. Bills of exchange were drawn by *P M & Co* on the firms to which the respective consignments were made and these bills were sold in the ordinary course of business in Calcutta *P M & Co* realizing the proceeds for the benefit of the company These bills were honoured by the respective consignees The rice was sold in England at a considerable loss and re drafts for the deficiency were drawn on *P M & Co* or on the company The company went into liquidation during these transactions Some of these re-drafts had been accepted by the company and others merely registered by the liquidators as claims against the company Claims were now made on the company by the drawees or endorsees of these re drafts but the liquidators declined to pay them stating that the proceedings in connection with the consignments of rice were not authorized by the memorandum and articles of association of the company and that therefore the company was not liable for any losses in respect of such consignments *Held* that trading in rice was a transaction *ultra vires* of the company the directors therefore could not bind the company and the consignees could not recover in respect of the shipments The company was not liable on the re drafts it had no power to issue bills of exchange or to accept the re-drafts and therefore the holders of those which had been in fact accepted were in no better position than the holders of those which had not been accepted. IN THE MATTER OF PORT CANNING COMPANY 7 B L R 583

56 ———— Promissory notes Issue of—*Negotiation within ordinary course of business* —Where the articles of association of a limited

COMPANY—*continued*

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

company stated that the objects for which the company was established were for the purchase of the business of an hotel keeper confectioner and provisioner the future working and carrying on of the said business and the doing of all such other things as were incidental or conducive to the attainments of the above objects it was held that the directors had power to bind the company by the issue of negotiable securities in the ordinary course of business Where a note which had been taken by the company as a security from two judgment debtors of the company was endorsed by the company to a third party and discounted by him and was on the due date not having been taken up by the makers renewed by the company —*Held* that such negotiation of the note by the company was within the ordinary course of the business of the company Also held upon the facts that the power of the company to issue negotiable securities was well exercised and that the company had due notice of dishonour by the makers. CHOONI LAL SEAL *v* SPENCE S HOTEL COMPANY

[I B L R, O C, 14

57 ———— **Liability of company for loan to secretary treasurer and agent**—*Principal and agent—Undisclosed principal—Election—Contract Act (IX of 1872) ss 230 233 234*—By the memorandum and articles of association of the New Fleming Spinning and Weaving Company *N K* was appointed secretary treasurer and agent of the company with power to raise or borrow from time to time in the name or otherwise on behalf of the company such sums of money as he might think expedient by bonds debentures or promissory notes or in such other manner as he might deem best and for the purpose of securing the repayment of any money so borrowed to make any arrangement which he might deem expedient by conveying or assigning away property of the company to trustees or otherwise *N K* was also secretary treasurer and agent of three other mill companies in Bombay On the 31st October 1878 the directors passed the following resolution — That the unallotted shares be filled up in the name of Nursey Kessowji Esq secretary treasurer and agent who is empowered to mortgage them at a fair rate of interest to enable him to obtain funds for the use of the company ' On the 11th November 1878 *P* advanced a sum of R1 00 500 upon the terms contained in a Gujarati writing of that date and signed by *N K* In this document *N K* acknowledged the receipt of the money for which 335 shares in the New Fleming Spinning and Weaving Company were duly handed over as security and he agreed to repay it within three months The last clause in the agreement stated that it was duly agreed to and approved by him (*N K*) and his heirs and representatives As an additional security *P* when advancing the loan obtained from *K N* (father of *N K*) a guarantee in the following terms — To Thaker Purmanundass Jivandass Written by Sha Kessowji Naik To wit —This day Sha Nursey Kessowji has received from you R1 00 500 namely one lakh and five hundred having deposited by way of security 335 namely three hundred and thirty five 'shares' of The New Fleming Spinning and Weaving Company Limited. If your said money cannot be paid with interest by the expiration of the time and you should sustain any kind of loss in (respect of) that I am duly to pay the same As to that, I am not to raise any obstacle or objection In case it should be necessary I am to fill up and duly deliver to you an indemnity bond on stamped paper through your vakeel (solicitor) This writing is duly agreed to and approved by me and my heirs and representatives Bombay the 11th of November in the English year 1878 On the evening of the day on which the loan was made —*viz* 11th November 1878 —but without the knowledge of *K N* it was agreed between *N K* and *P* that the time for the repayment of the loan should be extended to six months In December 1878 *N K* became insolvent and on 28th December 1878 a petition was presented to the High Court to wind up the New Fleming Spinning and Weaving Company On the 30th December *P* through his solicitors wrote a letter to the company stating that *N K* had obtained a loan from him of R1 00 500 on behalf of the company and enquiring whether the fact appeared in the company s books To this letter he received a reply signed by "*K N* director stating that the loan appeared in the books in *P* s name On the 17th January 1879 an order was made for the winding up of the New Fleming Spinning and Weaving Company and on the 4th February 1879 *P* gave notice on the official liquidators of the company of his claim against the company for the money advanced by him on the 11th November 1878 In March 1869 he filed a suit against *K N* to enforce his guarantee but was unsuccessful the Court holding that by extending the period of the loan to six months the agreement of the 11th November 1878 had been materially varied without *K N* s knowledge and that *K N* was consequently discharged. On the 24th April 1879 *P* filed his affidavit in support of his claim against the company The company resisted the claim *Held* (1) that the directors had power under the memorandum and articles of association to authorize *N K* to borrow money on behalf of the company and that they had done so and with that object had entrusted him with the unallotted shares (2) That when *P* advanced the loan to *N K* he was led to believe that *N K* was obtaining it on behalf of the four mill companies of which he was secretary treasurer and agent but that *P* was not aware and was not informed for which of the said companies the loan was obtained, and that the money was in fact advanced to *N* as to an agent acting on behalf of an undisclosed principal (3) That *P* when he discovered that the money was obtained for the New Fleming Spinning and Weaving Company was entitled to claim against the company and to rank as a creditor of the company for the amount advanced to *N K* with interest from the date of the loan —*viz* 11th November 1878 —to the date of the presentation of the petition to wind up the company PURMANUNDASS *v* COSMACK

I L R, 6 Bom, 323

COMPANY—*continued*

6 POWERS DUTIES AND LIABILITIES OF DIRECTORS—*continued*

58. ———— Cancellation of shares already issued—*Reduction of capital*—Directors have no power to cancel shares duly issued to a shareholder at his request and so reduce the capital of the company *Bhimbhai v Ishwardas Jugjiwandas I L R 18 Bom. 152* followed. SORABJI JAMSETJI v ISHWARDAS JUGJIWANDAS [I. L. R. 20 Bom. 654

59 ———— Director selling his own shares to shareholder of company—*Action for deceit—Position of director as regards individual shareholders*—A director of a company though he may occupy a fiduciary position with regard to the shareholders collectively holds no such position with regard to individual shareholders *Gilbert's case L R 5 Ch D 559* and *Gover's case L R 6 Eq 77* referred to WILSON v MACAULIFFE [I. L. R 18 All. 56

60 ———— Borrowing in excess of power in articles of association—*Ratification*—Under the articles of association of a limited company the directors had power from time to time as they might see fit without any previous consent of the shareholders to borrow any sum of money not exceeding R50 000 on the bill bond note or other security of the company upon such terms as they might think proper and had power with the sanction of a special resolution of the company previously obtained at a general meeting to borrow any sum of money not exceeding in the whole together with the R50 000 the sum of R1 00 000 *K* advanced sums of money to the company amounting in 1879 to over R80 000 No previous sanction was given to any of these advances On the 4th October 1879 an extraordinary general meeting of shareholders was held at which a resolution was passed sanctioning a mortgage to *K* of the whole of the company's property except a certain garden to secure the payment of a sum not exceeding R1 00 000 for advances already made and to be made with interest at 7 per cent This resolution was confirmed on the 16th of October and the mortgage was executed on the 22nd of December 1879 Subsequently the company was ordered to be wound up and *K* advanced a claim for R1 20 787 *Held* that there is a distinction between loans which a company is empowered to raise under its borrowing powers and debts which in meeting its current liabilities and in the actual carrying on of its affairs the company or its agents on its behalf have contracted and that the advances made by *K* did not amount to a borrowing within the meaning of the articles of association *In re Cefn Cilcen Mining Company L R 7 Eq 85* and *Waterlow v Sharp L R 8 Eq 501* followed. *Held* also that the borrowing powers conferred by the articles of association justified a mortgage the object of which was in part to cover previously incurred liabilities. IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 AND OF MEDLA TEA COMPANY KERNOT v WALTON I. L. R. 9 Calc. 14

61. ———— Ratification—*Act done by directors in excess of authority*—The ratification by a company of particular acts done by its directors in excess of the authority given them by the articles of the company does not extend the powers of the directors so as to give validity to acts of a similar character done subsequently IRVINE v UNION BANK OF AUSTRALIA I L. R., 3 Calc 280

7 WINDING UP

(a) GENERAL CASES

62. ———— Right to apply for winding up—*Holder of paid up shares*—The holder of fully paid up shares may apply for the winding up of a company as a contributory under the 10th section of Act X of 1866 The Court will not be satisfied with the bare statement of a director that a company is unable to pay its debts so as to grant a winding up order IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 AND SYLHET AND CACHAR TEA COMPANY 2 Ind. Jur N S 94

63 ———— Branch of English company in Calcutta—*Leave to provisional liquidator to advance money for a going in l go concern*—A joint stock banking company established by deed and Royal Charter in England under the provisions of the English Joint Stock Companies Act of 7 & 8 Vic., with agencies in different parts of the world and registered under the Joint Stock Companies Act of 1862 (25 & 26 Vic c 89) but not under any Indian Act having its principal place of business in London though having a principal branch in Calcutta in which the other branches in India are subordinate is not such a company as can be wound up as an unregistered company under the provisions of the Indian Companies Act of 1866 (Act X of 1866) but should be wound up by the Court of Chancery and an order of the Court of Chancery under the English Act of 1862 winding up the company in England has the effect of winding up all branches of the company in India and elsewhere IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 [1 Ind. Jur., N S. 335

64. ———— Jurisdiction of High Court—*Winding up of company formed in England—Principal place of business—Indian Companies Act (X of 1866) s 213*—A limited company formed in England under the English Companies Act 1862 and having its registered office in England but which has its principal place of business in Calcutta and is managed exclusively by directors in Calcutta and the business of which is carried on exclusively in India can be wound up by the High Court IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 AND OF CALCUTTA JUTE MILLS COMPANY LIMITED [I. L R 5 Calc 888

65 ———— Winding up in England—*English Companies Act 1862—Call order made by Court of Chancery*—The Courts in India treat a call-order made by the Court of Chancery in England upon a contributory of a company registered in England and being wound up under the authority of the

COMPANY—*continued*

7 WINDING UP—*continued*

Court of Chancery as a foreign judgment and will not allow the liability of a defendant sued upon such order to be disputed unless it be shown that the Court had no jurisdiction to make the order or that the defendant had no notice of it or that it is not in its nature a final order LONDON BOMBAY AND MEDITERRANEAN BANK *v* HORMASJI PESTANJI FRAMJI 8 Bom. O C 200

See LONDON BOMBAY AND MEDITERRANEAN BANK *v* BURJORJI SORABJI LYWALLA [I. L. R., 9 Bom 346

66 ——— Winding up under supervision of Court—*Order for dissolution of company—Voluntary winding up—Official liquidator—Companies Act VI of 1882*—As a general rule a winding up of a company under supervision of the Court should be terminated in the same way as a purely voluntary winding up—*i e* under ss. 186 and 187 of the Companies Act VI of 1882 Although under s. 195 of the Companies Act VI of 1882 the Court has power to make an order dissolving a company in the course of winding up subject to its supervision such cases must be exceptional and can only occur when the Court has deemed it proper to carry on the winding up under supervision in a manner such as clearly to approximate to a winding up by the Court The ordinary rule is the other way and it is reasonable that it should be so as generally a winding up under supervision is not conducted under so intimate a control of the Court as to put the Court in a position to judge of the correctness of the liquidators' action and the completeness of the winding up So far as the Court does not interfere a winding up under supervision remains essentially a voluntary winding up but the Court in a winding up under supervision has full authority to interfere and to exercise to any extent the power which it might have exercised if an order had been made for winding up the company by the Court. The words official liquidator in s. 160 of the Companies Act VI of 1882 do not include the liquidators in a winding up under supervision. Motion for an order for the dissolution of a company wound up under supervision of the Court refused. IN RE CARWAR COMPANY [I. L. R., 6 Bom., 640

67 ——— Voluntary liquidation—*Companies Act (VI of 1882) s 177—Liability to be sued—Execution of decree*—Where a company has gone into a voluntary liquidation it can still be sued for debts due by it incurred prior to liquidation although the fact that there are liquidators may be material if execution of the decree is sought. KOTHANDAPANI *v* SOMASUNDRAM [I. L. R., 15 Mad., 97

68 ——— Proceeding with suit—*Companies Act (VI of 1882) s 136—Proceeding to enforce execution of decree—Sanction of the Court—Suit or other proceeding*—The language of s. 136 of the Companies Act (VI of 1882) shows that proceedings in execution are regarded as distinct from the suit for the purpose of that section therefore the leave given to proceed with a suit is not authority for proceedings taken in execution of the decree in the suit authorized. JIVARDAS JAGJIVANDAS *v* DHANJISHA NASARVANJI [I. L. R., 16 Bom., 644

69 ——— Stay of proceedings—*Jurisdiction of High Court Calcutta to wind up company at Bombay*—A bank was registered at Bombay only as an unlimited company under Act XIX of 1857 and carried on business at Bombay and Calcutta. At a meeting held before Act X of 1866 came into force it was resolved that the company be wound up voluntarily under Act XIX of 1857 which resolution was confirmed after Act X of 1866 came into operation and more than a month after the original resolution. *Held* that these resolutions were informal that the company was not winding up under either Act and that an action against it by a creditor could not be stayed. *Semble*—That an action will not be stayed against a company which is being wound up voluntarily under Act X of 1866 And held that a company registered at Bombay only as before mentioned cannot be wound up by the High Court in Calcutta. IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 AND EAST INDIA BANK [1 Ind. Jur., N S., 330

70 ——— Order of Chancery Court in England—*Stay of actions in India*—Where a company was being wound up by the Court of Chancery in England, all actions brought against it in this country were ordered to be stayed. PEITSCH *v* COMMERCIAL BANKING CORPORATION [1 Ind. Jur., N S., 363

71 ——— Order of Chancery Court in England—*Suit against company in India*—A suit may be brought in the Courts in India against a company that is being wound up under The Companies Act 1862 (25 & 26 Vic c 89 s. 8) without the leave of the Court of Chancery being first obtained. *Semble*—The High Court will in the exercise of its general power stay the proceedings in a suit against such a company where the circumstances are such as to render it proper to do so BANK OF HINDUSTAN CHINA AND JAPAN *v* PREMCHAND RAICHAND. AMEDBHAI HABIBHAI *v* PREMCHAND RAICHAND [5 Bom., O C, 83

72 ——— Leave to proceed to execution Order for—*Stay of execution*—Where leave had been given to certain creditors to proceed to execution in a suit against a company while proceedings for the winding up of the company were pending but before the winding up order had been made—*Held* that the leave to proceed to execution was not necessarily affected by the winding up order IN THE MATTER OF THE INDIAN COMPANIES ACT 1866, AND SYLHET AND CACHAR TEA COMPANY [2 Ind. Jur., N S., 123

73 ——— Act XIX of 18— s —2—*Civil Procedure Code 1859 s 288*—In an application under s. 288 of the Civil Procedure Code to execute an order of a District Court for the

COMPANY—*continued*

7 WINDING UP—*continued*

winding up of a company by staying suits which had been filed against the company in the High Court — *Held* first that the order can take effect only from the time when it is filed in the Court to which it shall have been transmitted for the purpose of being executed and that suits can only be stayed from that time secondly that when the decree in a suit has already been actually executed by the attachment of property of the defendants although the sum decreed may not have been realized by a sale there is no longer a suit or action to be stayed within the meaning of s 72 of Act XIX of 1857 NARAYAN SHAMJI *v* GUJERAT TRADING COMPANY

[3 Bom. O C 20

74. ———— Notice of appeal—*Extension of time for appeal—Indian Companies Act (X of 1866) s 141—Practice* —Notice of an appeal against any order or decision made or given in the matter of the winding up of a company by the Court must under s 141 of Act X of 1866 be given to the respondent within three weeks after the order or decision complained of has been made The Court has power to extend the time for giving the notice after the three weeks have expired upon special circumstances being shown IN THE MATTER OF SARAWAK AND HINDUSTAN BANKING AND TRADING COMPANY LALLAH BARROOMUL *v* OFFICIAL LIQUIDATOR

[I L R., 4 Calc 704 3 C L R., 581

75 ———————— *Companies Act VI of 1882 ss 169 214—Practice—Winding up*—Notice of an appeal from any order or decision made or given in the matter of the winding up of a company by the Court must under s 169 of the Indian Companies Act 1882 be given to the respondent within three weeks after the order complained of has been made unless such time is extended by the Court of Appeal PAMANAPPA *v* OFFICIAL LIQUIDATOR BELLARY BRUCEPETTA STOCK AND LOAN TRANSACTING CO I. L R 22 Mad. 291

76 ———— Notice of proceeding—*Service of notices and orders—Suit against contributories—Contributory in India to English company—Last known address or place of abode—Rule 63 of the rules of 1862 of the High Court Bombay*—The London Bombay and Mediterranean Bank a joint stock company registered under the English Companies Act 186 was ordered to be wound up by an order of the Court of Chancery in England in 1866 and by a subsequent order of the said Court made in the winding up of the bank it was ordered that service of any notice summons order or other proceedings in these matters might be effected by putting such notice etc. into any post office either in England or at Bombay duly addressed to such contributories being past members according to their respective last known addresses or places of abode By a final balance order dated 5th June 1879 it was ordered by the Court of Chancery in England that the persons named in the schedule to the said order being contributories as past members of the said bank should within four days after the service of the said order pay the amount set opposite to their names with interest from the 15th March 1879 The defendant's name appeared in the said schedule and the present suit was brought to recover the sum therein appearing as due from him to the bank *viz* R3 900 The defendant denied that he had ever held shares in the plaintiffs' bank or that he ever had notice of any of the proceedings in the winding up At the trial it appeared that all the various orders and notices to shareholders made in the winding up of the bank prior to the balance order of the 5th June 1879 had been sent by post to the defendant addressed to him at No 36 Fanasvadi and were all returned undelivered. It was proved that he had never resided there but that his brother had a place of business there and that the defendant used occasionally to go there for the purpose of attending to his brother's business It further appeared that the residence of the defendant as given in the register of shareholders was Loharchall and not 36 Fanasvadi *Held* that the notices orders etc prior *to the order of 5th June 1879 were not so served as* to make the defendant subject to that final order that the obligation to obey the command of the Court of Chancery contained therein had not arisen as against the defendant and that consequently the present suit must fail It is a leading principle of English law always understood except when expressly excluded that a person proceeded against in a Court must have due notice of the proceeding failing such notice he is entitled to protection if the judgment or order obtained in his absence is made the ground of a suit in any Court governed by English principles The Court of Chancery in England had not in this case so called the defendant before it as to enable it in his absence to pronounce a definitive order against him or to bind him in the Court of his domicile although he was included in the order of the Court of Chancery The fact that the defendant frequently attended his brother's place of business at No 36 Fanasvadi was not sufficient to make that place his last known address If there had been evidence that he had used No 36 Fanasvadi as an address for receiving letters that might probably have been sufficient It would then have been known as his address at least as an address The address or residence of a member of a company entered in the register of shareholders although sufficiently ascertained for the purpose of communication from the company is not therefore ascertained for a service of legal proceedings For the purpose of such service care must be taken to find out the last known place of abode of the alleged contributory and to effect the substituted service there LONDON BOMBAY AND MEDITERRANEAN BANK *v* GOVIND RAMCHANDRA

[I. L. R., 5 Bom., 223

77 ———— Suit against contributory—*Service of notice and orders—Contributory in India to English company* —The defendant was sued as a contributory on the B list of shareholders liable in the winding up of the London Bombay and Mediterranean Bank The Bank was an English Joint Stock Company registered under the English

COMPANY—*continued*

7 WINDING UP—*continued*

Companies Act, 1862 and the winding up order was made by the Court of Chancery in England on the 20th July 1866 By a subsequent order made on the winding up it was ordered by the said Court that service of notices etc of the various proceedings might be effected on contributories being past members by posting the same either in England or in Bombay duly addressed to the last known address or place of abode of such contributories The Court of Chancery on the 16th December 1878 made an order for a call of £10 per share upon the contributories and on the 5th June 1879 the final balance order was made by the Court. This suit was brought to recover the sum of R754-7 0 alleged to be due by the defendant as a contributory in the B list under the said balance order The plaintiff was an assignee of the bank The defendant who resided at Sumari in the Surat District denied that he was a shareholder in the bank and alleged that he had had no notice of the various proceedings in the winding up At the hearing it was proved that one of the notices which had been posted in Bombay addressed to the defendant at Sumari in the Surat District *viz* a notice of the intended application for a call of £10 per share dated the 27th August 1878 had been returned undelivered to the Dead Letter Office having been carelessly addressed. No further steps were taken to serve it on the defendant *Held* that the defendant not having received any summons or notice to attend the hearing of the application for a call of £10 per share was not liable to the call made in his absence Courts in British India when called upon to give effect to a foreign judgment should insist upon a strict proof of the validity and service of summonses and other processes alleged to have emanated from a foreign Court and made a foundation for a liability to be enforced here by Courts that have no cognizance of the case on its merits *Rousillon* v *Rousillon L R 14 Ch D 351 and 371* followed. EDULJI BURJORJI v MANEKJI SORABJI PATEL

[I. L. R., 11 Bom. 241

78 ———— Contributories—*Shareholders —Notice of allotment—Secondary evidence of notice —Press copy letter—Evidence of original letter having been properly addressed and posted—Evidence Act (I of 1872) ss 16 114—Register of members—Presumption of membership—Companies Act (VI of 1882) ss 45 47, 60 61 sch I Table A (97)*—Upon the settlement of the list of contributories to the assets of a company in course of liquidation under the Indian Companies Act one of the persons named in the list denied that he had agreed to become a member of the company or was liable as a contributory The District Court admitted as evidence on behalf of the official liquidator a press copy of a letter addressed to the objector for the purpose of proving that a notice of allotment of shares was duly communicated. No notice to the objector to produce the original letter appeared on the record; but at the hearing of the appeal it was alleged by the official liquidator and denied by the objector that such notice had been in fact given There was no evidence as to the posting of the original letter or of the address which it bore but the press copy was contained in the press-copy letter book of the company and was proved to be in the handwriting of a deceased secretary of the company whose duty it was to despatch letters after they had been copied in the letter book. The objector denied having received the letter or any notice of allotment *Held* that the Court should not draw the inference that the original letter was properly addressed or posted that the press-copy letter was inadmissible in evidence and that there was no proof of the communication of any notice of allotment. The evidence adduced by the official liquidator to show that the defendant was a member of the company and so liable as a contributory consisted of the register of members a letter written by the objector, a reply thereto written by a managing director of the company and the oral testimony of the director himself The objector adduced no evidence at all *Held* that the official liquidator might if he had chosen to do so have put the register in evidence and waited before giving any further evidence until the objector had given some to displace the *primâ facie* evidence afforded by the register or to impugn the character of the register but his case must be looked at as a whole and having taken the line which he did he must take the consequences of his other evidence contradicting or impugning the *primâ facie* evidence of the register and notwithstanding that the objector gave no evidence the register was not conclusive RAM DAS CHAKARBATI v OFFICIAL LIQUIDATOR OF COTTON GINNING COMPANY

[I L. R 9 All 366

79 ———— Resolution to wind up—*Dissentient shareholders—Notice of dissent—Requirements of such notice—Indian Companies Act (VI of 1882) s 204*—The shareholders of the Gordon Mills having passed a resolution for the voluntary winding up of the company five dissentient shareholders gave notice of their dissent by a letter to the liquidators in the following terms — With reference to the resolutions to wind up the above company voluntarily and which were passed and confirmed on 14th instant we hereby give you notice under s. 04 of the Indian Companies Act (VI of 188) and require you to purchase the interest held by us in the said company at such price as may be determined either by private arrangement or by arbitration as we are dissentients from such resolutions. *Held* that the letter was sufficient notice of dissent under the provisions of s 204 of the Indian Companies Act (VI of 1882) MOTIRAM BHAGUBHAI v GORDON MILLS

I. L. R, 12 Bom., 523

80 ———— Suit against contributory on the B list—*Plea of discharge in insolvency—Foreign judgment—Balance order—Insolvent Act (Stat 11 & 12 Vic c 21) s 61*—The plaintiffs who were an English joint stock company registered under the English Companies Act 186 sued the defendant as a past member of the bank upon a balance order of the High Court of Justice in England dated 24th February 1881 The bank was in liquidation under a winding up order made on

COMPANY—*continued*

7 WINDING UP—*continued*

20th July 1866. The defendant pleaded discharge by insolvency and it appeared that he had filed his schedule on 10th January 1873 and had obtained his discharge under s. 60 of the Indian Insolvent Act (Stat. 11 & 12 Vic c 21) on the 10th July 1874. *Held* (but doubting) that the question of the defendant's liability or non liability to the claim made against him as a contributory could not be raised in this suit, and that on formal evidence being given by the plaintiffs judgment must go against the defendant. LONDON BOMBAY AND MEDITERRANEAN BANK *v* DADABHOY CURSETJI MAJU I. L. R. 10 Bom., 582

81. ——— Transfer of assets to new company—*Companies Act (X of 1866) ss 149 154 and 175—Right of creditors of transferring company—Dissentient shareholders—Sanction of Court*—By special resolutions passed on the 3rd July 1878 and confirmed on 31st July 1878 the shareholders of the Fleming Spinning and Weaving Company (Limited) resolved that the company should be wound up voluntarily and that all the assets of the said company should be transferred by the liquidators to a new company then intended shortly to be formed and registered in Bombay called the New Fleming Spinning and Weaving Company Limited and that the liquidators should receive as the consideration for such transfer certain fully paid up shares in the new company for distribution among the shareholders of the old company The said transfer was to be made subject to a covenant on the part of the new company to perform all the agreements and to discharge all the debts and liabilities of the old company The new company was duly formed and registered on the same day (31st July 1878) and the specified number of shares was delivered to the liquidators of the old company for distribution among the shareholders of the old company Two of the said shareholders *J* and *H* the holders of 50 and 20 shares respectively dissented from the special resolutions in the manner provided by s 175 of the Indian Companies Act (X of 1866) and required the liquidators to purchase their interests. The matter was thereupon referred to arbitration In the case of *H* an award was made and filed but further proceedings were stayed by order of Court In the case of *J* no award was made and he brought a suit which was still pending against both the old and new companies and the liquidators to recover R75 000 the alleged value of his shares In pursuance of the resolution the liquidators of the old company handed over the assets to the new company but no formal grant or assignment in writing of the said assets was executed. They remained in its possession until the 17th January 1879 on which day the said new company was ordered to be wound up by the Court The petitioners were appointed official liquidators and as such were in possession of the assets at the date of the petition No property whatever remained in the hands of the old company except the shares remaining to be distributed among the dissentient shareholders The new company had discharged debts of the old company to the amount of six lakhs of rupees and there remained debts of over three lakhs due by the old company Until after the new company had become insolvent no creditor of the old company had expressed his dissent from the above special resolution or had refused to accept the new company as his debtor On 1st March 1879 the voluntary winding up of the old company was directed to be continued as a winding up under the supervision of the Court. The official liquidators of the new company now presented a petition praying that the above special resolutions might be sanctioned by the Court. Certain unsatisfied creditors of the old company opposed the petition insisting that the sanction should be refused except upon the condition that they should be paid in full out of the property of the old company The two dissentient shareholders *J* and *H* also objected to the sanction being given unless provisions were made for the satisfaction of their claims as soon as they should be ascertained *Held* that under the special circumstances of the case the sanction of the Court should be given to the resolutions but subject to the value of the interest of the two dissenting shareholders being paid or adequately secured Such order to be without prejudice to any question between the creditors of the old company and the dissenting shareholders IN RE FLEMING SPINNING AND WEAVING COMPANY [I. L. R 3 Bom 299

82. ——— Transfer or sale of business—*Special resolution—Dissentient member—Notice of dissent—Requirements of notice—Powers of voluntary liquidator—Waiver—Arbitration—Failure to make award—Second arbitration—Companies Act X of 1866 ss 116 149 175 to 179*—The *F S & W Co (Ld)* in the course of being wound up voluntarily proposed to transfer its business and property to another company to be called the *New F S & W Co* and passed a special resolution on the 3rd July confirmed on the 31st July 1878 under s 175 of the Indian Companies Act X of 1866 empowering the liquidators to carry out the transfer *J* a dissentient member of the old company sent on the 5th August and therefore within the seven days provided by that section a notice expressing his dissent from such resolution but the notice did not contain the requisition provided for by the latter part of that section requiring the liquidators either to abstain from carrying the resolution into effect or to purchase his interest in the company The liquidators however replied on the 23rd August by offering to purchase *J*'s shares which offer being refused they and *J* entered into an agreement on the 12th October in pursuance of the provisions in that behalf contained in the Indian Companies Act X of 1866, for the reference of the dispute as to the price to be paid to the said *J* for his shares in the *F S & W Co (Ld)* to two arbitrators and an umpire to be named by them The agreement fixed a short date for the making of the award The arbitration was entered on but the time limited for the award having expired without any award being made *J* filed a suit on the 28th of December to recover the value of his shares

COMPANY—*continued*

7 WINDING UP—*continued*

office *Held* affirming the judgment of SHEPHARD J that those members who had given notice of withdrawal under the article quoted above were entitled to be paid out of the assets of the society in priority to the other members. ADIPURNAM PILLAI *v* D'SENA

[I. L. R., 19 Mad. 85

94. ——— Claims on assets—*Precedence of judgment-debt due to Secretary of State—Stay of execution of judgment-debt*—A judgment debt due to the Crown is in Bombay entitled to the same precedence in execution as a like judgment-debt in England, if there be no special legislative provision affecting that right in the particular case. Under similar circumstances a judgment-debt due to the Secretary of State in Council for India is in Bombay entitled to the like precedence and the reason is that such debt is vested in the Crown and when realized falls into the State treasury The nature of the cause of action in respect of which the judgment was recovered does not affect the right of the Crown or of the Secretary of State in Council for India to priority As the Crown is not either expressly or by implication bound by the Indian Companies Act (X of 1866) and as an order made under that Act for the winding-up of a company does not work any alteration of property such an order does not enable the Court to stay the execution of a judgment-debt due to the Crown or to the Secretary of State in Council for India. It is a principle recognized by the laws of many countries that claims of the Crown or State are entitled to precedence —*e g* the Hindu Roman and French codes, the laws of Spain the United States of America, Scotland and England. SECRETARY OF STATE IN COUNCIL FOR INDIA *v* BOMBAY LANDING AND SHIPPING COMPANY 5 Bom., O C., 23

95 ——— *Secured and unsecured creditors—Application of English law where Indian Act is silent—Rule of justice equity and good conscience*—There being no provision in the Indian statute law by which on the winding-up of a company secured creditors are entitled to any preference over unsecured creditors in such proceedings the rule of English law—that secured creditors can only prove for the balance of their debts after deducting the value of their securities—should prevail as being consonant with justice equity and good conscience *Waghela Rajsanji v Masludin, I L R 11 Bom. 551 L R 14 I A 89* referred to MUSSOORIE BANK *v* HIMALAYA BANK

[I. L. R. 16 All., 53

96 ——— *Right of servants to prove preferentially to other creditors—Wages of captain and crew*—Where a steam tug company was being wound up under the Indian Companies Act, 1866 it being admitted that the vessels were in the habit of going to sea,—*Held* that the captains and crews were entitled to rank preferentially and to be paid their wages in full in priority to the claims of other creditors. *Semble*—They would be similarly entitled if the vessels plied substantially in tidal waters whether plying actually on the open sea or not. *Held* also that, in the absence of any contract or custom to the contrary the captains and crews were monthly servants of the company and were entitled to be paid only for the month in which they were dismissed. *Held* also, that servants of companies generally had no right to prove in preference to other creditors, or to be paid in full or in priority to them. But where *A* by his contract was to be paid R1 000 on any breach of its terms,—*Held* that he was entitled to prove for R1 000. IN RE THE INDIAN COMPANIES ACT 1866, AND OF CALCUTTA STEAM TUG ASSOCIATION AND IN RE EASTERN STEAM TUG COMPANY

[2 Ind. Jur., N S., 17

But *see* IN THE MATTER OF AGRA AND MASTERMAN'S BANK 1 Ind. Jur., N S., 352

where however the order was made under s. 40 of the Insolvent Act.

97 ——— *Wages of labourers—Beng Acts III of 1863 and VI of 1865*—The wages of labourers employed under Bengal Acts III of 1863 and VI of 1865 are lawful ... of the land and form a primary charge upon it, into whosesoever hands it may pass. Therefore such labourers are entitled to their wages in full against a company which is being wound up and purchasers of the land from the company are entitled to set off against the purchase-money payments made by them to such labourers on account of wages due to them by the company previous to the purchase. IN THE MATTER OF THE INDIAN COMPANIES ACT 1866, AND SOUTHERN CACHAR TEA COMPANY

[2 Ind. Jur., N S., 180

98. ——— *Salary of servant—Proof of claims*—*A* had been engaged as assistant to a company for three years under articles of agreement, which contained no provision for his dismissal except in case of *A*'s failure to perform his covenants or for misconduct. Before the expiration of the three years the company was ordered to be wound up under the Indian Companies Act, 1866. At or about the time of filing the petition to wind up, notice had been given to *A* that his services were no longer required. Since then *A* had been unable, though he had done his best to obtain service elsewhere *A*'s period of contract had since expired. *B* also had been similarly engaged, but had received no such notice and was still continuing in the company's service His period of contract had not yet expired. In a proceeding in proof of claims of creditors against the company—*Held* that *A* was entitled to his salary to the end of the period of three years *B* was also entitled to his salary to the end of the period of his contract, or should that happen first till the company came to an end. IN THE MATTER OF THE INDIAN COMPANIES ACT 1866 AND SEEBSAUGOR TEA COMPANY 2 Ind. Jur., N S., 257

99 ——— *Unpaid wages of servants—Priority—Indian Companies Act VI of 1882 s ...*—Under the Indian Companies Act VI of 1882 the claim of servants of a company in respect of

COMPANY—*continued.*

7 WINDING UP—*continued*

unpaid wages has n priority to other debts due by the company IN RE PARELL MILL COMPANY [I. L. R., 10 Bom., 211

100 ———————— *Companies Act (VI of 1882) s 162—Extraordinary power of the Court under the Companies Act—Examination of witness—Costs* —Certain persons connected with a company then in course of liquidation who were also some of the defendants in a pending suit brought by the company (and revived subsequent to the order for winding up by the official liquidator) for an account and for the recovery of certain sums alleged to have been paid to the promoters of the company having been examined under an order obtained und r s. 162 of the Companies Act 1882 applied through their counsel for costs incurred on such examination *Held* that no order as to such costs could be made IN THE MATTER OF THE INDIAN COMPANIES ACT 1882 AND IN THE MATTER OF T F BROWN & Co [I. L. R 14 Calc. 219

101 ———————— *Unsuccessful application to make shareholders liable—Costs—Practice* —An unsuccessful application by an official liquidator to place certain shareh lders upon the list of contributories having been *bonâ fide* made in the liquidation of the company the Court ordered that the cost of each side should be paid as a first charge out of the estate IN THE MATTER OF WEST HOPETOWN TEA COMPANY I. L. R. 11 All. 349

(*d*) LIABILITY OF OFFICERS

102 ———— Voluntary winding up—*Inquiry into conduct of liquidators—Companies Act (VI of 1882) s 214—Misfeasance or breach of trust—Practice—Procedure—Affidavit Contents of —Summons Contents of* —Where contributories of a c mpany in voluntary liquidation complain of the conduct of liquidators in the winding up and desire an inquiry under s 214 of the Indian Companies Act (VI of 1882) the proper procedure is by summons in chambers Where it is sought to make an officer of a c mpany liable for misapplication of the funds of a company or f r misfeasance or breach of trust in relation to its affairs the sum sought to be recovered should be definitely stated in the summons and the grounds upon which the application is based should be fully and adequately set out in an affidavit or affidavits. IN RE JEHANGIR KARANI & Co HORMASJI RUSTOMJI DASAR *v* PESTONJI EDALJI DHARWAR I. L. R 19 Bom 88

103 ———— Auditor—*Misfeasance—Damages—Remoteness of loss—Limitation Act (XV of 1877) sch II art 36* —An auditor of a company to which Act VI of 1882 applies who is duly appointed by a general meeting of the company and not casually called in as occasion may require is an officer of the company within the meaning of s 214 of the abovementioned Act *In re the London and General Bank L R (1895) 2 Ch D 673* referred to The compensati n which under s 214 of the Indian Companies Act 1882 may be assessed against a defaulting director or other officer of a company is of the nature of damages it is therefore necessary that the loss to the company in respect of which compensation is asked for should be the direct and not a remote and more or less speculative consequence of the misfeasance or neglect of duty on the part of the director or other officer of the company from whom compensation is sought. The special proceeding provided for by s 214 of Act VI of 1882 is not subject to the limitation prescribed by art 36 of sch II of the Indian Limitation Act 1877 CONNELL *v* HIMALAYA BANK I. L. R. 18 All. 12

COMPANY—*concluded*

7 WINDING UP—*concluded*

104 ———— Substitution of representatives of deceased respondent as parties—*Companies Act (VI of 1882) s 214—Civil Procedure Code (1882) s 368* —R W and others contributories to a company which had gone into liquidation filed an application under s 214 of Act VI of 1882 directed against certain officers of the company That application after certain issues had been framed and partially tried was dismissed and an order was also made giving costs against the applicants The applicants appealed to the High Court against the order of dismissal Pending this appeal one of the opposite parties died and it was sought to put his legal representatives upon the record of the appeal as a respondent *Held* that in view of explanation II to s 214 of the Indian Companies Act 1882 the legal representatives of the said deceased respondent could not be brought upon the record either in respect of the relief prayed for in the original application or in respect of the order making costs payable by the applicants as that order could not be separated from the dismissal of the application WALL *v* HOWARD [I. L. R. 18 All. 156

COMPASS MAP MEANING OF—

———————— Compass map generally means the revenue surveys map BETTS *v* MAHOMED ISMAEL CHOWDHRY 25 W R. 521

COMPENSATION

See COSTS—SPECIAL CASES—GOVERNMENT [Marsh. 91

See CASES UNDER LAND ACQUISITION ACT ss. 35 39

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND RIGHT TO REMOVE—COMPENSATION FOR IMPROVEMENTS

1 CIVIL CASES

1. ———— Release of attached property —*Civil Procedure Code 1859 s 88* —Compensation

COMPENSATION—*continued*

1 CIVIL CASES—*concluded*

under s 88 Act VIII of 1859 can only be awarded on the application of the defendant by the Court which disposes of the case and cannot be given by another Court in whose custody certain property belonging to the defendant has been found and attached at the instance of the plaintiff HURO SOONDERY DOSSEE *v* BUNOSEE MOHUN DOSS [3 W R., Mis, 28

2 ———— **Excessive attachment**—*Civil Procedure Code 1859 s 88*—Where a suit was for R3 000 and the plaintiff who was declared entitled to R677, without sufficient grounds attached the defendant s property to the amount of R3 000 the defendant was held entitled to compensation MAHOMED REZOODDEEN *v* HOSSEIN BUKSH KHAN [6 W R. Mis 24

3 ———— **Claim made by defendant for compensation for arrest**—*Civil Procedure Code (1882) s 491—Leave to appear and defend—Cross claim in summary suit—Set off—Practice*—In a summary suit if a defendant has been arrested before judgment and claims compensation for such arrest under s 491 he is entitled on that ground to apply for leave to defend the suit and if a *primâ facie* case is made out leave to defend should be given (2) Under the Civil Procedure Code (Act XIV of 1882) a cross claim made by a defendant against a plaintiff cannot in ordinary cases be set up as a defence except when it arises out of the very transaction sued upon and is in the nature of a set off but the special cross claim provided for by s 491 of the Code *viz* a claim for compensation for arrest on insufficient grounds may under that section be taken into account in any suit and the amount awarded as compensation be awarded in the decree and thus *pro tanto* be a defence to the plaintiff s claim in the suit ROULET *v* FETTERLE [I. L. R. 18 Bom., 717

2 CRIMINAL CASES

(*a*) FOR LOSS OR INJURY CAUSED BY OFFENCE

4 ———— **Order that portion of fine should be paid as compensation**—*Criminal Procedure Code 1861 s 44*—The accused were convicted of the theft of some bullocks and fined. Under s 44 of the Criminal Procedure Code the Magistrate directed that the fines if collected should be paid to a witness as compensation for having to return the bullocks which he had purchased to the complainant *Held* that this order was bad The sale to the witness was not the offence complained of within the meaning of s. 44 ANONYMOUS [7 Mad., Ap 13

5 ———— **Award of portion of fine in theft where property is recovered.**—Where loss is occasioned to a person whose property has been stolen it is not illegal for the trying Magistrate to award part of the fine inflicted on the accused as amends to the owner of such property although the stolen property is recovered and restored to the owner REG *v* YESSAPPA BIN NINGAPPA [5 Bom Cr 41

6 ———— **Nature of compensation**—*Loss to person injured—Damages*—The compensation awarded under s 44 of the Code of Criminal Procedure to the person injured in consideration of the loss which he has suffered corresponds to damages awarded in civil proceedings QUEEN *v* BAHOO KOORMEE 5 W R., Cr., 78

7 ———— **Proof of loss or damage**—*Criminal Procedure Code 1861 s 44*—On a reference by a Sessions Judge an order made by a Magistrate under s. 44 of the Criminal Procedure Code 1861 awarding compensation to the complainant out of a fine inflicted for causing hurt reversed as there was no evidence on the record to show that loss was caused or that any special damage of a pecuniary nature resulted to the complainant from the offence REG *v* SAMSEN BABAJI 3 Bom., Cr, 43

8 ———— **Compensation between co-defendants**—*Criminal Procedure Code s 44*—A Magistrate has no power to take property from one defendant and give it to another defendant ANONYMOUS 4 Mad. Ap 28

9 ———— **Injury by negligence of accused**—*Award from fine imposed on person negligently digging pit whereby another person was injured*—An award of compensation to the widow of a person who died in consequence of a fall into a pit negligently dug by the accused from the fine imposed on the latter is illegal REG *v* SHIABASAPPA [7 Bom. Cr 73

10 ———— **Death caused by rash and negligent act**—*Criminal Procedure Code s 545—Compensation to widow of deceased*—An order that the amount of a fine imposed on one convicted of causing death by a rash and negligent act be paid as compensation to the widow of the deceased is illegal IN RE LUTCHMAKA I L. R. 12 Mad. 352

11 ———— **Death caused by negligence**—*Criminal Procedure Code (Act X of 1882) s 545—Compensation to widow*—A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by a rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed. *Held* that compensation could not be given to the widow under Criminal Procedure Code s. 545 YALLA GANGULU *v* MAMIDI DALI [I. L. R., 21 Mad. 71

12 ———— **Heirs of person suffering by offence**—*Criminal Procedure Code 1861 s 44*—Compensation under s 44 of the Code of Criminal Procedure cannot be awarded to any one except the person who has directly suffered by the offence It cannot be given to the heirs of a person who has been killed QUEEN *v* LALL SINGH [10 W R., Cr 30

COMPENSATION—*continued*

2 CRIMINAL CASES—*continued*

13 ——— Form of order for compensation—*Criminal Procedure Code 1861 s 44*—The award of compensation referred to in s 44 of the Code of Criminal Procedure should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein and should be found upon a statement of loss damage or expenses as the case may be ascertained at the trial QUEEN v GOUR CHURN DOSS 11 W R Cr., 53

14. ——— Innocent purchaser of stolen property—*Theft—Award of portion of fine—Criminal Procedure Code 1872 s 308*—Where a person has been convicted of theft and sentenced to a fine s. 308 of the Code of Criminal Procedure 1872 does not authorize a Magistrate to award part of the fine as compensation to a person who has innocently purchased the stolen property QUEEN v REDDON [I. L. R. 6 Mad. 286

15 ——— "Taken into account"—*Criminal Procedure Code 1872 s 308*—The expression "taken into account" in the Code of Criminal Procedure s. 308 means that the compensation awarded by the Magistrate is to be taken into consideration by the Court in a subsequent civil suit not that it is to be afterwards deducted from the damages awarded LOVE v AINSWORTH 22 W R 336

16 ——— Indirect consequences resulting from the offence—*Criminal Procedure Code (1882) s 545*—Compensation for loss caused by inability of the complainant to attend to his work on account of his time being taken up with the prosecution of the accused cannot be ordered to be paid under s. 545 of the Code of Criminal Procedure which deals with expenses incurred in the prosecution and with compensation for the injury only QUEEN EMPRESS v NARAYAN VAMANJI PATIL [I. L. R. 22 Bom. 438

17 ——— Award of compensation where no fine is inflicted—*Criminal Procedure Code (Act X of 1882) s 545*—Where an accused is discharged and no fine is imposed no order for payment of compensation can be legally passed under s 545 of the Criminal Procedure Code IN RE BASTOO DUMAJI [I. L. R. 23 Bom 717

18 ——— Cattle Trespass Act, 1871 s 22—*Illegal seizure of cattle—Costs paid by complainant—Fine or imprisonment in default of payment of fine.*—The illegal seizure of cattle under s. 22 of the Cattle Trespass Act 1871 is not a criminal offence The law allows certain Magistrates to adjudicate compensation to a party injured by an illegal seizure Court fees paid by the complainant may form part of such compensation It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s 21 of the Cattle Trespass Act IN THE MATTER OF KETABDI MUNDUL [2 C L R 507

19 ——— *Illegal seizure and detention of cattle—Costs of prosecution—Court Fees Act s 31*—A Magistrate having under s. 22 of the Cattle Trespass Act 1871 adjudged a seizure of cattle to be illegal directed the captor under s 31 of the Court Fees Act 1870 to pay the complainant the costs of the stamp and process fees incurred in prosecuting the complaint *Held* that s 31 of the Court Fees Act did not apply *Held* also that under s 22 of the Cattle Trespass Act such costs could be awarded to the complainant as compensation for the loss caused by the seizure and detention of the cattle HUSSAIN v SANJIVI [I. L R, 7 Mad. 345

20 ——— *Joint fine—Fine and compensation*—Proceedings under s. 22 of the Cattle Trespass Act are quasi-civil in their nature a Magistrate being at liberty under that section to assess and enforce in a summary manner compensation for an injury for which a civil action might be brought An order therefore for the payment of a sum as fine and compensation passed against two persons under that section which does not specify the proportionate amount payable by each is good IN THE MATTER OF NEAZ v MONSOR [I L R. 14 Calc 175

21. ——— *Illegal seizure of cattle—Fine—Imprisonment in default of payment of compensation—Criminal Procedure Code (1882) s 386*—An accused was found to have loosed the complainant s cattle at night from a cattle pen and to have driven them to the pound with the object of sharing with the pound keeper the fees to be paid for their release He was proceeded against under Act I of 1871 and under the provisions of s 22 ordered to pay compensation to the complainant and in default to undergo one month s rigorous imprisonment *Held* that s 22 was inapplicable to the facts of the case and that the order must be set aside On the facts it was not a case of illegal seizure and detention of cattle but rather one of theft as all the elements of that offence were present and the accused should have been charged with and tried for that offence *Held* further that the sentence of imprisonment in default of payment of the compensation was not warranted by law Compensation may be levied as a fine and the ordinary mode of levying fines is laid down in s 386 of the Code of Criminal Procedure The law nowhere provides that fines may be levied by means of imprisonment PARYAG PAI v ABJU MIAN [I. L R., 22 Calc 139

QUEEN EMPRESS v LAKSHMI NAYAKAN [I. L R 19 Mad 238

22 ——— Offence whether mere breach of contract amounts to an—*Criminal Procedure Code (Act V of 1898) ss 4 cl (o) 250—Act XIII of 1859 s 2*—A mere breach of contract is not under the first part of s. 2 of Act XIII of 1859 an offence within the meaning of the term in s 4 of the Criminal Procedure Code and no compensation can therefore be legally awarded under s. 250 of the Code in respect of such breach IN THE MATTER OF THE PETITION OF RAM SARUP BHAKAT [4 C W N 253

COMPENSATION—*continued*

2 CRIMINAL CASES—*continued*

(b) To Accused on Dismissal of Complaint

23 ———— Compensation to accused—*Power to award compensation without hearing evidence*—*Held* that it was not competent to the Magistrate to order compensation to the accused under s 270 Act XXV of 1861 without hearing evidence Bilash v Makroo
[2 B L R S N 15 10 W R Cr, 61

24 ———— *False case of theft—Criminal Procedure Code 1861 s 270*—Compensation is not allowable in false cases of theft Juhoorun v Girdharee Ram
[3 W R Cr 70

Chidi Chowdee v Bhowany
[1 W R Cr 1

Queen v Gogun Sein 2 W R Cr, 57

Jalil Munshi v Farnam Hossein
[6 W R Cr 55

Dhurai Noshyo v Hubee Noshyo
[7 W R Cr, 12

Chootoo Dhoon Bharbonia v Abdool Meah
[7 W R, Cr 40

Gunamanee v Haree Datta
[18 W R Cr 6

But *see* Kali Churn Lahiri v Shoshee Bhoosun Sanyal 23 W R Cr 17

25 ———— *Defamation*—Nor in a case of defamation Assaruddee Khan v Baloo Khan 1 W R, Cr 6

26 ———— *Penal Code s 374*—But only in cases under Ch XV of the Criminal Procedure Code and therefore not in a case under s 374 of the Penal Code Rateeah v Phokondee 5 W R Cr 1

27 ———— S 270 of the Code of Criminal Procedure applies only when a complaint of an offence triable under Ch. XV of the Code is dismissed. Anonymous
[6 Mad., Ap 49

Queen v Lalloo Singh 8 W R Cr 54

where it was held the section did not apply to cases of mischief committed on land and house-breaking by night though both contain an element of criminal trespass to which the section does apply

28 ———— *Amount of compensation*—R50 is the measure of compensation awardable from any complainant irrespective of the number of accused persons Queen v Lalloo Singh 8 W R Cr 54

29 ———— *Wrongful confinement*—Compensation cannot be awarded in a case of wrongful confinement Jharu v Bahar Ally
[7 W R Cr 11

Azour Howladar v Asaruddin
[17 W R Cr 1

COMPENSATION—*continued*

2 CRIMINAL CASES—*continued*

30 ———— *House breaking*—Nor in a case of house-breaking by night Dhurai Noshyo v Hubee Noshyo 7 W R, Cr 12

31 ———— *Fines—Power of Subordinate Magistrates*—Subordinate Magistrates of the second class have no power to award fines to accused as compensation for frivolous and vexatious prosecutions Reg v Jellapa bin Mudakappa
[1 Bom, 181

32 ———— *Frivolous and vexatious case—Causing hurt*—In a trial for causing hurt the Subordinate Magistrate awarded compensation to the defendant for a frivolous and vexatious complaint under s 270 of the Code of Criminal Procedure *Held* that the section did not apply to such a case Anonymous 5 Mad, Ap 40

33 ———— *Cases in which summons on complaint issues—Criminal Procedure Code 1861 s 270*—Amends under s. 270 of the Code of Criminal Procedure are awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue Reg v Ramji valad Daji 5 Bom, Cr 12

34. ———— *Fine—Criminal Procedure Code 1861 Ch XIV*—A fine cannot be awarded as compensation in a case falling under Ch. XIV of the Code of Criminal Procedure 1861 Queen v Ananund 3 W R, Cr, 60

35 ———— *Award on dismissal of vexatious complaint—Criminal Procedure Code 1861 s 270*—Under s 270 of the Criminal Procedure Code a Magistrate dismissing a complaint as frivolous or vexatious can only award a sum not exceeding R50 to the accused by way of compensation and cannot impose it by the way of fine nor can he directly sentence the complainant to imprisonment in default of payment Queen v Gopal
[2 N W 430

36 ———— *Failure to prove case—Criminal Procedure Code 1861 s 270*—The High Court refused to interfere with the order of a Magistrate fining complainants under s. 270 of the Code of Criminal Procedure when it appeared after due enquiry by the Magistrate that the complainants laid claim to large jummas in a chur without possessing any documents to prove their rights In the matter of Mothoor Ghose 11 W R Cr, 10

37 ———— *Unfounded charge of being person of bad repute—Criminal Procedure Code 1861 s 270*—A Magistrate is not authorized under s 270 of the Criminal Procedure Code to award compensation from the complainant to the accused in respect of an unfounded charge brought against such accused of being a person of bad character or repute Queen v Bal Kishen
[2 N W 447

38 ———— *Offences other than under Penal Code*—The power of Magistrates to award compensation to accused persons against whom frivolous and vexatious complaints have been

COMPENSATION—*continued*

2 CRIMINAL CASES—*continued*

...al is not confined to complaints brought under the provision of the Penal Code QUEEN v TURNER
[4 N W., 94

39 ———————— *Vexatious charge—Criminal Procedure Code 1861 s 270*—Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Ch XX and one under Ch XIX of the Code of Criminal Procedure a Magistrate may award amends to the accused under s 270 of the Code if he considers the charge with reference to the cases under Ch XX to have been vexatious MODHOO SOODUN GHOSE *alias* MADHUB CHUNDER GHOSE v JOYRAM HAZRAH 13 W R., Cr 39

40 ———————— *Vexatious charge—Criminal Procedure Code 1861 s 270*—Where a judicial officer from over anxiety for the due administration of justice in his Court makes a mistake in taking steps against parties whose conduct appears to obstruct the Court of Justice somewhat too hastily and without due circumspection It is not to be presumed that he had acted vexatiously in the sense of s 270 of the Criminal Procedure Code or otherwise than in perfect good faith so as to justify an award of compensation to the person who was prosecuted by his directions. ANONYMOUS CASE
[15 W R. 506

41 ———————— *Criminal Procedure Code s 250—Vexatious or frivolous charge—Case instituted upon complaint*—A case instituted by the police on a complaint to them is not instituted "upon complaint" in the sense of s 250 of the Criminal Procedure Code and therefore in such a case an order awarding compensation made under that section is illegal IN THE MATTER OF THE COMPLAINT OF ISREI ISHREE v BAKHSHI
[I. L. R. 6 All. 96

42. ———————— *Criminal Procedure Code s 250—Vexatious complaint*—The provisions of s. 250 of the Code of Criminal Procedure may be applied in summons cases whether tried summarily or not QUEEN EMPRESS v BASAVA
[I. L. R. 11 Mad. 142

43 ———————— *Criminal Procedure Code s 560—Compensation for frivolous or vexatious complaint—Complaint under s 110 of Criminal Procedure Code*—The award of compensation under s 560 of the Code of Criminal Procedure must be in respect of a frivolous and vexatious accusation of an offence of which the accused person has been discharged or acquitted. That section is not applicable to an application made to a Magistrate solely with a view to his taking proceedings under s 110 of the Code QUEEN EMPRESS v LAKHPAT
[I. L. R. 15 All. 365

44. ———————— *Imprisonment in default of payment of compensation—Distress—Sentence Legality of*—The operation of s 560 of the Code of Criminal Procedure is restricted to cases instituted by complaint as defined in the Code or upon information given *to* a police officer by a Magistrate and consequently that section has no application to a case instituted on a police report or on information given *by* a police officer *Quære*—Whether under the section a Magistrate has power to make an order for imprisonment in default of payment of the compensation awarded? A police constable arrested a carter and charged him before a Magistrate with an offence under s 34 of Act V of 1861 The Magistrate acquitted the accused and directed under s 560 of the Code that the police constable should pay him R20 as compensation or undergo simple imprisonment for a fortnight *Held* that as the section had no application to the case the order was illegal being made without jurisdiction *Held* further that even if the Magistrate had power under the Code to pass an order for imprisonment in default of payment of compensation awarded under s 560 it was illegal to pass such an order until some attempt had been made to levy the amount in the manner provided by s 386 for the levying of a fine RAMJEEVAN KOORMI v DURGACHARAN SADHU KHAN
[I. L. R., 21 Calc. 979

45 ———————— *Penal Code, ss 193 and 211—Sanction to prosecute and award of compensation—Imprisonment in default of payment of compensation—Sentence Legality of*—The complainant was directed to pay R50 as compensation to the accused or in default to suffer simple imprisonment for one month under s 560 of the Code of Criminal Procedure and sanction was also granted to prosecute him for offences under ss 211 and 193 of the Penal Code *Held* that if the Magistrate thought that this was a case in which a prosecution under ss. 211 and 193 of the Penal Code should be sanctioned he ought not to have taken action under the provisions of s 560 of the Code of Criminal Procedure *Held* also that the order for imprisonment in default of payment of the compensation awarded was illegal *Ramjeevan Koormi* v *Durgacharan Sadhu Khan I L R 21 Calc 979* followed SHIB NATH CHONG v SARAT CHUNDER SARKAR
[I. L. R 22 Calc., 586

46 ———————— *Order for imprisonment in default of payment of compensation*—Although compensation awarded under s 560 of the Code of Criminal Procedure is recoverable as if it were a fine it is not competent to a Magistrate immediately upon ordering a complainant to pay compensation to direct that he should in default be sentenced to imprisonment QUEEN EMPRESS v PUNNA I. L. R. 18 All., 96

47 ———————— *Compensation for frivolous and vexatious complaint—Order in the alternative for imprisonment*—It is not competent to a Court in awarding compensation under s 560 of the Code of Civil Procedure against a complainant for making a frivolous and vexatious complaint to order at the same time that in default of payment of the compensation the person against whom the order is made suffer imprisonment. *Queen Empress v Punna I L R 18 All 96* approved MANJHLI v MANIK CHAND I. L. R., 19 All 73

COMPENSATION—*continued*

2 CRIMINAL CASES—*continued*

48 ———————— *Compensation for vexatious complaint—Compensation where the complainant is a police officer*—S 560 of the Criminal Procedure Code 1882 does not authorize a Magistrate to pass an order for compensation to be paid by the complainant to the accused where the complaint is instituted by a police officer *Ramjeevan Koormi* v *Durgacharan Sadhu Khan I L R 21 Calc 979* followed QUEEN EMPRESS v SAKAR JAN MAHOMED [I. L. R. 23 Bom. 934

49 ———————— *Sanction to prosecute for false charge under s 211 Penal Code*—A Magistrate in acquitting a person accused on a charge of theft which he found to be false and malicious awarded compensation to each of them to be paid by the complainant Subsequently one of the accused applied for and obtained sanction to prosecute the complainant for bringing a false charge under Penal Code s 211 and certain of his witnesses for the offence of giving false evidence under s. 193 *Held* that the order granting sanction was not illegal as regards the complainant by reason of the previous award of compensation ADIKKAN v ALAGAN [I. L. R., 21 Mad. 237

50 ———————— *Sanction to prosecute and award of compensation—Criminal Procedure Code (Act V of 1898) s 250 and s 476—Magistrate Discretion of*—It is an improper exercise of his discretion by a Magistrate to award compensation to the accused under s 250 of the Criminal Procedure Code and also to direct or sanction the prosecution of the complainant under s 211 of the Penal Code for bringing a false charge *Shib Nath Chong* v *Sarat Chunder Sarkar I L R 22 Calc 586* followed. *Queen* v *Rupan Pae 6 B L R, 296 15 W R Cr 9* referred to BACHU LAL v JAGDAM SAHAI I L R 26 Calc 181

51 ———————— *Dismissal in default of appearance*—Where a Magistrate dismissed a complaint in default under s. 259 Code of Criminal Procedure and fined the complainant under s 270 the fine was remitted and ordered to be refunded RAM CHURN DEY v JANULL [17 W R. Cr, 6

52 ———————— *Amount of compensation—Criminal Procedure Code 1869 s 270*—Since the passing of Act VIII of 1869 a Magistrate may under s 270 in a case in which more than one person has been accused award compensation not exceeding R50 to each person IN THE MATTER OF THE PETITION OF BHYROO LALL [14 W R., Cr 75

53 ———————— *Alteration of charge to bring offence under Ch XV of Code—Criminal Procedure Code 1861 s 270*—When on a complaint being preferred to a Magistrate of an offence not coming within Ch XV of the Code of Criminal Procedure the Magistrate alters it so as to bring it under Ch XV he cannot award compensation to the accused under s 270 of the Criminal Procedure Code the offence originally complained of not being one for which compensation can be awarded. REG v GURNINGAPA 7 Bom., Cr 58

54 ———————— *Alteration of charge to bring offence under Ch XV of Code*—*Held* that where a Magistrate is dealing with a charge which he has the power to dispose of finally under Ch. XV of the Code of Criminal Procedure although the charge as originally laid fell under Ch XIV, he has a discretion to inflict a fine under s 270 of that Code HOTHOOR LALOONG v HINDOO SINGH MOUZ 10 W R., Cr., 49

55 ———————— *Cattle Trespass Act 1871 s 20—False complaint*—A complaint was made against certain persons under s 20 of the Cattle Trespass Act of 1871 charging them with having illegally seized and detained the complainant's cattle. The Assistant Magistrate who heard the complaint found it to be false and he ordered the complainant to pay R20 compensation to the accused and in default to suffer simple imprisonment for 21 days. On application to the High Court—*Held* that the order was illegal and must be set aside IN THE MATTER OF KALA CHAND v GUDADHUR BISWAS [I. L R., 13 Calc, 304

56 ———————— *Cattle Trespass Act 1871 s 20—Frivolous complaint—Compensation—Cattle Trespass Act Ch V—Complaint of illegal seizure not complaint of offence—Criminal Procedure Code s 250*—The illegal seizure of cattle under colour of the Cattle Trespass Act, 1871 not having been constituted an offence under that Act or otherwise an award of compensation under s 250 of the Code of Criminal Procedure to the accused on such complaint is illegal PITCHI v ANKAPPA [I. L. R., 9 Mad. 102

57 ———————— *Cattle Trespass Act s 20—Criminal Procedure Code s 4 (a) s 250—Illegal seizure of cattle under the Cattle Trespass Act not an offence within the meaning of the Code of Criminal Procedure*—In a case instituted upon complaint made under s. 20 of the Cattle Trespass Act the Magistrate acquitted the accused, and being of opinion that the complaint was vexatious directed the complainant to pay compensation to the accused as under s 250 of the Code of Criminal Procedure *Held* that the act complained of was not an offence within the meaning of the Code of Criminal Procedure and that the order awarding compensation was illegal. KOTTALANADA v MUTHAYA [I. L. R., 9 Mad., 374

58 ———————— *Criminal Procedure Code (1882) s 560—Frivolous and vexatious complaint—Cattle Trespass Act (IX of 1871) s 20—Complaint of wrongful seizure of cattle—Offence*—A complaint of the wrongful seizure of cattle is not a complaint of an offence within the meaning of the Code of Criminal Procedure. Consequently on the dismissal of such a complaint it is not competent to a Court to act under s. 560 of the Code and award compensation to the persons against whom the complaint is made *Pitchi* v *Ankappa I L R 9 Mad., 102 Kottalanada* v *Muthaya I L R.*

COMPENSATION—*continued*

2 CRIMINAL CASES—*continued*

9 Mad 374 Kalachand v Gadadhar Biswas I L R 13 Calc 604 and *Nedaram Thakur v Joonal I L R 23 Calc 248* referred to MF GHAI v SHEOJIK I. L. R., 18 All. 353

59 ——— *Cattle Trespass Act 1871 s 20—Fine or imprisonment in default of payment*—It is not lawful to pass a sentence of fine or of imprisonment in default of payment of the compensation awarded in a matter under s. 20 of the Cattle Trespass Act (I of 1871) IN THE MATTER OF KETAEDI MUNDUL 3 C. L. R. 507

60 ——— *Dismissal of charge—Criminal Procedure Code 1882 s 245 (1872 s 211)—Order of acquittal*—An order for compensation against a complainant may be made on an order of acquittal under s. 211 of the Criminal Procedure Code. MONA SHEIKH v ISHAN BARDHAN [I. L. R., 6 Calc. 581

61. ——— *Dismissal of charge after hearing evidence—Criminal Procedure Code ss 245 and 250—Vexatious complaint—Acquittal—Compensation*—S 250 of the Criminal Procedure Code (Act X of 1882) authorises the payment of compensation in cases where the accused has been acquitted under s 245 of the Code after the whole evidence in the case has been recorded *Number v Ambu I L R 5 Mad 381* followed. QUEEN EMPRESS v PANDU VALAD GOPALA [I. L. R. 10 Bom. 199

62. ——— *Failure to substantiate charge—Committal of prosecutor for false evidence—Act XIV of 1861 s 270—Act X of 1872 s 209*—When a prosecutor fails to substantiate his charge by making contradictory statements the Magistrate who tries the case under Ch XV of the Criminal Procedure Code can award compensation to the accused, although he commit the prosecutor to take his trial on a charge of giving false evidence QUEEN v RUPAN RAI [6 B L R. 298 15 W R Cr 9

63 ——— *Trial in original Court—Criminal Procedure Code 1872 s 209*—The special provisions of s 209 of Act X of 1872 as to award of compensation to a complainant are applicable only in the case of original trials under Ch. XVI of the Criminal Procedure Code 1872 ANONYMOUS 8 Mad. Ap 7

64. ——— *Acquittal after trial of charge—Criminal Procedure Code 1872 ss 209 211*—Where a formal charge has been drawn up and the accused tried and acquitted the acquittal should be one under s 220 Criminal Procedure Code 1872 and not under s. 211 and therefore no compensation can be awarded to the accused under s 209 in such a case RADHANATH PANJA v WOOMA CHURN CHOWDHRY 22 W R. Cr 12

65 ——— *Acquittal after trial of charge—Criminal Procedure Code 1872 s 209*—The fact that the accused has been tried and acquitted is no bar to the award of compensation under s 209 of the Code of Criminal Procedure 1872 NUMBER v AMBU I. L. R. 5 Mad., 381

66 ——— *Criminal Procedure Code (1882) s 560—Separate charges and acquittal on one—Incomplete discharge or acquittal* The accused was charged under ss. 352 and 379 of the Penal Code but convicted under s 352 being discharged under s 379 The Magistrate ordered the complainant to pay compensation for bringing a frivolous and vexatious charge under s 560 of the Criminal Procedure Code The order for paying compensation was set aside on the ground that s 560 could only operate when there was a complete discharge or acquittal MUKTI BEWA v JHOTU SANTRA [I. L R. 24 Calc 53 1 C W N., 17

67 ——— *Complainant—Ministerial officer—Criminal Procedure Code 1872 s 209—Award of compensation*—A karkun on the establishment of a Civil Court entrusted with the execution of a writ reported to the Court that a particular person obstructed him in attaching property as commanded by the writ and a report was thereupon made by the Court to a Magistrate with a view to proceedings being taken against the obstructor The Magistrate acquitted the accused and ordered the karkun to pay the accused compensation under s 209 of the Criminal Procedure Code *Held* that such last mentioned order was wrong the karkun not being a complainant within the meaning of s 209 of the Code of Criminal Procedure In such a case as the above the Subordinate Judge should be regarded as the complainant and he having acted judicially was not liable to the penalty provided in s 209 of the Criminal Procedure Code IN RE KESHAV LAKSHMAN I. L. R. 1 Bom. 175

68 ——— *Complainant—Complaint—Criminal Procedure Code (Act X of 1882) ss 250 560—Criminal Procedure Code Amendment Act (IV of 1891) s 2—Penal Code (Act XLV of 1860) s 186*—Where a Civil Court peon was sent by a Munsif to attach certain property and on the peon reporting that he had been obstructed in making the attachment the Munsif sent the case to the Deputy Magistrate for investigation and trial and the Deputy Magistrate summarily tried the accused under s 186 of the Penal Code dismissed the case and awarded compensation of R.0 to the accused —*Held* that the award of compensation was illegal: the peon though nominally the informant in the case was not the real complainant nor could the proceedings properly be said to have been instituted before the Deputy Magistrate on his information BHARUT CHUNDER NATH v JABED ALI BISWAS [I. L. R. 20 Calc., 481

69 ——— *Complaint of hurt—Summons for assault—Discharge of accused*—Where the complaint and the proof adduced in support thereof showed that the accused persons if guilty at all were guilty of offences not triable under Ch XVI of the Code of Criminal Procedure 1872 and the Magistrate issued a summons to answer

COMPENSATION—*concluded*

2 CRIMINAL CASES—*concluded*

a charge for assault under s 352 of the Penal Code and after examining the witnesses for the complainant discharged the accused and awarded compensation to the accused under s 209 of the Code of Criminal Procedure 1872 —*Held* that the order awarding compensation was illegal SOMER v QUEEN I. L. R., 6 Mad 316

70 ———— *Complaint taken cognizance of by Magistrate—Criminal Procedure Code 1882 s 250—Complaint to police*—Under s 250 of the Code of Criminal Procedure compensation cannot be awarded when the complaint having been made to the police the Magistrate has taken cognizance of the case upon receiving a charge sheet against the accused sent in by the police QUEEN EMPRESS v TOLAVARAPU I L R. 7 Mad. 563

71. ———— *Complaints under special law—Criminal Procedure Code 1861 s 270*—S 270 of the Code of Criminal Procedure does not apply to complaints under a special law but only to complaints triable by the Magistrate and punishable under the Penal Code with imprisonment for a period not exceeding six months QUEEN v ABDOOL AZEEZ KHAN 14 W R. Cr 36

72 ———— *Order for compensation to complainant under Act XIII of 1859—Breach of contract*—An order directing compensation under Act XIII of 1859 is illegal Such portion of the money advanced to the defendant as had been appropriated to the fulfilment of the contract or as could justly be set off against a part fulfilment of the contract ought not to be ordered to be refunded. ANONYMOUS 4 Mad. Ap 68

73 ———— *Effect of award of compensation on dismissal of complaint—Right of suit*—The compensation or award which a Magistrate who dismisses a complaint as frivolous or vexatious is empowered in his discretion to award to an accused person does not deprive the latter of any right of suit in the Civil Court which he may possess ADHAM v HURBULLUB 2 N W 58

74. ———— *Recovery of amount when not paid—Distress warrant—Criminal Procedure Code 1872 s 209*—A Magistrate in making an order for compensation under s 209 Code of Criminal Procedure is bound if the amount be not paid to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay but if such person admits he has no goods and there by waives the right to have the amount levied by distress the Magistrate may proceed to imprison him in the civil jail The warrant of distress cannot have currency simultaneously with the imprisonment. BISHESHWAR SHAHA v BISHWAMBHUR SIRCAR [23 W R. Cr 65

COMPETENT COURT

See CASES UNDER RES JUDICATA—COMPETENT COURT

COMPLAINANT

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I. L. R. 1 Bom. 175 [I. L. R. 20 Calc 481

See CONVICTION 22 W R. Cr, 32

See OATHS ACT ss 8 9 10 11 [I. L R., 13 Bom., 389

1. ———— **Person giving information to police of murder**—*Criminal Procedure Code 1861 s 360*—Where a person gave information to a Magistrate and the police of murder having been committed and subsequently on the charge having been dismissed petitioned the Sessions Judge to have the matter re investigated—*Held* that he was not a complainant within the meaning of s. 360 of the Criminal Procedure Code 1861 REG v FATECHAND VASTACHAND 5 Bom. Cr., 85

2. ———— **Contempt of authority of public servant**—*Criminal Procedure Code 1872 s 210*—In cases of contempt of lawful authority of a public servant the complainant referred to in s 210 of the Code of Criminal Procedure is the public servant whose authority has been resisted and without whose sanction no criminal proceedings can be instituted against the offender and not the person injured by the resistance IN RE MUSSAMUT ADAM [I. L. R., 2 Bom., 653

3 ———— **Complaint of bigamy by a person aggrieved**—*Criminal Procedure Code s 198—Penal Code (Act XLV of 1860) s 494*—Where the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother—*Held* that the complainant merely as brother of the lunatic was not a person aggrieved by such offence within the meaning of s 198 of the Criminal Procedure Code (X of 1882) and that the complaint could not be entertained QUEEN EMPRESS v RAI BUKSH MONI I. L. R. 10 Bom. 340

4. ———— **Complaint by the husband**—*Person aggrieved*—*Criminal Procedure Code (Act V of 1898) s 198—Penal Code (Act XLV of 1860) s 494*—The husband is a "person aggrieved" within the meaning of s. 198 of the Criminal Procedure Code upon whose complaint the Court should take cognizance of an offence under s. 494 of the Penal Code *Queen Empress v Rukhmoni I L R 10 Bom 340* and *In the matter of Ujjala Bewa 1 C L R 523* referred to DEPUTY LEGAL REMEMBRANCER v SARNA KAHMI [I. L. R. 28 Calc., 336

CHELLAM NAIDU v RAMASAMI [I. L R. 14 Mad., 379

5 ———— **Witness refusing to answer**—*Criminal Procedure Code 1882 s 485—Penal Code s 179—Semble*—A complainant is not a witness punishable for refusal to answer under s. 485 of the Code of Criminal Procedure or under s. 179 of the Penal Code IN RE GANESH NARAYAN SATHE [I. L. R. 13 Bom. 600

COMPLAINT Col

———— Dismissal of—

See CASES UNDER DISCHARGE OF ACCUSED

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

1. ———— **Cognizance of offence**—*Criminal Procedure Code ss 191 202 203—Magistrate Power of—"May take cognizance of" Meaning of*—The use of the term "may take cognizance of any offence in s. 191 of the Criminal Procedure Code does not make it optional with a Magistrate to hear a complainant but refers rather to the action of the Magistrate in taking cognizance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice He is bound to examine the complainant and then can either issue summons to the accused or order an enquiry under s. 202 or dismiss the complaint under s. 203 UMER ALI *v* SAFFER ALI I. L. R. 13 Calc. 334

2. ———— **Cognizance of offence without complaint**—*Power of Magistrate—Offence under Penal Code or special Act*—To give a Magistrate jurisdiction to take cognizance of an offence without any complaint under s. 68 Criminal Procedure Code 1861 there must be an offence committed which is punishable under the Penal Code or under some special Act. QUEEN *v* PANNA LALL MOOKERJEE [19 W R. Cr 4

3 ———— *Issue of warrant*——*Power of Magistrate*—A Magistrate not being the Magistrate of the district nor in charge of a division of the district is not competent to issue warrants for the arrest of persons against whom no complaint has been preferred to him nor any charge made by the police QUEEN *v* OOMRAO SINGH 3 N W 317

4 ———— *Power of Magistrate—Information of third person*—A Magistrate may take cognizance of a case on the information of a third person without any complaint by the party injured. IN RE RAMRUTTUN NEOGEE [6 W R. Cr 3

5 ———— **Trial without complaint**—*Illegal conviction—Railway Act 1854*—A conviction and sentence by a Magistrate F P under the Railway Act reversed; there being no complaint made before the Magistrate as required by the Code of Criminal Procedure REG *v* LARKINS [4 Bom. Cr 4

COMPLAINT—*continued*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued*

6 ———— *Case referred from Civil Court*—A Magistrate F P has no jurisdiction without complaint to take up a case referred by the Civil Court to the District Magistrate and sent by him for trial REG *v* DITCHAND KHUSHAL [4 Bom Cr 30

7 ———— *Case referred without jurisdiction by Subordinate Magistrate*—A Magistrate F P has no power to take up without complaint being made to him a case referred to him by a Subordinate Magistrate which such Subordinate Magistrate had no power to refer REG *v* BAGU VALAD OWSARI 4 Bom. Cr 34
ANONYMOUS CASE 7 Mad. Ap 33

8 ———— *Accused voluntarily appearing*—Where an accused person appears voluntarily before a Magistrate to answer a charge the want of a complaint on oath necessary for the issuing of a summons or warrant (ss 66 and 43 Criminal Procedure Code) becomes immaterial *Semble*—A Magistrate taking a complaint and issuing a summons thereon acts not ministerially but judicially Conditions under which a Magistrate may proceed with an investigation or trial without a complaint upon oath considered and cases bearing on the question reviewed and explained REG *v* SADA SHIBAPPA PUNDURANG GUPPA 5 Bom Cr 29

9 ———— *Charge of furnishing false information in land acquisition proceedings—Omission to refer to particular false statement on which accusation made—Penal Code (Act XLV of 1860) s 177—Land Acquisition Act (I of 1894) ss 9 and 10*—A Magistrate issued processes for the attendance of the accused on the complaint of the Land Acquisition Deputy Collector for having given false information within the terms of s. 177 of the Penal Code and s 10 of the Land Acquisition Act in certain written statements that *they had made to the Collector The complaint* was that the written statements were false The documents however contained more than one statement of fact Neither in the complaint made by the Deputy Collector nor in his examination by the Magistrate was any reference made to any particular statement made by either of the accused as being a false statement nor had the Deputy Collector put in the written statements upon which he desired to proceed either with his written complaint or at the time of his examination by the Magistrate *Held* that the complaint was bad and the case should not be allowed to proceed in its present form. The Magistrate was bound to require from the complainant the written statements on which the proceedings were founded and also to ascertain from him the particular statement or statements on which the accusation was made DURGA DAS RAKHIT *v* UMESH CHANDRA SEN [I. L. R 27 Calc., 985

COMPLAINT—*continued*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued*

10 ———— *Illegal conviction and sentence—Memorandum sanctioning the prosecution—Stamp Act X of 1862 s 3*—Conviction and sentence under s 3 of Act X of 1862 (Stamp Act) reversed as no complaint had been made to the trying Magistrate A memorandum under the signature of the Collector sanctioning the prosecution can not be accepted in the place of a complaint so as to authorize the issuing of a summons REG v BAI DIVALE 5 Bom Cr 48

11 ———— Offence charged not proved but different offence shown—*Fresh complaint*—Where a complaint laid before a Magistrate F P by certain Government employes accused the prisoner of criminal breach of trust of their wages but from the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money it was held that the Magistrate F P had power to frame a charge against and convict the prisoner of the latter offence without a fresh complaint being made to him REG v DHONDU RAMCHANDRA 5 Bom. Cr 100

12 ———— Offence disclosed in course of proceedings not triable by Magistrate without complaint—*Criminal Procedure Code 1872 s 142*—A complaint was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant In the course of the proceedings it appeared that the wife had committed bigamy (s 494 Penal Code) The Magistrate without a further complaint committed the woman alone for trial by the Court of Session. *Held* that the Magistrate had acted within his jurisdiction s 142 of the Code of Criminal Procedure being designed to prevent a Magistrate from enquiring without complaint into a case connected with marriage but when a case is properly before the Magistrate he may proceed against any person implicated IN THE MATTER OF UJJALA BEWA 1 C L R. 523

13 ———— Offence charged under particular section of Penal Code—*Power of Magistrate to apply any other section applicable*—A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint but may apply any section which he thinks applicable to the case so long as the parties are not misled and the proper procedure is observed. He may recall an order which he finds to be wrong and substitute any other which he may think right under the law KALIDASS BHUTTACHARJEE v MOHENDRONATH CHATTERJEE [12 W R., Cr 40

14 ———— Case referred by Civil Court—*Criminal Procedure Code s 273—Power to refer*—The various modes in which civil proceedings can be instituted under the Code of Criminal Procedure pointed out Where a Civil Court makes over a case to a Magistrate for investigation the Magistrate ought to examine the complainant and reduce the examination into writing which should be signed by the Magistrate and the complainant S 273 Code of Criminal Procedure only empowers a superior Magistrate to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a police officer but not cases where he himself takes cognizance of an offence BHUGOBAN CHUNDER PODDAR v MOHUN CHUNDER CHUCKERBUTTY [12 W R, Cr 49

15 ———— Case irregularly sent by Civil Court—*Investigation without complaint—Civil Procedure Code 1861 s 68*—Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court yet as the Court had given its sanction to the prosecution of the offence—*Held* that it was in the competency of the Magistrate under s 68 of the Code of Criminal Procedure even without a charge or complaint to proceed to investigate and if necessary to commit for trial to the Sessions Court. QUEEN v DOORGA NATH ROY [8 W R Cr., 9

16 ———— *Criminal Procedure Code (1882) ss 58 190 191—Cognizance taken by a Magistrate under s 190 sub s (1) cl (c)—Jurisdiction of Magistrate to hold a preliminary inquiry not thereby ousted*—*Held* that the fact of a Magistrate having taken cognizance of a case under s 190 sub-s (1) cl (c) of the Code of Criminal Procedure does not disqualify such Magistrate from holding a preliminary inquiry and committing the case to the Court of Session QUEEN EMPRESS v ABDUL RAZZAK KHAN [I L R., 21 All, 109

See QUEEN EMPRESS v FELIX [I. L. R 22 Mad., 148

and JAGAT CHANDRA MAZUMDAR v QUEEN EMPRESS I L R 26 Calc 786 [3 C W N 491

17 ———— Previous enquiry—*Criminal Procedure Code 1872 s 146*—The previous enquiry provided for by s 146 before a complaint is taken up ought not to be made after the accused has been brought before the Court under a warrant RAMKANT SIRCAR v JADUB CHUNDER DASS [21 W R, Cr 44

18 ———— Authorization to proceed with case—*Form of complaint Irregularity or defect in*—A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment though the complaint or authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district sent with the record of the case notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorization of the Court before which or against the authority of which an offence mentioned in Ch XI of the Code of Criminal Procedure is alleged to have been committed is a sufficient warrant for commencement of criminal proceedings

COMPLAINT—*continued*

I. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued*

Queen v. Mahim Chandra Chuckerbutty 3 B L R A. Cr 67 overruled. QUEEN v. NARAYAN NAIK [5 B L R F B., 660

S C IN THE MATTER OF NARAYAN NAIK [14 W R. Cr 34

19 ———— Extra-judicial knowledge of Magistrate—*Criminal Procedure Code 1861 s 68—Summons without complaint*—The power which a Magistrate of a district or a Magistrate in charge of a division of a district has to issue a summons without any complaint is not affected by the circumstance that the offence with which the accused was charged came to the knowledge of the Magistrate otherwise than through a petition which was presented against the accused. BISSESHUR ROY v. HUR PERSAD SINGH 11 W R. Cr 1

20 ———— *Code of Criminal Procedure (Act V of 1898) s 190 (1) (c)—Jurisdiction of Magistrate*—Where a Magistrate having lawful cognizance of an offence found it disclosed in the evidence that a certain other person not before the Court was concerned in the offence and thereupon issued process against him and tried him—*Held* that the Magistrate did not act without jurisdiction although he was not specially empowered to take cognizance under cl (c) sub s (1) of s. 190 Code of Criminal Procedure. CHARU CHANDRA DAS v. NARENDRA KRISHNA CHAKRAVARTI [4 C W N 367

21 ———— *Co-accused—Punishment of some if sufficient ground for refusal to try others who did not appear at the first trial—Further enquiry—Code of Criminal Procedure (Act V of 1898) ss 190 437*—If several persons commit an offence a Magistrate cannot consider the punishment of some of them to be sufficient in regard to others and refuse to summon the rest of the accused. A Magistrate having taken cognizance of an offence has jurisdiction to hold judicial proceedings in respect of all persons who the evidence discloses are the offenders. BISHEN DAYAL RAI v. CHEDI KHAN 4 C W N 560

22 ———— *Criminal Procedure Code (Act V of 1898) ss 190 191—Cognizance of a case taken upon an anonymous communication—Transfer of case*—Where a Magistrate took cognizance of a case on an anonymous communication and the accused applied for a transfer on the ground that the case came within the provisions of cl (c) of s 190 of the Code of Criminal Procedure the Court directed that the case be transferred to the file of another Magistrate for trial. IN THE MATTER OF HARI NARAYAN BISWAS [3 C W N 65

23 ———— *Act XXV of 1861 s 68—Private information*—A belief founded on private and anonymous information is not knowledge within the meaning of s 68 of the Criminal Procedure Code. IN THE MATTER OF MOHESH CHUNDER BANERJEE. QUEEN v. PURNA CHANDRA BANERJEE. QUEEN v. KALI SIRKAR [4 B L R Ap 1 13 W R Cr 1

24 ———— Report of police officer—*Criminal Procedure Code (Act XXV of 1861) s 68—Act X of 1872 s 142—Knowledge—Report of police—Interference of High Court*—S 68 of the Criminal Procedure Code applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute and even in such cases the jurisdiction to arrest requires for its foundation knowledge of the fact of an offence having been committed and that knowledge must be either personal or derived from testimony legally given. The report of the police or any statement which falls short of an actual formal complaint or of a statement made on oath is not sufficient in law to give a Magistrate jurisdiction to issue his warrant. In this case although the Magistrate had acted illegally before evidence was recorded and had shown a want of discretion in some of the stages the High Court refused to quash the Magistrate's order directing the prisoners to be put upon their defence on the ground that the order had been made by a competent officer after hearing evidence which was judicially received and recorded. IN THE MATTER OF THE PETITION OF SURENDRA NATH ROY. QUEEN v. SURENDRA NATH ROY [5 B L R 274 13 W R, Cr 27

25 ———— *Power of Court to act on police report—Subordinate Magistrate—District Magistrate*—A Subordinate Magistrate is competent to act on a police report but it is not proper for a District Magistrate to pass an order directing proceedings to be taken on the police report unless he has withdrawn the whole matter from the Court of such Subordinate Magistrate. MOUL SINGH v. MAHABIR SINGH 4 C W N 242

26 ———— *Code of Criminal Procedure (Act V of 1898) s 190 cl (c)—Proceedings against one not originally accused without investigation or evidence on acquittal of accused—Deputy Commissioner as Magistrate and Revenue Officer—Judicial and executive functions distinction between—Magistrate orders by to his subordinate on judicial matters validity of—High Court power of to revise such orders*—On information received and police investigation the Deputy Commissioner as Magistrate instituted proceedings against the informant for having himself put opium in a parcel consigned by rail by another and made him over to a Subordinate Magistrate for trial, and on the failure of the prosecution the Deputy Commissioner directed proceedings to be taken against the consignor. *Held* that this order of the Deputy Commissioner against the consignor without further information or investigation was without jurisdiction

COMPLAINT—*continued*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued*

10 ———— *Illegal conviction and sentence—Memorandum sanctioning the prosecution—Stamp Act X of 1862 s 3*—Conviction and sentence under s 3 of Act X of 1862 (Stamp Act) reversed as no complaint had been made to the trying Magistrate A memorandum under the signature of the Collector sanctioning the prosecution cannot be accepted in the place of a complaint so as to authorize the issuing of a summons REG v BAI DIVALE 5 Bom Cr 48

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12 ———— Offence disclosed in course of proceedings not triable by Magistrate without complaint—*Criminal Procedure Code 1872 s 142*—A complaint was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant In the course of the proceedings it appeared that the wife had committed bigamy (s 494 Penal Code) The Magistrate without a further complaint committed the woman alone for trial by the Court of Session. *Held* that the Magistrate had acted within his jurisdiction s 142 of the Code of Criminal Procedure being designed to prevent a Magistrate from enquiring without complaint into a case connected with marriage but when a case is properly before the Magistrate he may proceed against any person implicated IN THE MATTER OF UJJALA BEWA 1 C L R. 523

13 ———— Offence charged under particular section of Penal Code—*Power of Magistrate to apply any other section applicable*—A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint but may apply any section which he thinks applicable to the case so long as the parties are not misled and the proper procedure is observed. He may recall an order which he finds to be wrong and substitute any other which he may think right under the law KALIDASS BHUTTA CHARJEE v MOHENDRONATH CHATTERJEE [12 W R Cr 40

14 ———— Case referred by Civil Court—*Criminal Procedure Code s 273—Power to refer*—The various modes in which civil proceedings can be instituted under the Code of Criminal Procedure pointed out Where a Civil Court makes over a case to a Magistrate for investigation the Magistrate ought to examine the complainant and reduce the examination into writing which should be signed by the Magistrate and the complainant S 273 Code of Criminal Procedure only empowers a superior Magistrate to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a police officer but not cases where he himself takes cognizance of an offence BHUGOBAN CHUNDER PODDAR v MOHUN CHUNDER CHUCKERBUTTY [12 W R, Cr., 49

15 ———— Case irregularly sent by Civil Court—*Investigation without complaint—Civil Procedure Code 1861 s 68*—Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court yet as the Court had given its sanction to the prosecution of the offence—*Held* that it was in the competency of the Magistrate under s 68 of the Code of Criminal Procedure even without a charge or complaint to proceed to investigate and if necessary to commit for trial to the Sessions Court QUEEN v DOORGA NATH ROY [8 W R, Cr., 9

16 ———— *Criminal Procedure Code (1882) ss 58 190 191—Cognizance taken by a Magistrate under s 190, sub s (1) cl (c)—Jurisdiction of Magistrate to hold a preliminary inquiry not thereby ousted*—*Held* that the fact of a Magistrate having taken cognizance of a case under s 190 sub-s (1) cl (c) of the Code of Criminal Procedure does not disqualify such Magistrate from holding a preliminary inquiry and committing the case to the Court of Session QUEEN EMPRESS v ABDUL RAZZAK KHAN [I L R., 21 All, 109

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18 ———— Authorization to proceed with case—*Form of complaint Irregularity or defect in*—A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment though the complaint or authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district sent with the record of the case notwithstanding an irregularity or defect of form in recording the complaint The complaint or authorization of the Court before which or against the authority of which an offence mentioned in Ch XI of the Code of Criminal Procedure is alleged to have been committed is a sufficient warrant for commencement of criminal proceedings.

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COMPLAINT—*continued*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued*

tried the case declined to go into the question of title; he found that the complainant s tenants were in possession of the field; and disbelieving the evidence of *alibi* he convicted the accused and sentenced them to fine On application in revision to the High Court, it was urged (*inter alia*) that the complainant not being the person in possession could not legally institute the criminal proceedings, and that therefore the conviction was bad. *Held* that looking to the nature of the false defence set up by the accused, this was not a case for interference in revision as to do so would encourage perjury *Held* also that the words any person in possession in s 441 of the Penal Code do not mean only a complainant in possession " there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Queen* v *Kalinath Nag Chowdhry 9 W R., Cr., 1 Chandi Persad* v *Evans I L R 22 Cal., 123 Iswar Chandra Karmakar* v *Sital Das Mitter 8 B L R Ap 62* and *In re Ganesh Narayan Sathe I L R 13 Bom., 590* referred to QUEEN EMPRESS v KESHAVLAL JETKRISHNA

[I. L. R. 21 Bom., 536

34. ——— *Power of Magistrate to issue warrant or entertain case—Criminal Procedure Code 1869 s 66 (a) and ss 68 and 155*—In cases in which the police cannot arrest without a warrant a warrant cannot be legally issued by a Magistrate except on a complaint made upon oath (or under the provisions of s 68) whether the Magistrate issuing the warrant is authorized to entertain cases either on complaint preferred directly to himself or on the report of a police officer under s. 66 (a) of the Criminal Procedure Code or not The report of a police officer referred to in the above section means not any communication made by a police officer but the formal report drawn up under s. 155 of the Criminal Procedure Code in cases in which the police may arrest without warrant REG v JAFAR ALI 8 Bom. Cr 113

35 ——— Petition of third person—*Criminal Procedure Code 1872 s 205—Magistrate entertaining petition by third party*—Certain parties having complained in the Magistrate s Court of assault or ill usage by order of one whom they called their zamindar with a view to making them pay enhanced rent both complainants and accused were absent when the case was called on for hearing As the Magistrate was about to dismiss the complaint a third party appeared and alleged that the complaint had been made with the connivance of the accused for the purpose of fabricating evidence of his right or title to the mauzah where the complainants lived Thereupon the Magistrate compelled the complainants to appear took down the evidence of some of them received a counter complaint from the third party above mentioned and convicted the complainants under the Penal Code s 193 and sentenced them to imprisonment *Held* that the Magistrate ought not to have entertained the third party's petition or compelled the complainants to go on with their case and that under the circumstances the evidence given was not judicial evidence IN THE MATTER OF THE PETITION OF DUKHUN PAHAN

[24 W R Cr 32

36 ——— Omission to examine complainant —The Deputy Magistrate was held to have been wrong in summoning the parties charged before examining the complainant RUJUB MUNDLE v LOCHUN MUNDLE W R. 1864 Cr 73

37 ——— *Omission to take sworn examination of the complainant—Complainant merely called upon to attest complaint in writing—Criminal Procedure Code (1882) s 200*—It is not a sufficient compliance with the provisions of s. 200 of the Code of Criminal Procedure where a complainant who has presented a written complaint is merely called upon to attest the complaint on oath no separate sworn statement of the complainant being recorded by or under the orders of the Magistrate to whom the complaint is presented *Queen Empress* v *Murphy I L R., 9 All., 666* distinguished KESRI v MUHAMMAD BAKHSH I L R 18 All 221

38 ——— *Omission of examination of complainant on oath—Dismissal of complaint—Criminal Procedure Code (Act X of 1882) ss 197 200 202 203—Complaint against a public servant*—Upon receipt of a petition of complaint it is the duty of a Magistrate as directed by s 200 of the Criminal Procedure Code (Act X of 1882) to examine the complainant on oath Until he has done so it is not competent for him to dismiss the complaint under s 203 of the Code It is an irregular proceeding on the part of a Magistrate in *place of examining the complainant on oath to call on* the person complained against to submit a report as to the truth or otherwise of the allegations made against him If an investigation into the subject matter of the complaint is considered necessary it should be conducted according to the provisions of s. 202 either by the Magistrate himself or by some properly qualified officer A complaint against a public servant such as the Chairman of a Municipality must be dealt with in exactly the same manner as any other complaint and the consideration of the question as to the applicability of s 197 of the Criminal Procedure Code to the case should be postponed until after the complainant has been examined on oath in accordance with the law SATYA CHARAN GHOSE v CHAIRMAN UTTERPARA MUNICIPALITY

[3 C W N 17

39 ——— *Necessity for examination of complainant—Dismissal of complaint—Order for judicial inquiry or report without examining complainant legality of—Penal Code (Act XLV of 1860) s 211—Code of Criminal Procedure (Act V of 1898) ss 202 203 and 476*—Where a Magistrate after having examined the complainant and without hearing his witnesses or dismissing the complaint ordered the complainant to be prosecuted under s 211 of the Penal Code—*Held* that the Magistrate s order

COMPLAINT—*continued*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*concluded*

was without jurisdiction Where a complainant whose complaint had been reported false by the police complained to the Magistrate and asked him to try the complaint and the Magistrate did not examine the complainant himself but made over the case to a Subordinate Magistrate for judicial enquiry or report —*Held* that the Magistrate had no authority for this procedure A complainant must be examined by the Magistrate who receives the complaint or by some Magistrate to whom he has transferred the case When a complainant has been examined he is entitled to have the person accused brought before the Magistrate and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused and an investigation held. MAHADEO SINGH *v* QUEEN EMPRESS

[I. L R 27 Calc 921

2 POWER TO REFER TO SUBORDINATE OFFICERS

40 ——— Case originating with District Magistrate—*Criminal Procedure Code, 1861 s 68*—A case originating with a Magistrate of the district must under s 68 of the Code of Criminal Procedure be disposed of by the Magistrate himself and cannot be referred to a Subordinate Magistrate QUEEN *v* HOSSEIN MANJEE

[9 W R. Cr 70

IN THE MATTER OF THE PETITION OF DHUNPUT SINGH 19 W R Cr 30

41. ——— Irregularity in recording complaint—*Complaint not reduced to writing—Act X of 1872 ss 144 44 and 233—Criminal Procedure Code (Act XXV of 1861) ss 66 273 426 and 439—Irregularity in commencing proceedings* —Under s 66 of the Code of Criminal Procedure the examination of the prosecutor should be reduced to writing, and signed by him. When a complaint is made before a Magistrate but not reduced to writing he cannot under s. 273 of the Code of Criminal Procedure refer the case to a Deputy Magistrate for trial Ss. 426 and 439 do not apply to a case where the prosecution is not commenced by a complaint as directed in the Code A conviction with such irregularity cannot stand good merely because the amount of punishment would have been the same if proper proceedings had been instituted. QUEEN *v* MAHIM CHANDRA CHUCKERBUTTY 3 B L. R., A. Cr 67

42. ——— *Complaint not reduced to writing or signed* —On receipt of a petition from the complainant the Magistrate without examining him and reducing his examination into writing, and obtaining his signature thereto or appending his own signature as Magistrate referred the petition to a Deputy Magistrate for trial The Deputy Magistrate tried and convicted the accused. On a reference from the Sessions Judge on the ground that the proceedings were irregular under s. 66 Act XXV of 1861 and that therefore the order of the Deputy Magistrate was without jurisdiction —*Held* that the petition was sufficient and that the Magistrate was justified in making over the petition to a Deputy Magistrate who had the full powers of a Magistrate for enquiry and trial QUEEN *v* UMESCHANDRA CHOWDRY

[5 B L. R., 160 14 W R, Cr., 1

43 ——— *Non-compliance with provisions of Code* —A Magistrate of a district before whom a complaint had been made without complying with the provisions of s 66 Act XXV of 1861 sent the petition to be disposed of by a Deputy Magistrate and when the Deputy Magistrate had proceeded to some extent with the case the Magistrate took it up and tried it himself *Held* that non-compliance with the provisions of s. 66 made the subsequent proceedings void QUEEN *v* GIRISH CHANDRA GHOSE

[7 B L. R. 513. 16 W R., Cr., 40

44 ——— *Non-compliance with provisions of Code—Criminal Procedure Code (Act XXV of 1861) ss 66 67—Act VIII of 1869 s 66 (b)—Act X of 1872 ss 141 147 and 49* —A Magistrate of a district before whom a complaint had been made without complying with the provisions of s 66 of Act XXV of 1861 sent the petition to be disposed of by a Deputy Magistrate not authorized to receive complaints without reference from the District Magistrate who tried and convicted the offender *Held per* KEMP *J* that non-compliance with the provisions of s 66 of Act XXV of 1861 made the subsequent proceedings void. *Held per* AINSLIE *J.*, that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under s 66 (b) of Act VIII of 1869 and that the subsequent proceedings therefore were valid IN THE MATTER OF ISWAR CHUNDER KOER *v* UMESH CHUNDER PAL 8 B. L. R. 18

45 ——— *Omission to examine complaint—Act XXV of 1861 ss 66 and 273—Act X of 1872 ss 141 and 44—Reference by District Magistrate to Subordinate Magistrate* —A District Magistrate is not bound on receipt of a complaint to examine the complaint under s. 66 of Act XXV of 1861 before referring the complaint to a Subordinate Magistrate for disposal The examination of the complainant by the Magistrate to whom the case has been referred is sufficient QUEEN *v* HARU 9 B L. R. F B., 146

S C BHUGOBUT CHURN SEIN *v* SIAM ALI IN RE HARU RAM CHUNDER GHUTTUCK AND IN RE HARU

[18 W R. Cr., 18

46 ——— *Reference to Subordinate Magistrate before reducing examination of complainant to writing—Criminal Procedure Code 1861 s 66* —The Magistrate of the district on a complaint being presented to him has no power to refer the petition to a Subordinate Magistrate for trial until he has himself reduced the examination of the petitioner into writing in accordance with the

COMPLAINT—*continued*

2. POWER TO REFER TO SUBORDINATE OFFICERS—*continued*

provisions of s. 66 of the Criminal Procedure Code QUEEN v BHIKAREE 4 N W 88

47 ———— *Code of Criminal Procedure (Act V of 1898) ss 202 203 476—Dismissal of complaint—Judicial enquiry—Examination of complainant whether necessary—Reference to and enquiry by a Subordinate Magistrate of second-class powers in a case triable by a Court of Sessions—Jurisdiction of such Magistrate—Order for prosecution for false complaint* —A complainant appeared before a District Magistrate and charged certain persons with offences triable only by a Court of Sessions and asked for a judicial enquiry into his complaint and the Magistrate without himself examining the complainant made over the case to a Subordinate Magistrate of second class powers for holding the enquiry and the latter having reported the case to be false the District Magistrate sanctioned the prosecution of the complainant for an offence under s. 211 Penal Code *Held* that the Subordinate Magistrate exercising second class powers had no jurisdiction to deal with the offence triable only by a Court of Sessions and that the enquiry ought not to have been directed to be made by him That the District Magistrate, to whom the complaint was made was alone competent to deal with it and that he could not make it over for enquiry to any Subordinate Magistrate without having previously himself examined the complainant That the enquiry ordered could neither be regarded as one under s 202 of the Code of Criminal Procedure nor could the proceedings be regarded as held under s. 203 of the Code and that the order for the prosecution of the complainant was therefore not made according to law BUDHNATH MAHATO v EMPRESS [4 C W N 305

48 ———— Reference for enquiry and report—*Criminal Procedure Code ss 4 202 350* —A Magistrate upon complaint made having issued process and examined witnesses in support of complaint ceased to exercise jurisdiction His successor on taking up the case referred the complaint to the police for enquiry and report and upon receipt of the report discharged the accused. *Held* that this procedure was illegal A reference under s. 20 of the Code of Criminal Procedure cannot be made after evidence has been taken for the complainant and process issued. SADAGOPACHARYAR v RAGAVACHARYAR I L R 9 Mad 282

49 ———— *Reference to police officer—Examination of complainant* —It is not proper course for a Magistrate when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer He is bound to receive the complaint and after examining the complainant to proceed according to law IN RE JANKIDAS GURU SITARAM [I L R 12 Bom 161

50 ———— *Criminal Procedure Code (1882) s 202—Reference of cases by Magistrate to the police for enquiry* —A Magistrate can send a case for enquiry by the police under Criminal Procedure Code s 202 only when for reasons stated by him he distrusts the truth of the complaint In cases where the accused is a member of the police force it is generally better that the inquiry should be prosecuted by a Magistrate QUEEN EMPRESS v KANAPPA PILLAI [I L R 20 Mad 387

3 WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT

51 ———— Withdrawal of complaint —*Act XXV of 1861 s 270—Act X of 1872 s 210* —Offences punishable under the Penal Code with more than six months imprisonment are not triable under Ch XV of the Code of Criminal Procedure and consequently do not fall within the provisions of s 271 of that Code ANONYMOUS CASE [4 B L R F B 41 12 W R Cr 59

52 ———— *Criminal Procedure Code 1872 s 210—Penal Code s 352—Criminal force—Hurt* —Complainant alleged that he had been seized by the hands and legs thrown to the ground slapped thumped and slipped on the chest by three persons one of whom gave a knife to another with directions to stab complainant *Held* that the complaint disclosed a case of hurt and that s 210 of the Code of Criminal Procedure 1872 did not justify the Magistrate allowing the complaint to be withdrawn SAMBASIVANNA v BHOGAPPA [I L R 5 Mad, 378

53 ———— *Criminal Procedure Code 1898 s 248— Complainant* —A complaint having been made to the police the latter caused charges to be preferred under ss. 143 and 504 of the Indian Penal Code against certain accused The person who had complained to the police subsequently filed a petition praying the Second class Magistrate to withdraw the charges under s 248 of the Code of Criminal Procedure The Magistrate permitted the withdrawal and directed the accused to be set at liberty *Held* that the order was bad there being no complainant in the case and that consequently the Magistrate in purporting to act under s 248 had exceeded his powers QUEEN EMPRESS v CHENCHAYYA I L R 23 Mad 626

54 ———— *Withdrawal for want of prosecution—Criminal Procedure Code 1861 Ch XIV* —Cases instituted and tried under Ch XIV of the Criminal Procedure Code cannot be struck off the file at the request of the complainant or for the want of prosecution on his part The Magistrate must proceed in such cases in the manner prescribed by the chapter notwithstanding the complainant may desire to withdraw his complaint QUEEN v JUGROOP UGRAHEE 3 N W 341

55 ———— *Effect of withdrawal—Acquittal* —The withdrawal of a complaint by the complainant operates as an acquittal and the High Court has no authority to entertain the matter

COMPLAINT—*continued*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*concluded*

was without jurisdiction Where a complainant whose complaint had been reported false by the police complained to the Magistrate and asked him to try the complaint and the Magistrate did not examine the complainant himself but made over the case to a Subordinate Magistrate for judicial enquiry or report —*Held* that the Magistrate had no authority for this procedure A complainant must be examined by the Magistrate who receives the complaint or by some Magistrate to whom he has transferred the case When a complainant has been examined he is entitled to have the person accused brought before the Magistrate and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused and an investigation held. MAHADEO SINGH v QUEEN EMPRESS

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IN THE MATTER OF THE PETITION OF DHUNPUT SINGH 19 W R Cr 30

41. ———— Irregularity in recording complaint—*Complaint not reduced to writing—Act X of 1872 ss 144 44 and 293—Criminal Procedure Code (Act XXV of 1861) ss 66 273 426 and 439—Irregularity in commencing proceedings* —Under s 66 of the Code of Criminal Procedure the examination of the prosecutor should be reduced to writing, and signed by him. When a complaint is made before a Magistrate but not reduced to writing ...nnot under s 273 of the Code of Criminal Pro...e refer the case to a Deputy Magistrate for ... Ss. 426 and 439 do not apply to a case where ...prosecution is not commenced by a complaint as ...rected in the Code A conviction with such irregularity cannot stand good merely because the amount of punishment would have been the same if proper proceedings had been instituted. QUEEN v MAHIM CHANDRA CHUCKERBUTTY 3 B L R A Cr 67

42. ———— *Complaint not reduced to writing or signed* —On receipt of a petition from the complainant the Magistrate without examining him and reducing his examination into writing and obtaining his signature thereto or appending his own signature as Magistrate referred the petition to a Deputy Magistrate for trial The Deputy Magistrate tried and convicted the accused On a reference from the Sessions Judge on the ground that the proceedings were irregular under s. 66 Act XXV of 1861 and that therefore the order of the Deputy Magistrate was without jurisdiction —*Held* that the petition was sufficient and that the Magistrate was justified in making over the petition to a Deputy Magistrate who had the full powers of a Magistrate for enquiry and trial QUEEN v UMESCHANDRA CHOWDRY

[5 B L. R., 160 14 W R Cr, 1

43 ———— *Non-compliance with provisions of Code* —A Magistrate of a district, before whom a complaint had been made without complying with the provisions of s 66 Act XXV of 1861 sent the petition to be disposed of by a Deputy Magistrate and when the Deputy Magistrate had proceeded to some extent with the case the Magistrate took it up and tried it himself *Held* that non-compliance with the provisions of s. 66 made the subsequent proceedings void QUEEN v GIRISH CHANDRA GHOSE

[7 B L. R., 513 16 W R., Cr 40

44 ———— *Non compliance with provisions of Code—Criminal Procedure Code (Act XXV of 1861) ss 66 67—Act VIII of 1869 s 66 (b)—Act X of 1872 ss 144 147 and 49* —A Magistrate of a district before whom a complaint had been made without complying with the provisions of s 66 of Act XXV of 1861 sent the petition to be disposed of by a Deputy Magistrate not authorized to receive complaints without reference from the District Magistrate who tried and convicted the offender *Held per* KEMP J that non-compliance with the provisions of s 66 of Act XXV of 1861 made the subsequent proceedings void *Held per* AINSLIE J., that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under s 66 (b) of Act VIII of 1869 and that the subsequent proceedings therefore were valid. IN THE MATTER OF ISWAR CHUNDER KOER v UMESH CHUNDER PAL 8 B L. R., 19

45 ———— *Omission to examine complaint—Act XXV of 1861 ss 66 and 273—Act X of 1872 ss 144 and 44—Reference by District Magistrate to Subordinate Magistrate* —A District Magistrate is not bound on receipt of a complaint to examine the complainant under s. 66 of Act XXV of 1861 before referring the complaint to a Subordinate Magistrate for disposal The examination of the complainant by the Magistrate to whom the case has been referred is sufficient QUEEN v HARU 9 B L. R. F B., 146

S C BHUGOBUT CHURN SEIN v SIAM ALI IN RE LAM CHUNDER GHUTTUCK AND IN RE HARU

[18 W R., Cr., 18

46 ———— *Reference to Subordinate Magistrate before reducing examination of complainant to writing—Criminal Procedure Code 1861 s 66* —The Magistrate of the district on a complaint being presented to him has no power to refer the petition to a Subordinate Magistrate for trial until he has himself reduced the examination of the petitioner into writing in accordance with the

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued*

68 ——— **Delay in prosecution after sanction**—*False charge*—Sanction was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. *Held* that the Magistrate had power to dismiss the complaint ANONYMOUS 6 Mad Ap 15

69 ——— **Refusal of complainant to lay complaint.**—A Magistrate is not bound to convict of a charge on which the complainant refuses to lay a complaint, although on the accused's own admission the offence has been committed. ANONYMOUS 5 Mad. Ap 5

70 ——— **Non appearance of complainant**—*Criminal Procedure Code 1872 ss 205 & 1*—Where a complainant is required to pay fees for summoning witnesses under s 361 of the Code of Criminal Procedure and fails to do so the Magistrate must deal with the case on the evidence before him and is not justified in dismissing the complaint under s. 205 of that Code KORAPULU v MONAPPA [I. L. R 5 Mad. 160

71. ——— *Criminal Procedure Code 1872 s 208*—Under s 208 Criminal Procedure Code 1872 the Magistrate may dismiss the complaint if the complainant does not appear on the day to which the hearing has been duly adjourned even though the complainant and his witnesses have been examined and their further attendance seems unnecessary MUDOOSOODUN SHA v HARI DASS DASS 22 W R 40

72. ——— *Criminal Procedure Code 1861 s 259*—A Subordinate Magistrate has no power to dismiss a charge of criminal misappropriation under s 403 of the Penal Code for non appearance of the complainant under s 259 of the Code of Criminal Procedure That section only applies to cases which fall within Ch XV of the Criminal Procedure Code. ANONYMOUS [4 Mad. Ap 41

73 ——— *Order made in absence of parties*—When an order for adjournment was not made in the presence of the parties the dismissal of the complaint because the complainant did not appear on the day fixed was held to be illegal ANONYMOUS 8 Mad. Ap 6

74 ——— *Obstruction in repairing road without leave*—Where a person for having repaired a public road without having previously asked for leave to repair it was on simple petition charged with having obstructed the road and the complainant never appeared—*Held* that the Deputy Magistrate ought to have dismissed the complaint. QUEEN v BHOLA NATH BANERJEE [7 W R Cr 31

75 ——— *Criminal Procedure Code (Act V of 1898) ss 369 432 and 247—Warrant case Dismissal for default —Presidency Magistrate Power of*—An order by a Presidency Magistrate dismissing for default a case under s 4 0 Penal Code for the non appearance of the complainant is bad inasmuch as he thereby applied to a warrant case a procedure provided by s 247 of the Code of Criminal Procedure for summons cases only RAM COOMAR v RAMJEE [4 C W N 26

76 ——— *Presence of witnesses*—Where a complaint is preferred before a Magistrate and the witnesses named by the complainant are summoned and attend but the complainant is absent a Magistrate may if he thinks it unnecessary to carry on the enquiry in the absence of the complainant discharge the accused QUEEN v DASOO MANJEE 11 W R Cr 39

77 ——— *Illegal adjournment*—The Deputy Magistrate's order dismissing a case for default (after repeated unnecessary adjournments and after the accused was put on his defence) upon a day to which no legal adjournment was made, was set aside as illegal MAHOMED ALUM v AKIL [16 W R Cr 68

78 ——— *Discharge of accused*—In answer to a reference from a Sessions Judge the Court were of opinion that in a case where the accused has been duly summoned or arrested under a warrant and is present to meet any charge and the complainant and his witnesses negligently fail to appear against him if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under s 224 Code of Criminal Procedure the accused person ought to be discharged but also held that the question did not arise under the circumstances of the case and the case must go back to the Magistrate for investigation TAKI MAHOMED MANDAL v KRISHNA NATH RAI 7 B L R 7 [15 W R Cr 53

QUEEN v ABDUL BISWAS 7 B L R., 8 note

But *see* QUEEN v BHAGABATI SATHRAN [7 B L R 9 note

S C KUNDLAL SOOTBODHOE v BHAGIRUTTY SOOTRAN 10 W R. Cr 31

79 ——— *Postponement for further evidence*—Where the charge was one under s 347 of the Penal Code and the evidence of the prosecutor and other evidence had been taken and the case postponed for the evidence of further witnesses which was considered necessary by the Magistrate and they failed to appear an order by the Magistrate dismissing the case for want of sufficient evidence was held to be legal. QUEEN v BIDUR GHOSE [7 B L R 9 note 12 W R., Cr., 27

80 ——— *Criminal Procedure Code 1882 s 247*—A case having been transferred from the file of one Magistrate to that of another was on the day fixed called on for hearing but the complainant not appearing the case was dismissed

COMPLAINT—*continued*

4 DISMISSAL OF COMPLAINT—*continued*

had been sufficiently complied with and if not that the irregularity was covered by the terms of s 537 QUEEN EMPRESS v MURPHY

[I L R, 9 All, 666

95 ——— *Criminal Procedure Code 1882 s 203—Magistrate s discretion—Nature and extent of such discretion— Sufficient ground Meaning of—Complainant s motive*—A Magistrate cannot dismiss a complaint under s 203 of the Code of Criminal Procedure (Act X of 1882) until he has examined the complainant to see whether there is *primâ facie* evidence of a criminal offence In exercising his discretion under s 203 the Magistrate ought not to allow himself to be influenced by a *consideration of the motive by which the complainant* may have been actuated in moving in the matter nor by any other consideration outside the facts which are adduced by the complainant in support of his complaint IN THE MATTER OF THE PETITION OF GANESH NARAYAN SATHE

[I. L R. 13 Bom 590

96 ——— *Examination of complainant—Dismissal without enquiry*—A charge of theft should be enquired into before deciding it to be false or taking steps under s 211 Penal Code IN THE MATTER OF BISHOO BARIK

[16 W R., Cr 77

97 ——— *Examination of complainant—Criminal Procedure Code 1872 s 147*—A charge of theft was preferred by the petitioner on the 7th October 1878 before the police who thereupon instituted enquiries which subsequently resulted in their finding the charge unproved Meanwhile on the 15th October the charge was repeated in a complaint before the Magistrate of the District who directed the complainant and his witnesses to attend on a particular day but subsequently without having examined them or the complainant referred the matter to the Sub Deputy Magistrate That officer having reported the charge to be false the Magistrate on the 9th November wrote upon the police report which had meanwhile on the 26th October been submitted to him the following direction re show as false On the 19th November a counter prosecution under ss 211 182 and 500 of *the Penal Code was sanctioned and eventually on* the 22nd May 1879 resulted in the petitioner being convicted. While the counter prosecution was pending the petitioner on the 22nd April applied to the Magistrate to proceed with his complaint according to law but was informed that his complaint was dismissed On the following day the Magistrate recorded the following order — Dismissed in accordance with my decision recorded in the police report under s 147 of the Code of Criminal Procedure *Held* that the complaint had been improperly dismissed and that the order of the Magistrate dated 23rd April 1879 must be set aside FERAD ALI v NUSIBUN NISSA BIBEE 4 C L R 534

98 ——— *Hearing evidence—Dismissal without hearing evidence*—A Magistrate ought to hear evidence in support of a charge before dismissing the complaint A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property is no reason for a Magistrate to refuse to entertain the charge of theft QUEEN v KALI CHARAN MISSER 7 B L R., Ap. 55

S C RUNNOO SINGH v KALI CHARAN MISSER [16 W R Cr., 18

99 ——— *Hearing evidence—Dismissal without hearing evidence—Criminal Procedure Code (Act XXV of 1861) s 270—Act X of 1872 s 209*—On the day fixed for hearing a complaint of trespass and assault made against three persons named the complainant appeared with his witnesses and the defendants also appeared and on one of them being found to be a child of 8 years of age the Magistrate dismissed the case without taking any evidence *Held* the Magistrate was in error and should not have dismissed the case merely because one defendant was a child He should have followed the procedure laid down in ss 265 and 266 BILASH v MAKBOO

[2 B L R S N 15 10 W R. Cr., 61

100 ——— *Examination of complainant s witnesses—Recording reasons—Penal Code s 211 Charge under*—A Deputy Magistrate was held to have acted irregularly in dismissing a complaint and directing the trial of the complainant under s 211 of the Penal Code without recording his reasons for doing so and without examining all the witnesses tendered by the complainant or allowing a reasonable time for the attendance of such of the witnesses as were not present QUEEN v HEERA LALL GHOSE

[13 W R. Cr., 37

NISSAR HOSSEIN v RAMGOLAM SINGH [25 W R. Cr, 10

IN THE MATTER OF GANGOO SINGH [2 C. L. R. 380

101 ——— *Examination of complainant s witnesses—Criminal Procedure Code 1869 ss 193 249*—S 193 of the Code of Criminal Procedure applies to cases under Chap XV of that Code and a Magistrate cannot dispose of a case under that chapter without examining the witnesses called for the prosecution KISHORE SAHAI v MUNGERI SAHAI 16 W R., Cr., 45

So also under the Code of 1872

JITAN KHAN v DURGA SINGH [20 W R., Cr 59

102 ——— *Examination of complainant s witnesses—Criminal Procedure Code 1861 s 66*—A Magistrate cannot refuse a summons to a complainant even in a case in which the charge might have been laid at the police in the first instance but is bound under s. 66 of the Code of Criminal Procedure to examine the complainant on oath and pass orders in the case AMEER MAHOMED v BRASS

[14 W R., Cr., 36

COMPLAINT—*continued*

4 DISMISSAL OF COMPLAINT—*continued*

103. —— ——— *Examination of complainant's witnesses—Criminal Procedure Code 1861 s 67—Per* GLOVER J—Where the Criminal Procedure Code makes it necessary for a Magistrate before dismissing a charge to examine both the complainant and his witnesses it supposes that there has been already a *primâ facie* case made out and where the complainant makes out such a *primâ facie* case the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge but in a case where there is clearly no *primâ facie* case established the Magistrate is justified in acting under s. 67 of the Code of Criminal Procedure and in dismissing the case at once ISSER CHUNDER GHOSE *v* PEARI MOHUN PAUIT 10 W R, Cr 39

SREENATH MUNDLE *v* SREERAM PAJPUT [24 W R Cr 63

104. ——— *Examination of complainant's witnesses*—A Magistrate is bound before he discharges an accused person under s 215 of the Criminal Procedure Code to examine all the witnesses and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution. EMPRESS *v* HEMATULLA

[I. L. R. 3 Calc. 389

105 ——— *Examination of complainant's witnesses—Discharge of accused without examining all the witnesses*—Before a Magistrate discharges an accused person under s 215 of Act X of 1872 he is bound under that section to examine all the witnesses named for the prosecution. *Empress* v *Hematulla I L R 3 Calc 389* followed. EMPRESS OF INDIA *v* KASHI [I. L. R., 2 All. 447

QUEEN *v* PARASURAMA NAIKAR [I. L. R. 4 Mad., 329

ANONYMOUS CASE 8 Mad Ap 5

But *see* JELDHARI SINGH *v* SHUNKUR DOYAL [23 W R. Cr., 9

106 ——— *Power of and preliminaries to dismissal—Criminal Procedure Code (1882) s 203—Duty of Magistrate to examine witnesses for the complainant before dismissing complaint*—When a case has not been disposed of under Criminal Procedure Code s 203 and the complainant's witnesses have been summoned the Magistrate is bound to examine the witnesses tendered by the complainant and is not entitled to acquit the accused on a consideration of the complainant's statement alone QUEEN EMPRESS *v* SINNAI GOUNDAN [I. L R. 20 Mad., 388

107 ——— *Revival of proceedings—Criminal Procedure Code ss 203 437*—A complaint was made before a Magistrate of the first class of an offence punishable under s 323 of the Penal Code. The Magistrate recorded a brief statement by the complainant but did not ask him if he had any witnesses to call. An order was passed directing that a copy of the petition of complaint should be sent to the police-station calling for a report on the matter and on receipt of the report the Magistrate dismissed the complaint under s 203 of the Criminal Procedure Code. There was nothing in the Magistrate's original order to show that he saw reason to distrust the truth of the complaint nor did he direct any local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint. Subsequently to the dismissal of the complaint the same complainant brought a fresh charge upon the same facts against the same persons in the same Court and upon this charge the accused were tried convicted and sentenced. *Held* that the Magistrate had not complied with the provisions of s 203 of the Criminal Procedure Code and ought not merely on the report he had received to have dismissed the first complaint under s 203 QUEEN EMPRESS *v* PURAN

[I. L. R. 9 All. 85

(c) EFFECT OF DISMISSAL

108 ——— Dismissal for default in appearance of complainant—*Criminal Procedure Code s 269—Bar to complaint being again made*—Dismissal of a complaint under s. 269 of the Criminal Procedure Code in consequence of non attendance of the complainant the order of dismissal having been passed before the trial commenced amounts to a discharge without trial and does not bar the complaint from being again preferred ANONYMOUS 4 Mad., Ap 8

ANONYMOUS 6 Mad., 8

109 ——— Dismissal of complaint for default in appearance of complainant—*Presidency Magistrates Act (IV of 1877) s 124—Institution of fresh proceedings*—An order of dismissal under s 124 of Act IV of 1877 does not operate as an acquittal EMPRESS *v* THOMPSON

[I L. R. 6 Calc 523 8 C L R. 106

110 ——— *Criminal Procedure Code (Act V of 1898) ss 247 437—Dismissal of complaint in absence of complainant in a summons case—Acquittal of one of two accused who alone was present—Powers to revise proceedings*—The dismissal of a case and the acquittal of one of two accused under s 247 Code of Criminal Procedure on the ground of complainant's absence and purporting to be a termination of all proceedings relating to that matter will operate also against a co accused whose attendance could not be obtained and against whom the trial did not proceed. No order can be passed under s 437 setting aside the order and directing the case to be proceeded with against the absent accused. PANCHU *alias* PANCHANAN SINGH *v* UMOR MAHOMED SHEIKH 4 C W N 316

111. ——— Dismissal of summary case—*Acquittal—Criminal Procedure Code 1872 s 212*—The dismissal of a case in which a summons issues in the first instance amounts to an acquittal of the accused against whom after such an acquittal no further proceedings in respect of the same act can

COMPLAINT—*continued*

4 DISMISSAL OF COMPLAINT—*continued*

be taken under a different charge IRFAN BISWAS v JINNUT BIBEE 25 W R., Cr 63

112 ——— Dismissal after hearing evidence—*Further proceedings—Acquittal—Criminal Procedure Code 1872 s 147*—The further proceedings allowed by the Code of Criminal Procedure s 147 can only be taken in cases where the complainant has been alone heard and not where he has had the advantage of having his witnesses heard In the latter case a dismissal would amount to a verdict of acquittal against the accused parties and render a second trial on the facts impossible NITYANUNDO BUR v KALA CHAND BUR [24 W R, Cr 75

113 ——— Dismissal without proper exercise of discretion—*Criminal Procedure Code 1872 s 205—Acquittal*—A woman accused a man of seduction under promise of marriage and asked for maintenance for their illegitimate child The Deputy Magistrate summoned the man; but on the day appointed for hearing neither the complainant nor the woman appeared and the complaint was dismissed Subsequently the woman petitioned representing her inability to attend on the day appointed owing to causes beyond her control The Deputy Magistrate without enquiring into the allegation, held that his dismissal of the complaint operated like an acquittal *Held* that the Deputy Magistrate though *competent* to dismiss the complaint ought to have exercised some discretion more particularly under the circumstances detailed by the prosecutrix and that the section (Act X of 1872 s 205) contemplated such an exercise of discretion TAZOONNISSA v WASSIL 24 W R. Cr 64

114. ——— Dismissal in exercise of judicial discretion—*Criminal Procedure Code 1872 s 212—Acquittal*—Where the Magistrate dismissed a case in the exercise of a judicial discretion such dismissal by s 212 Act X of 1872 has the effect of an acquittal of the accused person The Court has no jurisdiction to entertain any application to interfere with the acquittal of an accused person except the application be made either by Government or under the sanction of Government IN THE MATTER OF THE PETITION OF BAGRAM [19 W R. Cr 52

115 ——— Dismissal after adjournment for evidence—*Non attendance of witnesses—Criminal Procedure Code 1872 ss 208 212*—The dismissal of a complaint under s 208 operates as an acquittal by reason of s 212 Code of Criminal Procedure EASTERN BENGAL RAILWAY COMPANY v KALIDASS DUTT 23 W R. Cr 63

116 ——— Dismissal on finding of not guilty—*Criminal Procedure Code 1872 s 250 (1882 s 203)—Acquittal*—An order dismissing a complaint under s. 250 of the Code of Criminal Procedure amounts to an acquittal IN THE MATTER OF JADUBAR MOOKERJEE 5 C L R. 359

117 ——— Dismissal on finding no offence proved—*Criminal Procedure Code 1882 s 253 (1872 ss 215 216 1861 69 s 250)—Acquittal*—A discharge under s. 250 of the Criminal Procedure Code 1861, does not amount to an acquittal QUEEN v HURPERSHAD 4 N W 23

118 ——— *Issue of warrant of arrest and not taking proceedings under it—Power of District Magistrate to order proceedings against persons against whom warrant was issued—No final order of dismissal*—Where there is evidence in any trial before a Subordinate Magistrate against certain persons that they have committed some offence and the Subordinate Magistrate does not think it necessary to proceed against them the District Magistrate cannot direct proceedings to be taken against them unless a final order of dismissal or discharge has been made and he considers such order to be an improper one Nor can he direct proceedings to be taken against such persons if they have not been before the Court unless he has removed the case for trial to his own Court by an express order MOTI SINGH v MAHABIR SINGH 4 C W N, 242

5 REVIVAL OF COMPLAINT

119 ——— Revival of proceedings—*Criminal Procedure Code (1882) s 203—Final disposal of case—Jurisdiction of Magistrate*—Where an original complaint is dismissed under s 203 of the Criminal Procedure Code a fresh complaint on the same facts before the same Magistrate cannot be entertained so long as the order of dismissal is not set aside by a competent authority *Nilratan Sen v Jogesh Chundra Bhuttacharjee I L R 23 Calc 983* followed KOMAL CHANDRA PAL v GOUR CHAND AUDHIKARI I L R, 24 Calc. 286 [1 C W N, 185

SIMBHOO RAM LALL v KABI HAZARI [3 C W N, 760

120 ——— *Right of appeal—Criminal Procedure Code (1882) ss 423 and 439—Presidency Magistrate, Jurisdiction of*—Where a complaint was dismissed by an Honorary Magistrate and an application was made to a Presidency Magistrate on the same facts and materials for a fresh summons—*Held* that as an Honorary Magistrate has co-ordinate jurisdiction with a Presidency Magistrate there was no right of appeal to the Presidency Magistrate from the order of the Honorary Magistrate The proper course would be to apply to the High Court under ss 423 and 439 of the Criminal Procedure Code to set aside the order and direct a re trial. *Nilratan Sen v Jogesh Chundra Bhuttacharjee I L R 23 Calc 983* approved *Virankutti v Chinamu I L R 7 Mad 557* and *Opoorba Kumar Sett v Probod Kumary Dassi 1 Calc W N 49* discussed. GRISH CHUNDER ROY v DWARKADASS AGARWALLAH [I L R 24 Calc. 528 1 C W N, 370

121 ——— *Fresh complaint after dismissal—Criminal Procedure Code (1882) s 203—Final disposal of case—Application of*

COMPLAINT—*continued*

5 REVIVAL OF COMPLAINT—*continued*

s 537 of the Criminal Procedure Code—Where an criminal complaint is dismissed under s. 203 of the Criminal Procedure Code a fresh complaint on the same facts cannot be entertained so long as the order of dismissal is not set aside by a competent authority S 537 of the Criminal Procedure Code is not intended to apply to a case which has not been finally disposed of NILRATAN SEN v JOGESH CHUNDRA BHUTTACHARJEE I. L. R., 23 Calc. 983 [1 C W N., 56

122. ——— A conviction in such a complaint if entertained is bad in law as being without jurisdiction KAMAL CHANDRA PAL v GOUR CHAND ADHIKARI [I. L. R. 24 Calc 286 1 C W N., 185

123 ——— *Complaint of offences under ss 182 and 500 of the Penal Code (Act XLV of 1860)—Necessary sanction not obtained—Withdrawal of complaint—Discharge of accused—Fresh complaint lodged on same charges—Effect of previous discharge of accused—Criminal Procedure Code (Act X of 1882) ss 248 253 and 403*—A complaint was lodged against the accused charging him with offences under ss. 182 and 500 of the Penal Code The complainant s solicitor finding that no sanction had been obtained as required by s. 195 of the Criminal Procedure Code for proceeding with the charge under s 182 of the Penal Code applied to the Magistrate for leave to withdraw the complaint which the Magistrate granted adding to his order the words accused is discharged. The complainant having subsequently obtained the requisite sanction filed a fresh complaint on the same charges. It was objected on behalf of the accused that the accused had been acquitted under s. 248 of the Criminal Procedure Code and that further proceedings were now barred under s 403 The Magistrate allowed the objection and stopped the proceedings On application to the High Court —*Held* that the order of the Magistrate should be reversed and the complaint investigated The order stopping the proceedings would be legal only if the accused had been acquitted by a Court of competent jurisdiction which was not the case as the Magistrate could not take cognizance of the charge under s 182 of the Penal Code without a sanction having been previously obtained As to the charge under s 500 of the Penal Code the proper procedure in respect of it was that prescribed for warrant cases The only legal order that could be made in such a case was an order of discharge under s 253 of the Criminal Procedure Code and not of acquittal and it was an order of discharge that was actually made IN RE SAMSUDIN I. L. R 22 Bom 711

124. ——— *Criminal Procedure Code (1882) s 203—Subsequent complaint arising out of the same matter*—When a competent tribunal has dismissed a complaint another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it *Nilratan Sen* v *Jogesh Chundra Bhuttacharjee I L R 23 Calc 983*; and *Komal Chandra Pal* v *Gourchand Adhikari I L R 24 Calc 286* followed *Queen Empress* v *Puran I L R 9 All 85*; and *Queen Empress* v *Umedan Weekly Notes All 1895 p 86* referred to QUEEN EMPRESS v ADAM KHAN [I. L. R. 22 All. 106

125 ——— *Revival of complaint after discharge—Power of Presidency Magistrate—Criminal Procedure Code 1882 ss 403 436-439*—P instituted a complaint of extortion in the Calcutta Police Court against O and B under s 384 of the Penal Code The Magistrate suggested that the matter should be settled by arbitration and the accused was discharged on 24th July 1892 The arbitration fell through and on B's application the complaint against O and B was revived on 6th May 1893 On the matter coming before the High Court on revision it was found that the offence being not compoundable the reference of the parties to arbitration was irregular *Held* that the order of 24th July discharging the accused was improper; that the provisions of ss 436 and 437 of the Criminal Procedure Code were not applicable to Presidency Magistrates who therefore can revive a complaint even after discharge; that the High Court has ample powers under the Charter Act if not under the Code to revise an order reviving a complaint after discharge and that in this particular case the Presidency Magistrate had exercised a proper discretion in reviving the complaint OPOORBA KUMAR SETT v PROBOD KUMARY DASSI [1 C W N 49

See CHAROOBALA DABEE v BARENDRA NATH MOZOOMDAR I. L. R 27 Calc 126

126 ——— *Criminal Procedure Code 1882 ss 203 437 and s 4 (a)—Magistrate s order to stay proceedings against accused—Revival of proceedings by setting aside order staying proceedings—Judicial or executive order—Order though right not authorised by law*—Where subsequent to the trial of one of several accused persons which ultimately resulted in his acquittal an application was made asking the District Magistrate to direct the Police to arrest the absconding accused and to proceed against them and the District Magistrate passed an order staying further proceedings on the ground that the case against such accused would not stand and his successor in office made an order directing the arrest and reviving the proceedings against the accused. *Held* that the order staying proceedings whether the petition on which it was made was a complaint within s 4 (a) or not was clearly one made in the course of a judicial proceeding, and was therefore a judicial and not an executive order that it was if not in terms at any rate in effect an order dismissing a complaint and therefore it was not competent to the successor in office to set aside such order of his predecessor *Kamal Chunder Pal* v *Gour Chand Adhikar I L R 24 Calc 286 1 C W N 185* *Nilratan Sen* v *Jogesh Chunder Bhuttacharji I L R 23 Calc 983 1 C W N., 56*

COMPLAINT—*continued*

5 REVIVAL OF COMPLAINT—*continued*

followed An order not authorised by law cannot be allowed to stand whether it is for the ends of justice or not The original order of the Magistrate staying proceedings could not be set aside unless the Crown took steps authorised by law to set it aside *In the matter of Guru Charan Aich* 1 C W N, 650 followed. INDERJIT SINGH v THAKUR SINGH [2 C W N, 290

127 ———— *Criminal Procedure Code 1898 s 203—Power of Presidency Magistrate to revive a case dismissed on non appearance of complainant* —The Code of Criminal Procedure (Act V of 1898) contains no provision which empowers a Presidency Magistrate to revive a case which he had dismissed for default in appearance of the complainant whether the order of dismissal was proper or not RAM COOMAR v RAMJEE 4 C W N 26

128 ———— *Code of Criminal Procedure (Act X of 1882) ss 259 369 439—Warrant case—Discharge of accused—Presidency Magistrate Power of—Revival of complaint*—A Presidency Magistrate when he has once discharged the accused under s. 259 of the Code of Criminal Procedure (Act X of 1882) has no jurisdiction to revive the case and therefore no jurisdiction to transfer it and the Bench to which it was transferred had consequently no jurisdiction to hear it DAMINI DASSI v HURRY MOHAN MOOKERJEE [4 C W N 46

129 ———— Power of Sessions Court to direct further enquiry—*Criminal Procedure Code 1861 s 67 (1872 s 147)*—A Court of Session had power to direct a Magistrate to enquire into a complaint dismissed by him under s 67 of the old Code of Criminal Procedure or the corresponding section of the Code of 1872 ANONYMOUS [7 Mad. Ap 16

130 ———— Striking out offence on list reported—*Criminal Procedure Code 1872 s 147*—A person made a complaint to the police that the accused had enticed away his wife (a non cognizable offence) and committed theft (a cognizable offence) The police enquired into the latter offence only and finding no *primâ facie* case made out reported to that effect to a Magistrate who directed that that offence be expunged from the list of reported offences. *Held* that under the circumstances there had been no dismissal of the complaint in respect of the former offence and that there was no bar to the complaint into that offence being taken up and proceeded with GOVERNMENT OF BOMBAY v SHIDAPA I. L. R 5 Bom 405

131. ———— Dismissal of warrant case not compoundable—*Revival of prosecution—Discharge under Criminal Procedure Code 1872 s 215*—A warrant case of a nature not compoundable under s 214 of the Penal Code was dismissed on the parties coming to an amicable settlement *Held* that the dismissal was equivalent to a discharge under s 215 of the Code of Criminal Procedure and the composition did not affect the revival of the

COMPLAINT—*concluded*

5 REVIVAL OF COMPLAINT—*concluded*

prosecution if that should otherwise be thought necessary or expedient REG v DEVAMA [I. L. R., 1 Bom., 64

COMPOSITION DEED

See DEBTOR AND CREDITOR [I. L. R., 16 Mad., 85

COMPOUNDING OFFENCE.

See COMPLAINT—REVIVAL OF COMPLAINT [I. L. R., 1 Bom. 64

See CASES UNDER CONTRACT ACT s 23—ILLEGAL CONTRACTS—COMPOUNDING CRIMINAL OFFENCES

See FALSE CHARGE [I. L. R., 11 Calc, 79

See GUARANTEE [I. L R, 11 Bom. 566

See MALICIOUS PROSECUTION [I. L. R. 3 Mad, 6

1. ———— Screening an offender—*Penal Code s 214*—The accused agreed to give R10 to *S* in consideration of his not giving evidence against *A* who was charged with the offences of house-breaking by night and theft in a building *S* gave evidence against *A* who was however acquitted The accused was charged under Penal Code s 214, but was acquitted. *Held* that the acquittal was right. S. 214 of the Penal Code presupposes the actual commission of an offence or the guilt of the person screened from punishment QUEEN EMPRESS v SAMINATHA I. L. R. 14 Mad., 400

2 ———— Adultery—*Withdrawal of charge*—Where the husband of a woman with whom the accused was alleged to have committed adultery professed himself unwilling to proceed with the prosecution and the Assistant Judge thereupon ordered the accused to be discharged the Court in the exercise of its discretion, declined to interfere REG v RAMLOJERIO 5 Bom. Cr., 27

3 ———— *Withdrawal of charge*—The power given to Magistrates to permit complainants to withdraw their complaints is confined to cases falling for disposal under Chap XV of the Criminal Procedure Code Consequently a charge of adultery cannot be withdrawn by a complainant with the Magistrate's consent QUEEN v GUMBHEER 2 N W., 234

4 ———— *Penal Code s 497—Appeal—N* charged *T* with having committed adultery with his wife On enquiry into the charge by the Magistrate the case was committed to the Sessions Court for trial when *T* was convicted. *T* appealed to the High Court After conviction *N* and his wife were reconciled and *N* at the hearing of the appeal asked for leave to compound the offence *Held* that at that stage of the case sanction could

COMPOUNDING OFFENCE—*continued*

not be given to withdraw the charge EMPRESS OF INDIA v THOMPSON I. L. R., 2 All. 330

5 ———— Assault—*Penal Code s 214—Act irrespective of intention*—The offence of assaulting a man and intentionally causing grievous hurt does not consist of an act irrespective of the intention and cannot be compounded. The term "assault" used in illustration *(b)* to s. 214 of Act XLV of 1860 does not mean assault as defined in the Code. It is to be construed in its general and more ordinary sense QUEEN v MADAN MOHUN [6 N W 302

6 ———— Cheating—*Forgery—Act X of 1872 (Criminal Procedure Code) s 188—Construction of Act with reference to Bill before the Legislature*—Cheating and forgery are not offences which may be lawfully compounded. Where a Magistrate decided that certain offences could be lawfully compounded, having regard to a Bill which the Legislature had brought in amending s 214 of the Penal Code—*Held* that it was irregular for such Magistrate to allow his decision to be guided by anything in a Bill that had not become law and it was his duty to have interpreted that section without reference to merely contemplated legislation IN THE MATTER OF THE PETITION OF FAUYAZ HUSAIN v HARBANS SINGH I. L. R. 3 All. 283

7 ———— Criminal breach of trust—*Penal Code ss 213 214 406*—The offence of criminal breach of trust under s 406 of the Penal Code cannot under the terms of ss 213 and 214 of the same Code be lawfully compounded IN THE MATTER OF A REFERENCE FROM THE CHIEF PRESIDENCY MAGISTRATE 6 C L. R. 392

REG v MUTHAVAN I. L. R. 1 Mad. 191

8 ———— Criminal misappropriation—*Penal Code s 404*—An offence under s 404 of the Penal Code is not one of the class of offences that may be compounded. ANONYMOUS CASE [7 Mad. Ap 34

9 ———— Enticing away married woman—*Criminal Procedure Code 1872 s 188*—The offence of enticing away a married woman with a criminal intent is not an offence which may lawfully be compounded REG v MUTHAVAN [I. L. R. 1 Mad. 191

10 ———— House trespass—*Criminal Procedure Code 1882 ss 248 259—Case sent up by police*—A criminal charge under s 448 of the Penal Code having been instituted the accused was sent up by the police before a Deputy Magistrate of the first class. Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled and that he did not wish to proceed further in the matter upon which the Magistrate recorded an order Compromised; defendant acquitted. Subsequently the Magistrate of the district relying upon ss. 248 and 259 and professing to act under s. 437 of the Criminal Procedure Code directed the Deputy Magistrate to send up the parties and proceed regularly with the case *Held* that ss 248 and 259 had no bearing on the case and that the mere fact of the accused having been sent up by the police did not prevent the offence which was legally compoundable from being compromised and that consequently the order of the Deputy Magistrate was perfectly correct and legal QUEEN EMPRESS v NOWAB JAN [I L. R 10 Calc 551

11. ———— Hurt—*Voluntarily causing hurt—Penal Code s 323—Criminal Procedure Code 1872 s 188*—The offence of voluntarily causing hurt under s 323 of the Penal Code is one which may lawfully be compounded and the withdrawal from the prosecution in such a case is therefore permissible under s 188 of the Criminal Procedure Code 1861 REG v JETHA BHALA 10 Bom. 68

12 ———— *Penal Code s 214—Causing grievous hurt*—Whenever the words voluntarily intentionally fraudulently dishonestly or others whose definition involves a particular intention enter along with a specified act into the description of an offence the offence not being one irrespective of the intention is not one which the exception to s 214 of the Penal Code by itself allows to be compounded. The offence to admit of compromise must be one in this sense irrespective of the intention and it must be one for which a civil action may be brought at the option of the person injured instead of criminal proceedings The offence of voluntarily causing grievous hurt cannot accordingly be compounded *Reg v Jetha Bhala 10 Bom, 68* disapproved REG v RAHIMAT [I. L. R. 1 Bom 147

13 ———— Kidnapping—The offence of kidnapping can be lawfully compounded QUEEN v GOPEE MOHUN MITTER 23 W R. Cr 26

14. ———— Mischief—*Criminal Procedure Code (Act X of 1882) s 345—Mischief done to the private property of a village Mahar*—The accused was charged with mischief for causing damage to crops which were the private property of a village Mahár The Magistrate refused to allow the offence to be compounded on the ground that the damage was done to a village Mahár and therefore could not be treated as damage affecting only a private person as Mahars had duties to perform in connection with the village *Held* that the offence was compoundable under s 345 of the Code of Criminal Procedure (Act X of 1882) as the damage was caused to a private person and not to the public The fact that the complainant was a village Mahár would not make his personal property the property of the public or even of the Mahár community generally IN RE MOTIRAM [I. L. R. 22 Bom., 889

15 ———— Wrongful restraint.—The causing of wrongful restraint to another may lawfully be compounded MOTHOORANATH BHOOMICK v KENARAM KURMOKAR 7 W R. 33

COMPOUNDING OFFENCE—*continued*

16 ——————— *Requisites for composition of offence valid in law—Criminal Procedure Code (Act V of 1882) s 345—Onus of proof—Wrongful restraint and confinement of coolies employed on tea garden* —Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it the *onus* is on him to show that there was a composition valid in law *M* a European British subject charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager pleaded that the Magistrate had no jurisdiction to try the cases as they had been compounded by the complainants The alleged compromise consisted of a Bengali paper signed by the coolies stating that they made razinama (compromise) of the case of their own accord' and a paper in English signed by *M* these papers being given to the District Superintendent of Police who had investigated the complaints and who stated that he asked the coolies as to the contents of the Bengali paper and they said that they had signed it voluntarily and stated its purport and that one of them said in the presence of the others that it was a razinama *G* one of the coolies also wrote on the paper the words in Uriya I will not carry on the case The Bengali paper was written by the Darogah of the police station in presence of *M* The paper signed by *M* was as follows — I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements Those whose agreements have not been completed proceedings will be taken against them on 22nd May if they have not returned to the garden before then Neither of the papers were explained to *G* so as to make them intelligible to him for though the Bengali paper was read out *G* did not understand that language *G* was one of the coolies who had completed his agreement with *M* *Held per* PRINSEP *J* —The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution here there was no forbearance on the part of *M* to proceed against *G* who had served out the term of his engagement and therefore there was no consideration for the agreement to compound Having regard moreover to the ignorance and inferior intelligence of *G* it was of vital importance for *M* to show what led to the alleged agreement and how it was that the Darogah was instrumental to it which he had not done *Per* TREVELYAN *J* —Compounding an offence supposes an arrangement by which the parties have settled their differences and in the more usual acceptation of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution Although the provisions of the Contract Act may not apply the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue and unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights it would be impossible to give effect to a so called arrangement or composition Having regard to the fact that the writer of the Bengali agreement had not been called and that the contracting parties were on the one side ignorant coolies strangers to the land and to the language in which the document was written and on the other a European of some education assisted by his Bengali clerk and having also the assistance of the police it was not proved that *G* knew what he was about and was fairly contracting *Held* therefore by the Court that there was under the circumstances no compounding of the offences with which *M* was charged valid in law such as to deprive the Magistrate of jurisdiction to try them MURRAY *v* QUEEN EMPRESS **I. L. R., 21 Calc, 103**

COMPOUNDING OFFENCE—*concluded*

17 ——— **Compounding after committal**—*Effect of on committal* —A committal once made of an accused person by a Magistrate to the Sessions cannot be annulled by his allowing the prosecutor to file a compromise QUEEN *v* SALIM SHEIK **2 W R., Cr 57**

18 ——————— *Criminal Procedure Code (Act V of 1898) s 345—Filing of petition of compromise in Court—Effect of subsequent withdrawal of petition* —Where a complainant a female had presented a petition of compromise in respect of a compoundable offence and the Magistrate had examined her and satisfied himself as to her understanding the same *Held* that he was wrong in ordering the petition to be put up with the record but should have immediately dealt with the matter and that he was under the terms of s. 345 Criminal Procedure Code obliged to accept the compromise and to give effect to it *Held* also that the complainant could not by a subsequent withdrawal of the above petition of compromise insist upon the case proceeding KUSUM BEWA *v* BECHU BEWA **[3 C W N 322**

19 ——————— *Offence lawfully compoundable—Penal Code (Act XLV of 1860) s 342—Petition for withdrawal and compromise—Object and effect of—Duty of Magistrate on receipt of such petition* —When a charge is framed against an accused person only of an offence which can be lawfully compounded and a petition of compromise or for leave to compound the offence is put in the Court should allow the parties to compound the offence and acquit the accused When a petition either for compromise of or for withdrawal from the case is put in the Court ought to make an order either granting or refusing the application then and there and should not put it off by ordering it to be filed with the record to be considered at the close of the trial MAHOMED ISMAIL *v* FAIZUDDI **[3 C W N 548**

COMPROMISE. Col

See DECREE—ALTERATION OR AMENDMENT OF DECREE I. L. R. 24 Mad., 1 [L. R. 27 I. A., 197

See DIVORCE ACT ss 16 17 [I. L. R 10 All. 559

See EVIDENCE ACT s 74 25 W R. 68

See CASES UNDER EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES

See MALABAR LAW—ENDOWMENT [I. L. R. 14 Mad. 153 I. L. R., 18 Mad. 1

———— Deed of—

See REGISTRATION ACT 1877 s. 17 (1864 s. 13) 7 B L. R 197 [2 C W N 663

———— Effect of—

See MORTGAGE—TACKING [I L R. 18 Mad. 368

———— of suit Power to make—

See ATTORNEY AND CLIENT [7 Bom O C 79

See COUNSEL I. L. R 13 All 272 [I L. R 27 Calc. 428 4 C W N 169

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS 6 N W 179 [5 W R. 5 8 W R 16 W R 1864 83 16 W R. P C 22 I. L. R. 12 Bom 686

See CASES UNDER HINDU LAW—WIDOW—POWER OF WIDOW—POWER TO COMPROMISE

See LIS PENDENS [I L R 18 Calc 188 I. L. R 12 Mad. 439 1 C W N 62

See PLEADERS—AUTHORITY TO BIND CLIENT 2 N W 149 [2 Mad. 423 I. L. R., 21 Mad., 274 I. L. R., 22 Mad 538

COMPROMISE—*continued*

———— out of Court without knowledge of Attorneys

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT 9 B L. R Ap. 19 [I L. R, 25 Calc 887 2 C W N 508 I. L. R. 27 Calc 269 4 C W N 208

See LIMITATION ACT 1877 ART 84 (1871 ART 85) I L R 1 Bom 505

———— pending appeal.

See PAUPER SUIT—APPEALS [I. L. R 18 Bom 464

See STAMP DUTY REFUND OF [11 W R 158 4 B L. R Ap 96 96 note

1 CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE

1 ———— Construction—*Release— All present and future liabilities* —General words used in a deed of compromise or in a release must be confined to matters of the same nature and forming part of the transaction which the parties had in view *Directors of the London and South Western Railway Company* v *Blackmore L R 4 H L., 610* followed. NEELANUND SINGH *v* HAMIDOODDIN [I. L. R. 8 Calc 576

2 ———— *Hindu family—Deed altering proper course of succession according to Hindu law* —Where a dispute in a Hindu family as to legitimacy and the right to succession resulted in a family arrangement as to the mode in which the estate was to be held by the sons.—*Held* that such a document ought not to be construed narrowly by a strict interpretation of the literal meaning of the words but that the object and general spirit are the best keys to the interpretation Where a family arrangement if construed strictly would have given a taluk in the event of the death of a younger son to such of the lawful widows as should have male issue —*Held* that as such a disposition would contravene the ordinary rules of devolution of Hindu property and be contrary to the usages of Hindus and as there was no mention of any change of intention as to the proprietary right a construction which would postpone male issue to their mothers was inadmissible GAJAPATHI RADHIKA PATTA MAHADEBI GURU *v* GAJAPATHI HARI KRISHNA DEBI GURU [6 B L. R., 202 14 W R., P C 33 13 Moore s I. A. 497

Reversing the decision of the High Court in GAJAPATY HARI KRISHNA DEVI GARU *v* GAJAPATY RADHIKA PATTA MAHA DEVI GURU and GAJAPATY NILAMANI PATTA MAHA DEVI GARU *v* GAJAPATY RADHIKA PATTA NEGHA DEVA GARU 2 Mad. 369

COMPOUNDING OFFENCE—*continued*

16 ———— *Requisites for composition of offence valid in law—Criminal Procedure Code (Act X of 1882) s 345—Onus of proof—Wrongful restraint and confinement of coolies employed on tea garden*—Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it the *onus* is on him to show that there was a composition valid in law *M*, a European British subject charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager pleaded that the Magistrate had no jurisdiction to try the cases as they had been compounded by the complainants The alleged compromise consisted of a Bengali paper signed by the coolies stating that they made razinama (compromise) of the case of their own accord' and a paper in English signed by *M* these papers being given to the District Superintendent of Police who had investigated the complaints and who stated that he asked the coolies as to the contents of the Bengali paper and they said that they had signed it voluntarily and stated its purport and that one of them said in the presence of the others that it was a razinama *G* one of the coolies also wrote on the paper the words in Uriya I will not carry on the case The Bengali paper was written by the Darogah of the police station in presence of *M* The paper signed by *M* was as follows —' I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements Those whose agreements have not been completed proceedings will be taken against them on 22nd May if they have not returned to the garden before then ' Neither of the papers were explained to *G* so as to make them intelligible to him for though the Bengali paper was read out *G* did not understand that language *G* was one of the coolies who had completed his agreement with *M* *Held per* PRINSEP J—The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution; here there was no forbearance on the part of *M* to proceed against *G* who had served out the term of his engagement and therefore there was no consideration for the agreement to compound Having regard moreover to the ignorance and inferior intelligence of *G* it was of vital importance for *M* to show what led to the alleged agreement and how it was that the Darogah was instrumental to it which he had not done *Per* TREVELYAN J—Compounding an offence supposes an arrangement by which the parties have settled their differences and in the more usual acceptation of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution Although the provisions of the Contract Act may not apply the proof of the arrangement must be similar to that which the Court

COMPOUNDING OFFENCE—*concluded*

requires for the proof of any agreement which is in issue and unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights it would be impossible to give effect to a so called arrangement or composition Having regard to the fact that the writer of the Bengali agreement had not been called and that the contracting parties were on the one side ignorant coolies strangers to the land and to the language in which the document was written and on the other a European of some education, assisted by his Bengali clerk and having also the assistance of the police it was not proved that *G* knew what he was about and was fairly contracting *Held* therefore by the Court that there was under the circumstances no compounding of the offences with which *M* was charged valid in law such as to deprive the Magistrate of jurisdiction to try them. MURRAY *v* QUEEN EMPRESS I. L. R., 21 Calc., 103

17 ———— **Compounding after committal**—*Effect of on committal*—A committal once made of an accused person by a Magistrate to the Sessions cannot be annulled by his allowing the prosecutor to file a compromise QUEEN *v* SALIM SHEIK 2 W R., Cr., 67

18 ———— *Criminal Procedure Code (Act V of 1898), s 345—Filing of petition of compromise in Court—Effect of subsequent withdrawal of petition*—Where a complainant a female had presented a petition of compromise in respect of a compoundable offence and the Magistrate had examined her and satisfied himself as to her understanding the same *Held* that he was wrong in ordering the petition to be put up with the record but should have immediately dealt with the matter and that he was under the terms of s 345 Criminal Procedure Code obliged to accept the compromise and to give effect to it *Held* also that the complainant could not by a subsequent withdrawal of the above petition of compromise insist upon the case proceeding KUSUM BEWA *v* BECHU BEWA [3 C W N 323

19 ———— *Offence lawfully compoundable—Penal Code (Act XLV of 1860) s 342—Petition for withdrawal and compromise—Object and effect of—Duty of Magistrate on receipt of such petition*—When a charge is framed against an accused person only of an offence which can be lawfully compounded and a petition of compromise or for leave to compound the offence is put in the Court should allow the parties to compound the offence and acquit the accused When a petition either for compromise of or for withdrawal from the case is put in the Court ought to make an order either granting or refusing the application then and there and should not put it off by ordering it to be filed with the record to be considered at the close of the trial MAHOMED ISMAIL *v* FAIZUDDI [3 C W N 549

COMPROMISE. Col

See Decree—Alteration or Amendment of Decree I. L. R., 24 Mad. 1
[L. R. 27 I. A., 197

See Divorce Act ss 16 17
[I. L. R 10 All. 559

See Evidence Act s 74 25 W R. 68

See Cases under Execution of Decree—Execution on or after Agreements or Compromises

See Malabar Law—Endowment
[I. L. R. 14 Mad. 153
I. L. R., 18 Mad 1

———— Deed of—

See Registration Act 1877 s 17 (1864 s 13) 7 B L R., 197
[2 C W N 663

———— Effect of—

See Mortgage—Tacking
[I L R 18 Mad. 368

———— of suit Power to make—

See Attorney and Client
[7 Bom O C 79

See Counsel I. L R 13 All 272
[I. L. R 27 Calc 428
4 C W N 169

See Guardian—Duties and Powers of Guardians 6 N W 179
[5 W R. 5
8 W R 16
W R 1864 83
16 W R. P C 22
I. L R., 12 Bom 686

See Cases under Hindu Law—Widow—Power of Widow—Power to compromise

See Lis pendens
[I L R 18 Calc 188
I L R 12 Mad 439
1 C W N 62

See Pleaders—Authority to bind Client 2 N W 149
[2 Mad. 423
I L R. 21 Mad 274
I. L R., 22 Mad 538

COMPROMISE—*continued*

———— out of Court without knowledge of Attorneys

See Costs—Special Cases—Attorney and Client 9 B L R Ap 19
[I L R 25 Calc 887
2 C W N 508
I. L R. 27 Calc 269
4 C W N 208

See Limitation Act 1877 art 84 (1871 art 85) I L R 1 Bom 505

———— pending appeal.

See Pauper Suit—Appeals
[I L R 18 Bom 464

See Stamp Duty Refund of
[11 W R 158
4 B L R Ap 96 96 note

1 CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE

1. ———— Construction—*Release—All present and future liabilities* —General words used in a deed of compromise or in a release must be confined to matters of the same nature and forming part of the transaction which the parties had in view *Directors of the London and South Western Railway Company v Blackmore L R 4 H L 610* followed Neelanund Singh v Hamidooddin
[I. L. R. 8 Calc 576

2 ———————— *Hindu family—Deed altering proper course of succession according to Hindu law* —Where a dispute in a Hindu family as to legitimacy and the right to succession resulted in a family arrangement as to the mode in which the estate was to be held by the sons—*Held* that such a document ought not to be construed narrowly by a strict interpretation of the literal meaning of the words but that the object and general spirit are the best keys to the interpretation Where a family arrangement if construed strictly would have given a taluk in the event of the death of a younger son to such of the lawful widows as should have male issue —*Held* that as such a disposition would contravene the ordinary rules of devolution of Hindu property and be contrary to the usages of Hindus and as there was no mention of any change of intention as to the proprietary right a construction which would postpone male issue to their mothers was inadmissible Gajapathi Radhika Patta Mahadebi Guru v Gajapathi Hari Krishna Debi Guru
[6 B L R. 202
14 W R. P C 33
13 Moore s I. A. 497

Reversing the decision of the High Court in Gajapaty Hari Krishna Devi Garu v Gajapaty Radhika Patta Maha Devi Guru and Gajapaty Nilamani Patta Maha Devi Garu v Gajapaty Radhika Patta Megha Deva Garu 2 Mad, 369

COMPROMISE—continued

1 CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE—*continued*

3 ———— *Agreement to relinquish claim—Continuing suit after agreement—Liability to repay consideration money*—Where during the pendency of a suit the plaintiff in consideration of R2 000 executed contemporaneously a farigh kutti or relinquishment of the claim made by him in the suit and an ikrarnamah or engagement to deliver in a razinamah or deed acknowledging himself to be satisfied —*Held* that the farigh kutti and razinamah amounted to a decided agreement for the settlement of the action and that although the plaintiff sued as a pauper yet as it was questionable whether he should have been allowed to sue as a pauper and as he had failed to perform his duty according to his engagement in entering up a razinamah he was liable to pay the consideration money of the agreement and the costs incurred in consequence of his unsuccessful and apparently unjust litigation which he had instituted and carried on for the purpose of freeing himself from the obligation incurred by the farigh kutti MUNNI RAM AWASTY v SHEO CHURN AWASTY [7 W R. P C 29
4 Moore s I. A 114

4 ———— *Conditional agreement to pay interest*—Where a compromise embodied in a decree was to the effect that the defendant should pay to the plaintiff the principal sum within a specified period and that if he were successful in another suit against a different party he could also pay the interest and the defendant succeeded in his suit in the first Court but his suit was dismissed on appeal —*Held* he was not liable to pay the interest on the proper construction of the compromise BOLAKEE LALL v MAHOMED HOSSEIN KHAN [14 W R. 63

5 ———— *Mahomedan law—Estate limited to take effect in favour of a person after another s death*—It is not consistent with Mahomedan law to limit an estate to take effect after the determination on the death of the owner of a prior estate by way of what is known to English law as a vested remainder so as to create an interest which can pass to a third person before the determination of the prior estate The parties to a solenamah or compromise were on the one side the widow of a Mahomedan she being in possession of villages in Oudh which had belonged to him and of which the summary settlement of 1858 had been made with her and on the other side two brothers alleged to be his sons. By the compromise which was made in the course of proceedings at regular settlement it was agreed that the widow should during her life time continue to hold possession and remain proprietor without power of alienation and that after her death the two sons should possess each one-half of the property *Held* that on the true construction of the compromise the title of the sons to succeed was contingent upon their surviving the widow and that no interest passed to their heirs on their deaths in her lifetime ABDUL WAHID KHAN v NURAN BIBI I. L R. 11 Calc 597
[L. R 12 I. A 91

6 ———— *Penalty for non fulfilment of conditions Suit to enforce*—A suit for a kabuliat having been brought in the Revenue Court a deed of compromise was filed in the suit in which it was stipulated that a certain sum would be paid by the defendants to the zamindar as rent of four kanis of land including homestead after mutation of names that R15 8 on account of outstanding balance and charges connected with the rents would be paid to the plaintiffs within a month and that in default the defendants would have no right *to the lands specified.* The defendants having failed to fulfil the conditions the plaintiffs executed their decree and realised from them the balance above mentioned and having sued them for the rent obtained a decree The plaintiffs then brought this suit to recover possession in virtue of itmami right of the land on the ground of non fulfilment of the conditions of the compromise The first Court gave them a decree which the lower Appellate Court reversed, holding that the deed merely imposed a penalty with a view to punctual payment. *Held* that as what the defendants had to do was of a perpetually recurring nature and no action which the Court might take would be effectual in preserving the plaintiff from being sued by the zamindar the intention was that the terms should be strictly enforced on failure to perform the conditions and that the defendant should be obliged to surrender the lands MAHOMED HASHIM v HOSSEIN ALI 19 W R. 433

7 ———— *Construction and enforceability of compromise of suit between members of grantee s family—Removal of manager—Appointment of receiver*—Early in the eighteenth century two villages were granted by the zamindars of Sivaganga and Guntamanaikanur to the last of the Naik rulers of Madura for the maintenance of the rank and dignity of his family which was now represented by the plaintiffs and defendants Nos. 1 to 23 The property was long managed by the representative for the time being of the senior line In 1844 one of the junior members instituted a suit for partition which terminated in a decree declaring the corpus of the property to be indivisible and the annual produce to be divisible in certain shares. Subsequently in 18 7 a compromise was entered into by which the parties agreed to vary the distribution of the shares but they agreed that the management of the estate indivisible and inalienable should continue to be vested in the eldest line subject to certain supervision on the part of the other members The compromise was long acted upon by the family but in 1892 the representative of the senior line died leaving only his widow and infant sons. The widow as guardian of the elder son then entered on the management and being grossly delegated it to a stranger The plaintiffs representing a junior line

COMPROMISE—*continued*

1. CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE—*continued*

now sued for the removal of these persons from management and the appointment of another manager alleging both that they had no right to the managership and that they had been guilty of mismanagement. All the members of the family were made parties to the suit. *Held* that the compromise was binding on the parties and that under the compromise the plaintiffs had no right to joint management; and that the widow of the last manager should be removed from the managership and that until one of her sons came of age the estate should be managed by a receiver appointed from among the members of the family TIRUMALAI NAIK *v* BANGARU TIRUMALAI SAURI NAIK I L R. 21 Mad. 310

8 ——— *Assignment of villages part of an impartible estate—Maintenance of a member of a junior branch of a joint Hindu family—Agreement—Arbitration award decree and settlement there on—Revenue by whom payable*—A talukhdar owning an impartible inheritance was the head of a joint Hindu family of which the defendant his first cousin was a member in a junior branch In 1864 they came to terms as to the latter's claims upon the ancestral estate A decree in that year founded upon the award of arbitrators between them declared the talukhdar's ownership and the assignment by him of eleven villages to the junior member free of liability in respect of the revenue These terms were entered in an administration paper or wajib ul arz of the talukh before the settlement of 1867 in the record whereof they were also entered. And they were referred to in a sanad granted to the talukhdar When the settlement of 1889 was in progress the profits of the eleven villages and the Government demand thereon had greatly increased and for this jumma the talukhdar was liable without any proportionate increase of profit from the eleven villages In 1881 the talukhdar sued for a declaration that the defendant's right in the villages consisted only of a certain amount of allowance for *maintenance derivable from them He also claimed* that the defendant should repay to him a sum which he had paid for local cesses The defence was that the defendant's right in the eleven villages had been conclusively settled in the above proceedings *Held* that by the true construction of the decree of 1864 which was the foundation of the title of either party the profits of the eleven villages belonged to the defendant and that the revenue was to be paid as between the two by the plaintiff with the enhancements without benefit to him from the increase in the yield of the land The principle of the judgments below was that the question to be decided was of the kind where the head of a family and a junior member dispute the amount of maintenance that should be paid But the property assigned in this case was not of the variable character which belonged to an ordinary allowance for maintenance and there was nothing to show that the Courts had authority to disturb settled arrangements on the ground of their

COMPROMISE—*continued*

1 CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE—*continued*

being originally based on claims to maintenance The talukh was vested in the plaintiff subject to the right of the defendant to hold the eleven villages and as between them the former was liable for the jumma and the latter for the local rates and cesses LOKNATH *v* BISSESSARNATH

[I. L. R 27 Calc 103

9 ——— Enforcing compromise—*Compromise of family disputes—Hindu law—Agreement as to succession to property—Suit to enforce the agreement—Mistake in law*—In 1859 two brothers *A* and *B* filed a petition in the Collectorate by which it was agreed that the family property should be divided in certain shares *B* who had only lately attained his age of majority acted on his own account and as guardian of his minor brothers In a suit by *A* to carry out the terms of the petition *B* contended that undue advantage had been taken of his youth and inexperience that the agreement was invalid and that there was no consideration It appeared that at the time of the agreement there was a *bonâ fide* dispute as to the rights of the parties and no evidence of fraud was adduced *Held* that the plaintiff was entitled to a decree Principles upon which the Court acts in setting aside compromises considered RAM NIRUNJUN SINGH *v* PRAYAG SINGH

[I. L. R. 8 Calc. 138 10 C L R 66

10 ——— *Non performance of ceremonies of worship—Allegation of breach of*—Two brothers executed and filed a deed of compromise dividing between them the family property and a decree was passed in terms thereof Under this decree the elder was to hold possession of certain lands the rents of which were to go to perform the worship of the family idol The elder was kept out of possession of these lands by the younger and he performed the worship at his own expense and the younger took out execution objecting that his brother had not performed his trust as family shebait so that he had been compelled to perform the ceremonies at his own expense but his objection was overruled *Held* on appeal by the younger that the non performance of any ceremonies by the elder brother gave him no cause of complaint unless he could show that such failure was not caused by any default on his own part RADHAJIBAN MUSTAFI *v* TARA MANI DASI 2 B L R. P C 79

[11 W R. P C 31

12 Moore's I. A 380

11 ——— *Decree made on compromise—Review of judgment—Altering decree*—The manager of the Court of Wards effected a compromise with claimants on the estate a decree was passed on the basis of that compromise but before the parties wished the decree to be made in the decree leave was reserved to apply for a review if the compromise was not sanctioned by the Commissioner and was prejudicial to the parties The compromise was sanctioned by the Commissioner but

COMPROMISE—*continued*

1 CONSTRUCTION, ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE—*continued*

whether it would be for benefit of minor to set aside compromise —The plaintiff a minor was as daughter and one of the heirs of *A*, entitled to $\frac{1}{8}$ths of his estate The value of *A* s estate was uncertain and depended on whether or not *A* had been a partner in business with *M* and whether or not a sum of R30 000 had been paid by *M* to *A* in satisfaction of all claims which *A* had against *M* in respect of *the estate of K a deceased brother of A and former* partner in the same business *M* having on *A* s death possessed himself of all the estates of *A* the plaintiff brought a suit against *M* in which a decree was made ordering an account to be taken of the estate of *A* which had come into the hands of *M* Pending such account *M* died leaving a will by which he appointed the son of *A* and another his executors and the suit was revived against them In their application for probate they stated that the value of *M* s estate so far as they had been able to ascertain and were aware was R4 41 000 Shortly after probate was granted negotiations were entered into between the executors and the advisers of the plaintiff for a compromise and a petition was with the concurrence of the executors presented by the plaintiff to the Court asking for its sanction to the terms agreed upon by the parties which were that the plaintiff should receive R20 000 in full of all demands and R5 000 for her costs of suit This petition took as the value of *M* s estate the amount stated by the executors in their application for probate and stated that the value of *A* s estate in case the above mentioned payment by *M* was proved would be R30 000 and in case it was not proved then a moiety of the estate of *M* and that considering the difficulties the plaintiff had to meet in proving her case and with a view to put an end to further trouble litigation and expense the above terms had been agreed to on her behalf These terms of compromise were sanctioned by the Court on the 11th September 1876 Shortly afterwards further property was discovered belonging to the estate of *M* The plaintiff brought a suit against the executors to *set aside the compromise allowing* that the terms had been accepted by her on the faith of the representation made by the executors in their application for probate and charging them with wilful and fraudulent concealment There was evidence to show that some of the property subsequently discovered was such that the defendants as executors ought to have known, even if they did not of its existence at the time of the compromise *Held* that even though the executors had no such knowledge and there was no actual fraud yet there was such culpable ignorance and neglect of duty on their part as to amount to fraud and carry with it the consequences of knowledge; and as the compromise had in consequence been entered into by the parties and sanctioned by the Court under a misapprehension of material facts the plaintiff was entitled to have the compromise set aside and the parties restored to their rights in the former suit at the time it was effected. *Per* PONTIFEX J —In cases where the sanction of the Court is required as where there is an infant concerned each party is bound to see that the materials on which the sanction of the Court is asked for are unimpeachable *Per* PONTIFEX J — *Quære* —Whether in this suit if the questions were found to arise it would be necessary for the Court to consider whether it would be for the benefit of the minor that the compromise should be set aside *Per* GARTH C J —*Semble* —*Even if it only* appeared that the compromise had been entered into and sanctioned under an entire mistake of the parties and of the Court with regard to the subject matter of the agreement it ought to be set aside under s 20 of the Contract Act *Per* GARTH C J —In a substantive suit by a minor to set aside a compromise made with the sanction of the Court obtained by fraud or mistake it is not the province of the Court to enquire whether it would or would not be for the benefit of the minor that the compromise should be set aside though it might be otherwise on an application for review to the Court which granted the sanction SOLOMON *v* ABDOOL AZEEZ

[I L R 6 Calc, 687 8 C L R 169

22 ——— *Party subsequently found legally entitled to nothing—Compromise made on behalf of minors* —When parties enter into a compromise or family arrangement in order to avoid litigating the question as to whether one of the parties is entitled to certain property or not such compromise will not be set aside although it should eventually turn out that the party taking something under the compromise was in reality legally entitled to nothing But where such a compromise was alleged to have been entered into by a mother on behalf of two minor sons on the one hand and an adult member of the family on the other agreeing to give the latter more than had been awarded by a judicial decision it was held that the compromise was not binding on the minors DHARMAJI VAMAN *v* GURRAV SHRINIVAS 10 Bom., 311

23 ——— *Ground for setting aside compromise—Consideration—Estoppel —Fraud* —When a claim is once compromised, and a new contract entered into the promisor is estopped from pleading illegality or absence of consideration *for the new contract* the real consideration or it being the withdrawal of the claim itself irrespective of the possibility of its being prosecuted to a successful issue The new contract can only be questioned on the ground of fraud such as want of good faith in making the claim compromised. VARAJLAL SHITLAL *v* DALSUKH VARAJLAL 12 Bom., 198

24 ——— *Ground for setting aside deed* —A deed of partition between two brothers based on a compromise of suit ratified by a decree of the Sudder Court and putting an end to litigation previously entered into by their father can not be set aside without strict proof of haste and precipitancy of the settlement, inequality restraint

COMPROMISE—*continued*

1 CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE—*concluded*

coercion or fraud. HETNARAIN SINGH v MODNARAIN SINGH [3 W R., P C., 51 7 Moore's I. A 311

25 ———— *Effect of setting aside compromise on right of appeal* —In a suit brought on behalf of an infant daughter by her mother as guardian a decision was given partly for and partly against the defendant who thereupon filed an appeal which he afterwards withdrew in accordance with the terms of a compromise purporting to have been made with the mother and daughter Subsequently at the suit of the daughter the compromise was set aside as fraudulent and collusive and a review of the original decision, in so far as it was adverse to the plaintiff's interest was allowed The defendant then applied that his appeal might be revived but his application was rejected by the High Court on the ground that he had deprived himself of his opportunity of appeal by his own fraudulent conduct. *Held* by the Judicial Committee that the effect of setting aside the compromise was to remit both parties to their original rights and that if the plaintiff was to be allowed to be heard against so much of the original judgment as was unfavourable to her the defendant must similarly be heard against so much of the same judgment as was unfavourable to him KHAJOOROONISSA v POUSHAN JEHAN I. L. R. 2 Calc 184 26 W R. 36 [L R 3 I A 291

26 ———— *Suit to set aside compromise—Set off—Equitable defence* —*D* was the manager of a religious endowment called the Chinchvad Sansthan On his death in 1852 disputes arose between *C* and *G* regarding the management of the sansthan each claiming to be the heir and successor of *D* After a long litigation they entered into a compromise in 1861 by which a portion of the sansthan property consisting of certain inam villages lands and varshasans were assigned to *G* and *C* was left in charge of the rest of the sansthan property together with all the rights privileges and manpans enjoyed by the hereditary trustee of the endowment In 1886 by a decree made in a suit called the Charity suit *C* was removed from his office and the plaintiffs were appointed trustees in his place In 1889 the plaintiffs filed the present suit to set aside the compromise of 1881 and recover back the sansthan property assigned to *G* under that compromise *G* pleaded by way of set off or equitable defence that if the plaintiff were at liberty to set aside the compromise they were bound to restore to him in lieu of the trust property assigned to him under the compromise certain private property belonging to his adoptive father which he had given up *Held* that *G* could not claim as a set off or as an equitable defence to recover from the plaintiffs in question the private property there being nothing in the compromise to show that there was any exchange of private property for trust property DHUNDIRAJ GANESH DEV v GANESH I L R. 18 Bom. 721

COMPROMISE—*continued*

2 REMEDY ON NON PERFORMANCE OF COMPROMISE

27 ———— **Effect of non performance in accordance with compromise**—*Suit to enforce compromise* —A compromise entered into in a former suit no fraud being alleged is not annulled by non performance by one of the parties The other parties may sue for its enforcement but they cannot revert to their original right RAM SAHAI SINGH v DHUNOOKDHAREE SINGH 1 W R. 268

28 ———— *Suit to enforce compromise—Revival of original right* —A compromise must be treated as a new and positive contract A breach of its stipulations may be ground of a suit for its enforcement but not for a revival of the original right BISHUN COOMAR ROY v HURISH CHUNDER DEB ROY 2 W R 209

29 ———— *Profits of land* —Where a compromise was made that any deficiency in the plaintiff's seer land was to be made up of assamee land and if that were insufficient from the defendant's seer land but the compromise was not acted on and the plaintiff was unable to make up the deficiency —*Held* that he was entitled to recover profits from the defendants in proportion to the deficiency in his seer land HIDAYUT OOLLAH v DOOKHCHORE RAI 2 Agra 204

30 ———— *Revival of original right—Suit to enforce conditions broken* —*Held* in accordance with a ruling of the Calcutta High Court and in contravention of a ruling of the late Sudder Court in 1850 that when a compromise has been effected and a party allowed to withdraw his suit under the provisions of s 98 Act VIII of 1859 if the compromise has not been acted upon the plaintiff is restored to his original right of action On the contrary if acted on either in whole or in part the plaintiff cannot be restored to his original right of action but may bring a suit for the performance of the condition uncomplied with *Held* also where a compromise is filed in Court and a decree is passed in accordance therewith such decree must be first set aside before a second suit can be brought on the original cause of action AMEER BEGUM v NOOR BEGUM Agra F B 1

31. ———— *Compromise after decree—Denial of compromise in execution of decree* —Where a compromise is set up and disavowed by one of the alleged parties thereto the other party cannot by an application in the execution department relying on the compromise arrest the execution of the decree Whatever rights may exist under the compromise must be established by a new suit JHUNDOO v HIMMUT 3 N W., 81

32 ———— *Compromise pending appeal* —Where a solenamah was based on the condition that the defendant should at once withdraw his special appeal but instead of doing so he went on with the appeal and caused notice to be served on the plaintiff and the plaintiff actually appeared and the special appeal would have come on for hearing but for the accidental absence of the defendant's pleader on the day of hearing —*Held* that

COMPROMISE—*continued*

3 COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued*

statements apparently favourable to the plaintiff's case the pleaders for both parties signed and presented to the Court a petition that if upon a particular bond in the witness possession it should be stated that the money was received through the defendant the Court should decree the suit otherwise the suit should be dismissed *Held* that this arrangement was not an adjustment or compromise of the suit within the meaning of s 375 of the Civil Procedure Code so as to determine the jurisdiction of the Court and necessitate its passing a decree according to the arrangement MUHAMMAD ZAHUR v CHEDA LAL.

[I. L. R. 14 All. 141

46 ——— **Assignment of interest pending suit**—*Civil Procedure Code s 372*—The cases of assignment creation or devolution of any interest pending a suit contemplated by s 372 of the Civil Procedure Code are those in which the person to whom such interest has come is arrayed on the same side in the suit as the person from whom it has passed *Held* therefore that a compromise in a suit for land between the plaintiff and one of the defendants whereby the latter consented to a decree being given to the former for half the land was not a case of assignment of an interest in such land within the meaning of that section RADHA PRASAD SINGH v RAJENDRA KISHORE SINGH I L R. 5 All 209

47 ——— **Civil Procedure Code 1882 s 375**—*Agreement to compromise suit—Subsequent disagreement—Application for decree in terms of agreement*—After the hearing of a suit had begun the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit The agreement was in writing and dealt in one clause with the dispute the subject matter of the suit and in a second clause with another dispute of long standing between the parties with which the suit had nothing to do The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement the defendants took out a rule nisi calling on the plaintiffs to show cause why the agreement should not be recorded in Court and why the Court should not pass a decree in accordance therewith under the provisions of s 375 of the Civil Procedure Code (Act XIV of 1882) The rule was argued on affidavits on either side the plaintiffs objecting that the above section did not apply to such a case as this and that in any case the matter could not be decided on affidavits but evidence must be gone into *Held* that s 375 gave the Court the power to deal with such a case as this in the manner required and that this was a proper case in which to exercise such a power and that in the circumstances of this case no definite procedure having been enjoined by the Code the matter might properly be decided on affidavits Rule made absolute accordingly RUTTONSEY LALJI v POORIBAI

[I. L. R. 7 Bom 304

48 ——— *Consent withdrawn before decree*—By an agreement made in writing before the hearing the parties to a suit entered into a compromise by which the plaintiff agreed for consideration to withdraw the suit When the case came on for hearing plaintiff refused to fulfil his promise The defendant having produced the agreement the Munsif held that it must be enforced and dismissed the suit On appeal the District Judge held that the agreement could not be treated as a compromise as the plaintiff did not consent and remanded the suit *Held* that the agreement could be enforced *Ruttonsey Lalji* v *Pooribai I L R 7 Bom 304* approved. KARUPPAN v RAMASAMI

[I L. R. 8 Mad. 482

49 ——— *Withdrawal from compromise—Agreement of parties—Decree on compromise—Appeal*—After suit filed by the plaintiff against several defendants one of whom was an infant a petition of compromise entered into between the adult parties was filed in Court The petition stated the terms of arrangement and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf Ten days after the petition of compromise was filed the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise and praying that the suit should proceed The second defendant presented a petition praying that the compromise should be recorded and a decree passed according to its terms The Court made a decree in accordance with the prayer of the second defendant's petition The first defendant appealed *Held* that an appeal lay and that the lower Court was wrong in enforcing the compromise at the instance of the second defendant *Semble*—That s 375 of the Code of Civil Procedure merely covers cases in which all parties consent to have the terms entered into carried out and judgment entered up *Ruttonsey Lalji* v *Pooribai I L R 7 Bom 304* questioned. HARA SUNDARI DEBI v KUMAR DUKHINE SUR MALIA

[I. L. R 11 Calc 250

50 ——— *Agreement adjusting a suit—Subsequent disagreement of the parties—Application by one of the parties to record the agreement*—Under s 375 of the Civil Procedure Code (XIV of 1882) an application to record an agreement adjusting a suit may be made although at the time of such application one of the parties either denies that it was made or wishes to withdraw from it or otherwise objects to its enforcement The Court being already seized of the suit which is adjusted the application to record the alleged agreement is a proceeding in that suit and the Court in connection with that proceeding necessarily has all the powers and has thrown upon it all the duties which appertain to it in regard to any other questions arising in any suit upon its file *Ruttonsey Lalji* v *Pooribai I L R 7 Bom. 304* approved and followed; *Hara Sundari Debi* v *Dukh nessur Malia I L R 11 Calc 250* dissented from GOCULDAS BULABDAS MANUFACTURING COMPANY v SCOTT I. L. R., 16 Bom., 203

COMPROMISE—*continued*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued*

51. ——— *Suit to enforce compromise—Deed of compromise—Admissibility in evidence of—Registration* —The plaintiff brought a suit to recover a certain jote The suit was compromised the defendant agreeing to give up a moiety not only of the jote in dispute but also of another jote of which he had dispossessed the plaintiff It was further agreed that the plaintiff would be entitled to bring a fresh suit for the recovery of the latter jote if the defendant failed to carry out the agreement The plaintiff was obliged to bring a fresh suit and both the lower Courts held that he was entitled to a decree On appeal by the defendant —*Held* that the lower Courts were right in decreeing the suit there being nothing in s 375 of the Civil Procedure Code to prevent the compromise from being enforced *Held further* that it was not necessary that the deed of compromise should be registered in order to make it admissible in evidence GUPTA NARAIN DAS *v* BIJOYA SUNDARI DEBYA **2 C W N 663**

52. ——— *Compromise not in terms of plaint* —A decree should not be passed in terms of a compromise where the latter does not give to the plaintiff any of the reliefs claimed in the suit and deals with matters not forming the subject matter of the suit Upon such a compromise being presented the Court should inform the parties that its terms cannot be embodied in a decree and if it appear that the compromise was arrived at conditionally upon its being incorporated in the decree the suit should be proceeded with. MUTHU VIJAYA RAGHUNATHA UDAYANA TEVAR *v* THANDAVARAYA TAMBIRAN **I L R 22 Mad. 214**

53 ——— *Dispute as to factum of compromise—Order dismissing suit in consequence of alleged compromise—Application to High Court by revision petition under s 622—Right of appeal against order dismissing suit—Acceptance of civil revision petition as appeal on Court fee being paid* —During the pendency of an appeal in a District Court a petition was filed by the pleaders of the plaintiffs and defendants in the suit praying on behalf of their clients that the case might be struck off the file on the ground that the matter in dispute had been compromised Two of the plaintiffs then filed a counterpetition denying that a compromise had been arrived at and praying that the appeal might be heard on its merits The District Judge after some intermediate orders struck off the appeal as prayed in the petition The two plaintiffs preferred a civil revision petition to the High Court whereupon it was objected that the petition could not be entertained as an appeal lay against the order of the District Judge inasmuch as it was not a decree in pursuance of a compromise under s 375 of the Code of Civil Procedure but an order passed on a dispute as to whether a compromise had in fact been arrived at The petition had been presented within the time allowed for appeal *Held* that inasmuch as the petition impeached the alleged compromise as not being a lawful compromise an appeal lay against the order of the District Judge but that the petition might be treated as an appeal on the Court fee being paid *Mahomed Wahiduddin v Hakiman I L R 25 Calc 757 at p 778* Where a party to a suit impugns an alleged agreement or compromise by which he would be bound the Court must satisfy itself by evidence that the agreement or compromise is a lawful one and that its terms have been consented to by the parties to the suit before it can proceed under s 375 of the Code of Civil Procedure to record it and pass a decree in accordance therewith SRIDHARAN SOMAYAJIPAD *v* PURAMATHAN SOMAYAJIPAD **I L R 23 Mad. 101**

54. ——— *Power of Court to refuse to record compromise too favourable to one party* —The terms of s 375 of the Civil Procedure Code (Act XIV of 1882) are imperative and a Court cannot refuse to record a lawful agreement of compromise and to pass a decree in accordance therewith merely because in its view it is too favourable to one of the parties MOTIRAM BALKRISHNA BALMANE *v* ZESU **I L R 22 Bom 238**

55 ——— *Compromise made notwithstanding dissent of client—Counsel's powers to compromise—Consent decree set aside* —Where counsel after consulting with his attorney and client as to the advisability of compromising a case and after receiving instructions from the attorney to do the best he could for his client compromised the case notwithstanding the express prohibition of the client and the client before the consent decree was drawn up notified her dissent to the other side —*Held* that the consent decree must be set aside CARRISON *v* RODRIGUES **I L R 13 Calc 115**

56 ——— *Compromise extending beyond the terms of the suit—Compromise Modification of terms of* —The only compromise which a Court can in any case be bound under s 375 of the Code of Civil Procedure to enforce is one which adjusts wholly or in part the suit matters going beyond the suit cannot if included in a compromise be so enforced A Court refusing to grant a decree on a compromise going beyond the suit cannot however grant a decree modifying the terms of the proposed compromise but must leave the parties to proceed with the suit as they may be advised FAJALEH ALI MIAH *v* KAMARUDDIN BHUYA **I L R 13 Calc. 170**

57 ——— *Compromise extending beyond scope of suit—Appeal—Form of decree on compromise* —In a suit for the partition of a zamindari the parties effected a compromise in writing which provided *inter alia* for certain reliefs which could only have been given by the Court in a suit based upon a different cause of action The compromise was presented in Court and a decree was passed embodying the whole of its terms *Held* (1) that an appeal lay against the decree (2) that the decree should have been passed in the terms of such of the provisions agreed upon as related to relief which

COMPROMISE—*continued*

3 COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued*

the Court could have given in the suit (3) that the decree should be modified accordingly VENKATAPPA NAYANIM v THIMMA NAYANIM

[I. L. R., 18 Mad., 410

58 ——————— *Recording compromise—Agreement made out of Court and comprising also matters not the subject of suit* —*Held* by the majority of the Full Bench MACLEAN C J and TREVELYAN and BANERJEE JJ (O KINEALY and BEVERLEY JJ dissenting) that where the parties to a suit have by an agreement adjusted the subject matter of the suit the Court can by an order made in the suit under s 375 of the Code of Civil Procedure direct such agreement to be recorded and make a decree in accordance therewith even if one of the parties to the agreement object *Held* (*per* O KINEALY and BEVERLEY *JJ*) that the Court could not make such an order the case not being one to which s 375 applied *Per* O'KINEALY *J*—The High Court on its Original Side exercising the equitable jurisdiction of the High Court of Chancery, would not on a contested motion give a decree of this nature *Per* BEVERLEY *J*—S 375 only applies to cases where the adjustment or satisfaction is made *in* Court and should not be extended to cases adjusted out of Court BROJODURLABH SINHA v RAMANATH GHOSE I. L. R. 24 Calc 908

[1 C W N, 597

59 ——————— *Agreement to compromise appeal—Petition to Court by both parties—Consent withdrawn before decree by one party—Remedy—Transfer of Property Act s 59—Charge on immoveable property—Oral agreement as to terms of compromise of suit—Terms of compromise in dispute—Proof by affidavit and further evidence—Procedure*—The parties to an appeal in which an issue had been remitted for trial to the lower Court having presented a petition to the lower Court stating that the suit had been compromised and the terms of the compromise requested the lower Court to move the Appellate Court to pass a decree in accordance with such terms Before a decree was passed one of the parties objected to the compromise being accepted *Held* that it was open to the Court such objection notwithstanding to pass a decree in accordance with the agreement *Ruttonsey Lalji* v *Pooribai I L R 7 Bom 304 and Karuppan* v *Ramasami I L R 8 Mad 482* followed *Hara Sundari Debi* v *Kumar Dukhinessur Malia I L R 11 Calc 250* observed upon An oral agreement by the parties to a suit that a decree be passed creating a charge on immoveable property above R100 in value is not rendered inoperative by s 59 of the Transfer of Property Act The parties to an appeal applied to the Court to pass a decree in accordance with the terms of a compromise and before decree was passed one of the parties objected to such decree being passed on the ground that certain conditions precedent to be performed by the other party had not been performed The Court (this being denied by the other party) called for affidavits in proof of the terms of the agreement of compromise and these being found not to be sufficiently conclusive directed the lower Court to take evidence on the point APPASAMI v MANIKAM

[I. L. R. 9 Mad. 103

60 ——————— *Civil Procedure Code s 577—Unverified solehnamah—Consent decree—Appellate Court, Power of*—Where an application purporting to contain the terms of a compromise was presented to the High Court by one of the parties to an appeal before it but on the so called solehnamah being sent down to the lower Court for verification it was found that the attendance of the parties for that purpose could not be procured. *Held* that the High Court was not justified in passing a decree under s. 577 of the Code of Civil Procedure in accordance with the terms of the unverified solehnamah BANDHU BHAGAT v MUHAMMED TAQUI I. L. R 14 All. 350

61 ——————— *Agreement adjusting suit—Power of Court to determine fact of agreement having been made—Reference of suit to arbitration—Award*—The plaintiff sued the defendant to recover certain property of which she alleged he had taken possession Subsequently the "matters in difference in the said suit" were by a signed submission paper referred to arbitration An award was made ordering the defendant to pay to the plaintiff R6 000 and cancelling a certain account. It also decided the claim of the plaintiff to two ornaments which was a matter not included in the submission paper but had been verbally referred to the arbitrator in the course of the arbitration The plaintiff now applied that the submission and award should be filed as an agreement adjusting the suit under s 375 of the Civil Procedure Code (Act XIV of 1882) or in the alternative that the award should be filed under s 525 The defendant disputed the agreement and denied the validity of the award. *Held* that under s 375 of the Civil Procedure Code the Court had jurisdiction to determine whether as a fact the alleged agreement adjusting the suit has been made and if it was satisfied that it has been made to record it Whether that fact should be tried on affidavit or by oral evidence is entirely for the discretion of the Court The Court accordingly holding that the suit had been adjusted by the submission and award ordered the same to be filed and the adjustment recorded *Held* further that the Court could make no order as to that portion of the award which dealt with matter not relating to the subject matter of the suit. A separate application should be made with regard to the ornaments. SAMIBAI v PREMJI PRAGJI

[I. L. R. 20 Bom 304

62 ——————— *Power of Court to frame additional issues as to an alleged compromise effected subsequent to the institution of the suit*—The Civil Procedure Code s 375 was intended to meet cases where the parties having agreed to compromise subsequently fall out The original Court has power to frame an additional issue to decide

COMPROMISE—*continued*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued*

whether a lawful compromise has been effected between the parties subsequent to the institution of the suit. APPASAMI NAYAKAN v. VARADACHARI [I. L. R. 19 Mad., 419

63. ——— *Execution of decree—Compromise in execution of decree—Estoppel—Civil Procedure Code ss 257A 647*—Although a Court executing a decree is bound by the terms thereof and cannot add to or vary or go behind them the effect of s 375 read with s 647 of the Civil Procedure Code is that when a decree is put into execution the proceedings taken therefor amount to a separate litigation in which the parties can enter into a compromise much in the same manner as in a regular suit. Such a compromise does not extinguish the decree and the Court executing the decree is bound subject to the conditions indicated by s 375 to give effect to the compromise. In execution proceedings the word suit in s 375 must with reference to s 647 be read as meaning execution of decree. By reason of the words in s. 375 lawful agreement or compromise the provisions of s. 257A become applicable to such a case and so long as the requirements of that section are satisfied, the compromise become a part of the decree itself and—at least as between the decree holder and the judgment-debtor—can be given effect to in execution of the decree. When such a compromise has been duly made and sanctioned by the Court executing the decree neither the decree-holder nor the judgment debtor can resile from the position assumed by them in the matter of the compromise. Even if such a compromise has been irregularly sanctioned by the Court executing the decree—the irregularity not amounting to want of jurisdiction—the compromise must take effect until the order sanctioning it is set aside and until that happens the parties are bound by it in all proceedings relating to the execution of the decree and where they have acted upon it they are estopped thereafter from questioning its validity. *Sita Ram v Dasrath Das I L R 5 All 492* followed. *Devi Ras v Gokal Prasad I L R 3 All 585 Ram Lakhan Rai v Bakhtaur Rai I L R 6 All 623 Fateh Muhammad v Gopal Das I L R 7 All 424 Ganga v Murlidhar I L R 4 All 240 Sheo Golam Lal v Beni Prosad I L R 5 Calc 27 Lakshmana v Sukayya Ba I L R 7 Mad 400 Yella Chetti v Munisami Reddi I L R 6 Mad 101 Pisan v Attorney General of Gibraltar L R 5 C P 516 and Sadasiva Pillai v Ramalinga Pillai L R 2 I A 219* referred to. MUHAMMAD SULAIMAN v. JHUKKI LAL [I. L. R. 11 All. 228

64. ——— Refund of Court fees—*Power to remit fees—Civil Procedure Code 1859 s 98*—S 98 Act VIII of 1859 was applicable only to mofussil Courts and a Judge exercising the ordinary original jurisdiction of the High Court had no power to remit fees under any circumstances. BARROW v. POLLOCK 1 Ind. Jur O S. 57 1 Hyde 149

COMPROMISE—*concluded*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*concluded*

65 ——— *Compromise of suit on day for defendant's appearance—Refund of stamp duty*—After service of the summons and on the day the defendant was required to appear the parties filed in Court deeds containing terms of compromise. *Held* that the plaintiff was entitled to a return of the entire amount of the stamp duty there having been no settlement of issues. BHISTOO CHUNDER ROY CHOWDHRY v. PARBUTTY DABEA [Marsh 274 2 Hay 213

66 ——— *Civil Procedure Code 1859 s 98—Return of stamp duty—Stamp Act X of 1862 s 26*—On the day fixed for the hearing of a suit in a Court of Small Causes the plaintiff's vakeel appeared and stated on behalf of his client that the defendant had satisfied him in respect of the matter of the suit which he prayed might be dismissed. The defendant did not appear. *Held* that the Judge was right in dismissing the suit but that he should have recorded an order under the first provision in s 98 of Act VIII of 1859. *Held* also that in such a case when the plaintiff applies for a return of stamp duty he must strictly bring himself within the subsequent part of the same section as modified by s 26 of Act X of 1862. ANONYMOUS CASE 1 Mad 127

67 ——— *Civil Procedure Code s 98—Stamp Act X of 1862 s 26—Refund of stamp duty*—The rule allowing refund of fees for suits (s 98 of Act VIII of 1859 as modified by s. 26 Act X of 1862) is not applicable to appeals which may be compromised. IN THE MATTER OF ZEBUNNISSA BIBEE 12 W R. 376

COMPULSORY LABOUR (MADRAS)

See MAGISTRATE JURISDICTION OF—SPECIAL ACT—ACT I OF 1858 4 Mad Ap 21

CONCEALMENT OF BIRTH.

——— Destruction of fœtus—*Penal Code s 318*—A person cannot be convicted of concealment of birth of a child under s. 318 of the Penal Code in the case of a miscarriage where the fœtus is only a few months old. ANONYMOUS 4 Mad Ap 63

CONCILIATOR

See DEKKAN AGRICULTURISTS RELIEF ACT
[I. L. R. 6 Bom. 31
I. L R. 8 Bom 20 411
I. L. R. 13 Bom., 424
I. L. R. 22 Bom 788

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS
[I. L. R. 19 Bom. 202

CONCUBINE.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—CONCUBINE
[I. L. R. 12 Bom., 26
I. L. R. 23 Mad. 282

CONCURRENT JUDGMENTS ON FACT

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACT

See CASES UNDER PRIVY COUNCIL PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS

CONDITION

——— Breach of—

See CASES UNDER LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

CONDITION PRECEDENT

See CHARTER PARTY 8 B L R. 544
[I L R. 14 Bom. 241
I. L. R., 15 Bom 389

See CASES UNDER CONTRACT—CONDITIONS PRECEDENT

See EXECUTION OF DECREE—NOTICE OF EXECUTION I. L R., 6 Calc 103
[I. L R. 3 All. 424
I. L R. 20 Calc 370
I. L. R 21 Calc. 19

See GUARANTEE 1 Ind. Jur N S 412

See CASES UNDER HINDU LAW—ADOPTION—SECOND SIMULTANEOUS AND CONDITIONAL ADOPTION

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION

CONDITIONAL SALE

See LIMITATION ACT 1877 ART 10 (1871 ART 10) I. L. R. 1 All., 592
[2 Agra 164
I. L R. 3 All. 175
I. L. R. 4 All. 291
2 N W 284
I L R. 14 Calc 761
I. L. R 20 All. 315 358 375

See CASES UNDER MORTGAGE

See CASES UNDER VENDOR AND PURCHASER—CONDITIONAL SALES
[I. L. R., 17 All 451

CONFESSION

See PLEA I. L. R 14 Bom, 564

CONFESSION—*continued*

1 GENERAL CASES

1. ——— 'Confession' Meaning of, as used in Evidence Act—*Evidence Act 1872, ss 26 30*—The word 'confession' as used in the sections of the Evidence Act relating to confessions must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt QUEEN EMPRESS v JAGRUP [I. L. R., 7 All 646

2. ——— Voluntary confession—*Proof of guilt*—A voluntary and genuine confession is legal and sufficient proof of guilt QUEEN v JHUBREE 7 W R., Cr 41

3. ——— Confession to be taken as a whole —A prisoner's confession must be taken in its entirety QUEEN v BOODHOO 8 W R. Cr., 38

GOLOKE CHUNDER CHOWDHRY v MAGISTRATE OF CHITTAGONG 25 W R., Cr 15

QUEEN v SONAOOLLAH 25 W R, Cr., 23

4. ——— *Statements of accused inconsistent with each other*—The ordinary rule of taking confessions as a whole and giving the accused (in the absence of other evidence against him) the benefit of any circumstance that may appear in his favour therefrom cannot apply to confessions which are diametrically opposed to each other but only where the more favourable view is not absolutely inconsistent with the general tenor of the confession QUEEN v NITYO GOPAL DASS BYRAGEE 24 W R. Cr 80

5. ——— *Inconsistent statements—Credibility of*—The words actually used by an accused, who is said to have confessed ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses deposing to a confession themselves arrived from the answers which the accused gave to questions put by them Where an accused makes two distinct statements—the one amounting to a confession of guilt the other repudiating guilt—if the one statement is taken against the accused the other also must be taken for what it is worth in his favour The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other QUEEN v SOOBJAN [10 B L. R. 333

6. ——— Confessions of prisoner in one case evidence in another —The confessions of the prisoner in one case in which he was convicted cannot be used against him in another case unless they are deposed to on oath either by the person who took them down or by some one else who heard them. IN RE MUNGER BHOOYAN 10 W R Cr., 56

CONFESSION—*continued*

1 GENERAL CASES—*concluded*

7 ——— **Corroboration of evidence of accomplice by confession of another prisoner** —The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others REG v MALAPA BIN KAPANA 11 Bom 196

8 ——— **Confessions of co accused against others in their absence** – Confessions of two of several accused persons made in the absence of the others are of no weight as against the latter Such confessions as well as the statements of approvers, are always regarded as tainted because from the position occupied by the persons making them, they are not entitled to the same weight as the evidence of ordinary witnesses QUEEN EMPRESS v BEPIN BISWAS I. L. R. 10 Calc. 970

9 ——— **Admissibility in evidence**—*Criminal Procedure Code ss 149 150*—To make the confession of a prisoner not uttered in the presence of a Magistrate admissible in evidence the fact disclosed must be one which of its own force independently of the confession would be admissible in evidence QUEEN v CHODA ATCHENAH [3 Mad. 318

2 CONFESSIONS UNDER THREAT OR PRESSURE

10 ——— **Statement admitting crime but pleading compulsion by others.**—An admission by *A* and *B* that the crime charged against them was committed by *C* and *D* and that whatever share they had in it was under compulsion is not a confession on which any person ought to be convicted QUEEN v KISTO MUNDUL 7 W R Cr 8

11 ——— **Proof of circumstances under which confession was made**—*Warning by Magistrate Averment of—Allegations of irregularity—Duty of Sessions Court* —Although the averment on the record of a Magistrate by whom a prisoner is tried that the accused, before making a confession was warned that it was optional with him to answer the questions put to him or not is on appeal conclusive as to the fact of such a warning having been given it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment or is not otherwise valueless Allegations made in a regular and proper manner before a Sessions Court on appeal that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in or diminish its value as evidence should receive due attention and be enquired into A Sessions Court refusing to make such enquiry commits a grave error in law and procedure REG v KASHINATH DINKAR [8 Bom. Cr 126

12 ——— **Record of circumstances under which confession was made**—*Criminal Procedure Code 1861 s 149—Judicial record* —To give weight to confessions of prisoners recorded under s 149 Code of Criminal Procedure there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate showing in whose custody the prisoners were and how far they were free agents QUEEN v KODAI KAHAR 5 W R. Cr., 6

CONFESSION—*continued*

2 CONFESSIONS UNDER THREAT OR PRESSURE—*continued*

13 ——— **Inducement to confess**—*Person in authority Statement to* —*W* a travelling auditor in the service of the Great Indian Peninsula Railway Company having discovered defalcations in the account of the prisoner who was a booking clerk of the company went to him and told him that he had better pay the money than go to jail and added that it would be better for him to tell the truth after which the prisoner was brought before the Traffic Manager in whose presence he signed a receipt for and admitted having received a sum of RS26-8 0 The prisoner was subsequently put on his trial for criminal breach of trust as a servant in respect of this and of other sums *Held* that the words used by *W* the travelling auditor constituted an inducement to the prisoner to confess and that *W* was a person in authority within the meaning of s 24 of the Evidence Act and that the receipt signed by the prisoner was therefore not admissible in evidence on his trial REG v NAVROJI DADABHAI 9 Bom 358

14 ——— *Illegal pressure —Presumption—Evidence Act s 24* —In the absence of evidence that a confession of an accused person has been induced by illegal pressure it is not to be presumed that such confession was so induced According to s 24 of the Evidence Act a confession is inadmissible only if the Court considers it to have been induced by illegal pressure REG v BALVANT PENDHARKAR 11 Bom. 137

15 ——— **Confession made under threat for a purpose other than to extort confession**—*Evidence Act 1872 s 24* —A prisoner was tried for wounding with intent to murder and wounding with intent to do grievous bodily harm The offence was committed on the high seas on board a ship on which the prisoner was a seaman At the trial it was proved for the prosecution that the master of the ship had sailed from Calcutta and could not be found and the Standing Counsel thereupon tendered in evidence his deposition before the committing Magistrate which contained an admission alleged to have been made to the deponent by the prisoner when in custody The Court refused to admit the portion of the deposition containing the admission to be read as it was stated to have been made immediately after the prisoner with others had been threatened by the witness with a loaded rifle it was immaterial that the threat was not made to extort a confession but to suppress an attempt at mutiny QUEEN v HICKS 10 B L. R. Ap 1

16 ——— **Confession to panchayat caused by threat**—*Evidence Act 1872 s 24*—

CONFESSION—*continued*

3 CONFESSIONS SUBSEQUENTLY RETRACTED—*concluded*

in under s 288 of the Criminal Procedure Code without independent corroborating testimony nor can these two be joined together and held as mutually corroborating each other so as to justify a conviction based on them *Queen* v *Amanulla 12 B L R Ap 15 21 W R Cr 49 Queen Empress* v *Ranji I L R 10 Mad 295* and *Queen Empress* v *Bharmappa I L R 12 Mad 123* referred to and approved of QUEEN EMPRESS v JADUB DAS [I L R 27 Calc 295 4 C W N 129

4 CONFESSIONS TO MAGISTRATE

29 ——— **Practice of taking prisoners before Magistrate to get confession recorded.**—The practice of taking prisoners before Magistrates not having jurisdiction in the case for the purpose of getting a confession recorded is not generally desirable but such a confession is legally admissible in evidence when duly proved REG v VAHALA JETHA 7 Bom Cr 56

30 ——— **Statement made to Magistrate**—*Criminal Procedure Code 1861 s 109*—S 109 of the Code of Criminal Procedure refers to cases where the confession of a prisoner has been made to the Magistrate conducting the investigation and not to the police It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner The mere standing by of the Magistrate when the confession *is being made to the police is not sufficient* QUEEN v DOMUN KAHAR 12 W R Cr 82

31 ——— **Sufficiency of confession**—*Corroborative denial of statement in Sessions Court*—The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence and notwithstanding a subsequent denial before the Sessions Court QUEEN v BHUTTUN RUJWAN 12 W R Cr 49

32 ——— **Statement on preliminary enquiry**—*Code of Criminal Procedure (Act X of 1872) ss 122 193 346—Code of Criminal Procedure (Act X of 1882) ss 342 364*—On a certain day a confession by an accused person was recorded by a Magistrate and on the next day the same Magistrate having jurisdiction to do so examined the witness s for the prosecution and eventually committed the accused *Held* following *Empress* v *Anuntram Singh I L R 6 Calc 954* that such confession having been made to a Magistrate competent to hold and who actually then was holding an enquiry preliminary to committal must be regarded as falling within s 193 of Act X of 1872 or s 342 of Act X of 1882 and as such governed by the reservations contained in s 346 of the former Act or s 364 of the latter Observations on ss 342 and 364 of Act X of 1882 (Criminal Procedure Code) EMPRESS v YAKUB KHAN I L R 5 All 253

33 ——— **Pardon wrongly tendered to witness**—*Admissibility of evidence—Criminal*

CONFESSION—*continued*

4 CONFESSIONS TO MAGISTRATE—*continued*

Procedure Code 1872 s 344—Evidence Act s 24—Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with others in offences one of which were exclusively triable by the Court of Session and such person was examined as a witness in the case—*Held* that the statement made by such person was irrelevant and inadmissible as a confession with reference to s 344 of Act X of 1872 and s 24 of Act I of 1872 EMPRESS OF INDIA v ASHGAR ALI [I L R 2 All 280

34 ——— **Improper examination of accused person by Magistrate**—*Criminal Procedure Code ss 164 364 533—Evidence Act ss 65 80—Record rejected*—The Deputy Magistrate of Malabar purporting to act under the provisions of the Mapilla Act (Madras Act XX of 1859) recorded a statement in the nature of a confession made by V who was under arrest on suspicion of being concerned in a Mapilla outrage This statement which was made in Malayalam was recorded in English in the form of a narrative and was signed by the Magistrate only The same Magistrate shortly afterwards purporting to act under the Code of Criminal Procedure before any evidence was recorded against V examined him as to this statement which was read over and translated to him In answer to questions V admitted that he had made it voluntarily This examination was recorded according to the provisions of s 364 of the Code of Criminal Procedure After other evidence was recorded V retracted his statement He was committed to the Sessions tried and convicted mainly on his own recorded statement and examination The Deputy Magistrate was examined as a witness and stated that the statement recorded by him was made by V and was correctly recorded, and was made voluntarily *Held* that the record of the statement made by V to the Deputy Magistrate was not admissible in evidence against V *Per* PARKER J—The provisions of s 164 of the Code of Criminal Procedure are imperative and s. 533 will not render a confession admissible where no attempt has been made to conform to the provisions of the former section If the confessional statement of V was recorded by the Magistrate in his executive capacity it was not receivable in evidence under s 80 of the Evidence Act The action of the Magistrate in examining V as to his confessional statement before there was any legal evidence on the record against him was illegal and therefore the record of such examination could not be used in evidence against V Inasmuch as the record of the statement of V was not admissible secondary evidence thereof could not be given QUEEN EMPRESS v VIRAN I L R, 9 Mad 224

35 ——— **Record of statement before Magistrate**—*Certificate of Magistrate—Criminal Procedure Code 1861 s 205*—A confession before a Magistrate should be recorded in the language in which it was made and to make it evidence the certificate by the Magistrate required by s. 205, Criminal Procedure Code 1861 must be attached. QUEEN v BHEEBEEKEE 4 N W, 16

CONFESSION—*continued*

4 CONFESSIONS TO MAGISTRATE—*continued*

36 ———— *Statement in foreign language* —It is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded EMPRESS v VAIMBILEE. VAIMBILEE v EMPRESS [I. L. R. 5 Calc. 826

37 ———— Improperly recorded confession—*Criminal Procedure Code 1872 ss 122 and 346* —A confession not recorded according to the provisions of Act X of 1872 s 346 is inadmissible as evidence QUEEN v KALA CHAND PAL [24 W R. Cr 29

QUEEN v CHUNDER BHUTTACHARJEE [24 W R. Cr 42

38 ———— Defect in confession—*Criminal Procedure Code 1872 ss 122 346* —A defect in a confession taken under s 122 of the Code of Criminal Procedure cannot be remedied as in the case of an examination of a prisoner under s. 346 by evidence taken at Sessions EMPRESS v HARI KISTO BISWAS 5 C L. R. 209

39 ———— *Unsigned confession—Criminal Procedure Code 1872 ss 122 and 346—Oral evidence to prove* – The confession of an accused person taken by a Magistrate having no jurisdiction to commit or try him is imperfect if not signed by the accused person or attested by his mark, and is inadmissible in evidence (ss 122 and 346 Criminal Procedure Code) The term Preliminary enquiry in the final clause of s 346 means such enquiries as are the subject of Chaps XIV (of enquiries and trials) and XV (of enquiry into cases triable by the Court of Session or the High Court) and therefore that clause does not apply to confessions recorded under s 122 which refers to an enquiry not during a trial or one held with a view to committal but an enquiry for the purpose of forwarding confessions when recorded to the Magistrate by whom the case of the accused person is enquired into or tried. Consequently when a confession taken under s 122 is inadmissible in evidence oral evidence to prove that such a confession was made or what the terms of that confession were is inadmissible also (s 91 of the Evidence Act) REG v BAI RATAN 10 Bom 166

40 ———— *Confession not taken in proper form nor authenticated by Magistrate—Criminal Procedure Code 1872 ss 122 346* —A confession not taken in the form of question and answer and not authenticated by the Magistrate s endorsement as to its accuracy is inadmissible in evidence even though no objection should be made to its reception ss 45 1 2 256 and 346 of the Code of Criminal Procedure and s 91 of the Evidence Act REG v AMRITA GOVINDA 10 Bom 497

But *see* EMPRESS v SAGAMBUR [12 C L R. 120

CONFESSION—*continued*

4 CONFESSIONS TO MAGISTRATE—*continued*

41 ———— *Criminal Procedure Code 1872 s 346—Confession improperly subscribed* —The direction of s 346 of the Code of Criminal Procedure enjoining that an accused person shall sign the record of his confession is not satisfied by the following — Signature of *A B* (the accused) the handwriting of *C D* Where the conviction of a person was based upon a confession thus subscribed the High Court reversed it and held that the Sessions Judge was bound to prevent the production of such a confession REG v DAYA ANAND 11 Bom 44

42 ———— *Criminal Procedure Code 1872 s 346—Prejudice—Failure by pleader to take objection* —An accused person whose signature to a statement made by him to the committing Magistrate is not taken as provided in s 346 of the Code of Criminal Procedure is not prejudiced thereby within the meaning of that section unless he is unfairly affected as to his defence on the merits Where a prisoner in the Court of Session was represented by a pleader who had opportunity to object to the admissibility of his statement and did not the High Court held that he was not prejudiced. REG v DEVA DAYAL 11 Bom. 237

43 ———— Confession taken by Magistrate other than the one investigating the case—*Certificate of Magistrate—Criminal Procedure Code 1872 s 122* —S 122 of the Code of Criminal Procedure which requires a Magistrate to certify on a confession his belief that it was voluntarily made does not apply to the case of a confession taken by a Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is enquired into or tried QUEEN v JETOO 23 W R. Cr 18

44 ———— Memorandum of Magistrate as to voluntariness of confession—*Criminal Procedure Code ss 122 and 346—Admissibility in evidence* —A confession recorded under s 122 of the Code of Criminal Procedure to be admissible in evidence must not only bear a memorandum that the Magistrate believed it to have been voluntarily made but also a certificate under s 346 of the Code that it was taken in the Magistrate s presence and hearing and contains accurately the whole of the statement made by the accused person No oral evidence can be received to prove the fact of a confession if the confession itself be inadmissible REG v SHIVYA [I L R 1 Bom 219

45 ———— Attestation of record—*Criminal Procedure Code s 346—Confession made to trying officer at time of trial* —The attestation required by s 346 of the Criminal Procedure Code is unnecessary when a confession is made in Court to the officer trying the case at the time of trial IN THE MATTER OF CHUMMAN SHAH [I. L. R. 3 Calc 756 2 C L. R. 317

46 ———— Evidence of recording officer where confession defective—*Criminal*

CONFESSION—*continued*

4 CONFESSIONS TO MAGISTRATE—*continued*

Procedure Code s 122—Admissibility of secondary evidence of confession not taken in accordance with s 346 of Criminal Procedure Code (X of 1872) — When the confession of a prisoner under s 122 of the Criminal Procedure Code was not taken in the manner provided by s 346, and was therefore defective —*Held* that the evidence of the recording officer that such confession was actually made was inadmissible to remedy the defect IN RE EMPRESS *v* MANNOO TAMOOLEE

[I L R. 4 Calc, 696 4 C L R 137

QUEEN *v* CHUNDER BHUTTACHARJEE

[24 W R Cr 42

47 ——— Confession to Magistrate during enquiry held previously to committal—*Criminal Procedure Code ss 122 and 346* —When a confession is made to a Magistrate by an accused person during an enquiry held previously to the case being taken up by the committing officer and by an officer acting merely as a recording officer it must be recorded in strict accordance with the provisions of ss 122 and 346 of the Code of Criminal Procedure If the provisions of these sections have not been fully complied with by the recording officer the Court of Session cannot take evidence that the accused person duly made the statement recorded and in cases where evidence can be taken a Court of Session is not at liberty to treat a deposition sent up with the record and made by the recording officer before the committing officer to the effect that the accused person did in fact duly make before him the statement recorded as evidence of that fact In such a case the recording officer must himself be called and examined by the Court of Session except in cases in which the presence of the recording officer cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court of Session considers unreasonable NOSHAI MISTRI *v* EMPRESS

[I. L R. 5 Calc 958 6 C L.R 353

48 ——— Confession recorded by Magistrate who afterwards holds the preliminary examination—*Criminal Procedure Code (Act X of 1872) ss 122 193 346* —A confession recorded by a Magistrate who afterwards conducts the enquiry preliminary to committal and has jurisdiction to do so is to be treated as an examination under s 193 of the Criminal Procedure Code and not as a confession recorded under s 122 notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police investigation To such a confession consequently the provisions of the last paragraph of section 346 apply S 122 of the Criminal Procedure Code contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried EMPRESS *v* ANUNTARAM SINGH

[I L R 5 Calc 954 6 C L R 207

49 ——— Confession, mode of recording and admissibility of—*Criminal Procedure Code (Act X of 1898) ss 164 364 533—Defective*

CONFESSION—*continued*

4 CONFESSIONS TO MAGISTRATE—*continued*

recording of a confession or statement—Magistrate recording a confession and holding subsequent judicial inquiry —Whether a confession made by a prisoner to a Magistrate be regarded as a statement under s 164 or under s 364 of the Code of Criminal Procedure the terms of the law require that the record should be signed not only by the person who makes the confession or is under examination but also by the Magistrate and that in addition thereto, there should be a certificate in the terms prescribed. Such a confession or statement to be admissible in evidence must strictly comply with the terms of the law The defect in recording a confession may be remedied under s 533 Criminal Procedure Code by examining the Magistrate who recorded the confession A confession freely made to a Magistrate and recorded under s 164 of the Code of Criminal Procedure is admissible in evidence and the fact that after the confession so recorded the same Magistrate holds the subsequent judicial inquiry and commits the case to the Court of Session does not make the confession inadmissible on that ground. *Empress* v *Anuntaram Singh I L R 5 Calc 954* explained and distinguished A Magistrate may become disqualified from dealing with a case by reason of a mere previous action taken by him but the character of the evidence and its admissibility cannot be affected by his subsequent conduct or in other words what is admissible in evidence cannot become inadmissible through the course subsequently taken by a Magistrate EMPRESS *v* LAL SHEIKH 3 C W N 387

50 ——— Confession made during or before investigation by police—*Statement to Magistrate other than the one holding enquiry—Criminal Procedure Code 1872 ss 122 346*— S 122 of the Criminal Procedure Code (Act X of 1872) does not apply to a confession recorded by a Magistrate acting under Ch. XV or Ch XVII but to a confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried and to a confession made during or before the commencement of an investigation by the police IN THE MATTER OF BEHARI HADJI 5 C L.R. 238

51 ——— Confession made commencement of proceedings—*Criminal Procedure Code 1872 ss 122 346—Prompt record of confessions* —A confession made by an accused person before a Magistrate who has jurisdiction to deal with the matter to which it relates may be made the commencement of a trial or enquiry under Chap XV of the Criminal Procedure Code and be treated as a confession under s 346 whether or not the case be still under the investigation of the police *Per curiam*,—The object of s 122 of the Code of Criminal Procedure is to enable any Magistrate other than the Magistrate by whom the case is to be tried or enquired into, to record a confession promptly *Behari Hadji 5 C L R 238* and *Reg* v *Shivya Bel ... I L R 1 Bom. 219* discussed. KRISHNO MOHUN *v* EMPRESS 6 C L R. 259

52 ——— Memorandum of Magistrate not in prescribed form—*Evidence Act*

CONFESSION—*continued*

4. CONFESSIONS TO MAGISTRATE—*continued*

s 21—Act X of 1872 (Criminal Procedure Code) ss 122 346—A confession does not become irrelevant merely because the memorandum required by law to be attached thereto by the Magistrate taking it has not been written in the exact form prescribed. EMPRESS OF INDIA *v* BHAIROON SINGH

[I. L. R 3 All 338

53 ———————— *Criminal Procedure Code 1872 ss 122 346—Admissibility in evidence*—Where a Magistrate in taking the confession of a prisoner under s 122 of the Criminal Procedure Code omits to take it in writing with the formalities prescribed by s 346 of that Code such confession is not absolutely inadmissible in evidence Evidence may be taken to show that the prisoner duly made the statement recorded *Reg v Shivya I L R 1 Bom 219* dissented from EMPRESS *v* RAMANJIYYA

I. L. R. 2 Mad 5

54 ———— **Certificate not recorded at time of confession**—*Criminal Procedure Code 1872 s 122—Admissibility in evidence*—If the certificate required by s 122 of the Code of Criminal Procedure (Act X of 1872) that a confession is voluntarily made is not recorded by the Magistrate at the time the confession is made or at any rate on the day it is reduced to writing, the confession is bad and inadmissible in evidence To render the statement of one person jointly tried with another for the same offence liable to consideration against that other it is necessary that it should amount to a distinct confession of the offence charged EMPRESS *v* DAJI NARSU

I. L. R. 6 Bom. 288

55 ———— **Examination not recorded in proper form**—*Error in recording examination—Question and answer—Statement of accused person—Criminal Procedure Code (Act X of 1872) s 346—Admissibility in evidence*—The confession of an accused person was recorded in a simple narrative form instead of in the shape of question and answer as required by the Code of Criminal Procedure s 346 There was nothing in the character of the confession or in the circumstances of the case to lead to the inference that the accused had been prejudiced by the error *Held* that the error did not affect the admissibility of the statement in evidence IN THE MATTER OF THE PETITION OF MUNSHI SHEIKH EMPRESS *v* MUNSHI SHEIKH

[I. L. R. 8 Calc 616

TITU MAYA *v* QUEEN

[I. L. R. 8 Calc 618 note 1 C. L. R. 1

56 ———— **Confession not recorded in language in which it is given admissibility of in evidence**—*Criminal Procedure Code (Act X of 1882) ss 164 364 and 533—Evidence Act (I of 1872) s 91—Examination of accused—Defect in confession*—An accused when in custody made a confession to a Deputy Magistrate in the presence of a Sub Inspector and during an investigation being held into a case of murder under the provisions of Chap XIV of the Criminal Procedure Code The confession was recorded by the Deputy Magistrate in English though made in Hindi which the Deputy Magistrate perfectly well understood and could write It purported to have been recorded under the provisions of s 164 and was in reply to one question which was set out The record bore the signatures of the accused and of the Deputy Magistrate as well as the certificate as required by the section It occupied about five pages of foolscap At the trial the Sessions Judge excluded this confession on the ground that not having been recorded in the language in which it was made and there being no reason why it should not have been so recorded the document was inadmissible in evidence He however called the Deputy Magistrate as a witness and admitted in evidence his statement as to what the accused told him This evidence which occupied only a few lines was to the effect that the accused told him he had committed the murder and on this evidence alone the accused was convicted On appeal held that the provisions of s 164 read with s 364 are imperative as to the language in which a confession is to be recorded and that s 533 does not contemplate or provide for any non compliance with the law in this respect and that therefore as it was not impracticable to record the confession in Hindi the Sessions Judge was right in refusing to admit the document in evidence —*Held* further that the Sessions Judge erred in admitting the oral evidence of the Deputy Magistrate as to what the accused told him as seeing that he was acting under the provisions of s 164 of the Criminal Procedure Code the confession was matter which was required by law to be reduced to the form of a document and therefore under s 91 of the Evidence Act no evidence could be given in proof of such matter except the document where as in this case it was in existence and forthcoming *Held* also that as the defects in the record could not be cured under s 533 of the Criminal Procedure Code and no secondary evidence could be given no proof of the confession could be given and the accused must be acquitted JAI NARAYAN RAI *v* QUEEN EMPRESS

[I. L. R. 17 Calc 862

57 ———————— *Criminal Procedure Code (Act X of 1882) ss 164 364 and 533—Examination of accused*—Where a confession made in Hindustani was taken before a Sub divisional Magistrate and was recorded by the Court Officer in Bengali, that being the language of the Court and where it appeared that the Magistrate himself was a Mahomedan and it was contended that he must be taken to have been able to record the confession in the language in which it was given there being no evidence to the contrary —*Held* in the absence of such evidence the Court should presume that the proceedings of the Magistrate were conducted in accordance with law and that in the absence of anything to show that it was practicable for the officers of his Court to record the statement in Urdu it could fairly be held that the Magistrate found that was impracticable and adopted the alternative allowed by law of having the confession recorded in the Court language *Jai Narayan Rai*

CONFESSION—*continued*

4 CONFESSIONS TO MAGISTRATE—*continued*

v *Queen Empress I L R 17 Calc 862* doubted LALCHAND v QUEEN EMPRESS

[I. L. R. 18 Calc 549

58 ———— *Criminal Procedure Code (1882) s 364—Recording statement of accused on examination before Magistrate*—Where an accused, a Manipuri was examined before the Magistrate through an interpreter who obtained his answers in Manipuri and they were recorded in that language and the interpreter translated them into Bengali and they were recorded by the Magistrate in English and the statement in English and that in Manipuri were found to differ—*Held* that the statement recorded in Manipuri must be taken to be the record in the case. Had the Manipuri statement not been made the Magistrate by recording the statement in English would not have strictly complied with the spirit and intention of s 364 of the Criminal Procedure Code though the record in English might not necessarily have been inadmissible in evidence QUEEN EMPRESS v SAGAL SAMBA SAJAO

[I. L. R. 21 Calc. 642

59 ———— *Criminal Procedure Code (1882) s 364*—The confession of an accused person made in Bengali the language in which the accused was examined was recorded in English. The committing Magistrate in his evidence in Court, said that he could not write Bengali well and that there was no Mohurrir with him at the time when the confession was recorded. *Held* the provisions of s 364 of the Criminal Procedure Code had been sufficiently complied with. *Jai Narayan Rai v Queen Empress I L R 17 Calc 862* distinguished QUEEN EMPRESS v RAZAI MIA

[I. L. R. 22 Calc 817

60 ———— **Confession to Presidency Magistrate**—*Statement of prisoner made before inquiry—Statement of prisoner made in the course of or after inquiry—Criminal Procedure Code (1882) ss 164 364 and 533—Examination of accused persons*—The sections comprised in Chap XIV of the Criminal Procedure Code (Act X of 1882) (except s. 155) do not apply to the Police in the Presidency towns and consequently a statement or confession made to a Presidency Magistrate does not come within s 164, and the procedure prescribed in regard to the recording of statements or confessions by that section and (by reference) s 364 does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. But such statement or confession, though not taken under s 164 is admissible in evidence against the prisoner *Queen Empress v Nilmadhub I L R 15 Calc 595* followed on this point. During an inquiry before a Presidency Magistrate after the evidence for the prosecution was taken the Magistrate examined the accused under ss 209 and 312 of the Criminal Procedure Code. The accused was examined in Marathi but the questions and answers were recorded in English. The Magistrate deposed at the trial that it was the invariable practice in his Court to take down depositions in English and that he could not himself have accurately recorded the prisoner's statement in Marathi. He also deposed that the statement was correctly recorded in English and that each question and answer when recorded was interpreted to the accused in Marathi and that the accused then made his mark at the end of the recorded statement. He further stated that there were at hand native subordinate officials of his Court who could have recorded the statement in Marathi but that he himself had not sufficient knowledge of Marathi as to be able to read what was written by such a subordinate or to satisfactorily check or test the correctness with which it represented the statement made by the accused. *Held* that assuming that it was practicable to record the statement in Marathi and that consequently it was irregular with reference to s 364 of the Code to record it in English, the statement was nevertheless admissible in evidence under s 533 the irregularity not having injured the accused as to his defence on the merits. *Jai Narayan Rai v Queen Empress I L R, 17 Calc 862* dissented from. QUEEN EMPRESS v VISRAM BABAJI

I. L. R. 21 Bom. 495

61. ———— **Confession not signed by the accused**—*Admissibility of such confession—Parol evidence admissible to prove the terms of the confession*—S 533 of the Code of Criminal Procedure (Act X of 1882) is intended to apply to all cases in which the directions of the law have not been fully complied with. It applies to omissions to comply with the law as well as to infractions of the law. *Queen Empress v Visram Babaji I L R 21 Bom 195* followed. *Jai Narayan Rai v Queen Empress I L R 17 Calc 862* dissented from. The accused was charged with murder. At the trial a confession made by him before the committing Magistrate was tendered in evidence against him. The Sessions Judge rejected the confession as inadmissible as it did not bear the mark or signature of the accused and as there was no other reliable evidence to bring home the charge to the accused he was acquitted. *Held* reversing the order of acquittal, that though the record of the confession was admissible parol evidence could be given of the terms of the confession and those terms when proved might be admitted and used as evidence against the accused under s 533 of the Code of Criminal Procedure (Act X of 1882). The accused was therefore ordered to be re tried. QUEEN EMPRESS v RAGHU

[I. L. R. 23 Bom. 221

62. ———— **Evidence Admissibility of confession in**—*Question and answer—Memorandum in English by Magistrate—Criminal Procedure Code (Act X of 1882) ss 164 364 and 533*—It is not necessary that the English memorandum referred to in para 3 of s 364 of the Criminal Procedure Code should be made in respect of confessions recorded under s 164 as the manner in which such a confession is to be recorded under the provisions of that section is fully set out in the first two paras of s 364. A confession of an accused person was recorded before a Deputy Magistrate by one of his clerks under the provisions of s 164 of the Criminal Procedure Code while the case was under

CONFESSION—*continued*

4. CONFESSIONS TO MAGISTRATE—*continued*

investigation by the police No English memorandum of the nature referred to in s. 364 was made by the Deputy Magistrate A further confession was recorded by the Magistrate under the provisions of s. 364, while the case was being heard before him. Both confessions were recorded in narrative form and the questions and answers were not taken down At the trial before the Sessions Judge both confessions were put in evidence and no evidence was given under the provisions of s. 533 of the Criminal Procedure Code that the accused duly made the statements recorded. The accused was convicted mainly on the strength of the confessions *Held* upon the authority of the decision in *Tilu Maya* v *The Queen*, *I L R 8 Calc 618 note* that as the accused was not prejudiced by the questions and answers not being recorded it was unnecessary for the judge to take evidence under s 533 and that the conviction based on the confessions must be upheld. FEKOO MAHTO v QUEEN EMPRESS I. L. R., 14 Calc. 539

63 ———— Statement recorded by a Magistrate—*Criminal Procedure Code 1882 s 164—Evidence—Judicial proceeding—Giving false evidence—Penal Code (Act XLV of 1860) ss 191 and 192* —A statement taken by a third class Magistrate under s. 164 of the Code of Criminal Procedure (Act X of 1882) such Magistrate not having authority to carry on the preliminary inquiry in the case is not evidence in a stage of a judicial proceeding within the meaning of ss. 121 and 193 of the Penal Code such that when the statement is contradicted afterwards before the Magistrate having jurisdiction and exercising it in the preliminary inquiry it will form a sufficient basis for an alternative charge of giving false evidence in a judicial proceeding QUEEN EMPRESS v BHARMA

[I. L. R. 11 Bom 702

See QUEEN EMPRESS v KHEM

[I. L. R. 22 All. 115

and QUEEN EMPRESS v ALAGU KONE

[I. L. R., 16 Mad. 421

64. ———— Defect in confession—*Criminal Procedure Code (Act X of 1882) ss 1 164 364 533—Evidence Act (I of 1872) ss 21 26 80 —Presidency towns Investigations in* —An accused in custody at the time made to a Magistrate in Calcutta in the course of a police investigation held in Calcutta, a statement confessing that he had murdered his father The accused spoke and understood English and the Magistrate questioned him in English and was answered sometimes in English and sometimes in Bengali. Whenever the answers were given in English they were so taken down when in Bengali they were written down in English and read over to the accused in that language who accepted the English as being the meaning of that which he had stated and signed the document in the presence of the Magistrate who affixed the usual certificate thereto In taking this confession the Magistrate purported to have acted under ss 164 and 364 of the Criminal Procedure Code At the trial subsequently to the admission of the confession in evidence under s 80 of the Evidence Act the Magistrate was called as a witness and deposed to the above facts with reference to the language in which the confession was taken and the mode in which it was recorded *Held* on a reference to a Full Bench as to whether the confession was inadmissible in evidence by reason of some of the answers having been given in Bengali but recorded in English that the provisions of s. 164 of the Code had no application to statements taken in the course of a police investigation made in the town of Calcutta and that consequently ss 364 and 533 had no application *Held* nevertheless that the document was properly admitted upon the evidence of the Magistrate under the provisions of s 26 of the Evidence Act *Semble*—The provisions of s 164 as read with s. 364 would not be complied with where answers made by an accused to a Magistrate in one language are taken down in another unless it could be shown that it was impracticable to have taken down the answers in the language in which they were given and further that there would be grave doubt if such a defect could be cured by s 533 QUEEN EMPRESS v NILMADHUB MITTER I. L. R. 15 Calc 595

65 ———— Examination of accused persons at preliminary investigation—*Criminal Procedure Code 1882 ss 159 164 364 533—Evidence Act (I of 1872) ss 21 24 25 26* —A Deputy Magistrate was deputed by the District Magistrate under s. 159 of the Code of Criminal Procedure (X of 1882) to hold an investigation into a case of murder and recorded the statements of the accused persons *Held* that the statements were rightly rejected as inadmissible The rule laid down in s 21 of the Evidence Act must be taken subject to the special provisions relating to confessions and statements of accused persons enacted in ss 24 25 and 26 of the Evidence Act and ss 164 and 364 of the Code of Criminal Procedure Were it otherwise confessions and statements of accused persons not recorded in accordance with the requirements of ss 164 and 364 of the Code might be proved as admissions by the accused and the wholesome provisions elaborately laid down in those two sections practically reduced to a nullity Nor can s 533 of the Code be construed to favour that view Under that section when a confession or other statement of an accused person is duly made in accordance with the provisions of law but in the recording of it those provisions have not been fully complied with oral evidence is admissible to prove that the confession or other statement was duly made The defect which the section is intended to cure is not one of substance but of form only *Queen Empress* v *Viran I L R., 9 Mad., 224* and *Jai Narayan Rai* v *Queen Empress I L R 17 Calc 870* followed The statements having been recorded by a Magistrate not being a police officer in the course of an investigation under Ch. XIV of the Code the provisions of s. 164 must be observed. The statements contemplated by that section should be recorded in the manner prescribed for recording evidence and confessions must be recorded in the manner provided by s. 364. Ss 365

CONFESSION—*continued*

5 CONFESSIONS TO POLICE OFFICERS —*continued*

167—Admissibility in evidence of confession—Deputy Commissioner of Police in Calcutta—Letters Patent 1865 cl 26—Case certified by Advocate General —The prisoner on his arrest made a statement in the nature of a confession which was reduced into writing by one of the inspectors in whose custody the prisoner was and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace At the trial of the prisoner at the Criminal Sessions of the High Court this statement was tendered in evidence against him and admitted by the Judge who overruled an objection on behalf of the prisoner that under s 25 of the Evidence Act it was inadmissible On a case certified by the Advocate General under cl 26 of the Letters Patent —*Held* that the confession was under s 25 of the Evidence Act not admissible in evidence *Per* GARTH *C J*—S *26* of the Evidence Act is not to be read as qualifying the plain meaning of s 25 In construing s 25 the term police officer is not to be read in a technical sense but in its more comprehensive and popular meaning *Per* GARTH *C J* (PONTIFEX *J* doubting)—The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction is in a case coming before the Court and under s 26 of the Letters Patent the Court of review not the Court below Such decision is to be come to on being informed by the Judge s notes and if necessary by the Judge himself of the evidence adduced at the trial *Per Curiam* —Apart from s 167 the Court has power in a case under cl 26 of the Letters Patent to review the whole case on the merits and affirm or quash the conviction QUEEN *v* HURRIBOLE CHUNDER GHOSE

[I L R. 1 Calc 207 25 W R., Cr 36

80 ———— **Confession to police officer by one of accused persons tried jointly**—*Evidence Act 1872 ss 25 and 167—Admissibility in evidence of confession—High Court s Criminal Procedure Act (X of 1875) ss 23 and 101—Letters Patent 1865 cl 25—Power of the High Court on a point of law reserved to consider the merits of the case* —S 25 of the Evidence Act (I of 1872) does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him Such a confession is not to be received or treated as evidence against the person making it but simply as evidence on behalf of the other The High Court on a point of law as to the admissibility of rejected evidence reserved under cl 25 of the Letters Patent 1865 and s. 101 of the High Court s Criminal Procedure Act (X of 1875) has power to review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reserved unless the admission of the rejected evidence ought to have varied the result of the trial (Evidence Act s 167) EMPRESS *v* PITAMBER JINA I L R., 2 Bom., 61

81. ———— **Admission made to police officer before arrest**—*Evidence Act ss 25 26* —An admission made by an accused person to a police officer before arrest is admissible in evidence EMPRESS *v* DABEE PERSHAD

[I. L. R. 6 Calc. 530 7 C L. R., 541

82 ———— **Circumstances rendering confession admissible**—*Evidence Act ss 24 26* —The circumstances which will render a confession objected to under ss 24-26 of the Evidence Act (I of 1872) admissible in evidence discussed. EMPRESS *v* RAMA BIRAPA I L. R., 3 Bom., 12

83 ———— **Self exculpatory statement to police officer in police custody**—*Re-trial* —A statement made to a police officer by an accused person while in the custody of the police although intended to be made in self-exculpation and not as a confession may be nevertheless an admission of a criminating circumstance and if so under ss 25 and 26 of the Evidence Act I of 1872 it cannot be proved against the accused After excluding evidence improperly admitted and put before the jury the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it It accordingly reversed the conviction and sentence of the accused declining to order his re trial EMPRESS *v* PAT DHARINATH I. L. R. 6 Bom. 34

84. ———— **Statements of prisoner to police officer on being accused**—*Evidence Act ss 25 26 27* —P accused of the murder of a girl gave to a police officer a knife saying it was the weapon with which he had committed the murder He also said that he had thrown down the girl s anklets at the scene of the murder and would point them out. On the following day he accompanied the police officer to the place where the girl s body had been found and pointed out the anklets. *Held* that such statements being confessions made to a police officer whereby no fact was discovered could not be proved against *P* Observations on the use of confessions made to police officers. *Reg* v *Jora Hasji 11 Bom 242* and *Empress* v *Rama Birapa I L R 3 Bom 12* referred to. EMPRESS *v* PANCHAM I. L. R., 4 All., 198

85 ———— **Statement to police officer investigating case**—*Evidence Act ss 25 27* —Under s 25 of the Evidence Act I of 1872 a confession made to a police officer is inadmissible in evidence except so far as is provided by s. 27 It is immaterial whether such police officer be the officer investigating the case – the fact that such person is a police officer invalidates a confession IN THE MATTER OF HIRAN MIYA 1 C. L. R., 21

86. ———— **Confession before Village Magistrate**—*Criminal Procedure Code s 164—Village Cess Act s 7—Evidence Act s 25*—A Village Magistrate is not a police officer and

CONFESSION—*continued*

5. CONFESSIONS TO POLICE OFFICERS —*continued*

therefore a confession made to a Village Magistrate is not inadmissible in evidence by reason of s 25 of the Evidence Act QUEEN EMPRESS v SAMA PAPI I. L. R., 7 Mad. 287

87 ——— **Incriminating statement by prisoner to police officer**—*Evidence of police constable*—A policeman on being cross examined stated that when he arrested the prisoner the prisoner said to him "Some Chinamen *at the time of the occurrence* came out with hatchets. On re-examination the policeman so far altered the words stated to have been used by the prisoner as to substitute for the words *at the time of the occurrence* the words *at the time* and on being asked if the prisoner had explained "what time answered he said at the time I struck the deceased." Counsel for the prisoner interposed and objected to the evidence The Standing Counsel contended that he was entitled to clear up a matter which had been left in doubt by the cross-examination. *Held* that the evidence could not be given. QUEEN EMPRESS v MATHEWS

[I. L. R. 10 Calc. 1022

88. ——— **Confession made to police officer Admissibility of for other purposes than as a confession**—*Evidence Act s 25—Criminal Procedure Code (Act X of 1882) ss 517 and 523—Evidence of ownership*—Statements made to the police by accused persons as to the ownership of property which is the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they are charged are admissible as evidence with regard to the ownership of the property in an enquiry held by the Magistrate under s 523 of the Criminal Procedure Code (X of 1882) The High Court declined to interfere with an order made by a Magistrate under s. 523 of the Criminal Procedure Code for the delivery of property where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner QUEEN EMPRESS v TRIBHOVAN MANEKCHAND

[I. L. R. 9 Bom. 131

89 ——— **Information as to offence charged**—*Evidence Act ss 26 27—Confessions of persons charged—Information as to offence*—When a fact is discovered in consequence of information received from one of several persons charged with an offence and when others give like information the fact should not be treated as discovered from the information of them all It should be deposed that a particular fact has been discovered from the information of *A B* and this will let in, under s. 27 Evidence Act so much of the information as relates distinctly to the information therein discovered. QUEEN v RAM CHURN CHUNG

[24 W. R. Cr 36

90 ——— *Evidence Act ss 25 26 27*—*B* and *R* accused of offences under s 411 of the Penal Code gave information to the police which led to the discovery of the stolen property This information was to the effect that the accused had stolen a cow and calf and sold them to a particular person at a particular place *Held* by the Full Bench (MAHMOOD J dissenting) that s 27 of the Evidence Act is a proviso not only *to s 26 but also to s. 25 and that therefore* so much of the information given by the accused to the police officer whether amounting to a confession or not as related distinctly to the facts thereby discovered might be proved *Empress v Kaarpala Weekly Notes All 1882 p 225* dissented from. *Per* MAHMOOD J that s 27 of the Evidence Act is not a proviso to s 25 but only to s 26 and that therefore the statements in question were wholly inadmissible in evidence *Empress v Puncham I L R 4 All 198* referred to by STRAIGHT *Offg C J* and MAHMOOD J *Per* STRAIGHT *Offg C J* that where a statement is being detailed by a constable as having been made by an accused in consequence of which he discovered a certain fact or certain facts the strictest precision should be enjoined on the witness so that there may be no room for mistake or misunderstanding Observations by STRAIGHT *Offg C.J* as to the mode in which the testimony of witnesses should be recorded in cases where two persons are being tried Observations by STRAIGHT *Offg C J* and DUTHOIT J upon the nature of confessions by accused persons in India and the circumstances in which such confessions are made EMPRESS v BABU LAL I. L. R. 6 All. 509

91. ——— *Confession made while in custody of police*—*Evidence Act ss 25 27*—No judicial officer dealing with the provisions of s 27 of Act I of 1872 should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused in consequence of which he discovered a fact than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him S 27 was not intended to let in a confession generally but only *such particular part of it as set the person to whom* it was made in motion and led to his ascertaining the fact or facts of which he gives evidence *Empress of India v Pancham I L R 4 All 198 Queen Empress v Babu Lal I L R 6 All 509* discussed and commented on Thus when a police officer deposed that an accused had told him that he had robbed *K* of R48 whereof he had spent R8 and had got R40 and that he had made over the R40 to him—*Held* that the statement that he robbed *K* of R48 was not necessarily preliminary to the surrender of the R40 and was inadmissible in evidence against him When also a police officer deposed to *the fact that the accused* who was charged with murder had stated to him that he and *K* had stolen some hides from *C* and upon such statement he had sent for *C* and recorded his information and when it appeared that *C* had already informed the police of the fact of the theft though the witness was not

CONFESSION—*continued*

5 CONFESSIONS TO POLICE OFFICERS —*continued*

167—Admissibility in evidence of confession—Deputy Commissioner of Police in Calcutta—Letters Patent 1865 cl 26—Case certified by Advocate General—The prisoner on his arrest made a statement in the nature of a confession which was reduced into writing by one of the inspectors in whose custody the prisoner was and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace At the trial of the prisoner at the Criminal Sessions of the High Court this statement was tendered in evidence against him and admitted by the Judge who overruled an objection on behalf of the prisoner that under s 25 of the Evidence Act it was inadmissible On a case certified by the Advocate General under cl 26 of the Letters Patent—*Held* that the confession was under s. 25 of the Evidence Act not admissible in evidence *Per* GARTH *C J*—S 26 of the Evidence Act is not to be read as qualifying the plain meaning of s 25 In construing s 25 the term 'police officer' is not to be read in a technical sense but in its more comprehensive and popular meaning *Per* GARTH *C J* (PONTIFEX *J* doubting)—The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction is in a case coming before the Court and under s 26 of the Letters Patent the Court of review not the Court below Such decision is to be come to on being informed by the Judge's notes and if necessary by the Judge himself of the evidence adduced at the trial *Per Curiam*—Apart from s 167 the Court has power in a case under cl 26 of the Letters Patent to review the whole case on the merits and affirm or quash the conviction QUEEN *v* HURRIBOLE CHUNDER GHOSE

[I L R. 1 Calc 207 25 W R., Cr, 36

80 ———— **Confession to police officer by one of accused persons tried jointly**—*Evidence Act 1872 ss 25 and 167—Admissibility in evidence of confession—High Court's Criminal Procedure Act (X of 1875) ss 23 and 101—Letters Patent 1865 cl 25—Power of the High Court on a point of law reserved to consider the merits of the case*—S 25 of the Evidence Act (I of 1872) does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him Such a confession is not to be received or treated as evidence against the person making it but simply as evidence on behalf of the other The High Court on a point of law as to the admissibility of rejected evidence reserved under cl 25 of the Letters Patent 1865 and s 101 of the High Court's Criminal Procedure Act (X of 1875) has power to review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reserved unless the admission of the rejected evidence ought to have varied the result of the trial (Evidence Act s 167) EMPRESS *v* PITAMBER JINA I. L. R. 2 Bom. 61

81. ———— **Admission made to police officer before arrest**—*Evidence Act ss 25 26*—An admission made by an accused person to a police officer before arrest is admissible in evidence EMPRESS *v* DABEE PERSHAD

[I. L. R. 6 Calc, 530 7 C L R 541

82 ———— **Circumstances rendering confession admissible**—*Evidence Act ss 24 26*—The circumstances which will render a confession objected to under ss 24-26 of the Evidence Act (I of 1872) admissible in evidence discussed. EMPRESS *v* RAMA BIRAPA I L R., 3 Bom, 12

83 ———— **Self exculpatory statement to police officer in police custody**—*Retrial*—A statement made to a police officer by an accused person while in the custody of the police although intended to be made in self-exculpation and not as a confession may be nevertheless an admission of a criminating circumstance and if so, under ss. 25 and 26 of the Evidence Act I of 1872 it cannot be proved against the accused After excluding evidence improperly admitted and put before the jury the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it It accordingly reversed the conviction and sentence of the accused declining to order his re trial EMPRESS *v* PANDHARINATH I. L. R., 6 Bom. 34

84. ———— **Statements of prisoner to police officer on being accused**—*Evidence Act ss 25 26 27*—P accused of the murder of a girl gave to a police officer a knife saying it was the weapon with which he had committed the murder He also said that he had thrown down the girl's anklets at the scene of the murder and would point them out On the following day he accompanied the police officer to the place where the girl's body had been found and pointed out the anklets. *Held* that such statements being confessions made to a police officer whereby no fact was discovered could not be proved against P Observations on the use of confessions made to police officers. *Reg v Jora Hasji 11 Bom 242* and *Empress v Rama Birapa I L R 3 Bom 12* referred to. EMPRESS *v* PANCHAM I. L. R., 4 All, 198

85 ———— **Statement to police officer investigating case**—*Evidence Act ss 25 27*—Under s 25 of the Evidence Act I of 1872 a confession made to a police officer is inadmissible in evidence except so far as is provided by s. 27 It is immaterial whether such police officer be the officer investigating the case—the fact that such person is a police officer invalidates a confession In THE MATTER OF HIRAN MIYA I C. L. R., 21

86. ———— **Confession before Village Magistrate**—*Criminal Procedure Code s 164—Village Cess Act s 7—Evidence Act s 25*—A Village Magistrate is not a police officer and

CONFESSION—*continued*

5. CONFESSIONS TO POLICE OFFICERS —*continued*

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87 ——— Incriminating statement by prisoner to police officer—*Evidence of police constable*—A policeman on being cross examined stated that when he arrested the prisoner the prisoner said to him Some Chinamen *at the time of the occurrence* came out with hatchets. On re-examination the policeman so far altered the words stated to have been used by the prisoner as to substitute for the words *at the time of the occurrence* the words *at the time* and on being asked if the prisoner had explained "what time answered he said at the time I struck the deceased" Counsel for the prisoner interposed and objected to the evidence The Standing Counsel contended that he was entitled to clear up a matter which had been left in doubt by the cross examination. *Held* that the evidence could not be given. QUEEN EMPRESS *v* MATHEWS I. L. R. 10 Calc. 1023

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89 ——— Information as to offence charged—*Evidence Act ss 26 27—Confessions of persons charged—Information as to offence*—When a fact is discovered in consequence of information received from one of several persons charged with an offence and when others give like information the fact should not be treated as discovered from the information of them all It should be deposed that a particular fact has been discovered from the information of *A B* and this will let in under s 27 Evidence Act so much of the information as relates distinctly to the information therein discovered. QUEEN *v* RAM CHURN CHUNG 24 W R. Cr 36

90 ——— *Evidence Act ss 25 26 27*—*B* and *R* accused of offences under s 414 of the Penal Code gave information to the police which led to the discovery of the stolen property This information was to the effect that the accused had stolen a cow and calf and sold them to a particular person at a particular place *Held* by the Full Bench (MAHMOOD *J* dissenting) that s 27 of the Evidence Act is a proviso not only to s 26 but also to s. 25 and that therefore so much of the information given by the accused to the police officer whether amounting to a confession or not as related distinctly to the facts thereby discovered might be proved *Empress v Kuarpala Weekly Notes All 1882 p 225* dissented from. *Per* MAHMOOD *J* that s 27 of the Evidence Act is not a proviso to s 25 but only to s 26 and that therefore the statements in question were wholly inadmissible in evidence *Empress v Puncham I L R 4 All 198* referred to by STRAIGHT *Offg C J* and MAHMOOD *J* *Per* STRAIGHT *Offg C J* that where a statement is being detailed by a constable as having been made by an accused in consequence of which he discovered a certain fact or certain facts the strictest precision should be enjoined on the witness so that there may be no room for mistake or misunderstanding Observations by STRAIGHT *Offg C J* as to the mode in which the testimony of witnesses should be recorded in cases where two persons are being tried Observations by STRAIGHT *Offg C J* and DUTHOIT *J* upon the nature of confessions by accused persons in India and the circumstances in which such confessions are made EMPRESS *v* BABU LAL I. L. R. 6 All. 509

91. ——— *Confession made while in custody of police—Evidence Act ss 25 27*—No judicial officer dealing with the provisions of s 27 of Act I of 1872 should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused in consequence of which he discovered a fact than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him S 27 was not intended to let in a confession generally but only such particular part of it as set the person to whom it was made in motion and led to his ascertaining the fact or facts of which he gives evidence *Empress of India v Pancham I L R 4 All 198 Queen Empress v Babu Lal I L R 6 All 509* discussed and commented on Thus when a police officer deposed that an accused had told him that he had robbed *K* of R48 whereof he had spent R8 and had got R10 and that he had made over the R10 to him —*Held* that the statement that he robbed *K* of R48 was not necessarily preliminary to the surrender of the R10 and was inadmissible in evidence against him When also a police officer deposed to the fact that the accused who was charged with murder had stated to him that he and *K* had stolen some hides from *C* and upon such statement he had sent for *C* and recorded his information and when it appeared that *C* had already informed the police of the fact of the theft though the witness was not

CONFESSION—*continued*

5 CONFESSIONS TO POLICE OFFICERS —*continued*

aware of it —*Held* that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s 27 and allow a police officer who is investigating a case to prove an information received from a person accused of an offence in the custody of a police officer on the ground that a material fact was thereby discovered by him when that fact was already known to another police officer ADU SHIKDAR v QUEEN EMPRESS [I. L. R., 11 Calc., 635

92.——————— *Confession while in custody of police—Evidence Act ss 25 26 27*—The accused were charged with theft of some jwari. During the police investigation they admitted before the police that they had taken the grain and concealed it in a jar which they forthwith produced. The identity of the jwari recovered with that stolen was not proved to the satisfaction of the trying Magistrate except by these admissions and upon these admissions they were convicted of theft *Held* that as the prisoners themselves produced the jwari it was by their own *act* and not from any *information* given by them that the discovery took place S 27 of the Evidence Act therefore did not apply; and though the fact of the production of the property might be proved, the accompanying confession made to the police was inadmissible in evidence *Empress* v *Pancham I L R 1 All 198* and *Queen Empress* v *Babu Lal I L R 6 All 509* followed. QUEEN EMPRESS v KAMALIA [I. L. R., 10 Bom., 595

93 ——————— *Evidence Act (I of 1872) ss 25 26—Admissibility of confession made to chowkidar—Retracted confession*—*P*, who was accused of the murder of his wife and was arrested by a chowkidar was alleged to have made a confession to him of the crime in the presence of one *D* whose evidence was not accepted by the Judge He subsequently a few hours later made a confession to the Magistrate detailing the account of the murder Two days after he retracted his confession before the Magistrate and alleged it had been made under police threats *Held* that after the view taken of the evidence of *D* it would not be safe to act upon the confession alleged to be made to the chowkidar but having regard to the circumstances of the case the second confession was reliable EMPRESS v INDRA CHUNDER PAL 2 C W N., 637

94.——————— **Statements made by accused while in police custody Admissibility of**—*Evidence Act ss 8 25 26 27—Confession—Confession leading to discovery of a fact—Statements as evidence of conduct.*—The accused was charged under s. 411 of the Penal Code with dishonestly receiving stolen property In the course of the police investigation the accused was asked by the police where the property was. He replied that he had kept it and would show it. He said he had buried the property in the fields He then took the police to the spot where the property was concealed and with his own hands disinterred the earthen pot in which the property was kept He made a second statement when pointing out the spot to the effect that he had buried the property there It was contended that those statements were inadmissible having been made when the accused was in custody of the police *Held* (1) that the above statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime and even if not intended by the accused as a confession of guilt they were an admission of a criminating circumstance and would form a very important part of the evidence against the accused, as showing that he had not come by the property honestly and were therefore properly within the rule of exclusion in regard to confessions made by a person in custody of the police (2) That neither of the above statements was admissible in evidence under explanation 1 of s 8 of the Evidence Act I of 1872 as evidence of the conduct of the accused. S 8 so far as it admits a statement as included in the word "conduct, must be read in connection with ss 25 and 26 and cannot admit a statement as evidence which would be shut out by those sections. (3) That the accused's statement that he had buried the property in the fields, was admissible in evidence under s 27 of the Evidence Act as it set the police in motion and led to the discovery of the property A statement is equally admissible under s 27 whether the statement is made in such detail as to enable the police to discover the property themselves or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed. QUEEN EMPRESS v NANA [I. L. R., 14 Bom., 260

95 ——————— **Information received from the accused**—*Evidence Act (I of 1872) s 27—Statement leading to the discovery of a fact—Admissibility of such statement*—If the statement of an accused person in the custody of the police is a necessary preliminary of the fact thereby discovered, it is admissible under s 27 of the Evidence Act; it is immaterial whether the statement is sufficient to enable the police to make the discovery by themselves or is only of such a nature as to require further assistance of the accused to enable them to discover the fact *Empress of India* v *Pancham, I L R., 1 All 199* dissented from *Queen Empress* v *Nana I L R 11 Bom 269* followed. *Adu Shikdar* v *Queen Empress I L R. 11 Calc., 635* referred to LEGAL REMEMBRANCER v CHEMA NASHYA I. L. R., 25 Calc., 413

DEPUTY LEGAL REMEMBRANCER v CHEMA NASHYA 2 C W N., 257

96 ——————— **Statement of accused to friend**—*Evidence Act (I of 1872) s 26—Statement made in temporary absence of police*—A person under arrest on a charge of murder was taken in a tonga, from the place where the alleged offence was committed, to Godhra. A friend drove with her in the tonga and a mounted policeman rode in front. In the course of the journey the policeman left the

CONFESSION—*continued*

5. CONFESSIONS TO POLICE OFFICERS —*concluded*

tonga and went to a neighbouring village to procure a fresh horse the tonga meanwhile proceeding slowly along the road for some miles without any escort. In the absence of the policeman the accused made a communication to her friend with reference to the alleged offence. At the trial it was proposed to ask what the prisoner had said on the ground that she was not then in custody and that s 26 of the Evidence Act (I of 1872) did not apply *Held* that notwithstanding the temporary absence of the policeman the accused was still in custody and the question must be disallowed. QUEEN EMPRESS v LESTER I. L. R. 20 Bom., 165

6. CONFESSIONS OF PRISONERS TRIED JOINTLY

97 ———— Evidence Act 1872 s 30—*Admissibility of confession of one against others* —A prisoner who pleads guilty at the trial and is thereupon convicted and sentenced cannot be said to be jointly tried with the other prisoners committed on the same charge who pleaded not guilty Where therefore one of eight prisoners before the committing Magistrate made a confession affecting himself and five others, and afterwards at the trial before the Assistant Sessions Judge pleaded guilty and was thereupon convicted and sentenced and the Judge then proceeded to take his evidence on solemn affirmation and recorded his confession as evidence in the case against the other prisoners —*Held* that the Judge was wrong in taking the confession into consideration against those prisoners who pleaded not guilty The proper course for the Judge was either to have sentenced the prisoner who pleaded guilty and then put him aside or to have waited to see what the evidence would disclose. REG v KALU PATIL 11 Bom., 146

98 ———— *Amendment of charges—Criminal Procedure Code 1872 ss 447 449* —While *A* and *B* were being jointly tried before a Court of Session the first for murder and the second for abetment of murder a confession made by *A* that he himself had committed the murder at the instigation of *B* was put in as evidence against *A* Subsequently the charge against *A* was altered to one of abetment of murder and the Sessions Judge under the authority of s. 30 of the Evidence Act used the confession against both and convicted them The High Court held that the original and amended charges were so nearly related that the trial might without any unfairness be deemed to have been a trial on the amended charge from the commencement and that no objection having been taken by *B* who was represented by a vakeel to the admissibility of *A*'s confession against him when the charge against *A* was altered the Sessions Judge was justified in using the confession against *B* also. REG v GOVIND BABLI PAUL 11 Bom., 278

99 ———— *Statement of person tried jointly with others* —The statement of a person tried jointly with other persons for the same offence is not made less of an admission as to all that the person knew concerning the offence affecting himself and the other persons by the fact of the Court not thinking him guilty of the offence charged QUEEN v BAKUR KHAN 5 N W 213

CONFESSION—*continued*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued*

100 ———— *Confession of co prisoner—Corroboration.*—The confession of one prisoner cannot be used as corroborative evidence against another person. Corroboration as to the details of the crime without corroboration as to the person of the accused is worthless. QUEEN v DURBAROO DASS SIRDAR 13 W R., Cr 14

101 ———— *Confession of Co-prisoner—Trial for substantive offence and for abetment* —The confessions of persons tried jointly for the same offence may by s. 30 Act I of 1872 be considered as against other parties then on their trial with them but such confessions when used as evidence against others stand in need of corroboration and cannot be used as corroborating in any way the evidence of approvers against such other parties S. 30 Act I of 1872 ought to be construed with great strictness and the confession of one person is not admissible in evidence against another although the two are jointly tried if one is tried for the abetment of the offence for which the other is on his trial. QUEEN v JAFFIR ALI [19 W R Cr 57

102 ————*Statements of accused persons as evidence against other co-accused.* —Statements made by one set of prisoners criminating another set of prisoners when each individual prisoner made a case for himself in which he was free from any criminal offence ought not to be taken into consideration under s. 30 of the Evidence Act against the prisoners of the second set when the two sets although tried together were tried upon totally different charges. QUEEN v. BUNWAREE LALL [21 W R. Cr 53

QUEEN v KHUKREE OORAM [21 W R. Cr 48

103 ———— *Confessions of accused tried jointly—Joinder of charges of theft and receiving stolen property* —*B M K* and *R* were jointly tried *B* for receiving stolen property under s 411 and *M K* and *R* for theft under s 380 The confession of *M K* and *R* was used as evidence against *B* and all the accused were convicted *Held* that the Magistrate committed an error of law in admitting the confession of *M K* and *R* as against *B* and it was a ground for setting aside the conviction but not for discharging the accused. BISHNU BANWAR v EMPRESS [1 C W N 35

104. ———— *Confessions of prisoners tried jointly as evidence* —Confessions of prisoners tried simultaneously with the accused for the same offence which are in a very qualified manner made operative as evidence by Act I of 1872 s 30 are only to be rated as evidence of a defective

CONFESSION—*continued*

6 CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued*

character and require especially careful scrutiny before they can be safely relied on QUEEN v SADHU MUNDUL 21 W R Cr 69

105 ———— *Statements made by prisoners before committing officer*—Statements made by a prisoner before the committing officer which implicate his fellows and exculpate himself cannot be regarded as evidence under the Evidence Act s 30 QUEEN v KESHUB BHOONIA [25 W R Cr, 8

106 ———— *Defects of confessions by co prisoners*—The confession of co prisoners cannot under the Evidence Act I of 1872 s 30 be treated as evidence of ordinary character not distinguished by any special infirmity or qualifications against the other prisoners as in addition to the infirmity inherent in an accomplice's testimony they are not given on oath and are not liable to be tested by cross examination QUEEN v NAGA [23 W R Cr, 24

107 ———— *Confession of co prisoner incriminating himself*—The statement of one prisoner cannot be taken as evidence against another prisoner under s 30 of the Evidence Act unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates QUEEN v BAIJOO CHOWDRY [25 W R Cr, 43

108 ———— *Confession by co-prisoner implicating himself*—Where more persons than one are being tried for the same offence and a confession made by one affecting himself and some of the others is proved the Evidence Act s 30 does not provide that such confession is evidence but that it may be taken into consideration the intention of the Legislature being that when as against any person implicated by such confession there is evidence tending to his conviction the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him shall be taken into consideration as bearing upon the truth or sufficiency of such evidence QUEEN v CHUNDER BHUTTACHARJEE 24 W R, Cr, 42

109 ———— *Confessions of fellow prisoners tried jointly for the same offence*—When the accused was convicted solely on the confessions of his fellow prisoners who were tried jointly with him for the same offence—*Held* that the conviction was bad Under s 30 of the Indian Evidence Act I of 1872 such confessions could be taken into consideration against the accused but they were not evidence within the definition given in s 3 of the Act and they could not therefore alone form the basis of a conviction QUEEN EMPRESS v KHANDIA BIN PANDU I L R 15 Bom. 66

110 ———— *Value as evidence of confession of persons tried jointly*—The words take into consideration in s. 30 of the Indian Evidence Act 1872 do not mean that the

CONFESSION—*continued*

6 CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued*

confession referred to in the section is to have the force of sworn evidence *Queen Empress v Khandia I L R 15 Bom 66* referred to QUEEN EMPRESS v NIRMAL DAS [I. L. R., 22 All. 445 448 note

111. ———— *Confession made by person charged jointly with another for separate offences arising out of one transaction Admissibility of as against the other*—In order to constitute an offence under s 373 of the Penal Code it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be with reference to employment either immediate or at some definite and not very remote future period but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will be employed while still a minor under the age of 16 years for that purpose although the point of time for such employment may be remote by reason of her physical incapacity for the purpose *H* the father of two girls twins about a year old sold one of them to *K*, a prostitute for R9 (and within ten days of such sale also sold her the other for R14 *K* was shown to have previously purchased another child whom she had brought up from her infancy and who was then living with her and leading the life of a prostitute Both *H* and *K* made confessions as to the guilty knowledge and intention with which the sale of the two children was made *K*'s confession was made within two hours after her arrest and immediately thereafter she was committed to hajat for seven days On the seventh day, on being brought up for trial before the Deputy Magistrate she retracted her confession and assigned an innocent reason for her purchase of the girl *H* and *K* were tried jointly *H* being charged with an offence under s 372 viz selling the girls for the purpose of prostitution and *K* with an offence under s. 373 viz buying for the same purpose Neither was charged with abetting the other The two confessions were used as evidence *Held* that having regard to the circumstances under which the confession of *K* was given and retracted it was open to suspicion and could not safely be acted upon and that the confession made by *H* was not legally admissible against her as they were not being tried jointly for the same offence KARUNA BAISTOBI v DEPUTY LEGAL REMEMBRANCER I L R., 22 Calc 164

112. ———— *Confession of co prisoner—Joint trial—Plea of guilty*—*A* and *B* were charged with murder *A* pleaded guilty but he was not convicted or sentenced till the conclusion of the trial of his fellow prisoner *B* The Sessions Judge holding that both the accused were jointly tried for the same offence took into consideration as against *B* the confessions made by *A* and convicted both of murder *Held* that after *A* had pleaded guilty he could not be treated as being jointly tried with *B* *A*'s confessions were therefore not admissible

CONFESSION—*continued*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued*

against B under s. 30 of the Indian Evidence Act (I of 1872) QUEEN EMPRESS *v* PARUJI [I. L. R. 19 Bom. 195

113 ———————— *Statements of co-accused who pleaded guilty—Joint trial*—Where two out of several persons on their trial in a Court of Session on a joint charge pleaded guilty and made certain statements to the Court it was *held* that such statements could not be taken into consideration as evidence against the other accused persons inasmuch as after pleading guilty the persons making those statements were no longer on their trial QUEEN EMPRESS *v* PIRBHU I. L. R. 17 All. 524

114. ———————— *Corroboration in material particulars*—Where the only evidence against two prisoners accused of murder directly implicating them in the commission of the crime consisted of confessional statements made by them before the committing Magistrate which were subsequently retracted and the statements in such confessions were corroborated in material particulars by other evidence on the record—*Held* that the evidence was sufficient to support a conviction QUEEN EMPRESS *v* PARU NAYAR I. L. R. 19 Mad. 482

115 ———————— *Confession of co-accused—Plea of guilty by one*—On the trial of more persons than one jointly for the same offence where one of them pleads guilty the person so pleading is no longer on his trial and cannot be treated as being jointly tried with the others A confession by that person affecting himself and others cannot therefore be taken into consideration as against such others under s 30 of the Evidence Act QUEEN EMPRESS *v* LAKSHMAYYA PANDARAM [I. L. R 22 Mad. 491

116 ———————— *Confession by one of several persons jointly tried for the same offence—Plea of guilty by person so confessing—Discretion to continue trial after plea of guilty*—The trial of an accused person does not necessarily end if he pleads guilty Under s 271 of the Code of Criminal Procedure where an accused pleads guilty "the plea shall be recorded" and the accused may be convicted thereon but evidence may be taken in Sessions cases as if the plea had been one of not guilty and the case decided upon the whole of the evidence including the accused's plea When such a procedure is adopted the trial does not terminate with the plea of guilty and therefore a confession by the person so pleading may be taken into consideration under s. 30 of the Indian Evidence Act 1872 as against any other person who is being jointly tried with him for the same offence A trial does not strictly end until the accused has been either convicted or acquitted or discharged. QUEEN EMPRESS *v* CHINNA PAVUCHI I. L. R 23 Mad. 151

117 ———————— *Confession of co-prisoner who has withdrawn from associates before offence*—The confession of a person who says he abetted a murder but withdrew before the actual perpetration of that murder by his asso[...] be used as evidence against those associ[...] the person confessing is tried with them [...] charge of murder REG *v* AMRITA G[...] [10[...]

118 ———————— C[...] *co-prisoner*—S 30 of Act I of 1872 is [...] and its wording shows that the confess[...] to be an element in the consideration of [...] Unless there is something more a co[...] will still be a case of no evidence and [...] ANONYMOUS 7 M[...]

119 ———————— *Co[...] prisoner when admissible against co-p[...]* render the confession of one prisoner [...] with another admissible in evidence again[...] it must appear that that confession [...] confessing person substantially to the sa[...] it implicates the person against whom it [...] in the commission of the offence for [...] prisoners are being jointly tried QUE[...] ALI 10 B L. R. 453 19 W[...]

QUEEN *v* MOHESH BISWAS [10 B L. R., 455 note 19 W[...]

120 ———————— *Co[...] co-prisoner—Illegal conviction*—A con[...] solely on the evidence of a co-prisoner [...] QUEEN *v* AMBIGARA HULAGU [I. L. R 1[...]

QUEEN *v* BUDHU NANKU [I. L. R., 1[...]

121. ———————— *C[...] uncorroborated confession*—A convi[...] person who is being tried together with c[...] for the same offence cannot proceed u[...] uncorroborated statement in the confes[...] other persons. EMPRESS OF INDIA *v* [...] EMPRESS OF INDIA *v* RAM CHAND [I. L. R 1 All[...]

122. ———————— *Co[...] one prisoner implicating himself a[...] Effect of—Court Meaning of*—Un[...] the Evidence Act the confession of a pri[...] ing himself and another person charg[...] same offence is when duly proved a[...] evidence against both but such second pe[...] when it is uncorroborated as against hi[...] convicted on it *Per* GARTH C.J—S[...] must be dealt with by the Court in the s[...] as any other evidence The weight how[...] attached to such evidence and the quest[...] taken by itself it is sufficient in poi[...] justify a conviction is a question for [...] Unsupported by other evidence it how[...] be taken as evidence of the very weakest [...] simply a statement of a third person not [...] oath or affirmation If such confess[...] borated by other evidence it is immateria[...] proving the case at the trial the confess[...] the other evidence or the other evidence [...]

CONFESSION—*continued*

6 CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued*

confession *Per* JACKSON J (MCDONELL concurring) —Such evidence is not sufficient to support a conviction even if corroborated by circumstantial evidence unless the circumstances constituting corroboration would if believed to exist themselves support a conviction *Per Curiam* —The word "Court" in s. 30 of the Evidence Act means not only the Judge in a trial by a Judge with a jury but includes both Judge and jury EMPRESS v ASHOOTOSH CHUCKERBUTTY

[I. L. R., 4 Calc 483 3 C L. R. 270

123 ——— *Uncorroborated confession of a co-accused Sufficiency of for conviction—Uncorroborated testimony of an accomplice—Evidence Act (I of 1872) s 114 ill (b)* —The confession of a co-accused if proved is evidence against the accused but it is evidence of the weakest kind and if uncorroborated it is not sufficient to warrant a conviction *Empress v Ashootosh Chuckerbutty I L R 4 Calc 483* followed. MANKI TEWARI v AMIR HOSSEIN

[2 C. W N 749

124. ——— *Statement of prisoner exculpating himself* —A prisoner charged together with others with being a member of an unlawful assembly made a statement before the committing Magistrate implicating his fellow prisoners and another person He subsequently withdrew this statement and made another in which he endeavoured to exculpate himself *Held* that this statement was not evidence against the other prisoners under s. 30 of the Evidence Act It was not a confession nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged; but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself and any mention made by him in such a statement of other persons having been engaged in the riot was altogether irrelevant and not evidence against them NOOR BUX KAZI v EMPRESS

[I. L R., 6 Calc., 279 7 C L R 385

125 ——— *Confession not implicating prisoner confessing* —Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons and was not sufficient of itself to justify his conviction —*Held* that such confession could not be taken into consideration under s 30 of Act I of 1872 against such other persons *Queen v Belat Ali 10 B L R 453* followed. EMPRESS OF INDIA v GANRAJ

[I. L. R. 2 All., 444

126 ——— *Confession of prisoner exculpating himself* —Where a person being tried jointly with other persons made a statement deprecating any guilty knowledge and seeking to clear himself at the expense of such other persons —*Held* that such statement could not be taken into consideration under s. 30 of Act I of 1872 against such other persons *Queen v Belat Ali 10 B L R 453* and *Empress v Ganraj I L R 2 All 444* followed. EMPRESS OF INDIA v MULU

[I. L. R 2 All., 646

127 ——— *Trial for dacoity and receiving stolen property* —*A* and *B* were committed for trial the former for dacoity under s. 395 of the Penal Code and the latter under s. 413 for receiving stolen property knowing it to be such. *A* made two confessions and in both he stated he had handed over to *B* some pieces of gold and silver stolen at the dacoity When *B* was arrested a gold ring and a silver wristlet were found in his possession At the trial *A* pleaded guilty and *B* claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with *B* out of pieces of gold and silver given to him for the purpose by *B* On this evidence and on the confessions made by *A* the Sessions Judge convicted *B* On appeal to the High Court —*Held* that *A* and *B* not having been tried jointly for the same offence the confession of *A* was inadmissible as evidence against *B* There was therefore no evidence of the identity of the goods stolen at the dacoity with those found in *B*'s possession and the case against him failed. Conviction quashed EMPRESS v BALA PATEL

[I. L. R., 5 Bom., 63

128 ——— *Statement by prisoner in absence of co prisoners—Confession.*—Several persons were charged together with offences under ss 148 302 324 and 326 read with s. 149 of the Penal Code The Sessions Judge when about to examine the prisoners required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court. *Held* that the evidence so given was inadmissible IN THE MATTER OF THE PETITION OF CHANDRA NATH SIRKAR. EMPRESS v CHANDRA NATH SIRCAR I. L. R. 7 Cal. 65 8 C. L. R., 353 CHAKOWRI LALL v MOTI KURMI

[13 C. L. R., 275

129 ——— *Statement by prisoner in absence of co prisoners—Code of Criminal Procedure (X of 1872) s 250* —The two accused persons were jointly tried before the Sessions Judge on a charge of murder The Sessions Judge examined each of the accused in the absence of the other making the latter withdraw from the Court during the examination of the former though without objection from the pleaders of the accused persons. *Held* that the examination of each accused could be used only against himself and not against his fellow accused. EMPRESS v LAKSHMAN BALA

[I. L. R. 6 Bom 124

130 ——— *Distinct confession of offence charged* —To render the statement of one person jointly tried with another for the same offence liable to consideration against that other it is

CONFESSION—*continued*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued*

necessary that it should amount to a distinct confession of the offence charged EMPRESS v DAJI NARSU I. L. R., 6 Bom. 288

131. ——————— *Statements of co-prisoners pleading guilty*—Several prisoners being charged together with house breaking some of them pleaded guilty The Sessions Judge used the confessions made by those who pleaded guilty as evidence against a prisoner who was tried *Held* that such confessions were not evidence under s 30 of the Evidence Act 1872 VENKATASAMI v QUEEN [I. L. R. 7 Mad. 102

132. ——————— *Offence of same definition arising out of single transaction—Inculpation through separable acts—Counterfeit coin—Penal Code (Act XLV of 1860) s 239*—*A* and *B* were tried together under s 239 of the Penal Code (XLV of 1860) on a charge of delivering to another counterfeit coins, knowing the same to be counterfeit at the time they became possessed of them *A* confessed that he had got the coins from *B* and had passed them to several persons at his request *Held* that the confession of *A* was relevant against *B* When two persons are accused of an offence of the same definition arising out of a single transaction the confession of the one may be used against the other though it inculpates himself through acts separable from those ascribed to his accomplice and capable therefore of constituting a separate offence from that of the accomplice QUEEN EMPRESS v NUR MAHOMED I. L. R 8 Bom., 223

133 ——————— *Confession of co prisoner used against abettor*—Upon the trial of *A* for murder and *B* for abetment thereof a confession by *A* implicating *B* cannot be taken into consideration against *B* under s. 30 of the Evidence Act 1872 BADI v QUEEN EMPRESS I. L. R. 7 Mad 579

134. ——————— *Confession if taken to be taken against all co-accused—Admissibility of confession against co accused*—When more persons than one are jointly tried for the same offence the confession made by one of them if admissible in evidence at all should be taken into consideration against all the accused, and not against the person alone who made it EMPRESS v RAMA BIRAPA [I. L. R. 3 Bom 12

135 ——————— *Want of corroboration*—A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons QUEEN EMPRESS v DOSA JIVA I. L. R., 10 Bom 231
QUEEN EMPRESS v KRISHNA BHAT [I. L. R., 10 Bom 319

136 ——————— *House breaking—Production of stolen property*—Where the accused was convicted of house breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow prisoner and the fact that he pointed out the stolen property some months after the commission of the offence—*Held* that the mere production of the stolen property by the accused was not sufficient corroboration of the confession of the other prisoner QUEEN EMPRESS v DOSA JIVA I. L. R., 10 Bom. 231

CONFESSION—*concluded*

6 CONFESSIONS OF PRISONERS TRIED JOINTLY—*concluded*

CONFESSION OF JUDGMENT

1. ——————— Confession at filing of plaint —*Discretion of Judge to hear the case*—An insolvent defendant appeared and confessed judgment at the suit of one of his creditors at the filing of the plaint There were other suits filed by other creditors. The Judge (Recorder of Moulmein) gave a decision for the plaintiff but declined to sign judgment pending a reference to the High Court under Act XXI of 1863 s 22 on the following question Is the plaintiff entitled to a decree as of the date on which the defendant appeared and confessed judgment? *Held* that the Judge has a discretion when parties have come to a mutual agreement or when the defendant has confessed judgment to decide the suit at once in accordance with such agreement or confession He is not bound to do so till the time fixed for the regular hearing of the suit and he cannot exercise that discretion where there is any doubt as to the good faith or identity of the parties BANK OF BENGAL v CURRIE [3 B L R. A. C 396 12 W R. 432

2. ——————— Conditional confession of judgment—The confession of judgment must be unconditional unless the plaintiff consents to a conditional one e g a decree on payment of instalments ATMA RAM v CHUNDUN SINGH [2 Agra 77

CONFISCATION

See CASES UNDER ACT OF STATE

See CASES UNDER FORFEITURE OF PROPERTY

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY [I. L. R. 17 All., 456

CONFISCATION OF PROPERTY IN OUDH.

1. ——————— Limitation—*Release of Government rights—Settlement—Cause of action*—House property in Lucknow of which the Government had assumed possession as confiscated under the proclamations issued by Lord Canning and Sir James Outram in March 1858 was released under an order passed on the 6th July 1863 whereby the Government abandoned the confiscation and left former owners to their rights This property had previously to the confiscation, belonged to one *M K* Lands in Oudh confiscated under Lord Canning's proclamation were in October 1863 directed to be settled with the heirs of *M K* In a suit brought in March 18 5 by a plaintiff who claimed a share of the house property

CONFISCATION OF PROPERTY IN OUDH—*continued*

and lands as heirs of the heirs of *M K* against a defendant who was an heir of *M A* and who had obtained possession of the houses and lands under the orders passed for the release of the one and the settlement of the other the defendant pleaded that the entire property had come into her possession in 1850 under a gift from *M K* and that the plaintiff's suit was barred by limitation. *Held* (first) in respect of the house property that if the defendant was in possession at the time when the proclamations were issued, the question of limitation must be decided as if there never had been a confiscation and (second) in respect of the lands that no question of limitation could arise since the suit was brought within twelve years from the date of the Government order for settlement, under which alone any title to the lands could have been acquired by either of the parties. JEHAN KADR *v.* AFSAR BAHU I. L. R., 4 Calc., 727

2. ——— Lord Canning's proclamation 1858, Effect of—*Re-grant of confiscated lands.*—The effect of Lord Canning's proclamation of the 15th March 1858 was to divest all the landed property from the proprietors in Oudh and to transfer it to and vest it in the British Government. Consequently all who since that date claim title to such property must claim through the Government. Where a re-grant is made to a former owner the new title will depend entirely on the terms of the re-grant and if such re-grant is made for life only no suit can be maintained to rectify an alleged mistake and for declaration of an absolute title according to the tenure of the sunnuds by which the property was held under the old dynasty and prior to the confiscation. MIRZA JEHAN KADR *v.* DEPUTY COMMISSIONER OF LUCKNOW L. R., 6 I. A., 63

3. ——— Property standing and registered in name of one party but admitted to belong to another—*Registration for fiscal purposes.*—In Oudh, before its annexation to the British rule, a Rajah was a talukhdar of a large taluka. A younger branch of his family had a separate mehal in the possession of *A* wholly distinct from and independent of the taluka the Rajah possessed as representing the elder branch of the family. The Oudh Government for fiscal purposes included *A*'s mehal with the Rajah's taluka, so that the Rajah as the elder branch of the family represented *A*'s mehal at the Court at Lucknow notwithstanding that *A* remained in undisturbed possession as absolute owner paying through the Rajah for his mehal a proportion of the jumma fixed on the taluka. This relation between the Rajah and *A* subsisted up to the time of the annexation of Oudh by the British Government. While the Government was making a settlement with the land owners, and *A* was about to apply for a distinct settlement of his mehal, he and after him his widow was induced by the Rajah not to do so, the Rajah in letters fully recognising *A*'s absolute right to the mehal. After the suppression of the rebellion in Oudh and the Government had recognised the taluka hereditary with its rights, a provisional settlement of the taluka in [illegible] mehal was made with the Rajah but before a sunnud was granted to him, Government confiscated half his estates for concealment of arms. The Rajah suppressed the fact of the trust relation of the mehal of *A* and contrived that it should be included in the half part of the estate the Government had confiscated, which mehal the Government as a reward granted to Oudh loyalists. *A*'s widow brought a suit against the Government and the grantees for the restoration of the mehal and for a settlement. The Chief Commissioner held that, as the Rajah was the registered owner of the mehal of *A* included in his taluka, it had been properly forfeited. Such finding reversed on appeal on the ground that *A* was the acknowledged cestui que trust of the Rajah and that *A*'s widow as equitable owner was not affected as between her and the Government by the act of confiscation of half the Rajah's taluka. THAKURAIN SOOKRAJ KOER *v.* GOVERNMENT 14 Moore's I. A., 112

4. ——— Confiscation and restoration of lands in Oudh in 1858 and of immoveables in Lucknow—*Gift—Fraud.*—On a claim for a share in property consisting of (1) immoveables in Lucknow and (2) revenue-paying land in a district of Oudh, the defence was title by gift with possession from the former owner a member of the family through which the plaintiff claimed. As to the immoveables in Lucknow they having been included in the confiscation which, having followed the capture of the town in 1858 was subsequently abandoned without any intention on the part of Government to make a re-grant in favour of any person, the result in regard to the present question was the same as if no such event had occurred. The other property (2) came under the general confiscation of Oudh lands in 1858, and also was restored through subsequent settlement operations in which the final order relating to the land in question, was to the effect that settlement should be made with the "heirs" of the previous owner. *Held* that the above did not preclude the defence of exclusive title by gift; the order last mentioned, on its true construction, only designating all those who might take under and through the previous owner (deceased at the time of settlement) without excluding any claimant, save those who might claim adversely to such title. The Government did not make the settlement which followed the confiscation, make any arbitrary or wholly new redistribution of estates or proceed as if the existence of previous titles (although they had been brought to an end) was to go for nothing. The enquiry in most cases was as to who would have been entitled had there been no confiscation. As to both classes of property, the gift was maintained. JEHAN KADR *v.* AFSAR JAHAN BEGUM I. L. R., 13 Calc., 1 L. R., 13 I. A., 131

CONFISCATION OF SALT

See CASES UNDER SALT ACTS AND REGULATIONS RELATING TO

CONNIVANCE.

See DIVORCE ACT, s. 14. I. L. R., 3 Calc., 688
7 Mad., 251

CONSENT

See CASES UNDER ACQUIESCENCE

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL I L R. 18 Calc. 378

See CONSOLIDATION OF SUITS [21 W R., 198

See DECREE—FORM OF DECREE—GENERAL CASES I L R., 9 All., 229

See EVIDENCE—CIVIL CASES—MODE OF DEALING WITH EVIDENCE 12 W R 244 [19 W R., 248

See HINDU LAW—INHERITANCE—MODIFICATION OF LAW 1 Agra 106 [2 Agra 173 3 Agra, 143

See JUDGE—POWER 21 W R. 196

See CASES UNDER JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES ETC

See PARTIES—SUBSTITUTION OF PARTIES —PLAINTIFFS [17 W R., 475 8 B L R Ap 98

See PLEADER—AUTHORITY TO BIND CLIENT [2 Moore s I. A. 253 I L R. 11 Bom 591 2 Mad. 423

See CASES UNDER WAIVER

——— Proof of—

See EVIDENCE ACT s 74 [I. L. R 4 Calc 79

CONSENT DECREE

See DECREE—CONSENT DECREE

CONSEQUENTIAL RELIEF

See CASES UNDER COURT FEES ACT 1870 s 7 AND SCH II ART 17

See CASES UNDER DECLARATORY DECREE SUIT FOR

See CASES UNDER VALUATION OF SUIT—SUITS—DECLARATORY DECREE SUITS FOR.

CONSIDERATION

See CASES UNDER CONTRACT ACT s 25

See CASES UNDER PROMISSORY NOTE—CONSIDERATION

See CASES UNDER VENDOR AND PURCHASER —CONSIDERATION

——— Illegal—

See CASES UNDER CONTRACT ACT s 23—ILLEGAL CONTRACTS

See TROVER 6 B L R, 581

CONSIDERATION—*continued*

——— Immoral—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR IMMORAL CONSIDERATION I L R 23 Mad 613

——— Proof of—

See CASES UNDER EVIDENCE—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR ETC

1. ——— Practice of Courts in India —*Contract—Consideration Proof of*—It is the established practice of the Courts in India, in cases of contract to require satisfactory proof that consideration has been actually received according to the terms of the contract and a contract under seal does not of itself in India import that there was a sufficient consideration for the agreement A plaintiff however suing to set aside a security admittedly executed by himself must make out a good *primâ facie* case before the defendants can be called on to prove consideration. PRAHLAD SEN *v* BODHU SING KALIPRASAD TEWARI *v* PRAHLAD SEN PRAHLAD SEN *v* DURGA PRASAD TEWARI PRAHLAD SEN *v* PUN BAHADUR SING PRAHLAD SEN *v* RAJENDRA KISHOR SING [2 B L R P C 11 12 W R P C 6 12 Moore s I A 275 286

See RAJU BALU *v* KRISHNARAV RAMCHANDRA [I. L. R. 2 Bom 273

2 ——— *Proof of consideration*—It is the practice of the Courts to receive evidence as to the actual payment of consideration money notwithstanding the sale deed may contain an admission of the receipt thereof It being generally if not universally the case that the consideration money is not paid at the time of the execution of the deed gross injustice would be committed if such evidence were excluded SURM RAE *v* UBHMAN RAE 2 N W., 209

RAJENDRA NATH BANERJEE *v* JODOO NATH SINGH 7 W R 441

RAJU BALU *v* KRISHNARAV RAMCHANDRA [I. L. R., 2 Bom., 273

3 ——— *Document importing consideration*—A bond although under seal does not in India of itself import that there has been a sufficient consideration for it. MAHOMED ZAHOOR ALI KHAN *v* RUTTA KUNWOOR 2 N W., 481

4. ——— Sufficiency of consideration —*Contract Act s 2 cl (d)—Consideration moving indirectly from promisee—Stranger to consideration*—*L* granted an estate to *C* and directed her to make an annual payment to *L's* brothers. *C* by agreement of even date made with *L's* brothers promised to carry out *L's* directions. *Held* by INNES J following *Dutton* v *Poole 2 Lev., 210* that the agreement was enforceable against *C* by *L's* brothers *Held* by KINDERSLEY J that the grant by *L* and the promise by *C* to the brothers of *L* being

CONFISCATION OF PROPERTY IN OUDH—*continued*

and lands as one of the heirs of *M K* against a defendant who was an heir of *M A* and who had obtained possession of the houses and lands under the orders passed for the release of the one and the settlement of the other the defendant pleaded that the entire property had come into her possession in 1856 under a gift from *M A* and that the plaintiff's suit was barred by limitation *Held* (first) in respect of the house property that if the defendant was in possession at the time when the proclamations were issued the question of limitation must be decided as if there never had been a confiscation; and (second) in respect of the lands that no question of limitation could arise since the suit was brought within twelve years from the date of the Government order for settlement under which alone any title to the lands could have been acquired by either of the parties. JEHAN KADR *v* ASSUR BAHU I. L. R. 4 Calc., 727

2 ——— **Lord Canning's proclamation 1858 Effect of**—*Re grant of confiscated lands*.—The effect of Lord Canning's proclamation of the 15th March 1858 was to divest all the landed property from the proprietors in Oudh and to transfer it to and vest it in the British Government Consequently all who since that date claim title to such property must claim through the Government. Where a re grant is made to a former owner the new title will depend entirely on the terms of the re grant; and if such re-grant is made for life only no suit can be maintained to rectify an alleged mistake and for declaration of an absolute title according to the tenor of the sunnuds by which the property was held under the old dynasty and prior to the confiscation MULKA JEHAN SAHIBA *v* DEPUTY COMMISSIONER OF LUCKNOW L. R. 6 I. A. 63

3 ——— **Property standing and registered in name of one party but admitted to belong to another**—*Registration for fiscal purposes*.—In Oudh before its annexation to the British rule a Rajah was a talukhdar of a large talukh A younger branch of his family had a separate mehal in the possession of *A* wholly distinct from and independent of the talukh the Rajah possessed as representing the elder branch of the family The Oudh Government for fiscal purposes included *A*'s mehal with the Rajah's talukh so that the Rajah as the elder branch of the family represented *A*'s mehal at the Court at Lucknow notwithstanding that *A* remained in undisturbed possession as absolute owner paying through the Rajah for his mehal a proportion of the jumma fixed on the talukh This relation between the Rajah and *A* subsisted up to the time of the annexation of Oudh by the British Government While the Government was making a settlement with the land owners and *A* was about to apply for a distinct settlement of his mehal he and after him his widow was induced by the Rajah not to do so the Rajah in letters fully recognising *A*'s absolute right to the mehal After the suppression of the rebellion in Oudh and the Government had recognized the talukhdari tenure with its rights a provisional settlement of the talukh including *A*'s mehal was made with the Rajah but before a sanad was granted to him Government confiscated

CONFISCATION OF PROPERTY IN OUDH—*concluded*

half his estates for concealment of arms The Rajah suppressed the fact of the trust relation of the mehal of *A* and contrived that it should be included in the half part of the estate the Government had confiscated which mehal the Government as a reward granted to Oudh loyalists *A*'s widow brought a suit against the Government and the grantees for the restoration of the mehal and for a settlement. The Chief Commissioner held that as the Rajah was the registered owner of the mehal of *A* included in his talukh it had been properly forfeited. Such finding reversed on appeal on the ground that *A* was the acknowledged *cestui que trust* of the Rajah and that *A*'s widow as equitable owner was not affected as between her and the Government by the act of confiscation of half the Rajah's talukh. THUKRANI SOOKRAJ KOOWAR *v* GOVERNMENT 14 Moore's I. A. 113

4 ——— **Confiscation and restoration of lands in Oudh in 1858 and of immoveables in Lucknow**—*Gift—Title*.—On a claim for a share in property consisting of (*a*) immoveables in Lucknow and (*b*) revenue paying land in a district of Oudh the defence was title by gift with possession from the former owner a member of the family through which the plaintiff claimed As to the immoveables in Lucknow they having been included in the confiscation which having followed the capture of the town in 1858 was subsequently abandoned without any intention on the part of Government to make a re-grant in favour of any person the result in regard to the present question was the same as if no such event had occurred. The other property (*b*) came under the general confiscation of Oudh lands in 1858 and also was restored through subsequent settlement operations in which the final order relating to the land in question was to the effect that settlement should be made with the heirs of the previous owner *Held* that the above did not preclude the defence of exclusive title by gift the order last mentioned on its true construction only designating all those who might take under and through the previous owner (deceased at the time of settlement) without excluding any claimant save those who might claim adversely to such title The Government did not in the settlement which followed the confiscation make any arbitrary or wholly new re distribution of estates or proceed as if the existence of previous titles (although they had been brought to an end) was to go for nothing The enquiry in most cases was as to who would have been entitled had there been no confiscation As to both classes of property, the gift was maintained. JEHAN KADR *v* AFSAR BAHU BEGUM I. L. R. 12 Calc., 1 L. R., 12 I. A., 124

CONFISCATION OF SALT

See CASES UNDER SALT ACTS AND REGULATIONS RELATING TO

CONNIVANCE

See DIVORCE ACT s 14 I. L. R., 3 Calc 638; 7 Mad 231

CONSENT

See CASES UNDER ACQUIESCENCE

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL I. L. R. 18 Calc., 378

See CONSOLIDATION OF SUITS [21 W R., 198

See DECREE—FORM OF DECREE—GENERAL CASES I. L. R., 9 All., 229

See EVIDENCE—CIVIL CASES—MODE OF DEALING WITH EVIDENCE 12 W R 244 [19 W R 248

See HINDU LAW—INHERITANCE—MODIFICATION OF LAW 1 Agra 106 [2 Agra 173 3 Agra, 143

See JUDGE—POWER 21 W R. 196

See CASES UNDER JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES ETC

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS [17 W R., 475 8 B L. R., Ap 98

See PLEADER—AUTHORITY TO BIND CLIENT [2 Moore s I. A. 253 I. L R., 11 Bom 591 2 Mad. 423

See CASES UNDER WAIVER

——— Proof of—

See EVIDENCE ACT s 74 [I. L. R., 4 Calc 79

CONSENT DECREE

See DECREE—CONSENT DECREE

CONSEQUENTIAL RELIEF

See CASES UNDER COURT FEES ACT 1870 s 7 AND SCH II ART 17

See CASES UNDER DECLARATORY DECREE SUIT FOR

See CASES UNDER VALUATION OF SUIT—SUITS—DECLARATORY DECREE SUITS FOR

CONSIDERATION

See CASES UNDER CONTRACT ACT s 25

See CASES UNDER PROMISSORY NOTE—CONSIDERATION

See CASES UNDER VENDOR AND PURCHASER—CONSIDERATION

——— Illegal—

See CASES UNDER CONTRACT ACT s .3—ILLEGAL CONTRACTS

See TROVER 6 B L R, 581

CONSIDERATION—*continued*

——— Immoral—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR IMMORAL CONSIDERATION I L R, 23 Mad 613

——— Proof of—

See CASES UNDER EVIDENCE—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR ETC

1 ——— Practice of Courts in India—*Contract—Consideration Proof of*—It is the established practice of the Courts in India in cases of contract to require satisfactory proof that consideration has been actually received according to the terms of the contract and a contract under seal does not of itself in India import that there was a sufficient consideration for the agreement A plaintiff however suing to set aside a security admittedly executed by himself must make out a good *primâ facie* case before the defendants can be called on to prove consideration PRAHLAD SEN *v* BODHU SING KALIPRASAD TEWARI *v* PRAHLAD SEN PRAHLAD SEN *v* DURGA PRASAD TEWARI PRAHLAD SEN *v* PUN BAHADUR SING PRAHLAD SEN *v* RAJENDRA KISHOR SING [2 B L R P C 11 12 W R P C., 6 12 Moore s I A 275-286

See RAJU BALU *v* KRISHNARAV RAMCHANDRA [I. L. R. 2 Bom 273

2. ——— *Proof of consideration*.—It is the practice of the Courts to receive evidence as to the actual payment of consideration money notwithstanding the sale deed may contain an admission of the receipt thereof It being generally if not universally the case that the consideration money is not paid at the time of the execution of the deed gross injustice would be committed if such evidence were excluded SURM RAE *v* UBHMAN RAE 2 N W 209

RAJENDRA NATH BANERJEE *v* JODOO NATH SINGH 7 W R 441

RAJU BALU *v* KRISHNARAV RAMCHANDRA [I. L R., 2 Bom., 273

3 ——— *Document importing consideration*.—A bond although under seal, does not in India of itself import that there has been a sufficient consideration for it MAHOMED ZAHOOR ALI KHAN *v* RUTTA KUNWOOR 2 N W., 481

4. ——— Sufficiency of consideration—*Contract Act s 2 cl (d)—Consideration moving indirectly from promisee—Stranger to consideration*.—*L* granted an estate to *C* and directed her to make an annual payment to *L*'s brothers. *C* by agreement of even date made with *L*'s brothers promised to carry out *L*'s directions. *Held* by [illegible] J following *Dutton* v *Poole 2 Lev., 210*, the agreement was enforceable against *C* by *L*'s brothers. *Held* by KINDERSLEY J that the [illegible] *L* and the promise by *C* to the brothers of [illegible]

CONSIDERATION—*continued*

one transaction there was a sufficient consideration for the promise within the meaning of the Contract Act, s. 2 CHINNAYA PAU v RAMAYA

[I. L. R., 4 Mad., 137

5 ———————— *Contract Act s 2 cl (d)*—The administratrix of an estate having agreed to pay *S* his share of the estate if *S* would give a promissory note for portion of a barred debt claimed by *A* from her *S* executed a promissory note in favour of *A* gave it to the administratrix and received his share of the asset *Held* that there was consideration for the promissory note within the meaning of s. 2 cl. (*d*) of the Contract Act 1872 and that *A* could recover upon it. SAMUR PILLAI v ANANTHANATHA PILLAI

[I. L. R., 6 Mad 351

6 ———————— *Promissory note —Good consideration.*—In an action on a promissory note in which the defence was want of consideration it appeared that the note was given by the defendants to the plaintiff in respect of a transaction in which it was arranged that the plaintiff was to find sureties in a certain appeal case in which the defendant was acting as mooktear or agent the sureties were to be approved by the Collector and were to be paid R10 000 The plaintiff found the sureties they were duly approved by the Collector but the plaintiff paid them a much less sum than R10 000 *Held* that there was good consideration for the note GUNGA NARAIN DOSS v SIB CHUNDER SEN

[1 Ind. Jur., N S., 409

7 ———————— *Execution of letter of license by creditors to insolvent*—The execution of a letter of license to an insolvent by all the creditors mentioned in the schedule to his petition in the Insolvent Court upon which his petition in the Insolvent Court was dismissed was held to be sufficient consideration to enforce the contract to forbear against one of the creditors although all the creditors were designated together as one party in the deed and there was no express declaration that each creditor executed in consideration of all the others executing BUNGSEEDHUR PODDAR v RAMJEE MORARJEE 2 Ind. Jur N S 243

8. ———————— *Verbal promise for interest—Nudum pactum*—Where a contract of loan stipulated that the legally demandable rate of interest should be five per cent. it was held that a claim by the creditor of interest at eight per cent founded upon a bare promise of the debtor to pay eight per cent or upon the fact that the debtor had in account voluntarily debited himself with eight per cent in lieu of five per cent could not be maintained in law for want of consideration amounting merely to a *nudum pactum* GUTHRIE v LISTER

[6 W R. P C., 59
11 Moore's I. A 129

9 ———————— *Assignment of debt—Transfer of mortgage*—*A* mortgaged to his brother *B* his twelfth share in the immoveable estate of the family *C* at *B's* request became surety for *A* to Government *A* having become a defaulter *C* became liable to Government in respect of his defalcations. *B* with a view to indemnify *C* transferred to him *A's* mortgage *C* at the same time assigning to *B* a debt due by *D* to *A* which had been previously assigned by *A* to *C* In a suit by *C* against *B* for possession of *A's* share —*Held* that the assignment by *C* to *B* of *D's* debt was a sufficient consideration for the transfer by *B* to *C* of *A's* mortgage and that a sale which was made by the Government of *A's* share was subject to such pre-existing valid charge YASHAVANT SUBAJI KULKARNI v GOPAL LADKO BHANDARKAR

[2 Bom., 202 2nd Ed., 194

10 ———————— *Illegal consideration—Account stated—Mortgage—Construction of agreement*—An agreement reciting that in consideration of the care which the plaintiff took of the defendant and her property during her infancy and of the instruction given to her for which the plaintiff expended her own money the defendant had mortgaged her house to the plaintiff and stipulating that in the event of the defendant going to live with any man and similarly after her death the house would become the plaintiff's property —*Held* that there was no illegal consideration shown but the contract was good in law and in substance an account stated with a mortgage to secure the amount due and the usual decree for redemption was made reversing the decrees of the Courts below which threw out the plaintiff's claim. HEIRS OF HUSEN BEG BAI v AKUBAI 2 Bom. 357 2nd Ed., 337

11. ———————— *Want of consideration—Agreement to avoid further litigation*—A mutual agreement to avoid further litigation is not an agreement void for want of consideration BHIMA VALAD KRISHNAPPA v NINGAPPA BIN SHIDAPPA TUSE 5 Bom., A. C., 75

12 ———————— *On demand promissory note given for interest on mortgage deed with interest on such interest*—A promissory note payable on demand, given for interest due on a mortgage deed with interest on such interest cannot be enforced by suit there being no consideration for the making of such a note RUSTAMJI ADESIR DAVAR v RATANJI RUSTAMJI WADIA 7 Bom. O C., 9

13 ———————— *Marriage—Valuable consideration.*—Marriage is a valuable and not merely a good consideration. CHINTALAPATI CHINNA SIMHADRIRAJ v ZAMINDAR OF VIZIANAGRAM

[2 Mad., 128

14. ———————— *Servant employing particular broker on his master's behalf—Void agreement*—Where a mehta without the knowledge of his master agreed with his master's brokers to receive a percentage (called sucri) on the brokerage earned by such brokers in respect of transactions carried out through them by the mehta's master and no express consideration was alleged or proved by the mehta the Court refused to imply as a consideration an agreement by the mehta to induce his master to carry on business through such brokers and was of opinion that such an agreement would be inconsistent with the relation of master and servant. But where the same brokers agreed with the mehta not to charge

CONSIDERATION—*continued*

him brokerage on such private transactions as he should carry on through them and the mehta carried on private transactions through the brokers it was held that the brokers were bound by that agreement and could not maintain a claim for such brokerage VINAYAKRAV GANPATRAV *v* PANDORDAS PRANJIVANDAS 7 Bom. A C 90

15 ——————— *Debt due—Consideration for power* —J M executed in favour of *P* an instrument (authorizing *P* to recover by suit or otherwise from *W* and *N* a sum of R22 500) which contained this clause From whatever sum *P* may recover from *W* and *N* he is to pay himself the sum of R8 640 which is due to himself and also the expenses he may incur in making recovery and he is to hand over the surplus to me *Held* that the above instrument was made on a good consideration and was irrevocable PESTANJI MANCHARJI WADIA *v* MATCHETT 7 Bom. A. C 10

16 ——————— *Mutuality of obligation—Want of consideration* —An agreement whereby the defendant undertook to pay the plaintiff and two other co-creditors of an insolvent a share in any sums which he might recover from the insolvent in consideration of receiving a share in any sums which might be recovered by the other creditors is not though the plaintiff has passed no similar agreement in favour of the defendant invalid for want of consideration or mutuality of obligation BHAGTIDAS BHAGVANDAS *v* OLIVER 9 Bom. 418

17 ——————— *Mutual consideration—Agreement to pay rent for ever* —Where there was a written agreement between the first defendant s father and the Collector in which the first defendant s father undertook to pay a certain rent for ever but these general words were qualified by the words that he is to pay the rent as long as the village remains in his possession and the document did not contain any express agreement or undertaking on the part of the Collector —*Held* that the enjoyment of the land by the first defendant s father at a certain rent as long as he retained possession of it was ample consideration and motive for his agreement to pay the rent and that it was not necessary in order to prevent the consideration and motive for his agreement from being wholly defeated to imply on the part of the Collector an agreement that he should hold the land for ever at that rent and no more SUBUPALAYI AMMAL *v* APPAKUTTI AIYANGAR 3 Mad. 106

18 ——————— *New contract imposing fresh liability* —The defendants entered into a contract with the plaintiff in writing by which in consideration of the trouble taken and large sums of money advanced by the plaintiff on behalf of the defendants the defendants promised that they would from generation to generation pay to the plaintiff R100 per annum out of a specified fund. *Held* that the undertaking of the plaintiff to forbear from enforcing the debt due to him prior to the contract was a sufficient new consideration to support the contract CHETU NARAYANA PILLAY *v* ANAMPERUMAL AMBALOM 4 Mad. 447

CONSIDERATION—*continued*

19 ——————— *Contract to pay sum in event of pleader winning a case* —A suit is not maintainable on a rookha for shukrana given after the terms of a pleader's remuneration have been agreed upon and when his services are already engaged there being no consideration for the contract FULLER *v* BISHOON KOOER 3 N W 25

20 ——————— *Debt due on decree barred by limitation* —A debt due on a decree is a sufficient consideration for the making of a promissory note although execution of the decree be barred by limitation at the time the note is made MULLINS *v* BEDDY 6 N W 150

21 ——————— *Advance of money to save reputation of family—Moral obligation—Assignment of share in family estate* —Where a Hindu parcener voluntarily advanced money to his brother and co parcener for the purpose of his defence against a charge of forgery without any previous request and merely to save the reputation of the family the obligation being no more than a moral obligation was held not to be a sufficient consideration to support an assignment to the former by the latter of his share in the undivided family estate VASUDEV BHAT *v* VENKATESH SANBHAV [10 Bom., 139

22 ——————— *Moral consideration—Promise to pay at majority debt during infancy—Promise to pay barred debt* —The general rule of law is that a consideration merely moral is not valuable consideration such as would support a promise But there are instances of enforceable promises which formerly were referred to the now exploded principle of previous moral obligation and which are still held to be binding although that principle has been rejected Amongst those instances is a promise after full age to pay a debt contracted during infancy and a promise in renewal of a debt barred by the law of limitation. The efficacy of such promises is now based upon the principle that where the consideration was originally beneficial to the party promising and he be protected from liability by some provision of the statute or common law meant for his advantage he may renounce the benefit of that law and if he promise to pay the debt he is bound by the law to perform that promise. *D* executed a razinama in favour of the plaintiff on 20th August 1868 transferring certain lands to the latter The plaintiff after giving the usual kabuliat to the Collector was put in possession of the lands On the 7th April 1869 *T* obtained a money decree against *D* and on the 3rd July 1869 attached the lands as belonging to *D* *Held* that a decree of 1867 which plaintiff held against *D* though time barred, in 1868 was (being then still unsatisfied) a good consideration for *D*'s razinama in 1868 in plaintiff's favour TILLACKCHAND HINDUMAL *v* JITAMAL SUDARAM 10 Bom 206

SREENATH BANERJEE *v* DOORGA DOSS KUNDY [9 W R., 218

23 ——————— *Suit on hundi—Indorsement of hundi* —A hundi was drawn out of

CONSIDERATION—*continued*

Bombay upon a person in Bombay indorsed and delivered out of Bombay to one who out of Bombay indorsed and sent it to the plaintiff in Bombay who received it got it accepted and presented it for payment to the drawee, by whom in Bombay it was dishonoured The plaintiff who was the agent and banker of an Ajmir constituent on its acceptance by the drawee credited the Ajmir constituent with the amount as of the date when the hundi would become payable In a suit against the first indorser —*Held* that as between the Ajmir constituent and the first indorser (the defendant) the giving by the Ajmir constituent to the defendant of another hundi which was never presented in Bombay for acceptance or payment was a consideration for the indorsement by the defendant to the Ajmir constituent of the hundi sent by the latter to the plaintiff and sued on by him SUGANCHAND SHIVDAS *v* MULCHAND JOHARIMAL [12 Bom 113

Affirmed on appeal in MULCHAND JOHARMAL *v* SUGANCHAND SHIVDAS I. L. R. 1 Bom. 23

24. ——— *Contract to give lease—Proof of consideration*—In a suit for a declaration of right to and to obtain possession of a raiyati jote by virtue of an amaldari pottah granted to plaintiff by defendant where the terms of the pottah were substantially that the plaintiff was to have a raiyati jote at a certain jumma and that on there being a measurement and re-assessment the plaintiff was to be liable to pay higher (*i e* per gunnah) rates there being no mention of consideration or any reference to a right of occupancy —*Held* that plaintiff could not urge that the written contract conveyed to him a right of permanent possession for due consideration nor could defendant be legally called upon to prove payment of consideration. BUNGO CHANDER CHUCKERBUTTY *v* NUZMOODEEN AHMED 11 W R 156

25 ——— *Contract to pay maintenance*—Plaintiff was brought from his native place by defendant's adoptive father D who had no one to inherit his property except his daughter's daughter with a view to give her to plaintiff in marriage and confer on him all he possessed After marriage D's grand daughter died but owing to defendant's being adopted plaintiff was deprived of all the cherished hopes of his wife's future inheritance Accordingly the adoptive mother and defendant executed a mosharrah patra in plaintiff's favour promising him in consideration of the above facts a monthly allowance for maintenance The present suit was to recover a balance due of this allowance *Held* that whether the English law was applied or the principles of justice equity and good conscience the deed disclosed a good and sufficient consideration for the promise to pay and defendant was bound to pay the stipulated allowance SHIB NUNDUN ROY *v* SREE NARAIN ROY 11 W R., 415

26 ——— *Suit for land under pottah—Question of consideration*—In a suit to recover certain land alleged to have been granted under a pottah the Judge finding that no consideration had been given by the plaintiff pronounced the contract a *nudum pactum* on which no action would lie *Held* that as defendant had admitted the grant of the pottah and contended that the whole of the lands had been made over to plaintiff's possession no question of consideration could arise ROOP NARAIN SINGH *v* CHATOOREE SINGH [12 W R 283

27 ——— *Contract to grow indigo—Extinguishment of original debt which was the consideration*—Where a raiyat in consideration of an advance of money has stipulated to grow indigo for a certain number of years the contract is not void as being without consideration because during the period it had to run the debt due from the raiyat is extinguished by the delivery of indigo leaves The contract is one entire contract upon one entire consideration and a contract which was at its commencement based upon a valid consideration cannot become void for want of consideration by any change whatever in the situation of the parties LEDLIE *v* GOPAL MUNDUL 17 W R., 91

28 ——— *Appointment of agent—Remedy in case of revocation of authority—Suit for specific performance*—The defendant by an agreement in the nature of a letter of attorney constituted the plaintiff and his descendants the hereditary agents of the defendant gave him authority to collect the rents of his share in an inam village and promised to pay him an annual salary out of the rents. *Held* that as between the parties and during their lifetime the appointment was valid and binding, whether or not any valuable consideration passed; the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment. If the defendant had revoked the agency improperly the remedy lay under ordinary circumstances in a suit by the plaintiff for damages for breach of contract Where however the plaintiff chose to sue for specific performance and demanded arrears of salary —*Held* that without a valuable consideration for the defendant's promise the agreement passed by him to the plaintiff would be *nudum pactum* and the plaintiff would not be entitled to recover except for work and services actually rendered. VISHNUCHARYA *v* RAMCHANDRA I. L. R. 5 Bom., 253

29 ——— *Promise to refrain from suing—Suit found to be barred*—Where by reason of a promise, the promisee refrains from bringing a suit which but for the promise he might have brought there is good consideration for the promise but if at the time of the promise no remedy remained to the promisee by reason of limitation there is no valid consideration and the promise cannot be enforced at law PETER *v* VARDON [23 W R. 62

30 ——— *Want of consideration—Decree Adjustment of out of Court—Civil Procedure Code (XIV of 1882) s 258—Contract*—The plaintiff held a decree against the defendant and in execution of it attached the defendant's property A compromise was then made by which the defendant executed to the plaintiff the bond sued upon in satisfaction of the judgment-debt The compromise however was not certified to the Court.

CONSIDERATION—*concluded*

Held that the bond was without consideration The adjustment of the decree not having been certified to the Court was not binding on the plaintiff and, therefore constituted no valid consideration PANDURANG RAMCHANDRA v NARAYAN
[I L R 8 Bom 300

31. ———— *Uncertified adjustment of decree—Civil Procedure Code ss 244 (c) 258—Contract Act IX of 1872 ss 2 10 23 28*—The consideration for a mortgage consisted partly of the amount of two decrees held by the mortgagee against the mortgagor The mortgagee having sued to enforce the mortgage the mortgagor pleaded failure of consideration as a bar to the enforcement of the mortgage This plea was based on the allegation that the mortgagee had not certified the adjustment of the decrees as provided by s 258 of the Civil Procedure Code and they were still in force under the terms of that section *Per* DUTHOIT *J* that the failure of the mortgagee to certify the adjustment of the decrees did not constitute a failure of consideration because he did not covenant to certify such adjustment and it was not in fact necessary for him to do so because he could not seek execution of the decrees on the ground that though unsatisfied they were still in force under s 258 of the Civil Procedure Code without becoming liable to penalties and because if the mortgagor considered the entering up of the adjustment of the decrees to be imperative he had his remedy by application to the Court in the terms of s 258 *Per* MAHMOOD *J* that the adjustment of a decree out of Court if never certified to the Court is under s 258 ineffectual only so far as the execution of the decree is concerned that there is nothing in the Contract Act to make such an adjustment invalid as the consideration for an agreement that an agreement founded on such consideration may be enforced without defeating the objects of s 258 and that consequently there was in respect of the amount of the decrees valid consideration for the mortgage *Gunamani Das* v *Pran Kishori Dasi 5 B L R 223 Meer Mahomed Kazem Jowharry* v *Khetoo Bibee 20 W R 150 Gani Khan* v *Koonjoo Behary Sen 3 C L R 414 Davlata* v *Ganesh Shashiri I L R 4 Bom., 295 Shadi* v *Ganga Saha I L R 3 All., 538* and *Sita Ram* v *Mahipal I L R 3 All 533* followed. *Patankar* v *Devji I L R 6 Bom 146* and *Pundurang Ramchandra Chowghule* v *Narayan I L R 8 Bom 300* dissented from RAMGHULAM v JANKI RAI
[I L R 7 All. 124

32 ———— Inadequacy of consideration—*Suit to set aside deed*—Party seeking to set aside a transaction on the ground of inadequacy of consideration must show such inadequacy as will involve the conclusion that he either did not understand what he was about or was the victim of some imposition ADMINISTRATOR GENERAL OF BENGAL v JUGGESWAR ROY
[I L R 3 Calc 192 1 C L R., 107

33 ———— *Evidence of mala fides*—Inadequacy of consideration is not conclusive proof of *mala fides* KOMOLA PERSAD NARAIN SINGH v NOKH LALL SAHOO 6 W R. 30

CONSIGNEE OF WEST INDIAN ESTATE.

See LIEN I L R. 2 Calc 58

CONSIGNOR AND CONSIGNEE

See CASES UNDER CONTRACT—CONSTRUCTION OF CONTRACTS

See LIEN I L R 18 Calc 573

1 ———— Goods consigned to agent for sale on commission—*Hundis drawn against goods and paid by agent—Railway receipts sent to agent—Equitable assignment of goods by consignor—Goods attached by judgment-creditor of consignor—Claim by agent*—One *P* at Viramgam consigned certain bags of seed to *V H & Co* at Bombay for sale on commission and drew hundis against the goods for R3 200 which at his request *V H & Co* accepted and paid on receiving the railway receipts by post The goods were to be sold on arrival on *P's* account and the proceeds credited to him as against the advances made by the payment of the hundis. On the arrival of the goods at Bombay they were attached by *B S & Co.*, who had obtained decrees against *P* *Held* that *V H & Co* were entitled to the goods They had made specific advances against the goods *B S & Co* as attaching creditors occupied the same position as *P* himself and had no better claim to the goods than he had and if he had attempted to prevent the goods reaching the hands of *V H & Co* who at his request had made specific advances against them he would have been restrained by injunction VELJI HIRJI v BHARMAL SHRIPAL
[I L R 21 Bom 287

2 ———— Duty of consignee as to clearing goods on arrival.—There is no duty cast upon the consignee of goods arriving by a vessel to remove them on the first day of the arrival of the vessel in the absence of an express contract SASSOON v HARRY DAS BHUKUT 1 C W N, 44

CONSOLIDATION OF CLAIMS

See PRACTICE—CIVIL CASES—ADMIRALTY COURTS I L R 22 Calc 511
[3 C W N 67

CONSOLIDATION OF SUITS

1. ———— Consolidation of suits on application of plaintiffs —Consolidation of suits on application of plaintiffs allowed PEACOCK v BYJNATH I L R. 10 Calc. 58

2. ———— Appeal.—Two suits having been instituted by a purchaser of two different portions of the same tenure for enhancement of the rent of the respective portions the first Court treated them as if they constituted one suit and gave one decision in both *Held* that in doing so the Court acted sensibly and reasonably and that there could be no objection to one appeal being filed from what was substantially one decree ENAYETOOLLAH v PADHA CHURN ROY 15 W R. 395

CONSOLIDATION OF SUITS—*concluded*

3 ———— *Irregularity in bringing appeals* —Where there were two suits separately instituted in the Collector's Court for partition of two mouzahs and defendants appeared in both cases but preferred only one appeal relating to both mouzahs instead of appealing separately —*Held* that the Collector's decision as to one mouzah of which no notice was taken by the Judge must virtually be deemed as unappealed. ALUP LAL *v.* SHEO DYAL [2 Agra 142

4 ———— **Application for leave to appeal to Privy Council.**—*Quære*—Whether the Court has power to consolidate two suits on an application for leave to appeal to the Privy Council AJNAS KOOER *v.* LATEEFA 18 W. R. 21

5 ———— **Power of Court to consolidate without consent of parties** —When several cases are before a Court and the subject of suit and the defendants vary with each case the Court has no authority to order them to be tried as one case against the will of the parties and without the consent of all the parties no such consolidation can be effected by the Court as to make the evidence given by any party in one case evidence in all the case SOORENDRO PERSHAD DOBEY *v.* NUNDUN MISSER [21 W. R. 196

CONSPIRACY

See ABETMENT 21 W. R., Cr 35 [4 C. W. N. 528

———— *Evidence Act (I of 1872) s 10—Proof requisite for charge of conspiracy* —A conspiracy within the terms of s 10 of the Evidence Act contemplates more than the joint action of two or more persons to commit an offence NOGENDRABALA DEBEE *v.* EMPRESS [4 C. W. N., 528

CONSULAR COURT

———— **at Muscat.**

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL [I. L. R. 24 Bom. 471

———— **at Uganda**

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R. 22 Bom. 54

———— **at Zanzibar**

See HIGH COURT JURISDICTION OF—BOMBAY—CIVIL. [I. L. R. 20 Bom. 480

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R. 19 Bom. 741

———— **Registration of British subjects at Zanzibar**—*Stat 6 & 7 Vic c. 94—Order in Council of 9th August 1866 arts 1 6 25 30 32 35—Stat 39 & 40 Vic c. 46—Attachment Effect of* —The jurisdiction of the British Consul at Zanzibar to hear and determine suit of a civil nature between British subjects depends upon whether the causes of action in such suits have arisen within the dominions of the Sultan of Zanzibar and not upon the question whether parties to such suits are resident within those dominions. Under the treaty made in 1839 between Her Majesty the Queen and the Sultan of Muscat British subjects are liable to be sued in the British Consular Courts at Zanzibar by Americans as being subjects of another Christian nation and by convention with the Rao of Cutch made with the acquiescence of the Sultan of Zanzibar natives of Cutch having been subjected to the British Consular Court in the same manner as if they were British subjects may be sued by Americans and others in that Court When the British Consul at Zanzibar has permitted persons who have not been registered as under British protection to bring and continue suits in his Court that circumstance must be accepted as a sufficient indication that they have excused to his satisfaction their neglect to register under art 30 of the Order in Council of 9th August 1866 *Quære*—Whether Stat 39 & 40 Vic c 46 deals with the order in Council of the 9th August 1866 except so far as that order relates to the slave trade WAGJI KORJI *v.* THARIA TOPAN I. L. R. 3 Bom., 58

CONTEMPT OF AUTHORITY OF PUBLIC SERVANT

See COMPLAINANT [I. L. R., 2 Bom 653

———— **Penal Code s. 185**—*Bidding at auction without intending to purchase* —A person is guilty of contempt under s. 185, Penal Code who bids for the lease of a ferry sold at public auction by a Magistrate without intending to perform the obligation under which he lays himself by such bidding QUEEN *v.* PEAZOODEEN [3 W. R. Cr., 33

CONTEMPT OF COURT

See CASES UNDER CRIMINAL PROCEDURE CODE 1882 s 4 6 (1872 s. 4,1)

See CASES UNDER CRIMINAL PROCEDURE CODE 1882 s 487 (1872 s 473)

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION [I. L. R., 6 Calc. 445

See LETTERS PATENT HIGH COURT cl. 15 [I. L. R. 25 Calc 236

See MUNSIF JURISDICTION OF [I. L. R. 15 Mad. 131

See RECEIVER I. L. R. 22 Calc. 643

CONTEMPT OF COURT—*continued*

1 CONTEMPTS GENERALLY

1. ——— **Sending officer to Judge to ask for explanation of language used on the Bench.**—A barrister offended by the use of a strong expression on the part of a Judge while sitting in Court sent an officer to the Judge's private residence upon a pacific errand to ask for an explanation *Held* by nine Judges out of eleven that the party sending the message and the party conveying it were guilty of contempt of Court IN THE MATTER OF PITTARD 1 Hyde 79

2. ——— **Communication with Judge**—It is contrary to the practice of all Courts of Justice unfair to an adversary and a contempt of Court for a suitor under any pretext whatever to communicate with a Judge except by public proceedings in open Court respecting the merits of any case in which he is interested and which is either pending in the Court of such Judge or likely to come before him. TAYLER *v* ASMEDH KOONWAR 4 W R 86

3 ——— **Resistance of process of Civil Court**—*Jurisdiction of Criminal Court—Penal Code s 186*—The resistance of process of a Civil Court is punishable under the Code of Criminal Procedure by a Court of criminal jurisdiction QUEEN *v* BHAGAI DAFADAR

[2 B L R F B 21 10 W R Cr 43

IN RE CHUNDER KANT CHUCKERBUTTY overruled [9 W R Cr 63

4 ——— *Criminal Procedure Code (Act XXV of 1861) ss 163 and 168—Jurisdiction of Small Cause Court*—A Judge of a Small Cause Court in the mofussil found a judgment debtor guilty of resisting an officer of the Court in attaching property in satisfaction of a decree and fined him. *Held* that the Judge acted without jurisdiction He ought to have sent the judgment debtor before the Magistrate IN THE MATTER OF MANI CHANDRA DAS 2 B L R A C 188 [11 W R 82

5 ——— **Carrying off crops pending suit for rent**—*Ground for dismissal of suit*—During the pendency of a suit for rent the plaintiff procured an attachment of the growing crops and afterwards and without authority and before the suit was determined carried off some of the crops *Held* that although this was an act properly punished by the Court below as a contempt with a fine it was no ground for dismissing the suit CHUTTOONATH SINGH *v* SOOROOP SINGH

[Marsh 21 1 Hay 56

6 ——— **Turning out the Sheriff's officers**—*Officers in possession by order of Court*—Land belonging to *N B* had been seized by the Sheriff under a writ of *fieri facias* which expressly directed him to take that particular land while in possession his officers were turned out by *A* who knew that they were in possession by order of the High Court *A* had purchased the right title and interest of *N B* in the land at a sale held in the Court of the Zilla Judge of the 24 Pergunnahs in execution of a decree of that Court against *N P* *A* was put in possession by an officer of that Court *Held* that the turning out of the Sheriff's officers was a contempt of the High Court BHUGGOBUTTY DASSEE *v* NOBIN CHUNDER BOSE

[2 Ind Jur, N S 99

7 ——— **Refusal of witness to sign deposition**—*Criminal Procedure Code 1861 s 163*—The defendant was convicted of contempt of Court under s 163 of the Code of Criminal Procedure for having refused to sign a deposition given by him as a witness in the course of a revenue inquiry The High Court set aside the conviction ANONYMOUS [6 Mad Ap 14

8 ——— **Officer of Court accepting bribes**—*Person offering bribes to officers—Power of High Court*—The High Court as a Court of Record has the power of summarily punishing for contempt Any officer of the High Court who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court is guilty of a gross breach of duty and a contempt of Court So also any person who offers or gives such present is guilty of a contempt of Court IN RE ABDOOL [8 W R Cr 32

9 ———**Refusal to pay money under order of Civil Court**—*Imprisonment—Jurisdiction of High Court—Civil Procedure Code 1877 ss 341 342*—The decree in an administration suit directed *A* a party to the suit to pay over a sum of money which she admitted was in her hands to her own attorney in the suit to be applied by him as directed by the decree *A* refused to pay over the money and she was imprisoned for disobedience to the Court's order After she had been in prison for six months she applied to the Judge of the Court below under s. 341 of the Civil Procedure Code to be discharged This order was refused *Held* on appeal that the proceeding under which *A* had been imprisoned was not in execution of a decree but that she was imprisoned under process of contempt and that the provisions of ss 341 and 342 did not apply to the case *Per* WHITE *J*—The jurisdiction of the High Court to imprison for contempt is a jurisdiction that it has inherited from the old Supreme Court and was conferred upon that Court by the Charters of the Crown which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain and this jurisdiction has not been removed or affected by the Civil Procedure Code MARTIN *v* LAWRENCE I L R 4 Calc 655

10 ——— **Jurisdiction of High Court**—*Civil Procedure Code 1882 s 136—Committal for contempt—Power to commit for contempt—Procedure*—Under the authority conferred by the Charters of the Supreme Courts and continued by their own Letters Patent the High Courts in India possess the power of enforcing obedience to their orders by committal for contempt As regards the High Court in India the remedy provided by s 136 of the Civil Procedure Code (Act X of 1877) in cases

CONTEMPT OF COURT—continued

2 PENAL CODE S 174—continued

Court the place at which the law and the time of the law which the attendance of the person summoned is required and it should go on to say that such person is not to leave the Court without leave and if the case in which he has been summoned is adjourned without ascertaining the date to which it is adjourned Where a summons did not mention the place at which or the time of the day when the attendance of the person summoned was required—*Held* that such person could not lawfully be punished under s. 174 of the Penal Code for non attendance in obedience to such summons EMPRESS OF INDIA v RAM SARAN I. L. R. 5 All. 7

15 —————— *Defendant escaping from custody under civil warrant*—S 174 of the Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court REG v SARDAR PATHU 1 Bom 38

16 —————— *Chairman of Municipal Commissioners—Act XXVI of 1850—Disobedience of order of public servant*—The Chairman of Municipal Commissioners appointed under Act XXVI of 1850 although a public servant is not legally competent as such to issue an order for attendance before him *Held* accordingly that disobedience of such an order was not an offence within s 174 of the Indian Penal Code REG v PURSHOTAM VALJI 5 Bom. Cr 33

17 —————— *Order of Mahalkari in revenue case*—A conviction under s 174 of the Penal Code for having intentionally omitted to attend the Mahalkari's Court to give evidence in a revenue case in accordance with a summons duly issued and served under Regulation XVII of 1827 ss 26 and 29 was not illegal REG v NARAINAPPA COMTE 5 Bom 39

18 —————— *Verbal order to attend Disobedience to*—The defendant was arrested by a warrant and was released on bail to appear before the Magistrate on a specified day The defendant appeared on that day but the Magistrate being unable to take up the case a verbal order was given to the defendant to appear on the following day This he omitted to do and was convicted under s 174 of the Penal Code *Held* that the conviction was good. ANONYMOUS 5 Mad. Ap, 15

But see VENKATAPPOA v PAPAMMAH [5 Mad 132

and ANONYMOUS 6 Mad. Ap 10

19 —————— *Criminal Procedure Code 1861 s 219—Forfeiture of recognizance*—In consequence of the default in the appearance by the person bailed the surety was compelled to pay the penalty mentioned in the recognizance *Held* that notwithstanding s 219 of Act XXV of 1861 the accused might have been proceeded against for contempt of Court under s 174 of the Penal Code QUEEN v TAJUMADDI LAHORY [1 B L. R. A Cr 1 10 W R Cr 4

CONTEMPT OF COURT—continued

2 PENAL CODE S 174—continued

20 —————— *Disobedience of order of Mahalkari—Summons under s 8 Act XI of 1843 power of Mahalkari to issue*—A Mahalkari invested with the powers of a second class Subordinate Magistrate cannot issue a summons under s. 8 of Act XI of 1843 nor can a person be convicted under s. 174 of the Penal Code for having disobeyed such a summons so issued REG v VENKAJI BHASKAR 8 Bom, Cr, 19

21 —————— *Judge of Small Cause Court—Act XXIII of 1861 s 21—Sentence of fine or imprisonment*—The Judge of a Court of Small Causes is only empowered, by s 21 of Act XXIII of 1861 to inflict fine or imprisonment in cases where offences under s 174 of the Penal Code occur in the presence or view of the Court. The power of the Judge does not extend to cases in which the witness fails to attend or the failure to comply with an order of the Court is merely inferred from other circumstances EX PARTE PAVADAY CHETTI 2 Mad 319

22 —————— *Subordinate Magistrate—Mad Act I of 1863*—A Subordinate Magistrate who issues a summons may take cognizance of the offence of disobedience to that summons under s 174 of the Penal Code notwithstanding the repeal of Madras Act I of 1863 ANONYMOUS [4 Mad. Ap 52

Correcting the decision in ANONYMOUS CASE [4 Mad. Ap 51

23 —————— *Disobedience to verbal order*—A conviction under s 174 of the Penal Code for disobeying a verbal order of a Village Magistrate is good ANONYMOUS 7 Mad Ap 3

24 —————— *Omission to state place of attendance in order*—The summons must state the place where the person's attendance is required otherwise no penalty can be attached to any disobedience of the order to attend ANONYMOUS [7 Mad. Ap 14

ANONYMOUS 7 Mad Ap 43

25 —————— *Wilful disobedience—Absence and consequent non-receipt of summons*—The non attendance must be in the nature of wilful disobedience to attend Where a witness was summoned for a certain day and being absent from home did not receive the summons until after the day had passed he could not be fined for non-attendance because he did not appear afterwards and state his reason for not attending QUEEN v UNGUN LALL [1 N W Ed. 1873 303

26 —————— *Non attendance in obedience to order of public servant*—A conviction for non attendance in obedience to an order from a public servant under s 174 Penal Code can not be had unless the person summoned was legally bound to attend and refused or intentionally omitted to attend IN THE MATTER OF SREENATH GHOSE [10 W R., Cr 33

CONTEMPT OF COURT—*continued*

2 PENAL CODE S 174—*continued*

27 ———— *Summons to give information—Census etc —Madras Act III of 1869* —A summons issued by a tahsildar to a village karnam to appear and give information required for the preparation of census jummabundi and dowle accounts is not within the purview of Madras Act III of 1869 and disobedience of such a summons is not an offence under s 174 of the Penal Code QUEEN v SUBRAMANYAM I. L. R. 5 Mad 377

28 ———— *Disobedience of summons—Revenue inquiry—Power to issue summons* —Under Madras Act III of 1869 Collectors and their subordinate officers may issue a summons for the purpose of any inquiry however general which they are empowered to make for the purposes of administration *Queen v Subramanyam I L R 5 Mad 377* overruled. QUEEN EMPRESS v SUBBANNA [I L R 7 Mad. 197

29 ———— *Madras Act III of 1869—Disobedience to lawful order of public officer—Summons by revenue officer to give evidence in pauperism inquiry—Standing order of Board of Revenue (Madras) No 48a* —The accused who were parties to a petition pending in a District Court were summoned by a tahsildar to give evidence on an inquiry by him as to whether or not the petitioner was a pauper they omitted to attend on the summons and were charged in respect of such non attendance under s 174 of the Penal Code and were convicted *Held* the conviction was bad the tahsildar not being authorized to issue the summons under Act III of 1869 (Madras) QUEEN EMPRESS v VARATHAPPA CHETTI I L R 12 Mad 297

30 ———— *Summons—Disobedience* —A man who in obedience to a summons to appear and answer a criminal charge attends a Magistrate's Court but finding the Magistrate not present at the time mentioned in the summons departs without waiting for a reasonable time is guilty of an offence under s 174 of the Penal Code QUEEN EMPRESS v KISHAN BAPU I L R. 10 Bom 93

31 ———— *Non attendance on service of summons—Appearance by mukhtar—Criminal Procedure Code Act V of 1898 s 205* —In a summons case on the day fixed for trial an appearance was made on behalf of an accused person by his mukhtar who asked the Magistrate under s 205 of the Code of Criminal Procedure to dispense with the personal attendance of the accused. The Magistrate however regarding the non attendance of the accused as a *contempt of Court* called upon him to show cause why he should not be prosecuted under s 174 of the Penal Code for non attendance on service of summons *Held* that the accused did make an appearance though not a personal appearance on service of summons but that he did not personally attend should not under the circumstances have been regarded as an offence under s 174 of the Penal Code DURGA DAS PAKHIT v UMESH CHUNDRA SEN I. L. R. 27 Calc 985

32 ———— *Mad Act III of 1869—Power to order subordinate to carry out sale for arrears of revenue* —Madras Act III of 1869 confers no authority upon revenue officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue and therefore on failure to attend he cannot be convicted under s 174 of the Penal Code ANONYMOUS [5 Mad Ap 23

ANONYMOUS 7 Mad Ap 11

33 ———— *Mad Act III of 1869* —A Subordinate Magistrate convicted certain persons under s 174 of the Penal Code, of disobedience to summonses issued by him as tahsildar *Held* that the convictions under the first part of s 174 were sustainable *Madras Act III of 1869* gives a tahsildar power to issue summonses ANONYMOUS 6 Mad Ap 44

This was the only law under which he can issue summonses and on disobedience to them the persons summoned might be convicted under s 174 of the Penal Code ANONYMOUS 7 Mad. Ap 11

But he may not issue them to any person to appear before any one but himself therefore a conviction for disobedience to a summons issued by him to appear before a revenue officer is illegal ANONYMOUS 7 Mad Ap 10 11

34 ———— *Disobedience to summons served* —In order to make a person summoned as a witness liable under s 174 of the Penal Code the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart QUEEN v SUTHERLAND QUEEN v NARAIN SINGH [14 W R. Cr. 20

35 ———— *Evidence of notice to attend* —Before convicting a person under s 174 of the Penal Code it is necessary to prove that he had notice to appear at a certain time and place and that he did not do so IN THE MATTER OF SHIB PERSHAD CHUCKERBUTTY 17 W R., Cr 38

36 ———— *Mad Reg IV of 1816 ss 15 16—Disobedience of summons—Concurrent jurisdiction* —The provisions of s 174 of the Penal Code are not in conflict with the special provisions of ss 15 and 16 of Regulation IV of 1816 (Madras) In ordinary cases disobedience to the summons of a Village Munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code the Criminal Court must deal with it QUEEN v RAMACHANDRAPPA [I. L. R. 6 Mad. 249

37 ———— *Disobedience to a summons—Summons to appear at place outside British territory* —It is not an offence under the Penal Code s 174 to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory QUEEN EMPRESS v PARANGA [I. L. R. 10 Mad. 463

CONTEMPT OF COURT—*continued*

2 PENAL CODE S 174—*concluded*

38 ———— *Non attendance in obedience to an order of a public servant —Absence of public servant* —The offence contemplated by s. 174 Penal Code is an omission to appear at a particular time and at a particular place before a specified public functionary Where therefore the public servant was absent on the date fixed in a summons —*Held* that the person summoned could not be convicted under this section though he failed to attend having the intention to disobey the summons. QUEEN EMPRESS *v* KRISHTAPPA

[I. L. R. 20 Mad. 31

3 PENAL CODE S 175

39 ———— Penal Code s. 175—*Omission to produce document when ordered by Court —Criminal Procedure Code 1882 ss 477 480 485 and 487—Jurisdiction of Magistrate in respect of offence committed before him—Witness not producing document—Dissolved ence of lawful authority of public servant* —The accused was summoned as a witness to produce certain documents in a case before a Magistrate but he failed to produce them saying that they were not in his possession. The Magistrate having found that the statement was incorrect and that the accused could have produced the documents in question charged him with having committed an offence under s 175 of the Penal Code and himself tried and convicted him. *Held* that neither ss 477 480 nor s. 485 (which sections provide for the only cases in which a Court other than a High Court etc. can try persons for offences committed before itself) was applicable to the case and the Magistrate was therefore precluded by s. 487 from trying the case QUEEN EMPRESS *v* SESHAYYA

[I. L. R. 13 Mad. 24

It does not appear from the statement of the case whether or not the offence was committed in view or presence of the Court *and* taken cognizance of the same day From the judgment it would appear that it was *not* and this must form the ground for the decision for offences under s 175 Penal Code are expressly mentioned in s 480 of the Criminal Procedure Code and if committed in view or presence of the Court and taken cognizance of the same day the Magistrate would apparently have had clear power to try the offence and convict the accused as he did.

See IN RE PREMCHAND DOWLATRAM

[I L R. 12 Bom. 63

4 PENAL CODE S 228

40 ———— Penal Code s 228—*Jurisdiction to try* —An officer before whom whilst acting in a particular capacity an offence under s 228 of the Penal Code is committed cannot in another capacity take up and try the offence QUEEN *v* CHUNDER SEEKUR POY 12 W R. Cr 18

41 ———— *Prevarication—Refusing to answer questions* —*Held* that prevarication while giving evidence does not constitute the offence under s. 228 of the Penal Code of intention ally causing interruption to a public servant sitting in a judicial proceeding REG *v* AUBA BIN BHIKAV

[4 Bom. Cr 6

42 ———— *Prevarication* —Prevarication may though it does not necessarily amount to contempt of Court within s 228 Penal Code and s 435 of the Criminal Procedure Code 1872 REG *v* JAIMAL SHRAVAN 10 Bom 69

43 ———— *Prevarication—Refusing to answer questions* —*Held* that refusing or neglecting to return direct answers to questions does not constitute the offence under s 228 of the Penal Code of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding REG *v* PANDU BIN VITHOJI

[4 Bom Cr 7

44 ———— *Giving evidence reluctantly and inconsistently* —No conviction can be had under s 228 of the Penal Code simply because witnesses in a case give inconsistent evidence and give their evidence reluctantly and take up the time of the Court QUEEN *v* HURRY PARAMANICK TANTEE 15 W R. Cr 5

45 ———— *Obstruction of public servant* —A party who bids for an estate at a sale in execution knowing that he is not able to deposit the earnest money obstructs the business of the Court and is guilty of contempt of Court punishable under s 228 of the Penal Code IN RE MOHESH CHUNDER MOOKERJEE W R. 1864 Mis 3

46 ———— In a conviction under s 228 Penal Code it ought to be stated that the Judge was sitting in a stage of a judicial proceeding the nature of which should also be stated IN THE MATTER OF THE PETITION OF PROKASH CHUNDER DOSS 12 W R Cr 64

47 ———— *Intention to insult Proof of* —Before a conviction can be had under s 228 of the Penal Code of offering an insult to a public servant it must be proved that there was an intention to insult QUEEN *v* HURRI KISHEN DASS

[15 W R. Cr 62

5 PROCEDURE

48 ———— Record of statement—*Contempt by witness—Act XXIII of 1861 s 21* —In a proceeding for contempt it is under s 21 Act XXIII of 1861 fatal to the conviction if the Judge fail to record with the finding and sentence the statement of the offender LEKH RAJ *v* PALEE RAM

[1 N W 162 Ed. 1873 241

49 ———— When sentence of imprisonment necessary—*Criminal Procedure Code 1861 s 163—Penal Code s 179* —Under s 163 of the Code of Criminal Procedure if a Court before which the offence of contempt under s. 179 of the Penal Code is committed considers that a sentence of imprisonment is called for it should record a statement of the facts constituting the contempt

CONTEMPT OF COURT—*continued*

5 PROCEDURE—*continued*

and the statement of the accused and forward the case to a Magistrate QUEEN v PUTTON SAHOO [11 W R Cr., 49

50 ——— Omission to call on party to make defence—*Criminal Procedure Code 1861 s 163—Omission to follow Directions of*—When a Civil Court omitted (as directed by s 163 of the Code of Criminal Procedure) to call upon a person who was charged with contempt of Court to make any statement he might wish to make in his defence it was held that this irregularity was fatal to the order and that the High Court would exercise its extraordinary jurisdiction and reverse an order so made KASHINATH VITHAL v DAJIGOVIND [7 Bom A. C 102

51. ——— Omission to state reasons and facts—*Fine for contempt of Court*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt with any statement the offender may make as well as the finding and sentence Where this course was not adopted the High Court set aside the order inflicting a fine PANCHANADA TAMBIRAN 4 Mad 229

52. ——— Sending case for investigation—*Penal Code s 174—Criminal Procedure Code (Act XXV of 1861) s 171—Power of Subordinate Magistrate*—A Subordinate Magistrate has no power to try an offence punishable under s 174 of the Penal Code committed against his own Court but is bound under s 171 of the Code of Criminal Procedure to send the case if in his opinion there is sufficient ground for investigation to a Magistrate having power to try or commit for trial QUEEN v CHANDRA SEKHAR ROY [5 B L. R. 100 13 W R. Cr, 66

CHUTTOORBHOOJ BHARTHEE v MACNAGHTEN [15 W R., Cr, 2

IN THE MATTER OF TARAPROSHAD SAHOO [15 W R. 88

53 ——— Sending case for investigation—*Criminal Procedure Code 1861 s 171*—A Civil Court may under s 171 of the Code of Criminal Procedure, transfer a case to the Criminal Court for investigation without specifying the particular officer by whom it is to be investigated and the deposition of the Civil Court officer setting forth the charge on which he transferred the case to the Criminal Court is a sufficient complaint. QUEEN v MADHUB CHUNDER MISSER 13 W R. Cr 45

54 ——— *Criminal Procedure Code 1861 s 171*—Under s 171 of the Criminal Procedure Code a Court has no power to send a case to be investigated by the Magisterial authorities but must specify the Magistrate by whom the investigation is to be made QUEEN v NURPUT SINGH [4 N W., 86

55 ——— Duty and power of Collector—*Criminal Procedure Code 1861 s 171—Act X of 1859 s 147*—It is not necessary that the preliminary enquiry contemplated by s. 171 of the Code of Criminal Procedure should be conducted in the presence of the accused All the Court (Revenue in this case) making the enquiry has to do is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate and the Collector is not bound to dispose of a case of contempt of the lawful authority of a public servant under s. 147 Act X of 1859 but it is discretionary with him to proceed under s. 171 of the Code of Criminal Procedure CHOTA SADOO v BROOJO CHUCKERBUTTY 9 W R. Cr., 3

56 ——— Criminal Procedure Code ss. 480 537—*Act XLV of 1860 (Penal Code) s 228*—The procedure laid down in s. 480 of the Criminal Procedure Code should be strictly followed. The provisions of the section should be applied then and there at any rate before its rising by the Court in whose view or presence a contempt has been committed which it considers should be dealt with under s. 480 Where a Magistrate in whose presence contempt was committed took cognizance of the offence immediately but in order to give the accused an opportunity of showing cause postponed his final order of some days—*Held* that such action though it might be irregular was not illegal and as the accused had not been in any way prejudiced was covered by s 537 of the Criminal Procedure Code *Held* also that under the circumstances it was doubtful whether there was any necessity for the Magistrate to postpone the final order until the accused had had an opportunity of showing cause against it and that he should have directed the detention of the accused and dealt with the matter at once or before his rising. QUEEN EMPRESS v PAIAMBAR BAKHSH [I. L. R., 11 All., 361

57 ——— Mode of arrest for contempt in foreign territory—*Punishment for contempt of Court*—The High Court will not send a special bailiff into the Gaikwad's territories to arrest a defendant who has been guilty of a contempt of Court but the Court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay A defendant guilty of contempt of Court is liable to imprisonment on the criminal side of the Bombay Jail. HARI VALLABHDAS KULLIANDAS v UTAMCHAND MANIKCHAND 7 Bom O C., 173

58 ——— Application for discharge—*Practice*—When a person is in custody for contempt of Court any application for release should be made to the committing Judge It is advisable but not necessary to limit the period of commitment to a fixed time. IN THE MATTER OF SITTARAM ATMARAM [1 Ind. Jur., N S., 23

6. EFFECT OF CONTEMPT

59 ——— Person under contempt—*Privilege from arrest—Party to suit proceeding to Court*—When a writ of attachment for contempt was issued by the Court against a party to a suit in

CONTEMPT OF COURT—*concluded*

6. EFFECT OF CONTEMPT—*concluded*

that Court —*Held* he could not claim privilege from arrest while proceeding to Court for the purpose of attending the hearing of his suit JOHN v CARTER [4 B L R O C 90

CONTINUING OFFENCE

See BOMBAY MUNICIPAL ACT 1888 s. 47? [I. L. R. 22 Bom., 766

See CANTONMENT ACT 1889 [I. L. R. 22 Bom. 841

See CONVICTION

See KIDNAPPING I. L. R 18 All. 109

CONTINUING RIGHT

See LIMITATION ACT 18 , ART 120 [I. L R., 20 Calc. 906

CONTRACT

See CASES UNDER CONTRACT ACT

See CASES UNDER HINDU LAW—CONTRACT

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS

See CASES UNDER LIMITATION ACT 1877 ARTS 115 116

See CASES UNDER MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS

See CASES UNDER RIGHT OF SUIT—CONTRACTS OR AGREEMENTS

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRACTS

See CASES UNDER SPECIFIC PERFORMANCE

———— Avoidance of—

See DURESS

————Breach of—

See CASES UNDER ACT XIII OF 1859

CONTRACT—*continued*

See CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACTS

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACTS

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT

See CASES UNDER LIMITATION ACT 1877 ss 115 116 (1859 s 1 cls 9 AND 10)

See SMALL CAUSE COURT—PRESIDENCY TOWNS—DAMAGES FOR BREACH OF CONTRACT I L R. 19 Mad. 304

————Continuing breach of—

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED [I. L R 19 All. 39

See LIMITATION ACT 1877 s 23 [I. L. R. 2 Bom 273

————Illegal—

See CASES UNDER CONTRACT ACT s 23

————Implied—

See MADRAS RENT RECOVERY ACT s 11 [I L R 14 Mad 44
I. L. R 15 Mad. 47
I L R. 17 Mad. 43 50 54 73

————in restraint of trade

See CASES UNDER CONTRACT ACT s 27

————of service Breach of—

See CASES UNDER ACT XIII OF 1859

————Post-nuptial—

See CONTRACT ACT s 25 [15 B L R Ap 5

1 CONSTRUCTION OF CONTRACTS

1. ———— Printed form of contract—*Writing and printing—Sale of goods to arrive* —The defendants contracted to purchase certain piece goods from the plaintiffs who were dealers in these goods The contract of sale was written out on one of the printed forms of the plaintiffs firm which forms contained in print the words now in course of landing or in the said godowns and now on board ship As a matter of fact well known to both parties the goods contracted for were neither in the godowns nor on board ship *Held* that under the circumstances the printed words above set out formed no part of the contract entered into between the parties. CARLISLE NEPHEWS AND COMPANY v HURMOOK ROY [I. L. R. 9 Calc. 679 13 C L R 120

2 ———————— *Contract partly written and partly printed* —Where a contract is

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

partly printed and partly written and there is a conflict between the printed and written part the written part must be taken to control the printed part CARLISLE v NUTHMULL NOWLUCKEE [2 Hyde, 242

3 ———— "Tallow" Contract to deliver—A contract for tallow' is fulfilled by the delivery of the fat of sheep goats and other animals besides oxen MAHOMED IBRAHIM v LAUDER [Cor, 42

4. ———— Rope Contract to purchase —A contract in writing to take all your rope and Manilla rope at the following prices construed to mean all the vendor's rope in a certain godown on a particular day TARRACKNAUTH PAULIT v SHERBOURNE Cor 62

5 ———— Duration of contract—*Effect of recital in regard to control over operative words* —The parties during several years had transactions consisting of the deliveries of produce by the defendants to the plaintiff's agent under advances upon separate contracts specifying prices and of consignments by the defendants through the plaintiffs A purchase account' and an interest account kept between them resulted in a general account and in 1872 a large sum was due thereon to the plaintiffs to whom in 1873 the defendants sent letters mortgaging property with instruments of title accompanying In the beginning of 1874 the parties entered into a written agreement which described the balance due in respect of previous advances as the block account comprising also an interest account and the transactions proceeded The intention was shown that the advances should be liquidated by returns but the only date mentioned from which an inference could be drawn as to the intended duration of the arrangement between the parties show at 30th June 1875 In this suit brought in December 1875 it was contended that the right construction of the agreement of 1874 required that it should continue to subsist (unless rescinded either by mutual agreement or on breach of its stipulations by one party justifying its rescission by the other) until the liquidation of the balance by returns at all events as regarded the block account In order to the working of an agreement for a liquidation in such a way it would have been necessary to imply obligations for which no express provision had been made nothing for instance having been fixed as to the extent or duration of the business or as to the rates at which produce was to be offered or accepted *Held* that such provisions could not now be supplied and that the stipulations as to the block account were binding only during the continuance of the arrangement for the conduct of the business by the parties such arrangement being terminable at will after the 30th June 1875 The letters of 1873 and the documents of title deposited with them were held to constitute a security for the general balance due from the defendants to the plaintiffs and not only a security for advances on certain of the contracts referred to in a paragraph in the nature of a recital for the latter was not necessarily repugnant to the wider construction, and the operative words were wide enough to apply to all the transactions between the parties The construction of an ambiguous stipulation in a written agreement may be governed or qualified by a recital but if the intention is clearly to be collected from the operative words that intention is not to be defeated or controlled because it may go beyond what is expressed in the recital MARCAR v SIGG I L R, 2 Mad. 239

6 ———— Extras not mentioned in contract—*Allowance for extras* —The plaintiff in answer to an application to him by the defendant for an estimate of the cost of some surveying tents replied— We send you as requested the prices of tents flags and poles etc enclosing a memorandum of prices in which there was no allusion to flies for the tents It appeared that no mention had been made about the flies in a conversation which subsequently took place between the parties during the progress of the manufacture of the tents *Held* that the plaintiff was not entitled to recover an extra price on account of flies LAUDER v EASTERN BENGAL RAILWAY Co 1 Ind Jur N S 320

7 ———— Sale and purchase of indigo —*Ground for rejection* —A contract of sale and purchase of indigo the produce of a certain concern contained the following clause — The quality of the indigo to be equal to that usually made at the above concern and to be delivered in good merchantable order free from dampness carefully packed the contents of each chest to be of one quality and got up with the usual care of the mark and if not so delivered such allowance to be made to purchasers as shall be awarded by *J P T* *Held* the words if not delivered referred to all the several preceding stipulations including the quality and therefore inferiority of quality below that usually made at the indigo concern was no ground for rejection of the indigo tendered but only the subject for an allowance to be awarded by *J P T* MACFARLANE v ROBERT [2 Ind. Jur, N S, 258

8 ———— Contract for coal on behalf of Government—*Default of contractor* —Where *C* entered into a contract with the Government to construct a railway feeder and purchased coal from a coal company and after the coal had been delivered and deposited at a certain place *C* absconded —*Held* that the Government had no right to detain or claim the coal or to take the same out of the possession of the coal company who were entitled to retain possession of the coal against any claimant but *C* himself GORDON STUART & Co v EXECUTIVE ENGINEER OF THE CALCUTTA AND JESSORE ROAD DIVISION 7 W R, 426

9 ———— Timber trade in Burma— *Tainzahs* —According to the timber trade in Burma the holding of what are called tainzahs does not give possession of the timber and where the parties in a contract use the word "received and do not think

CONTRACT—continued

1 CONSTRUCTION OF CONTRACTS —continued

5 to use the word entered they must be taken t have intended the word r entered t have the meaning f having obtained possession of the goods and n t merely f having entered and got tamzahs for them BURMA COMPANY v SNADDEN

[17 W R. 120

10 ———— Delivery by instalments—*Tender—Abandonment of excess—Sale of goods*—A contract made between the plaintiffs and the defendant stipulated f r the delivery to the defendant of " 00 bags of Madras Coast castor seed which were to be shipped per steamers and then stated that shipment of 2 ,00 bags was to be made in December On the 12th December 1 690 bags arrived by steamer *Shahjehan* and n tice in writing was given to the defendant wh requested that the delivery might be postponed owing to his not having godown room On the 14th December the defendant refused t take the 1 690 bags on the gr und that he was not bound to take a portion of the 2 00 bags but only the whole at one time On the 16th December the defendant tendered the value of 2 00 bags which was refused and on the same day the plaintiffs resold the 1 690 bags On the 17th December the plaintiffs informed the defendant that 810 bags the balance of the 2 ,00 of the December shipment were due on the 18th and they did arrive on the 19th but were refused by the defendant on the same ground as before and they were accordingly resold by the plaintiffs *Held* that according to the terms of the contract there was a legal and proper tender of the December shipment by the plaintiffs and that the defendant having committed a breach of the contract in not accepting the bags the plaintiffs were justified in reselling them at once and suing for damages SIMSON v GORA CHAND DOS

[I. L. R 9 Calc 473

11 ———— Delivery order for goods deliverable monthly—*Sub contract—Tender—Repudiation of contract—Damages*—The defendant entered into a contract with the Union Mills for the purchase of 90 000 gunny bags at R21 8 per 100 bags delivery from October to March, each month 15 000 bags Subsequently the defendant contracted to sell to the plaintiffs these 90 000 bags at R24 2 per 100 bags delivery from October to March 15 000 each month buyers to pay difference cash against delivery order on Mills In August the defendant made out in the plaintiffs favour a delivery order directing the mills to deliver 90 000 bags on receiving payment for the same at R21 8 per 100 bags and on the same day sent to the plaintiffs a bill showing the amount of difference payable to him by them The plaintiffs refused the delivery order on the ground that it had not been accepted by the mills but on a subsequent tender of the order and bill they offered on the 5th September to pay the amount of difference on receiving a delivery order accepted by the mills The defendant treated the contract as at end and sold the bags in the market In a suit for damages —*Held* that the defendant sold not only a delivery order but the right to obtain from the mills 90 000 bags deliverable in lots of 15 000 per month after payment of the difference and impliedly undertook that the mills would accept the delivery order and deliver the goods in terms thereof when presented that the plaintiffs were entitled to get the delivery order at any reasonable time before the first mothly instalment fell due and further that the defendant was not entitled to repudiate the contract after the plaintiffs offer of the 5th September and having done so was liable in damages LAMDEO v CASSIM MAMOOJEE

[I. L. R., 21 Calc 173

12 ———— Shipment at monthly intervals—*Contract Act (IX of 1872) s 39*—The defendant agreed to purchase from the plaintiffs 120 cases of condensed milk which were to be shipped in London and delivered in Madras The agreement stipulated for shipment in six lots of twenty cases each at monthly intervals but it contained a proviso whereby the plaintiffs were excused from monthly shipments if space in ships sailing for Madras were not available The second shipment was not made within one month from the date of the first shipment thereupon the defendant repudiated the contract *Held* (1) that the interval of time contemplated in the contract was one month more or less regard being had to the time which it might be reasonable to allow to the plaintiffs for finding a steamer available for the required shipment (2) that the plaintiffs having failed to make the second shipment by a steamer of which they might have availed themselves the defendant was justified in rescinding the contract VOLKART BROTHERS v RUTNAVELU CHETTI

[I L R. 18 Mad. 63

13 ———— Delivery in whole of November on seven days notice from buyer—*Breach of contract*—A contract for delivery by the defendants to the plaintiff of 1 000 bags of ginger stated that ' delivery was to be taken and given in the whole of November on seven days notice from the buyer On the 5th November the plaintiff gave notice to the defendants requiring delivery to be given within seven days and again on the 11th that he was prepared to take delivery on the following day On the 12th the defendants wrote to the plaintiff stating that they would give delivery on the 28th 29th and 30th November On the 15th the plaintiff gave notice that he considered the contract at an end In a suit for damages for non delivery —*Held* (affirming the decision of the Court below) that the words on seven days' notice from the buyer were intended to give the buyer the right of fixing the particular time in November at which the delivery was to commence and that the defendants were therefore bound to commence delivery on the expiration of the seven days' notice JUGGERNATH KHAN v MACLACHLAN

[I. L R 6 Calc 681 8 C L R 225

14 ———— Non acceptance—*Breach of contract*—The plaintiff entered into a contract with the defendant to deliver sulphur to be imported by

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

the ship *Michael Angelo* No sulphur arrived by the *Michael Angelo* consigned to the plaintiff and he procured it elsewhere but the defendant refused to accept it In an action for non acceptance,—*Held* reversing the decision of the Court below (MARKBY J 2 B L R S N 9) that the defendant was not bound to accept sulphur not imported by the *Michael Angelo* BIHARI LAL v MADHUSUDUN KUNDU [2 B L R O C, 154

15 ———— *Breach of contract— Ex a certain ship* —By a contract entered into between the plaintiffs and defendant the plaintiffs agreed to sell certain goods *ex* a specific ship to the defendant the goods to be taken delivery of within forty five days and ten days to be allowed for inspection and claiming allowance for any damaged goods the defendant to take the risk of damage from the date of the contract The period for taking delivery and for inspection dated from the 13th May The plaintiffs did not receive the whole of the goods until 16th of June and therefore were not ready to perform their contract by submitting them for inspection within the specified time the defendant did not call upon them to do so In a suit for breach of the contract by the defendant in not accepting the goods —*Held* that the plaintiffs not being in a position to complete the contract no cause of action had arisen *Held* on appeal that the goods ought to have been ready for inspection within the ten days stipulated and the plaintiffs not having shown that they were ready and willing so to perform the contract had no right of action notwithstanding that the defendant never in fact called on them to deliver the goods for inspection The words *ex* a certain ship must be taken to mean that the goods are really landed and not in course of being landed and therefore independently of the question of the necessity on the part of the plaintiffs to show their readiness to perform their part of the contract the defendant was not bound to take goods on board ship in respect of which if the contract were binding upon him he would have been bound to take the risk of any damage or loss to the goods on board ship or in the course of landing ROBERTSON GLADSTONE & CO v KUSTURY MULL [3 B L R O C 103

16 ———— Contract for freight—*June shipment—Naming probable date of arrival of steamer—Later arrival no breach of contract—Estoppel—Notice of readiness to load* —The defendant in April 1891 contracted with the plaintiffs for freight for 3/5 tons seed wheat etc by any first class steamer etc (subject to safe arrival) June shipment Goods to be alongside in time to be all taken in on or before the second day after notice that steamer is ready for cargo otherwise difference of freight at market rate to be payable on demand as liquidated damages etc On the 29th May defendant wrote saying he would be glad to know the name and probable date of arrival of the steamer On the 3rd June the plaintiffs replied declaring the S S *County of York* against the engagement and adding in a postscript that the steamer would be ready to load on or about the 12th instant The S S *County of York* arrived in Bombay on the 10th June but from unforeseen circumstances had not a berth in the dock and was not ready to load until the 23rd instant In the meantime on the 18th June the defendant repudiated the contract on the ground that having been led by the plaintiffs to expect that the ship would be ready to load on the *12th instant* he had made telegraphic arrangements on that fact ing and the ship not being ready he was compelled to ship his goods by other steamers in order to fulfil his engagements The plaintiffs accordingly relet the freight on defendant s account and brought this suit for the loss incurred in so doing *Held* that the plaintiffs were entitled to succeed for that nothing had occurred to alter the original contract which gave them the whole of June in which to provide a steamer The statement made by the plaintiffs on the 3rd of June (in answer to the defendant s enquiries as to the probable date of the arrival of the steamer) that the steamer would be ready to load on or about the 12th instant was not a promise but a mere expression of opinion. The question of estoppel did not arise On the 22nd June the plaintiffs gave their shippers amongst others the defendant a notice to the following effect As the *County of York* will be in dock to morrow ready to receive cargo we have to request that your cargo be down not later than Wednesday the 24th instant etc etc *Quare* —Whether this was a "notice that the steamer was ready for cargo" as required by the contract BETTS CRAIG & CO v MARTIN I L R 16 Bom. 389

17 ———— Custom or usage qualifying contract—*Shipment Meaning of*—On 18th April 1890 the defendant signed a contract (No 3053) to buy from the plaintiffs 25 bales grey dhuties June shipment in four lots with an interval of four weeks These goods were not supplied as they could not be obtained at the price limited On 24th September 1890 the defendant gave the plaintiffs an order at an increased limit of price in the following terms Please telegraph your Manchester friends to purchase on my account 25 bales grey dhuties relating to No 3053 at an all round advance of Id per pair on original limits for November December January shipments in three monthly lots about 8 bales to be shipped in each month. This order was accepted and the goods were shipped as follows — 6 bales were handed to the carriers (the S and N W Railway Co) in Manchester on the 8th November 1890 and were shipped at Birkenhead on the 9th December 1890 6 bales were handed to the same carriers on the 4th December 1890 and were shipped on the 13th December 1890 10 bales were handed to same carriers on the 23rd December and 1 bale on the 24th December and these 11 bales were shipped on the 6th January 1891 The defendant refused to accept the goods He contended that the documents of 18th April and 24th September should be read together and that the final contract was for November December January shipments in three

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

monthly lots at intervals of four weeks. He also contended that the shipment on the 9th December 1890 was a late shipment and that he was not therefore bound to accept the goods under the contract. As to the last contention the plaintiffs alleged that by the custom of Bombay in the case of contracts made with members of the Native Piece-goods Association the date of the carrier's weight note was to be regarded as the date of shipment and that under such a contract as the one in question delivery to the Railway Company or other inland carrier was equivalent to shipment. This custom it was alleged originated in consequence of the above Association having agreed that all piece goods ordered out by its members should be conveyed to Bombay by certain lines of steamers only and by no others. It was stated that unless some such custom existed it would in many instances be impossible for Bombay merchants to carry out their contracts as no steamers of the selected lines might be available. The Judge of the Court of Small Causes at the hearing found that the alleged custom existed and was generally accepted and understood by merchants and dealers in Bombay. On reference to the High Court —*Held* that the contract finally agreed only was that 25 bales relating to No 3053 (*i e* the documents of the 18th April) should be purchased on defendant's account at an all round advance of 1*d* per pair on the original limits. Such bales to be shipped in the manner and at the times mentioned in the document of the 24th September 1890 SMITH *v* LUDHA GHELLA DAMODAR I L R., 17 Bom 129

18 ———— Sale of goods—*Non acceptance of goods —Contract for goods to be ordered from Europe—Performance of contract by offer of goods of same description not ordered out for purchasers but bought by vendors in Bombay* —On the 7th August the defendants commissioned the plaintiffs to order out from Europe 500 cwt copper braziers September shipment assorted in the manner set out in the indent signed by the defendants free on board Bombay harbour at the rate of £53 5 per ton On the same day the plaintiffs sent a reply to the defendants' order in their usual form partly lithographed and partly written as follows —

We have the pleasure to inform you that we have received a telegram from our Manchester friends and so far as regards the cyphers therein used we learn that they advise the following purchases which will be invoiced to you at your limit subject to confirmation by letter as usual Order this day hundred bundles of copper braziers at £53 5 per ton free on board Bombay As a fact however no telegram had been received from the plaintiffs Manchester friends and the plaintiffs had not learned that they had advised the purchases referred to in their reply The acceptance of the plaintiffs offer was really based on the plaintiffs view of the probabilities of the copper market The agents in England were unable to carry out the order and it remained unexecuted On the 20th October the plaintiffs having negotiated with one Naga Ducha to take over from him a September shipment of copper by the S S *Merton Hall* answering to the defendants order and for the purpose of fulfilling it wrote to the defendants as follows —

We beg to inform you of the arrival of the S S *Merton Hall* with hundred packages of goods sold to you as per agreement No 213 and have therefore to request payment of the cash for those goods according to the terms of the agreement. The plaintiffs negotiations however with Naga Ducha fell through and they were unable to supply the defendants with the goods from the *Merton Hall* The defendants on the 30th October wrote through their solicitors to the plaintiffs stating that they believed the goods never came to Bombay and that they considered the contract at an end The plaintiffs however on the 29th October had succeeded in purchasing a September shipment of goods from one Beg Mahomed corresponding to those ordered by the defendants They then on the 31st October wrote to the defendants informing them that it was a mistake of their clerk to advise the arrival of the defendants goods per *Merton Hall* and handing the defendants invoice of 100 bundles arrived *ex Tulan Head* The defendants discovered that the plaintiffs had not ordered out these goods but had purchased them in Bombay and on that ground they refused to accept them The price of copper had then fallen The plaintiffs sold the goods by auction and brought this suit against the defendants to recover the difference between the price realized by the sale and the price which by their contract the defendants had agreed to pay It was admitted by the plaintiffs witnesses that it was intended at the time the defendants gave their order that the goods should be ordered out from England by the plaintiffs and that this was the invariable course of business of the plaintiffs firm—the present case forming the only instance to the contrary *Held* that the defendants were not bound to accept the goods offered by the plaintiffs and that the plaintiffs were not entitled to recover the amount sued for An importing firm which accepts a commission to order out goods at a fixed rate and undertakes that they shall be invoiced to the person giving the order at that rate does not (in the absence of proof of usage to the contrary) fulfil his contract by obtaining goods answering to the terms of the order from another firm in Bombay and tendering them to the person giving the order BOMBAY UNITED MERCHANTS COMPANY *v* DOOLUBRAM SAKULCHAND I L R. 12 Bom 50

19 ———— Contract to deliver goods—*Suit for non delivery—Agreement exempting from liability in case of loss of carrying ship—Necessity for declaring name of carrying ship to purchaser—Loss of ship What is a—July August shipment What amounts to* —The defendants agreed to sell to the plaintiff 500 tons of coal per steamer July August shipment The last clause of the agreement was as follows — In the event of the ship being lost this contract to be null and void." The coal was put on board the S S *Rubens* by the defendants at Sunderland on the 30th and 31st August On the 1st September the *Rubens* was sunk by collision in

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

dock and remained at the bottom in twenty three feet of water for sixteen hours when she was raised and her cargo discharged The coal was pronounced unfit for a voyage to Bombay Extensive repairs to the ship were found necessary and she was use less until the 6th October The plaintiff sued for damages for non delivery of the coal. The defendants relied on the last clause of the agreement as exempting them from liability *Held* that the defendants were not liable The *Rubens* was lost for the purpose for which she was required under the contract ie for a voyage in fulfilment of a July August shipment and the defendants having proved that the coal had been duly shipped on board the vessel so lost were exempt under the last clause of the agreement from liability for non delivery It was argued that until the name of the carrying ship was declared to the plaintiff as purchaser neither the ship nor the coal was assigned to the contract and therefore the loss could not be within the contract *Held* that if such a condition was intended it should have been expressed. The appropriation of certain goods to the contract by the vendors (the defendants) the placing them on board the *Rubens* and doing all in their power to despatch them to Bombay in fulfilment of the contract were enough to entitle them to the protection of the last clause of the agreement NUSSERVANJI JEHANGIR KHAMBATA *v* VOLKART BROTHERS I L R 13 Bom 15

20 ——— **Contract to sell from 2 500 to 3 500 tons of coal**—*Breach of contract—Non delivery of coal—Damages*—On the 18th May 1893 the defendants sold to the plaintiffs the entire cargo of coal per steam ship ——— May shipment *via* canal amounting to 2 500 to 3 500 tons or there abouts The defendants intended a certain steam ship called the *Ethelaida* which carried a cargo of 3 335 tons of coal to satisfy this contract This ship however did not load in May and consequently her cargo did not fulfil the condition of the contract From the day of making the contract the plaintiffs had been urging the defendants to declare the name of the vessel in which the coal contracted for was to be shipped On the 14th June the defendants by letter informed the plaintiffs that the vessels chartered for their May shipment had not loaded in May and they offered to cancel the contract On the same day however and about an hour after the plaintiffs had received this letter and before they had replied to it the defendants sent them another letter as follows — We have now been informed that the boat our coals have been loaded in is the *Ethelaida* and we now beg to declare it Correspondence subsequently passed between the parties On the 15th June the plaintiffs wrote to the defendants as follows — Please inform us finally what you intend In case the *Ethelaida* is declared as bringing coals sold to us under contract of 18th May please let us know the date of her sailing landing and the particular date of her arrival in Bombay and also how much coal she has on board On the following day the defendants replied The *Ethelaida* is the boat chartered for the cargo we sold you We do not positively know whether she commenced to load in May or June She was expected to load about 3 300 tons On the 28th June the defendants wrote definitely stating that the *Ethelaida* did not load in May The plaintiffs refused her cargo and sent in a statement of their alleged loss calculated upon 3 300 tons the amount stated to be the cargo of the *Ethelaida* in the defendants letter of the 14th June *Held* that the damages must be calculated upon a cargo of 2 500 tons only The *Ethelaida* was never incorporated into the contract The defendants declared her against the contract but after they had informed the plaintiffs that she had not loaded in May the plaintiffs refused her cargo. The contract which the defendants failed to fulfil was a contract to deliver the *Ethelaida* cargo which they were always ready and willing to deliver The option rested with the defendants whether they would deliver 2 500 or 3 500 tons or any intermediate quantity and upon no principle could the Court exercise that option for them and declare that they were liable to deliver more than a cargo of 2 500 tons. CURSETJI JEHANGIR KHAMBATTA *v* CROWDER [I L R 18 Bom 299

21. ——— **Suit for non delivery**—*Clause exempting from liability in case of loss of carrying ship—Loss of ship—Declaration of ship after date of loss—Appropriation of goods after goods lost*—The defendants by a contract dated 10th January 1896 sold 2 500 tons of coal to the plaintiff of the February and March shipment to be delivered in Bombay No ship was named in the contract which contained the following clause — In the event of the ship being lost this contract shall be null and void. February and March shipments ordinarily arrive in Bombay on or before the 30th April following All of the coal contracted for was duly delivered by the defendants except 1 376 tons which still remained to be delivered to the plaintiffs By a letter dated 25th April 1896 addressed to the plaintiff the defendants declared the S S *Eastby Abbey* as the ship carrying the said 1 376 tons of coal remaining due under the contract There was no evidence of any appropriation of coal on board the *Eastby Abbey* to the purpose of the above contract prior to this declaration It subsequently transpired that the *Eastby Abbey* had run on a reef in the Red Sea on the 16th April and so seriously damaged that being taken to Suez (where such of her cargo as had not been thrown overboard was sold) she was found unable to proceed to Bombay and she returned to England for repairs The plaintiff sued the defendants for non delivery of 1,376 tons of coal. The defendants pleaded that the ship having been lost they were exempt from liability under the above clause in the contract *Held* that the defendants were liable for the non-delivery of the coal There having been previously to the declaration of the ship no appropriation of the coal on board to the purpose of the contract the exemption clause did not apply *Semble*—In case of a contract containing such an

CONTRACT—continued

1 CONSTRUCTION OF CONTRACTS —continued

exemption clause as the one in questi n the declara ti n of a ship so as thereby to appr priate goods on board to the purposes of the contract is useless if made after the ship has been l st whether the fact of the loss is known to the declarant or n t DADABHAI HORMUSJI DUBASH v KHAMBATTA

[I. L. R. 22 Bom., 189

22. ———— Continuing offer—Successive contracts—Reasonable notice—Offer—The plaintiffs were the agents of two mills in B mbay The defendants were a coal company carrying on bus ness in B mbay by their agents the Bombay Company Limited. The defendants on the 19th of August 1897 signed a memorandum in the form of a letter addressed to the plaintiffs of which the first two clauses were as follows — The undersigned have this day made a contract with Messrs Homee Wadia & Co for a peri d of twelve m nths viz from 1st September 1897 to 31st August 1898 Sellers to supply them with Bengal Coal Co s Desburghur from time to time as required by purchasers reas nable notice to be given of such requirements The t tal quantity indented for during the year shall n t exceed without seller's consent the maximum average of 350 t ns per month. Up to the 10th July 1898 the plaintiffs had indented for 1 ,52 tons of which 1 ,5 tons had been delivered On that date they indented f r 500 tons more On the 18th July the plaintiffs further indented for an additi nal 1 ,500 tons The defendants replied ffering to deliver 500 t s in August but decl ning to deliver 1 ,500 tons The plaintiffs on the 2 nd July gave n tice to the defendants that they w uld require delivery of the balance viz 2 648 tons (that is 4,300 minus 1 5 2 tons already delivered) on or bef re the 31st August 1898 The defendants subsequently d livered 200 and 500 tons leaving 1 948 tons undelivered The plaintiffs claimed R 600-13 as damages for n n delivery *Held* that the memorandum of the 19th August 1897 was n t a contract but simply a continuing offer and that each successive order given by the plaintiffs was an acceptance f the ffer as to the quant ty ordered. The ff r of the defendants and each successive order of the plaintiffs constituted a series of c ntracts The failure alleged was on to comply with orders given after the defendant s offer was cancelled and withdrawn *Held* further that plaintiffs were n t entitled to obtain more than 350 tons in any one m nth without the defendants c n ent *Held* further that the n tice given by the plaintiffs on the 2 nd July 1898 to supply 2 648 t ns was n t a reasonable n tice with in the meaning of the memorandum of the 19th August 1897 BENGAL COAL Co v HOMEE WADIA & Co

[I L R 24 Bom 97

23 ———— Offer—Acceptance in different terms—Contract Act (IX of 1872) ss 7 and 207—Evidence of previous dealings between parties inadmissible —The defendant made an offer in writing to the plaintiffs for the purchase of 200 bales f pepperill drill at 9s 2d A few days later the plaintiffs salesman tendered for signature to the defendant an indent containing certain terms not contained in the original offer and in particular containing the word Free Bombay Harbour and interest This the d fendant refused to sign The plaintiffs h wever sent the offer by cable to their home firm and on receipt of a favourable reply communicated this acceptance to the d fendant This acceptance the d fendant said he had returned. The plaintiffs denied that he had done so *Held per* JENKINS C J— The law on this point is thus formulated in the most authoritative mode by the Contract Act (IX of 1872) s 7 In order to convert a proposal into a promise the acceptance must be absolute and unqualified That is to say until there is such an acceptance the stage of negotiations has n t been passed and no legal obligation is imposed Similarly any departure from the terms of the offer or any qualification vitiates the acceptance it accompanies unless it is agreed to by the person from whom the offer comes In other w rds an acceptance with a variation is no acceptance; it is simply a counter proposal which must be accepted by the original promis r before a contract is made *Held* further that because the acceptance was n t shown to have been returned no inference could be drawn that the defendant must have assented to the terms in which it failed to correspond to his offer It is clear that a person making a proposal cannot impose on the party to whom it is addressed the obligation to refuse it under the penalty of imputed assent or attach to his silence the legal result that he must be deemed to have accepted it Evidence of previous dealings is admissible only for the purpose of explaining the terms used in a contract and not to impose on a party an obligation as to which the contract is silent or to read into it a liability which would otherwise not exist It was impossible to find in dealings carried out on the basis of signed indents any clue to the intention f the parties when n t only was no indent signed but the defendant refused to sign one MAHOMED HAJI JIVA v SKINNER

[I. L R. 24 Bom 510

24 ———— Executory contract involving personal considerations—Assignment of contract—Contract consisting of distinct contracts with separate parties —Seven salt manufacturers the defendants contracted with *A* to manufacture at least in the factory in the name of and for the benefit of *A* such quantities of salt as he might require them to manufacture each season for seven years in consideration f *A* s paying them at the rate f R11 8 0 per garce of salt (four months credit after each delivery being allowed) and of his paying Government tax and dues and executing all duty papers in the defendant s factory *B* was a party with *A* to the contract though he was not expressly mentioned therein *A* assigned his share in the contract to *C*. *B* as first plaintiff and *C* as second plaintiff brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract during the second year of its continuance (1880) and praying (1) that all the

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

defendants be directed to deliver to the plaintiffs the salt collected during 1886 (2) that defendants 2 4 and 7 should be held liable for any damages plaintiffs might suffer through a fall in the price of salt The Court of first instance having held that the contract contained seven separate and distinct contracts each defendant having contracted with reference to his own pans only decreed (1) that the seven defendants should pay damages at the rate of R5 12 0 per garce for the salt collected by each during the years 1886 to 1889 leaving the quantity to be ascertained in the execution of the decree (2) that the defendant should pay the plaintiffs costs On appeal the District Judge modified the decree by fixing the rate of damages at R45 10 0 for each garce of salt *Held* on appeal that *A* was not competent to assign his interest in the contract to the second plaintiff since the contract was based on personal considerations and that the assignment of it as an executory contract was invalid without the consent of the defendants *Farrow* v *Wilson L P 4 C P 744 Humble* v *Hunter 12 Q B 310 Arkansas Valley Melting Company* v *Belden Mining Company 127 U S R 379* followed NAMASIVAYA GURUKKAL v KADIR AMMAL I L R., 17 Mad. 163

25 ——— Sale of goods—*Special place of delivery to be mentioned hereafter —Assessment of damages—Contract Act (IX of 1872) ss 49 94 and 231* —Bought and sold notes of Purneah indigo seed provided The seed to be delivered at any place in Bengal in March and April 1891 It was added the place of delivery to be mentioned hereafter The buyer made mention of this on the 20th March 1891 in a letter to the broker for both parties This letter specifying Howrah railway station as the place was forwarded to the vendor who replied that he would deliver at his own godowns at Sulkea This the buyer declined. The vendor and the buyer each insisting that the place named by him was the proper one for delivery the buyer refused to accept at the vendor s godowns or at any place other than Howrah station The vendor remained for a certain time ready and willing to deliver at his godowns at Sulkea and the buyer not accepting delivery at that place the vendor declared the contract cancelled. The buyer then sued him for breach of the contract to deliver at the place mentioned by the buyer On the question whether the vendor had discharged his liability by readiness and willingness to deliver at his own godowns at Sulkea —*Held* that the choice of place given originally by the contract to the buyer subject only to the express contract that it must be in Bengal and to the implied one that it must be reasonable had not been converted by the words about mention thereafter into a deferred question to be settled by a subsequent agreement The buyer according to the contract already subsisting had the right to fix the place There was a special promise in the contract as to the delivery and to complete its terms nothing more was required than a mention by the buyer of a reasonable place within Bengal This had been made by him. The contract therefore did not fall within s. 94 of the Indian Contract Act (IX of 1872) dealing with cases where there has been no special promise as to delivery and fixing the place of production as the place for delivery but rather resembled what was contemplated in s 49 And the buyer was entitled to damages on the contract. GRENON v LACHMI NARAIN AUGURWALA [I. L. R. 24 Calc., 8 L. R. 23 I. A 119

26 ——— *Contract to supply goods at fixed price—Duty imposed on material subsequently to date of contract—Liability to supply goods—Indian Tariff Act (VIII of 1894) s 10*— On 2nd November 1894 the defendant contracted to supply the plaintiff with a certain quantity of dhotars made of European or Egyptian yarn No 80 at the rate of 2-5 pairs each month for a period of one year In January 1895 an import duty of five per cent was imposed by Government on the yarn The defendant thereupon declined to supply the dhotars unless the plaintiff paid the duty in addition to the contract price *Held* that under s 10 of Act VIII of 1894 the defendant could call on the plaintiff to pay the duty which he had paid on the yarn that is he could add so much to the contract price as would be equivalent to the duty which he himself had paid The question was whether the dhotars supplied to the plaintiff were actually made out of yarn on which duty had been paid by the defendant TRIKAMLAL JAMNADAS v KALIDAS DALPATRAM [I. L. R 21 Bom 628

27 ——— *Offer of performance—Tender of railway receipts endorsed in blank—Goods not available—Goods subject to demurrage or freight—Duty of seller*—*P* agreed to sell and *F* to buy certain goods to be delivered to *F* in April May 1897 The contract of sale contained (*inter alia*) the following clauses (10) The goods to be tendered fully 48 hours before the expiration of the present term of 72 hours granted by the railway company in order to enable buyers to weigh sample and inspect the same; and the delivery not to be considered complete until the samples have been refracted and examined and any dispute about quality etc settled (11) If railway receipt be tendered such to be handed to buyers 48 hours before the goods are liable to demurrage under the present term of 72 hours granted by the railway company *P* not having before the 31st May goods of his own to meet the contract arranged with *H* for certain goods of *H* to be delivered under it and tendered to *F* On that day certain railway receipts which had been endorsed in blank by *H* in respect of the said goods were tendered to *F* *F* was ready to pay for the goods; but before tendering the price he insisted upon an endorsement of the railway receipts by *H* to *P* and by *P* to himself *P* was unable to point out the goods to be delivered under the contract nor could he indicate the wagon numbers *P* refused to procure the endorsements required by *F* and thereupon *F* declined to take delivery as proposed though he tendered the price in

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

exchange for the goods. *Held* that, *F* not having had an opportunity of inspecting the goods as provided by the contract the tender made as aforesaid by *P* was not such an offer of performance of the contract as *F* was bound to accept *Held* also that *F* was not bound to accept a tender of railway receipts for goods subject (as some of these were) to demurrage nor for goods on which freight had not been paid (as was the case with some of these goods) nor for goods that were not available on the 31st May as in the present case In order to establish a valid tender of the goods it was for *P* to show that had *F* taken the railway receipts the railway company would have been bound to deliver the goods upon production of the receipts and *F* was under no duty to point out to *P* that the tender was defective *F's* duty under the contract arose when a sufficient tender was made to him and not till then. Failure to justify an alleged breach of contract upon one ground only which is found insufficient does not disentitle the defendant to rely upon other grounds which his rights under the contract entitle him to rely upon. *Cowan* v *Milbern L R., 2 Exch 230* and *Mothoormohun Roy* v *Bank of Bengal I L R 3 Calc., 392* referred to MOTICHAND v FULCHAND I L. R., 26 Calc 142 [3 C W N 116

28 ———— *Tender of railway receipts for goods subject to freight—Railway receipts for goods subject to demurrage—Defective tender—Estoppel.*—Under a contract of sale of goods it was provided that if instead of the goods railway receipts for them be tendered they must be handed over to the buyers 48 hours before the goods were liable to demurrage under the present term of 72 hours granted by the railway company that sellers must be present at the time of delivery to inspect the weighing and sampling and in their default buyers will weigh and sample and sellers must abide by the result. On the last day of delivery the plaintiffs tendered to the defendants certain railway receipts purporting to cover the goods under the contract and blank endorsed by the consignee named in the receipts and demanded payment of the goods they did not offer to give delivery of the goods covered by the receipts The defendants refused to accept the railway receipts until they were endorsed by the consignee named in them to the plaintiff and by the plaintiff to the defendants It was subsequently found that freight had not been paid on the receipts and that demurrage was payable on some of the goods but the defendants did not at the time raise any objection on that ground. *Held* that having regard to the terms of the contract the defendants were not bound to accept the railway receipts or upon their being tendered to pay the price of the goods as demanded. That the plaintiffs had not complied with the terms of the clause relating to delivery by railway receipts and it was open to the defendants to rely upon that objection and they cannot be said to have waived all questions as to freight demurrage and the tendering of railway receipts instead of the goods themselves That the offer made by the plaintiffs did not constitute a readiness and willingness on their part to deliver the goods. MOTICHAND v SREEKISSEN [4 C W N 313

29 ———— Collateral agreement - *Contract Act ss 21 65—Mistake of law—Agreement to secure repayment of loan collateral to primary obligation.*—By an agreement in writing defendants trustees of a temple in consideration of an advance of money which they represented was required to pay off debts incurred for the benefit of the temple granted to plaintiff a lease of the right to manage the temple lands and plaintiff promised that he would repay himself out of the profits to be derived from the lands and that neither the defendants nor their family property should be made liable for the debt In a suit by plaintiff against a tenant of the temple lands this lease was held to be void for illegality Defendants subsequently resumed management and plaintiff sued them to recover the money advanced by him. It was found that the agreement was entered into by both parties under a mistake as to the validity of the lease *Held* that assuming s 65 of the Contract Act was not intended to vary the rule that a mistake of law is no ground for relieving a party from his own contract plaintiff was nevertheless entitled to recover on the ground that the agreement which provided for repayment was collateral and had failed. An agreement that an obligation which is contracted shall be discharged in some particular mode is collateral to the primary contract which created the obligation though the two agreements may be mixed up in one contract KRISHNAN v SANKARA VARMA I. L. R. 9 Mad. 441

30 ———— Agreement not to alienate —*Mortgage* —Plaintiff sued as managing trustee of a choultry to set aside certain mortgages of the lands with which it was endowed made by the second third and fourth defendants to the sixth and seventh defendants and for an injunction to compel payment of kist which had been allowed to fall into arrears contrary to the provisions of the machalka sued upon The defendants pleaded that the mortgages made were not in violation of the provisions of the machalka The Court of first instance dismissed the suit On appeal the Civil Judge considered the provisions — Moreover we are only entitled to cultivate the said four villages and to maintain the said choultry with the income therefrom as above stated and we have no right to alienate the said lands by sale etc —fatal to the right to mortgage advanced by the defendants one to five Accordingly he reversed the decree appealed from *Held* by SCOTLAND C.J that the reasonable construction to be put upon that portion of the razinama relating to alienation was that the villages were not to be alienated so as to deprive the choultry of the receipt of the portion of the produce fixed by the razinama for its support that the security of the cultivation of the land and the application of the fixed portion of the produce to the maintenance of the choultry was all that the parties intended to effect, that there was nothing in the record to

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS
—*continued*

show that the payment of that fixed portion had been rendered less certain by the transfer of the villages to the mortgagees that consequently the beneficial interest of the plaintiff as trustee under the razinama was not impaired, and the mortgages were not made in violation of the provisions of the machalka *Per* HOLLOWAY J that the right set up was based upon a purely capricious exercise of the plaintiff's will in the effectuation of which he had no conceivable interest that contractual words seeking to create a right of this sort are ineffective to create it; and that consequently the alienations by mortgage were wrongly declared void KRISTNA MADALI v SHANMUGA MUDALIAR 6 Mad. 248

31. ——— **Agreement to share costs of litigation to be prosecuted to its furthest limits**—*Failure on advice to appeal to Privy Council* —Plaintiffs having sought to recover from defendants their share of the costs of certain litigation which plaintiffs had set agoing at the instance of defendant's father who was jointly interested with plaintiffs in certain property in suit but who wanted the means to prosecute the litigation for its recovery and who accordingly executed an ikrarnamah agreeing to share the costs of the necessary litigation proportionably with plaintiffs provided they furnished the funds for prosecuting that litigation to the furthest limits and the said litigation having terminated adversely to the interests of both plaintiffs and defendants without any appeal having been preferred to the Privy Council and defendants having repudiated all responsibility for costs on the ground of default in prosecution of litigation to the furthest possible limit —*Held* that as plaintiffs had merely undertaken to furnish the means for carrying on the litigation but had not actually undertaken the conduct of that litigation and as it was not in evidence that defendants had wished to go up to the Privy Council and to this end had made a demand on but had been frustrated by plaintiffs the plaintiffs were entitled to recover proportionate costs in the concerted litigation with costs in the present suit proportioned to the amount thus obtained by them. The lower Courts in this case found that it had not been proved either that the pleaders had advised or that defendant's father had agreed that there should be an appeal to the Privy Council. SHUSHEE MOHUN SHAHA CHOWDHRY v TARA PURSHAD MOJOOMDAR 25 W R., 478

32 ——— **Settlement of dispute between Hindu widow and reversioners**—*Ikrarnamah—Condition in restraint of lease—Transfer of Property Act (IV of 1882) ss 10 and 15* —In an ikrarnamah executed by a Hindu widow on the one side and her husband's cousins on the other in settlement of disputes regarding her husband's estate one of the conditions agreed upon was that "if either of the parties should want to execute a lease jointly or individually it would be executed and delivered by mutual consultation of both the parties and if the document be not signed and consented to by both parties it shall be null and void." In a suit brought on the basis of the ikrarnamah to set aside a lease granted by the widow —*Held* there is nothing in any statute law which renders such a provision inoperative neither ss 10 and 15 of the Transfer of Property Act (IV of 1882) nor any principle underlying them is applicable to it; it is not an unreasonable provision; there was no absence of equity in the arrangement and effect should be given to it KULDIP SINGH v KHETRANI KOER [I. L. R 25 Calc., 889 2 C W N., 463

33 ——— **Agreement to give refusal of purchase**—*Contract between purchaser from Hindu widow and reversioners—Breach of contract in leasing to others* —*W* purchased an estate from a Hindu widow On her death the reversioners brought a suit to set aside the sale and recover possession Upon this *W* entered into an ikrar or undertaking in which he agreed on consideration of their desisting from the suit that he would remain in possession as long as he pleased and when he had occasion to sell the property would give them the refusal Several years after *W* entered into negotiations with third parties for the sale of the concern to which the property was annexed but not being able to come to terms with them he broke off the negotiation and the property was subsequently leased to others Upon this the reversioners sued to have the property conveyed to them. *Held* that *W*'s promise not to alienate the property coupled with the promise that he would personally retain possession amounted to an undertaking which was violated by what had taken place Plaintiffs were therefore entitled to the conveyance sought for upon payment of the price RAM NATH SEN LUSHKUR v RASH MOHUN MOOKERJEE 24 W R 214

34. ——— **Contract to cultivate indigo** —By a contract for the cultivation of indigo the defendant agreed, in consideration of certain payments to prepare the land sow the seeds that should be supplied, reap the crop etc. And it was stipulated that in case the defendant should neglect to cultivate the lands the amla of the factory might cultivate them and deduct the expense from the money payable to the defendant *Held* that it was not obligatory upon the plaintiff to enter upon the lands and cultivate them on default by the defendant. MACRAE v JHOOMUCK MISSER [Marsh., 386 2 Hay 391

35 ——— *Construction of agreement—Right of suit to recover advances*—A raiyat took advances from an indigo factory on condition that he was not to repay any portion of the same until the expiration of the agreement and even then he was not to be bound to repay the money in cash, but had the option either to pay the same in cash or continue to cultivate the land with indigo, and deliver the plants grown thereon until the whole of the advances were satisfied. *Held* that an action would not lie for a refund of the balance in consequence of the plaintiff closing the factory before the expiration of the contract WATSON & CO. v HURRY NATH SIRCAR 7 W R., 383

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

36. ——————— *Breach of contract—Non-completion of agreement of compromise as part performance of contract to sow indigo* —Where a contract for sowing indigo was entered into and advances made in part performance of an agreement of compromise between the parties to a suit for enhancement of rent —*Held* that the non-completion of the agreement of compromise did not exonerate the defendant from performing his part of the contract for sowing indigo SANDYS v SETUL MUNDUL 10 W R. 420

37 ——————— Cash on delivery—*Readiness and willingness to take delivery—Delivery Failure of in terms of contract—Breach of contract—Custom.*—Where a contract is for delivery "free on board" and cash on delivery is provided for payment may be enquired upon delivery of the goods at the time and place mentioned for delivery in the contract. HEILGERS & Co v JADUBLALL SHAW I. L. R 16 Calc 417

38 ——————— Demurrage—*Sale of cargo by consignee—Several purchasers—Contract incorporating the charter party—Liability of one purchaser for delay of all—Contract absolute.*—On the 2nd June 1888 the defendant entered into two contracts with the plaintiffs the consignees of the cargo each for the purchase of 500 tons of coal per S S *Dunedin* then in harbour The contracts provided (*inter alia*) delivery to be taken at a rate of not less than 200 tons per day All conditions in the charter party to be binding on the purchaser The charter party stated cargo to be discharged whether permitting at the average rate of not less than 300 tons a working day or to pay demurrage at the rate of £30 per working day or *pro rata* Previously to the 2nd of June the rest of the cargo had been sold by the plaintiffs to three other purchasers and the lay days had already partially expired but as regards neither of these facts did the defendants ask nor were they given information The *Dunedin* discharged at only three of her four hatches and so discharging was able to give delivery of something more than 300 but less than 400 tons a day Delivery was given to whichever of the four purchasers was the first to come alongside At the expiration of the lay days (being the days required to discharge the whole cargo at the average rate of 300 tons a day) the cargo had been completely discharged with the exception of 264 tons which remained to be delivered to the defendant The cargo to be discharged subsequently to 2nd of June would have been discharged within the lay days but for the want of lighters on the part of the purchasers of the cargo generally It occasionally happened however that a lighter was kept idle waiting for its turn at one of the three hatches. The plaintiffs paid one day s demurrage in respect of the delay in discharging the 264 tons and now brought an action to recover the same from the defendant *Held* that the defendant was liable The contract of the defendant (by incorporation of the charter party) to take delivery within the lay days or to pay demurrage being absolute he could only excuse non-performance of his contract by showing it was due either to default of the captain of the ship or of the plaintiffs themselves neither of which had been shown The plaintiffs were not to blame for any difficulties occurring by reason of there being other purchasers That was the well known nature of the trade and it was for the defendant if he desired protection in this respect to provide for it in his contract Neither were the plaintiffs bound to be able to deliver to the defendant at the rate of 400 tons a day under his two contracts The stipulation in each of the two contracts that delivery should be taken at a rate of not less than 200 tons per diem was not one on which the defendant could insist but was an independent stipulation in favour of the cargo VOLKART BROTHERS v NUSSERVANJI JEHANGIR KHAMBATTA I. L. R., 13 Bom 392

39 ——————— Sale of goods—*Delivery—Delivery on Sunday—Custom as to delivery* —Where the defendant a European was sued for damages for non-delivery of goods and contended that he was not bound to deliver on Sunday —*Held* that delivery on Sunday was not unlawful and that in the absence of custom to the contrary the defendant was bound to deliver the goods on that day if they had not already been delivered LALCHAND BALKISSAN v KERSTEN I. L. R 15 Bom. 338

40 ——————— Goods ordered through commission agents—*Contract of agency—Contract of sale—Form of action* —The defendants traded in Bombay as merchants and commission agents under the style of *S D & Co* being a branch of a French firm trading in Paris under the same name of which firm also the defendants were members The Paris firm were agents for certain manufacturers of zinc The plaintiff a Bombay merchant ordered out 48 casks of zinc sheets through the defendants firm in Bombay by an indent in the following form — I hereby request you to instruct your agents to purchase for me (if possible) the under mentioned goods on my account and risk upon the terms stated below Such terms *inter alia* limited the price of the goods and the time within which the shipments were to be made Later the plaintiff consented to increase his limit of price The defendants, having communicated with their Paris firm wrote to the plaintiff as follows — We have the pleasure to inform you that our home firm has reported by wire concerning your esteemed order as follows — Placed at your increased limit Subsequently the plaintiff was informed by the defendants that the manufacturers being full with orders the zinc sheets would not be ready for shipment as soon as had been expected and he was asked whether he agreed to give an extension of time or desired to cancel the indent Simultaneously the plaintiff wrote that the contract time had been exceeded and that he would buy similar goods in Bombay on the defendants account This the plaintiff did and brought this action to recover the difference in price as damages on account of the defendants having failed to perform their contract for the delivery of 48 casks of zinc sheets *Held*

CONTRACT—*continued*

1. CONSTRUCTION OF CONTRACTS
—*continued*

that neither the defendants nor their Paris firm had entered into any contract of sale on which they were liable to the plaintiff They had only constituted themselves his agents to place his order *i e* to effect a contract of purchase on his account with the manufacturers of zinc—and consequently the action as brought would not lie *Ireland* v *Livingston L. R 5 E & I. Ap 395* and *Cassaboglou* v *Gibb L. R 11 Q B D 797* discussed and considered. MAHOMED ALLY EBRAHIM PIRKHAN v SCHILLER DOSOGNE & Co **I. L. R., 13 Bom., 470**

41. ———— Agreement for permission to quarry—*License Non-renewal of—Implied condition*—By an agreement (in renewal of similar agreements for the two previous years) dated the 3rd September 1888 the defendant agreed to pay the plaintiff rent for a piece of hilly ground at the rate of R329 per month for one year during which time the defendant was to be allowed to blast stones and carry on the work of quarrying to the extent of seven crow bars, such quarrying to be done at such places as the plaintiff had pointed out or should choose to point out from time to time The rent to be paid was arrived at on a calculation of R47 per crow-bar and was to be payable whether defendant employed the seven crow bars or less. The defendant by the sixth clause of the agreement further undertook as follows —"As regards the police arrangement and other expenses at the time of blasting stones, and obtaining an order or licens etc and as to any other kind of expenses, risk and responsibility all these are upon me I will duly pay you at the rate of R329 per month clear until the fixed time The defendant was a stone contractor and had been employed in this work of quarrying all his life and for the previous two years on this very spot, and was well aware that blasting could not be carried on without a license from the authorities which was revocable at any time, and required renewal annually At the time of the agreement the defendant was in possession of a license which expired on the 31st December 1888. After that date the authorities refused to renew the license on the ground that the quarry where operations were being carried on was surrounded by houses on all sides and the defendant thereupon refused to continue the payment of the monthly rent of R329 The plaintiff accordingly brought this suit in the Small Cause Court for three months' rent at the above rate *Held* looking at the nature of the contract, that it must be taken to have been the intention of the parties to it that the monthly sum of R329 should only be payable so long as quarrying was permitted by the authorities and that there was no unconditional contract to pay R329 in all events in cl. 6 of the agreement or elsewhere *Taylor* v *Caldwell 3 B and S 826 32 L. J Q B 164* followed. *Marquis of Bute* v *Thompson, 13 M and W., 487* and *Ridgway* v *Sneyd Kay 627* commented on and distinguished. GOCULDAS MADHAVJI v NARSU VENKTJI **I. L. R., 13 Bom., 630**

42. ———— Personal contract—*Assignment—Suit by assignee*—When considerations connected with the person with whom a contract is made form a material element of the contract, it may well be that such a contract on that ground alone is one which cannot be assigned without the promisor's consent so as to entitle the assignee to sue him on it. *Stevens* v *Benning 1 K and J., 168* referred to. By an agreement in writing dated 13th December 1882 and executed in favour of *M D* and *H D*, who were the proprietors of an indigo concern, the defendant *R* agreed to sow indigo, taking the seed and tandi from *M D* and *H D's* concern, on four bighas of land out of his holding selected, measured, and prepared by *M D* and *H D* or their amlah; and when the indigo was fit for weeding "to weed, reweed, and turn it up to the extent necessary according to the directions of the amlah of the concern;" and when the indigo was fit for reaping, to "reap and load it on carts according to the directions of the amlah of the concern; and if any portion of the said indigo land" was in the judgment of the amlah of the concern found bad, in lieu thereof to get some other land in his holding measured, and "on the land so measured in Bysack" to "sow Bhadoi crops only which will be reaped in Bhadur The defendant also agreed not to sow on the land measured any crop that might "cause obstacle to the cultivation of indigo, and, if he did so, "the amlah of the concern should be at liberty to destroy such crop," and he should not "oppose the destruction thereof nor sue in the Courts, Civil or Criminal for destruction of the same." As regards a breach of any condition, it was provided "If I or my heirs depart from the conditions of this indigo engagement directly or indirectly or in any way neglect to cultivate or do not cultivate indigo, I or they shall pay to the above named *M D* and *H D* damages for the same from my or their person and property and shall raise no plea or objection. In 1886, *M D* and *H D* assigned the entire benefit of this agreement to the plaintiff In a suit by the plaintiff against the defendant for damages on account of his alleged failure to cultivate indigo for the plaintiff's concern in accordance with the terms of the agreement of the 13th December 1882 —*Held* that the agreement must be construed as one which had been entered into by the defendant with reference to the personal position circumstances and qualifications of *M D* and *H D* and their amlah; and that therefore it was not assignable so as to give the assignee a right to sue upon it in his own name for a breach of contract. TOOMEY v RAMA SAHI **[I. L. R. 17 Calc. 115**

43. ———— Agreement to pay an annual sum in consideration for abolishing a bazar Suit upon—*Subsequent sale of the land on which the bazar stood—Right to annual sum payable under the agreement*—Plaintiff and defendants entered into an agreement by virtue of which they settled their disputes and amongst other matters it was agreed that the plaintiff should abolish her bazar at a certain place within her zamindari, which she had established in opposition to a bazar belonging to the defendants; and it was further agreed that the

CONTRACT—*continued*

1 CONSTRUCTION OF CONTRACTS —*continued*

defendant should pay her annually R25 in lieu of her income from that bazar Plaintiff also undertook that so long as this annual payment was continued she would not establish any new bazar within two miles of the bazar of the defendants. Subsequently the plaintiff sold the site of her former bazar together with some other land. *Held* that if the payment was to be made in consideration of her abolishing the bazar she was not entitled to it after she had parted with the land upon which the bazar stood That if the payment was in consideration of the plaintiff undertaking not to establish a new bazar within two miles of the defendant's bazar she had disentitled herself to a continuance of the payment from the time when she made it impossible for herself to secure the fulfilment of the condition by parting with the land. SARAT MOHINI DASI *v* BHUBAN MOHAN GHOSE . 3 C W N 183

44. ——— Consideration—*Compromise of a bonâ fide claim—Good consideration—Agreement to lend money on mortgage—Delay in completion of agreement—Subsequent agreement to pay interest from a certain date—Consideration for such agreement—Right to rescind—Time of essence of contract—Suit by lender against borrower*—On 31st August 1891 the plaintiff agreed to lend the defendant R30 000 on a mortgage By the agreement the mortgagor (defendant) was to clear the title and the time fixed for completion of the agreement was eight days from its date The mortgage was not completed within the stipulated time in consequence of the non production of the title-deeds by prior mortgagees who were to be paid off out of the money to be advanced by the plaintiff On the 9th September 1891 the plaintiff's solicitors wrote to the defendant reminding him that the time for completion had expired and stating that the plaintiff would require interest to be paid on the money which he had with him lying idle on the defendant's account On the 24th September 1891 the plaintiff formally tendered the R30 000 to the defendant but as no mortgage deed was then ready for execution the money was not then paid. The plaintiff was always ready and willing to advance the money but in consequence of the defendant's delay he insisted on interest being paid from the 24th September 1891 The title deeds were ultimately produced at the end of November or the beginning of December and on 7th December 1891 the draft mortgage was sent to the defendant for approval It contained a clause stipulating for payment of interest from 24th September 1891 On the 9th December 1891 the plaintiff had an interview with the defendant The two points then discussed were (1) what time after due date should be allowed to the defendant (mortgagor) for payment of interest (2) whether interest on the principal sum should run from the 24th September 1891 On the first point the plaintiff gave way allowing defendant fifteen days instead of eight as originally provided As to the second point he declined to advance the money unless interest was paid from the 24th September 1891 The defendant ultimately agreed to this The mortgage-deed was duly engrossed with a stipulation for payment of interest from the 24th September 1891 and the 26th January 1892 was fixed as the day for execution On that day however one of the defendant's daughters who had to execute the deed was absent and the plaintiff refused to advance the money until her signature was obtained. Subsequently the defendant refused to sign the deed on the ground that it contained the clause for payment of interest from 24th September 1891 He contended that he was not liable to pay interest from that date. The plaintiff brought this suit claiming R1,865 12-0 as damages for the defendant's breach of agreement The lower Court held that although the original agreement of 31st August 1891 mentioned no date from which interest should run the defendant on the 9th December 1891 had agreed to pay it from 24th September 1891 and had made no objection on the point until February 1892 The defendant contended that if such an agreement was made on the 9th December 1891 it was without consideration but the Court held that the plaintiff was at that date at liberty to rescind the agreement altogether and that he had consented not to rescind in consideration of being paid interest from the 24th December 1891 The lower Court accordingly passed a decree for the plaintiff *Semble*—That time was not of the essence of the contract but *held* that in any case under the circumstances there was consideration for the agreement made by the defendant to pay interest from the 24th September The plaintiff clearly regarded himself as entitled to rescind and at the defendant's request agreed to forbear to do so if the defendant would consent to pay interest from 24th September 1891 The claim of the right to rescind was undoubtedly a real one and made in good faith and the forbearance to enforce it might well be an inducement to the defendant to agree to the plaintiff's terms and the principle laid down in *Miles* v *New Zealand Alford Estate Co L R 32 Ch D* 266 applied. DADABHOY DAJIBHOY BARIA *v* PESTONJI MERWANJI BARUCHA I. L R 17 Bom 457

2 CONDITIONS PRECEDENT

45 ——— Intention to execute more formal contract—*Final agreement Effect of*.—Where two parties have come to a final agreement the mere fact that at the time of their doing so they intended to embody the terms of such agreement in a formal instrument does not make such agreement less binding on them WHYMPER & Co *v* BUCKLE & Co [I L R. 3 All. 469

46 ——— Intention to make more formal contract—*Binding effect of preliminary agreement—Agreement to adjust suit suit for damages for breach of*—Even where formalities in the embodiment of contracts are at the option of the parties there may be a concluded and binding contract although there is an intention to put it in writing into a more formal shape. The existence of such intention is evidence that neither party was to be

CONTRACT—*continued*

2 CONDITIONS PRECEDENT—*continued*

bound until the intended formalities have been com plied with But when a sale so as to pass an interest, requires certain formal steps and nothing turns upon the intention of the parties no inference against a concluded agreement can be drawn from the non completion of formalities which are not of their selec tion The parties to a suit executed a written agree ment which was duly registered, whereby the plain tiff agreed to accept the property of the defendant specified in the agreement in adjustment of the said suit The agreement was not recorded under s 98 Act VIII of 1859 The plaintiff proceeded with his suit obtained a decree and sold the property men tioned in the agreement in execution of the said decree The sale proceeds being insufficient to satisfy the decree other property belonging to the defendant was attached and sold for R23 360 In a suit for damages brought by the defendant —*Held* that the agreements to withdraw the previous suit and to accept the properties of the present plaintiff in dis charge of the claim were concluded agreements and that therefore the present plaintiff was entitled with interest to the sum which property not men tioned in the agreement fetched at the sale under the decree obtained by the defendant VENKATACHEL-LASAMI CHETTIAR *v* KRISTNASAWMY IYER

[8 Mad, 1

47 ———— Unseaworthiness—*Breach of contract in not shipping goods—Part performance* —In an action for breach of contract in not shipping certain goods the defendants pleaded the unsea worthiness of the vessel It was found that the ship was unseaworthy at the time of sailing and that the defendants had placed part of the goods on board *Held* that it is a condition precedent that a vessel shall be in a proper state to take the goods on board for the purpose of the particular voyage or in such a state that she may be made fit for the voyage with the goods on board without such a delay as to frustrate the object of the merchant in shipping his goods *Held* that the putting part of the goods on board without knowledge of the unseaworthiness of the vessel was not a waiver of the performance of the condition *Semble*—Unseaworthiness at the time of sailing is not a breach of the condition TURNER MORRISON *v* PALLI MAVROJANI

[2 B L R, O C 127

48 ———— Agreement to ship after two country voyages—*Contract of affreightment Construction of*—When a ship-owner has contracted to give a certain notice to a charterer or to do any other act with a view to inform the charterer when the ship will be ready the charterer is not bound to ship his goods until the ship-owner has given him that notice or has done that act *Held* therefore in an action for not shipping goods under the following contract:— *H S* to arrive after completion of two country voyages for London on notice in May or June it appearing that the plaintiffs had sent the vessel for one country voyage only that the defendants were entitled to refuse to ship the goods. FLEMING *v* KOBOLEB

[I L R, 4 Calc, 237 3 C L R, 297

CONTRACT—*continued*

2 CONDITIONS PRECEDENT—*continued*

Affirming decision in S C 2 C L R, 169

49 ———— Stipulation not to sell to others same description of goods—*Suit for breach of contract*—The plaintiffs on the 4th August 1881 entered into a contract with the de fendant for the sale to the latter of a quantity of goods of a certain description to be delivered up to the 31st December 1881 ' The plaintiffs stipulated that they would make no sales of goods of the same description to others before the 1st December 1881. The goods arrived in Calcutta between the 4th and 24th November 1881 On the 15th August the plain tiffs entered into other contracts with other buyers for the sale of the same description of goods at a lower price than that at which they had sold to the defendant these contracts being on terms that the goods were not to arrive in Calcutta until after the 31st December 1881 In a suit to recover damages for breach of the contract by the defendant in not accepting the goods —*Held* that the stipulation not to sell the goods to others itself amounted to a condi tion precedent to the defendant s obligation to accept the goods and therefore the plaintiffs were not en titled to damages CARLISLES NEPHEWS & Co *v* RICKNAUTH BUCKTEARMULL

[I L R, 8 Calc, 809

50 ———— Condition to abide by in terested referee—*Maxim No man can be judge in his own cause* —*A* entered into a contract to supply Government with timber of a certain qua lity to be approved by *K* the superintendent of the gun carriage factory for which the timber was required, before acceptance *K bonâ fide* tested and rejected the timber tendered. *Held* that it was not open to *A* to question the reasonableness of *K's* refusal to accept the timber or to show that the tim ber was of the quality stipulated for *Per* INNES *J*—The rule of civil law that a condition the hap pening of which is at the will of the party making it is null and void as being destructive of the con tract is not a rule of the Indian Law of Contracts. *Per* MUTTUSAMI AYYAR *J*—The maxim that no man shall be a judge in his own cause does not apply where one party to a contract agrees to abide by the judgment of the other or where both parties agree to abide by the decision of an interested third party SECRETARY OF STATE FOR INDIA *v* ARATHOON

[I L R 5 Mad. 173

51 ———— *Guarantee that casks for shipment are fit for purposes for which they are employed* —If a party enters into a contract to provide and ship molasses at the risk and expense of the seller he must be taken to guarantee that the casks are proper casks and properly coppered for any voyage from Calcutta for which such goods may be reasonably ordered by the plaintiffs to be shipped PALMER *v* COHEN

1 Hyde 123

52 ———— Comparison of accounts of collection—*Contract to be liable for outstanding balance* —The defendant promised that in the event of his obtaining possession of certain land he would be responsible for all balances ascertained to

CONTRACT—*continued*

2. CONDITIONS PRECEDENT—*continued*

be outstanding after comparison of the collection accounts for 1259 (1852) *Held* that the comparison of the accounts was a condition precedent to the defendant's liability and therefore that the plaintiff was not entitled to recover such arrears notwithstanding the defendant was let into possession and it was proved that there were such arrears unless it was also shown that the accounts had been compared or an opportunity of comparing them had been afforded to the defendant. LUCKHY DASS MUSTOOFEE *v.* JOGESHUR MOOKERJEE [Marsh. 563 2 Hay 667

53 ———— Payment for removal of obstruction—*Suit on obstruction not being removed*—By the terms of an arrangement come to by the parties in the proceedings before the commissioner in a suit for partition of real property it was agreed that "*T* (one of the parties) is to be paid the price of a privy which is to be pulled down for the purpose of the new pathway to be opened on the west side of the premises, which price is to be ascertained (by the commissioner) on inspection and paid by all parties *T* being at liberty to take over the materials at a valuation. In a suit by the purchaser from one of the parties to the partition suit against *T* charging that he obstructed the pathway etc such obstruction being the not removing the privy —*Held* (reversing the decision of the Court below) that the payment to *T* of the price of the removal was a condition precedent to the obligation on *T* to remove the privy TARRUCK NAUTH GHOSE *v.* KALEE PERSHAD KHETTRY 2 Ind. Jur N S 210

54. ———— Tender of payment—*Suit on non-delivery of goods—Mutual obligations*—The plaintiffs entered into a contract in writing by which the defendant was to deliver 2400 bundles of gingelly seed on being put in possession of the necessary funds In a suit for damages by reason of non delivery —*Held* that the plaintiffs before they could recover must show that they paid or tendered the amount stipulated and that the vendor's rights under the contract could not be controlled by the course of dealing between the parties SHAND & Co *v.* ATMAKURI ADINARAYANA CHETTI [3 Mad. 193

55 ———— *Suit on non-delivery of goods—Reciprocal promises—Damages Measure of*—On 6th March 1883 *V* promised to sell 5 000 bags of gingelly seed at R7 11 a bag to *S* Two-thirds of the price was paid in advance *V* agreed to deliver the 5 000 bags at the end of April and to give *S* notice as instalments of 1 000 bags were ready for delivery within the stipulated time, and *S* promised to pay *V* the balance of the contract price on each instalment when ready for delivery There was neither delivery nor payment in terms of the contract 3 000 bags were delivered by *V* but *S* did not pay the balance of the price due and 2 000 bags were never delivered On 7th May *V* declined to deliver these bags on the ground that *S* had not paid the balance of the contract price for the 3 000 bags delivered when ready for delivery and subsequently repaid to *S* the balance due to him of the money advanced In a suit by *S* against *V* for damages for non-delivery of 2 000 bags —*Held* that *V* was not excused from performance of his promise by the failure of *S* to pay the balance due for the bags delivered and that *S* was entitled to recover the difference between the market and the contract price on the day the contract was broken by *V* SIMSON *v.* VIRAYYA I. L. R., 9 Mad., 359

56 ———— Averment of readiness and willingness—*Covenant dependent or independent*—The plaintiff and defendants entered into the following agreement dated 26th January 1851

Under the bond executed to *J M* by *B* on the 9th October 1849 for R1 252 13 the balance left due by him in the matter of the jaggery which he undertook to supply to you R1,360 remain due on this date to the exclusion of what has been paid for the amount of principal and interest for this balance you have obtained by purchase the virthi land possessed by *B* in Sitaparam Agraharam and the half virthi of land of his elder brother Under such circumstances we hereby agree to pay you out of the said amount R680 within the end of May in the current year and the remaining R680 within the end of May of the ensuing year 1852 and then to get the said deeds of sale endorsed by you and the 1½ virthis of land put into our possession as purchased by us. We will therefore pay the said amount of R1 360 in two instalments and take back this sanad along with the deeds of sale endorsed. In a suit for recovery of a sum of money alleged to be due under the agreement —*Held* that on the true construction of the contract it was not incumbent on the plaintiff to deliver or aver readiness to deliver the land to the defendants The question whether covenants are dependent or independent or whether a certain act is or is not a condition precedent is entirely one of construction and to be determined in each case by educing the intention of the parties from the language they have used. YOUNG *v.* MANGALAPILLY RAMAIYA 3 Mad. 125

57 ———— *Independent covenants*—Where defendants sub rented an abkari farm for one year from 31st July 1864 under a machalka by which the defendants covenanted to pay monthly instalments of rent to plaintiff and plaintiff covenanted to furnish defendants with the accounts of the farm from the month of July 1864 during which period the management was in the hands of plaintiff's agent in an action by plaintiff for rent due to him and the value of arrack supplied by him —*Held* that the covenants were independent one not being a condition precedent to the other and that therefore the non performance by the plaintiff of the covenant to furnish accounts was not sufficient to justify the entire dismissal of his suit against the defendants there being no obligation on him to allege readiness and willingness to furnish accounts RAMAIYA *v.* NARAYANASAMY 3 Mad. 239

58 ———— Deposit with Bank—*Receipt given for loan—Statement in receipt that loan was repayable on production of receipt—Non-production*—The plaintiff deposited the sum

CONTRACT—*continued*

2 CONDITIONS PRECEDENT—*concluded*

of R2 454 7 7 with the defendants bank in Bombay as a loan for a year to bear interest at the rate of four and a half per cent He was given a receipt for the said sum which stated that the money was repayable here on production of this receipt *Held* that the receipt contained the terms of the contract of loan between the plaintiff and the defendants and that the production of the receipt was a condition precedent to the repayment of the money DIAS v HONGKONG AND SHANGHAI BANKING CORPORATION **I L R 14 Bom, 498**

3. PRIVITY OF CONTRACT

59 ———— **Privity, Want of**—*Goods carried by two companies*—Plaintiff delivered a certain quantity of jute to the India General Steam Navigation Company at Serajgunge for delivery at the Eastern Bengal Railway Company's station at Sealdah and it was arranged by the bill of lading (the contract in the case) that the freight from Serajgunge to Sealdah should be payable to the Eastern Bengal Railway Company at Sealdah and it was so paid upon the delivery of the goods A portion of the jute was not delivered and this suit having been brought against the Eastern Bengal Railway Company for the value thereof the Small Cause Court Judge was disposed to dismiss the suit without further enquiry on the ground of want of privity between plaintiff and defendant *Held* that it was premature for the Judge to say that the suit could not lie against defendant without proceeding with the further investigation of the case and that although plaintiff might have a remedy against the India General Steam Navigation Company it by no means followed that he had none against the defendant company also. GUJENDRO MOHUN SHAHA v EASTERN BENGAL RAILWAY COMPANY **17 W R., 240**

See S C after remand **18 W R 145**

where it was held that the want of privity of contract was an inference the Judge might legally draw from the facts

60 ———— **Purchase in one name**—*Agreement to hold on joint account*—In an action by *A* against *B* for damages for non acceptance of shares by *B* alleged to have been bought by him of *A* it was shown that the shares were bought by *C* who after the purchase entered into an arrangement with *B* that the purchase should be on their (*B* and *C*'s) joint account *Held* there was no contract between *A* and *B* and the suit was dismissed. BARROW v STEWART **1 Ind. Jur N S 226**

4 REPUDIATION OF CONTRACT

61. ———— **Contract entered into by mistake**—*Power to replace parties in their original positions*—He who would disaffirm a contract entered into by mistake must do so within a reasonable time and will not be allowed to do so unless both parties can be replaced in their original position MUHAMMAD MOHIDIN v OTTAYAL UMMACEE **1 Mad., 390**

CONTRACT—*continued*

4 REPUDIATION OF CONTRACT—*concluded.*

62 ———— **Delay**—*Right to have contract set aside*—One who repudiates a contract and asks to have it treated as void is bound to take steps for this purpose at the earliest moment without avoidable delay Although one of the parties to a contract was induced to enter into it by fraud of the other he is nevertheless bound by the contract until he repudiates it and this he cannot do when he has allowed that to occur on the footing or in view of the contract, which renders it impossible that the parties should be put in *status quo* In such circumstances his proper remedy is by an action for damages TALEB HOSSEIN v AMEER BAKSH **22 W R., 529**

5 BOUGHT AND SOLD NOTES

63 ———— **Evidence of contract**—*Material variation*—*C & Co* and *H & Co* were merchants at Calcutta *H & Co* sold to *C & Co* a large quantity of indigo through the medium of a broker who drew up a sold note addressed to *H & Co* and submitted it to *H* for his approval when *H* having objected to a particular word remaining the broker took the sold note to *C* and informed him of *H*'s objection. *C* struck his pen through the word objected to by *H* placing his initials over that erasure, and returned it to the broker who thereupon delivered it so altered to *H & Co* The broker delivered to *C & Co* on the following day a bought note which differed in certain material terms from the sold note In an action brought by *H & Co* against *C & Co* for non performance of the contract contained in the sold note the Supreme Court at Calcutta was of opinion that the sold note alone formed the contract and found for the plaintiffs. *Held* by the Privy Council on appeal (reversing that decision) that the transaction was one of bought and sold notes and that the circumstances attending *C*'s alteration of the sold note and affixing his initials, were not sufficient to make that note alone a binding contract and that there being a material variation in the terms of the bought note with the sold note they together did not constitute a binding contract COWIE v PEMFRY **3 Moore's I A 448**

64 ———— *Broker's bought note*—A broker's bought note is not of itself evidence of a contract It is signed by one only of the parties To complete the evidence of the contract there should also be a sold note signed by the other party showing that the buyer had duly accepted his supposed obligations MACKINNON v SHIBCHUNDRA SEAL **[Bourke O C., 354**

65 ———— *Material variation in notes*—The bought note in a contract for the purchase and sale of silk chussum was as follows — Bought by your order and for your account the following silk chussum of Messrs. Jardine Skinner & Co. as much as they may supply of November and March bund etc The sold note was in similar terms but stated that as much "as you can supply was sold. *Held* that the bought and sold

CONTRACT—*continued*

5 BOUGHT AND SOLD NOTES—*concluded*

notes did not constitute a contract binding Messrs Jardine Skinner & Co. to supply chussum of either the November or March bund at a l ss TAMVACO v SKINNER 2 Ind. Jur N S. 221

66. ———— *Sold note differing from bought note—Mistake in name of one of the parties to the contract—Oral evidence to show with whom the contract was really made—Specific Rel ef Act ss 31 34—Damages for breach of contract right of suit for*—A contract intended to have been entered into between the plaintiff and the defendant was entered by a mistake on the part of the broker in the sold note as having been made between a third person and the defendant. In a suit brought by the plaintiff on the contract oral evidence was given to show that the contract was really made between the plaintiff and the defendant The Judge of the Small Cause Court found that the mistake did not mislead the defendant and gave judgment in favour of the plaintiff contingent on the opinion of the High Court as to whether the mistake in the sold note was a bar to the plaintiff's suit for damages on the contract *Held* that there was a contract between the parties for breach of which the plaintiff could sue for damages. MAHOMED BHOY PUDDUMSEE v CHUTTERPUT SING I. L. R. 20 Calc. 854

67 ———— *Contract of sale—Want of assent—Broker's bought and sold notes*—To contract through a broker to sell a quantity of paddy at a price stated the plaintiff firm signed the sold note This was taken by the broker to the defendant firm of which a member before signing the bought note wrote in Chinese characters not understood by the vendor a term as to quality This was to the effect that the paddy was to be without yellow grains and not wet A part delivery was made of paddy not answering this description For this the defendant firm made a part payment at a reduced rate. Of the rest they refused to take delivery when tendered because it was not of the quality contracted for *Held* that the plaintiff s suit for the balance of the price of the part delivered and for damages for non-acceptance of delivery of the rest failed. If the plaintiffs—neither they nor their broker understanding Chinese—did not assent to the term written by the defendant then there was no contract entered into to buy If on the contrary the plaintiffs had assented to that term then the paddy was not of the quality required by the contract AH SHAIN SHOKE v MOOTHIA CHETTY

[I. L. R., 27 Calc., 403
L. R 27 I A 30
4 C W N 453

6 CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES

68 ———— Contract to deliver Government paper—*Wagering—Contract Act XXI of 1848*—A Court will require strict evidence that a contract *per se* legal is intended to operate illegally It is not necessary, in order to support a contract that the plaintiff should have possession of the Government paper when the contract is entered into; it is sufficient if he is in a position and is ready and willing to deliver it at due date A letter stating the bearer willlhand over to you R75 000 5½ loan notes is sufficient to establish the *bond fide* nature of a transaction for purchase of Company s paper MOHINDRO NATH MITTER v KOYLAS NATH BANERJEE Cor 1 2 Hyde 121

69 ———— Suit for non acceptance of Government paper—*Contract Act s 30—Tender—Readiness and willingness—Action for non acceptance*—Where a contract for the sale and purchase of Government paper provides for the delivery of the paper on a subsequent date it is not necessary in order to sustain an action against the buyer for non acceptance on the due date that the plaintiff should have taken the Government paper contracted for to the place of business of the defendant and then and there made an actual tender of it JUGGERNAUTH SEW BUX v RAM DYAL

[I. L R 9 Calc 791

70 ———— Sale of shares for future delivery—*Readiness and willingness*—In a suit to recover damages for the non-acceptance of shares where the vendor had contracted to execute proper transfers and do all other things necessary on his part to transfer the shares and to bear the expense of such transfer—*Held* on the issue whether the plaintiff was ready and willing to perform his part of the contract that it was sufficient to show that he had in his possession at the time fixed for the performance of the contract on his part such certificates of the shares contracted to be sold as were required by the law and that he tendered the same with a deed of transfer to the purchaser to effect the transfer but that it was the duty of the purchaser himself in such case having accepted the shares to have the transfer made into his name in the books of the company MAGANBHAI HEMCHAND v MANCHABHAI KALLIANCHAND 3 Bom. O C 79

71. ———— *Obligation to perform—Delivery and acceptance—Readiness and willingness*—Where on the face of the contract it did not appear that either party was called upon to act first it was held that the plaintiff was not entitled to recover unless he proved performance of or an effort to perform, his part In the absence of any indication on the part of the plaintiff that he was ready to deliver the defendant is not liable for non acceptance The readiness and willingness on the part of the plaintiff must be substantial something on which the defendant may act not a readiness and willingness concealed in the plaintiff s mind COMMERCIAL BANK v MODOOSOODUN CHOWDHRY

[1 Ind Jur N S., 17

72 ———— *Performance of contract*—*Held* that a contract to deliver shares in a public company is sufficiently performed when the vendor places the vendee in such a position as enables

CONTRACT—*continued*

7 WAGERING CONTRACTS—*continued.*

to secure the profit or ascertain the loss before the Vayda day The contracts were in the usual mercantile form and were entered into through brokers, the principals not being brought into contact with each other until after the contract was made. *S*'s procedure was also similar *S* was a mukadam and guarantee broker to the plaintiffs and he too, entered into these contracts as a speculation intending to settle them before the *Vayda* day but prepared if forced to do so, to perform them in kind. *Held* that the contracts sued on were not shown to have been agreements by way of wager It was a highly speculative mode of doing business, but there is no law against speculation as there is against gambling Contracts are not wagering contracts, unless it be the intention of both contracting parties, at the time of entering into the contracts, under no circumstances to call for or give delivery from or to, each other In this case, even the defendant—seeing that he did not know with whom contracts might be made on his behalf by his brokers—must have contemplated the possibility of being called on to give or take delivery TOD *v.* LAKHMIDAS PURSHOTAMDAS I. L. R. 16 Bom., 441

84. ———— Contract Act (IX of 1872), s. 30—*Bombay Act III of 1865—Broker Suit by for differences paid in respect of contracts made by him for defendant*—Act III of 1865 (Bombay) is still in force and has not been repealed by the Contract Act. *Dayabhai* v *Lakhmichand I L R 9 Bom 358* followed As between the original parties, a promissory note which has for its consideration a debt due on a wagering contract is void and therefore not binding in the hands of the original payee *Oulds* v *Harrison, 10 Exch., 572* distinguished. In order to constitute a wagering contract neither party should intend to perform the contract itself but only to pay the differences. In order to ascertain the real intentions of the parties, the Court must look at all the surrounding circumstances and will even go behind a written provision of the contract to judge for itself whether such provision was inserted merely for the purpose of concealing the real nature of the transaction. *Tod* v *Lakhmidas I L R 16 Bom., 441 Eshoor* v *Venkatasubba I L R., 17 Mad., 480* and *University Stock Exchange* v *Strachan, L R., 1896 Ap Ca., 166* referred to. The defendant employed the plaintiff from time to time as a broker to purchase Government paper and shares of the Manekji Petit Spinning and Weaving Company The plaintiff did so to the extent of many lakhs of rupees. No delivery was given or taken but the differences only between the contract price and the price at the date of settlement (the Vaida day in each month) were paid or received by the defendant. The plaintiff now sued the defendant on two promissory notes given to the plaintiff by the defendant in respect of differences due by him in respect of the contracts thus made on his behalf. The defendant pleaded that he was not liable the contracts being wagering contracts. It appeared from the evidence that the practice in the bazar (which was followed in this case) was for brokers to enter into such contracts in their own name and not to disclose the principals. The broker became liable to give or take delivery The defendant stated that he did not know the persons to whom the plaintiff sold or from whom he purchased. *Held* (1) on the evidence that the defendant authorized the plaintiff as his broker to contract on his behalf, but in the plaintiff's own name on the understanding that the defendant would indemnify the plaintiff and pay him brokerage in respect of the transactions entered into by him on behalf or for benefit of defendant. Accordingly the plaintiff did enter into contracts in his own name with third parties. The defendant was not directly a party to them nor did his name appear anywhere in the contracts themselves. (2) That the plaintiff was entitled to recover from the defendant the losses which he paid to third parties in respect of the contracts made by the plaintiff on the defendant's behalf, and that such losses were a valid consideration *pro tanto* for the notes sued upon. No doubt so far as the defendant was concerned, all the contracts were merely wagering or gambling transactions, but there was no evidence to show that, so far as the third parties were concerned, they were otherwise than genuine The plaintiff was not, as between himself and the defendant, the principal in the transactions. He was merely the broker with a personal liability to the third parties. There was nothing to show that as between himself and the third parties the contracts were not perfectly genuine. The mere delivery and payment of differences on hand was a matter of subsequent arrangement. If he was liable to be called upon to receive or make actual delivery then, in the absence of any express agreement to the contrary a similar liability rested on the defendant himself whatever might have been the defendant's own intentions. As the contracts between the plaintiff and the third parties were not void, so the contracts between the defendant and the plaintiff to indemnify the plaintiff in respect of these contracts were also valid. The mere fact that the plaintiff knowing the defendant's position and means, must have inferred that he did not mean or intend to perform the contracts in specie was not, *per se* without more sufficient to render the contracts invalid and not binding on the defendant. The inference of the plaintiff would not be, *per se* a binding agreement. PEROSHA CURSETJI *v.* MANEKJI DOSSABHOY I. L. R., 22 Bom., 899

85. ———— *Contracts to buy and sell Government promissory notes—Contract Act (IX of 1872) s 30—Onus of proof*—*A*, on various occasions, agreed to sell to *B* (a broker) certain amounts of Government of India promissory notes, amounting in all to 4½ lakhs, for delivery on the following 30th of November On the [illegible] of November *B* agreed to sell, and *A* to buy 4½ lakhs worth of the notes for delivery on the 30th November and *B* sued *A* did not perform his contract to sell, and [illegible] him for damages, amounting to R[illegible]10[illegible] being the difference between the price at which he (*B*) had agreed to buy and the price at which he had agreed to sell. *B* denied that the transactions were bond

CONTRACT—*continued*

7 WAGERING CONTRACTS—*continued*

fide contracts made in the ordinary way of business and pleaded that the real contract was only to pay differences as ascertained by the price of the Government paper on the 30th of November and that such a contract, being by way of wager was void under s. 30 of the Contract Act. *Held* on the evidence that neither party intended *bonâ fide* purchases and sales for delivery and that, therefore the contract was void as a wagering contract *Held* on appeal that the burden of proof that the agreements were wagers, *i.e.*, that they were not in substance what they were in form lay on *A* as the party so alleging *Per* MUTTUSAMI AYYAR, J that it being proved on the evidence that it was the defendant's intention at the time he contracted to sell to pay differences only the plaintiff either knew of this intention or he did not In the former case the contract was a wager and therefore void and in the latter there was no *consensus* as to a matter which was of the essence of the contract, and therefore no valid contract *Per* BEST J., that a contract is not a wagering contract unless it is the intention of both parties at the time of entering into the contracts to call for or give delivery from or to each other (see *Tod* v *Lakshmidas Purshotamdas I L R., 16 Bom 441* and *Grizewood* v *Blane 11 C B 526*) and that no such common intention having been proved, the contract was a valid one ESHOOR DOSS v VENKATASUBBA RAU I. L. R , 17 Mad., 480

Held in the same case on appeal under the Letters Patent by COLLINS C J and PARKER and SUBRAMANIA AYYAR JJ that the plaintiff was not entitled to recover for the reason that the agreement sued on was void under the Contract Act s 30 as being a gambling transaction. ESHOOR DOSS v VENKATASUBBA RAU I. L. R., 18 Mad., 306

86 ——————— *Contracts to buy and sell Government promissory notes—Contracts for payment of differences only—Contract Act (IX of 1872) s 30*—*A* having on various occasions sold certain amounts of Government promissory notes to *B* aggregating on the whole to 2½ lakhs for delivery on 30th November 1891 *B* on the 28th of November sold the same amount to *A* for delivery on the 30th November On that day *B* through his attorneys called upon *A* to retain the paper contracted to be sold by *A* to *B* in respect of that contracted to be sold by *B* to *A* and to pay the differences in the prices of the two contracts to *B* and subsequently sued him for the amount *Held* that on the evidence *B* having admitted that the original contract sued on was for payment of differences only it was a wagering contract and therefore void *Held* on appeal —*Per* MUTTUSAMI AYYAR J that the above judgment should be confirmed. *Per* BEST J., that on the evidence it was not proved that at the time of entering into the original contract the intention of both parties was merely for payment of differences and that consequently the contract was not a wagering contract but a valid one VENKATA CHELLALA CHETTI v VENKATA SUBBA RAU [I L R , 17 Mad., 496

87 ——————— *Contract effected by the person on life of another in which he has no interest—Wager—Stat 14 Geo III c 48—Stat 8 & 9 Vic c 109—Assignment of life policy to a stranger without interest in the life insured*—In India an insurance for a term of years on the life of a person in which the insurer has no interest is void as a wagering contract under s 30 of the Contract Act (IX of 1872) and that therefore a suit on such a policy must be dismissed. *Quære*—Whether an assignment of a life policy to a stranger having no interest in the life of the insured is void? ALAMAI v POSITIVE GOVERNMENT SECURITY LIFE ASSURANCE CO I L R 23 Bom , 191

88 ——————— *Sutta transactions—Suit to recover brokerage in respect of sutta transactions—Bombay Act III of 1865*—Plaintiff was employed by defendants to enter into cotton transactions on their behalf at Dholera. The contracts for the sale and purchase of cotton were made on terms contained in a printed form which incorporated the rules framed by the cotton merchants of Dholera. These rules expressly provided for the delivery of cotton in every case and forbade all gambling in differences In spite of these rules and the express terms of the contracts, the course of dealings was such that none of the contracts were ever completed except by payment of differences between the contract price and the market price in Bombay on the *Vaida* day The plaintiff entered into numerous transactions of this kind on the defendants behalf He now sued to recover from them the balance due to him on account of brokerage commission and losses incurred in the said transactions *Held* that the transactions were a mere gambling for differences, and no suit would lie under Bombay Act III of 1865 to recover any of the items connected with such transactions In order to determine whether a contract is a wagering contract the Court will not only look at the terms of the written contract but also probe among the surrounding circumstances to find out the true intentions of the parties *Universal Stock Exchange* v *Strachan L R 1896 Ap Ca. 166* and *In re Gieve L R 1899 1 Q B 794* followed DOSHI TALAKSHI v UJAMSI VELSI [I. L. R., 24 Bom., 227

89 ——— Account arising from illegal transactions—*Act XXI of 1848*—A plaintiff cannot recover on an account stated which springs out of transactions coming under Act XXI of 1848 NOBINCHUNDER MOOKERJEE v PROSUNNO KOOMAR BANERJEE 1 Ind. Jur O S., 126

But *see* TRIBHUBANDAS JAGJIVANDAS v MOTILAL RAMDAS 1 Bom., 34

90 ——— Suit to recover deposit paid on wagering contract—*Contract Act (IX of 1872) ss 22 24-30 and 65—Bombay Act III of 1865 s 1—Act XXI of 1848—In pari delicto potior est conditio possidentis Application of the maxim—Plaint Amendment of—Deceit—Unilateral mistake*—On the 21st of January 1883

CONTRACT—*continued*

7 WAGERING CONTRACTS—*continued*

the plaintiff contracted to purchase from the defendant the right to receive the dividend on 50 shares of the Empress Mill at R37 per share the plaintiff being under an impression that the dividend was to be declared on some subsequent day The plaintiff deposited R100 with the defendant as part payment of the purchase-money Subsequently it was ascertained that the dividend had been already declared on 17th January 1883 (*i.e.* four days before the contract) at R25 The plaintiff thereupon sued the defendant to have the contract declared cancelled and sought to recover the deposit of R100 with interest The Judge of the Court of Small Causes at Broach, being of opinion that the contract was in its nature a sutta or wagering contract rejected the plaintiff's claim. The plaintiff applied to the High Court under its extraordinary jurisdiction to set aside the lower Court s decision. *Held* that, in the first instance the plaint as framed not disclosing any cause of action ought to have been returned for amendment It should either have alleged a mistake common to both parties to the contract or should have contained an allegation of fraud on the defendant s part inducing the plaintiff to enter into the agreement. The mere circumstance that the contract was "caused by one of the parties to it being under a mistake as to a matter of fact would not under s. 22 of the Contract Act (IX of 1872) have made the contract voidable *Held* also that if the contract was really a wager the deposit could not be recovered under s. 65 of the Contract Act as its nature must from the first have been known to the parties. To an agreement so known to be void s 65 does not apply If the contract was in the intention of both parties a wager the suit would be barred by s 1 of Bombay Act III of 1865 which though it formed a part of Act XXI of 1848 which is repealed by the Contract Act is not being a special Act applicable to the Bombay Presidency itself repealed It must be read with s 30 of the Contract Act. *Held* also that to constitute a wager the transaction between the parties must wholly depend on the risk in contemplation and "neither party must look to anything but the payment of money on the determination of an uncertainty" But if one of the parties has the event in his own hands the transaction is not a wager If the plaintiff's real contention was that defendant was aware of a declaration of dividends at R25 per share and by keeping plaintiff in ignorance of the facts induced him to enter into a wagering agreement for payment of differences at a contract rate of R37 per share then to a suit for the recovery of the deposit made to the defendant with reference to such an agreement, Bombay Act III of 186. has no application. Wagering contracts are not illegal. They are simply destitute of legal effect. If fraud was practised on plaintiff the maxim *potior est cond t o defendentis* would not apply DAYABHAI TRIBHOVANDAS *v* LAKHMICHAND PANACHAND [I. L. R., 9 Bom. 358

91. ———— Illegal consideration in suit for money paid—*Contract Act s 23 and s 30—Betting on a horse race—Entrance money for horse race—Agreement by way of wager*—Where a person who had lost a bet on a horse race requested another to pay the amount of such bet agreeing to repay him and the latter paid such amount—*Held* that the money so paid was recoverable from the person for whom it was paid, the consideration for the agreement not being unlawful within the meaning of s. 23 of the Contract Act 1872 and the agreement not being one by way of wager within the meaning of s. 30 of the same Act *Knight* v *Fitch* 24 *L J., C P* 122 *Knight* v *Cambers* 24 *L J., C P.,* 121 *Jessopp* v *Lutwyche* 10 *Exch* 614 and *Beeston* v *Beeston, L R., 1 Ex D.,* 13 referred to. PRINGLE *v* JAFAR KHAN I. L. R., 5 All, 443

92. ———— Contract Act IX of 1872, s 30—*Loan to facilitate gambling—Loan to aid in paying off gambling debt.*—*Held* that the fact that the object with which the plaintiff lent money to the defendant was to enable him to pay off a gambling debt did not taint the transaction with immorality so as to disentitle the plaintiff to recover BENI MADHO DAS *v* KAUSAL KISHOR DHUSAR [I. L. R , 22 All, 452

8. ALTERATION OF CONTRACTS

(*a*) ALTERATION BY PARTY

93 ———— Addition of words to contract—*Sale of goods*—*R G G & Co* entered into a contract to sell certain goods to *A S N S* both Calcutta firms The contract which was in a printed English form was taken on the 18th December 1868 by one *M* on behalf of the firm of *R G G & Co.* to obtain the signature of the vendee's firm It was signed on their behalf by *A S* Neither *M* nor *A S* understood English and no explanation was given of the terms of the contract to *A S* at the time he signed it but there had been negotiations between *M* and *A S* as to these goods prior to the time when *A S*'s signature was obtained. It did not appear that the goods had been identified in any way by the purchasers who had merely seen a sample. After his signature *A S* wrote in Nagri "Goods fresh grenadines five cases at two annas and three pie per yard." *A S N S* afterwards, on the 9th February 1869 paid R1 000 as earnest money which was accepted by *R G G & Co* who then allowed further time for taking delivery of the goods which however *A S N S* finding some of the goods were stained declined to do. *R G G & Co* thereupon brought an action for breach of contract in not taking delivery and a cross-suit was brought by *A S N S* to recover the R1 000 paid as earnest money *Held* that the words "fresh goods" after the signature of *A S* constituted part of the contract into which the parties entered, and by which they were bound. MADHAB CHANDRA RUDAR *v* AMRIT SING NARYAN SING [5 B L R., 111

ROBERTSON GLADSTONE & Co *v* KASTURY MULL [3 B L R., O C., 103 at p 108

See AH SHAIN SHOKE *v* MOOTHIA CHETTY [I. L. R., 27 Calc., 403

where an alteration in a contract in English was mad

CONTRACT—*continued*

8. ALTERATION OF CONTRACTS—*continued*

in the Chinese language which was not understood by the broker or the other party to the contract and therefore was held not to have been agreed to

94. ——— *Signature—Repudiation—Statute of frauds*—The plaintiffs contracted with the defendant for the purchase from him of a certain quantity of hog's lard. The terms of the contract were contained in a letter which was drafted by the plaintiffs and sent to the defendant for signature. The defendant returned the letter unsigned, with two additional clauses. The plaintiffs not being able to agree to one of these clauses had an interview with the defendant when the defendant took the document away with him and subsequently on 17th May returned it signed but with the additional clauses still remaining. The plaintiffs had another interview with the defendant on 5th June during which the additional clause objected to by the plaintiffs was struck out one of the plaintiffs writing the word cancelled against that clause and the defendant putting his initials against the word "cancelled. The plaintiffs then added to the contract the words approved together with *R* and *C* being the initials of their firm. Other alterations had been made in the document and it containing many erasures the plaintiffs on the same day sent a fair copy to the defendant for signature but the defendant wrote repudiating the alleged contract and refusing to sign the document. *Held* (confirming the decision of the Court below) there was no binding contract between the parties. The signature of the defendant put to the document on 17th May was not a sufficient signature by the party to be charged so as to satisfy the statute of frauds. CHARRIOL *v* SHIRCORE 8 B L R 305

95 ——— *Signature*—To a contract between the plaintiffs and the defendant for the purchase by the defendant of a cargo of salt the plaintiffs after the contract had been signed by the defendant added in the margin "Ten days demurrage will be allowed at R200 per diem." *Held* that the addition of the words in the margin did not amount to an alteration within the rule of English law: the alteration must be either something which appears to be attested by the signature or something which alters the character of the instrument. EDE *v* KANTO NATH SHAW I. L. R. 3 Calc. 220

96 ——— **Filling up document after signature**—*Execution of document—Sufficiency of signature*—Where a document although blank when signed and put into the hands of one of certain parties is afterwards filled by the consent of those parties with words which had already been agreed upon by them and had in consequence of such consent been already drafted the signature to the fair copy although attached before the words were filled in is just as binding as if it was attached to the document after the words had been written down in it. AHED HOSSEIN *v* LALLA RAM SURUN [11 W R 216

97 ——— **Addition to document—** *Material alteration*—Where a subsequent addition to a document though unauthorized by the executant serves only to state explicitly what is already implied in the document and what the law would infer from it such addition is immaterial and does not vitiate the instrument. Interest at a penal rate should not be awarded if there be no demand for it or for a sum by way of compensation for special damage on the part of the plaintiff. TIKAMDAS JAVAHIRDAS *v* GANGA KOM MATHURADAS 11 Bom., 203

98 ——— **Alteration of date of bond, Effect of**—*Suit to enforce altered document*—In suits upon two hypothecation bonds executed by different defendants the plaintiffs in the first suit sued for recovery from the defendants personally and in the second suit for recovery from the defendants and also from the property hypothecated, and in each case obtained a decree. The lower Appellate Court reversed both decrees on the ground that the bonds were vitiated by a fraudulent alteration of them in the material part *viz* the date fixed for payment. *Held* that the documents might be used as evidence of the debt between the parties and also of the creation of the charge upon the property hypothecated. It lies upon the parties who seek to enforce an altered instrument to show the circumstances under which the alteration took place. RAMASAMY KON *v* BHAVANNI AYYAR. RAMASAMY KON *v* SINTHIWAIYAN *alias* CHINNA BHAVANI AYYAR 3 Mad. 247

99 ——— *Alteration in bond sued on—Materiality of alteration—Fraud—Admissibility on evidence*—Suit on a bond the date of which had been altered from 11th September to 20th September while it was in the possession of the plaintiff. Fraud was not proved and the period of limitation reckoned from the 11th September had not expired. *Held* that the bond was void as such and was not receivable in evidence to prove the debt. *Christacharlu v Karibasayya I L R. 9 Mad 399* followed. GOVINDASAMI *v* KUPPUSAMI [I L. R 12 Mad. 239

100 ——— **Fraudulent alteration in document Effect of.**—An alteration made in a deed without the consent of the parties who originally executed the deed and with the fraudulent view of benefiting him who propounds it vitiates the deed only. The materiality or otherwise of the alteration does not affect this rule of law. KALEE COOMAR ROY *v* GUNGA NARAIN DUT ROY 10 W R. 250

So also as to the alteration in a will. *See* PARAMMA *v* RAMACHANDRA I. L. R., 7 Mad. 302

101. ——— **Alteration of document** —*Effect of as to admissibility in evidence*—If an instrument on which a case depends should appear to have been altered it cannot be received in evidence or be acted upon till it is most satisfactorily proved by all the subscribing witnesses at the least, and other evidence that the alteration was made antecedently to the signature. PETAMBER MANICKJEE *v* MOTIEECHAND MANICKJEE [5 W R. P C., 53 1 Moore's I. A., 420

CONTRACT—*continued*

8 ALTERATION OF CONTRACTS—*continued*

102 ———— Material alteration Effect of—*Bond Forgery — Fraud* — A person who had a bond executed in his favour by one of three brothers forged the signatures of the other two brothers to the bond and brought a suit upon it in its altered form against the three brothers. The forgery having been established the Court of first instance dismissed the suit as against all the three defendants and this decision was affirmed on appeal On second appeal to the High Court —*Held* that the decision was correct as a material alteration in a bond is if fraudulently made sufficient to render the bond void. A party who has the custody of an instrument made for his benefit is bound to preserve it in its original state and any material alteration of it will vitiate the instrument Where a person brings a suit upon a document which when produced in evidence is found to have been fraudulently altered to the knowledge of the plaintiff no Court ought to allow an amendment to enable him to succeed upon it in its original state GOGUN CHUNDER GHOSE *v* DHURONI DHUR MUNDUL

[I. L. R. 7 Calc., 616 9 C L R 257

103 ———— Material alteration —*Promissory note—Negotiable instrument—Alteration of rate of interest* —An alteration which vitiates an instrument must be such as to cause the instrument on the face of it to operate differently from the original instrument The alteration of the rate of interest in one of the clauses of a promissory note held to be a material alteration vitiating the note although the clause so altered was a penal clause to which even if unaltered the Court would not give effect ODEYCHAND BOODAJI *v* BHASKAR JAGONNATH

[I L R 6 Bom 371

See ANANDJI VISRAM *v* NARIAD SPINNING AND WEAVING COMPANY I. L. R., 1 Bom., 320

104 ———— Consent of parties—*Material alteration of document* —A material alteration made after execution does not vitiate a deed if it be made with the consent of all the parties ISAC MAHOMED *v* BAI FATMA I. L. R. 10 Bom. 487

105 ———— Fraudulent alteration of document Effect of—*English law how far applicable in mofussil* —In a suit brought to recover R815 principal and interest due according to the terms of a registered mortgage bond it was found that the plaintiff had fraudulently altered the terms of the bond prior to registration (1) by inserting a condition making the whole sum payable upon default of payment of any instalment and (2) by doubling the rate of interest The defendant admitted in his written statement that he had received a certain portion of the consideration for the bond from the plaintiff At the trial the plaintiff claimed to amend the plaint and recover the first instalment according to the terms of the bond as executed by defendant. *Held* by the Full Bench (KERNAN *Offg C.J.*, MUTTUSAMI AYYAR HUTCHINS PARKER and HANDLEY *JJ*) that the suit must be dismissed. *Per* KERNAN and MUTTUSAMI AYYAR *JJ*—The decision in *Ramasamy Kon's case* 3 *Mad.*, 247 is in conformity with the law of England. *Per* KERNAN HUTCHINS PARKER and HANDLEY *JJ* —The rule in *Master* v *Miller* is in consonance with equity and good conscience and applicable to the mofussil *Per* MUTTUSAMI AYYAR *J* —That rule is more penal than equitable but having been adopted by the Courts since 1866 must be followed. CHRISTACHARLU *v* KARIBASAYYA I L R. 9 Mad. 399

106 ———— *Alteration in material part—Effect of alteration as vitiating document—Vesting of interest by execution of mortgage instrument* —By an agreement entered into between plaintiff and defendants' predecessors in title plaintiff undertook to sell and convey certain lands to the purchasers and to allow half the purchase money to remain at interest for three years on security of the lands sold. Plaintiff's mother was alive as also his son who was then a minor In order to protect the purchasers from any claims by the said mother or son as against the lands so agreed to be sold plaintiff further agreed to give the purchasers a bond indemnifying them from any such or other claims. Plaintiff in pursuance of the said agreement, duly executed a conveyance of the lands; he also gave the purchasers an indemnity in respect of claims by his mother as against the lands. The purchasers executed a mortgage over the lands in plaintiff's favour in which the indemnity to be furnished by plaintiff was at first referred to in general terms but the document concluded with the words, a security should be furnished for this sum on account of the minor only The balance of purchase money so secured not having been paid plaintiff brought a suit for the sale of the mortgaged land and before doing so tendered an indemnity protecting the defendants against any claims that might be made as against the lands by the plaintiff's said minor son It was found that the words for the minor only had been added to the mortgage instrument after its execution On its being contended that the alteration was a material one and vitiated the document and that the suit being based on the altered document must fail and that the tender of a general guarantee as originally agreed upon was a condition precedent to the plaintiff's right to sue —*Held per* COLLINS, *C J* and BENSON *J* (in an order calling for a finding as to whether the alteration had been made with the mortgagor's consent) that the mortgage instrument having provided for security to be given by plaintiff in general terms the addition of the words for the minor only restricted the liability of the property to be given by plaintiff as security to claims made by the said minor son. It diminished the guarantee to be given by plaintiff against claims by the mother or others It was thus an alteration in a material part of the document and would vitiate it as a basis for the plaintiff's suit unless the plaintiff could show that the alteration had been made with the consent of the mortgagors who executed the document. The finding of the lower Court was that the alteration had been made without the mortgagor's consent. *Held* SUBRAMANIA AYYAR, *Offg C.J* and MOORE *J* (O FARRELL, *J* dissenting) that on the execution

CONTRACT—*continued*

8 ALTERATION OF CONTRACTS—*continued*

of the mortgage instrument any interest in the property comprised therein at once became vested in the plaintiff that such interest was not and could not have been divested from him by the subsequent addition of the words referred to, and that in asking for the sale of the land plaintiff was seeking to enforce not a right resting on the contract or covenant but one arising by operation of law with reference to the vested interest created by the instrument having been executed, that though reference was made in the plaint to the provisions relating to the mortgage instrument in its altered state such reference was not an essential part of plaintiff's cause of action and that the suit was not necessarily based on the altered instrument that the execution of a security bond in terms of the mortgage instrument before it was altered was not a condition precedent and the suit was sustainable though no such security had been given before the institution of the suit and that (the question of damages not arising) plaintiff was entitled to a decree on the mortgage instrument which would also provide that he must furnish a proper security bond before an order absolute would be passed *Per* O FARRELL, *J* —That inasmuch as the suit was based not on the transferred right but on the altered document and as no obligation had as yet attached under the unaltered document the suit should be dismissed that the defendants' liability was contingent upon the prior execution by plaintiff of a general guarantee and not of the limited one which he relying on the fraudulent alteration had tendered that where an agreement has as to one of the parties been wholly executed, the altered contract may be given in evidence of the correlative obligations incurred by the other party but that here the agreement so far as it related to repayment of the purchase money was executory and contingent upon the fulfilment by the plaintiff of the prior obligation to execute a proper guarantee and that a conditional decree upon a proper security bond being executed could not be given SUBRAHMANIA AYYAN *v* KRISHNA AYYAN [I. L. R 23 Mad. 137

107 ———— Addition of false attestation—*Bond—Material alteration of a document* —In an action on an attested instrument not required by law to be attested the obligee while the instrument was in his possession and custody got another attesting signature added to it by a man who had not in fact witnessed the execution of it by the obligor *Held* that although the alteration did not vary the contract it was material in the sense of stating a falsehood either expressly or by implication by way of increasing the apparent evidence of its genuineness and that the obligee could not sue upon it SITARAM KRISHNA *v* DAJI DEVAJI I L. R 7 Bom. 418

108 ———— Interpolation of name of witness Effect of—*Document not requiring attestation—Material alteration* —The interpolation of the name of a witness in document which need not be attested is not a material alteration that would render the document void. *Suffell* v *Bank of England 9 Q B D.*, *555* explained. *Sitaram Krishna v Daji Devaji I L R 7 Bom 416* dissented from MOHESH CHUNDER CHATTERJI *v* KAMINI KUMARI DABIA I L. R. 12 Calc 313

109 ———— Addition of name of attesting witness—*Forged attestation* —In a suit on a hypothecation bond dated before the Transfer of Property Act came into operation and executed in favour of the plaintiff by the father (deceased) of defendant No 1 it appeared that after the bond had come into the hands of the plaintiff the name of defendant No 1 had been added as that of an attesting witness and that this was a forgery *Held* that the plaintiff was not precluded from recovering by reason of his alteration in the bond sued on RAM AYYAR *v* SHANMUGAM I L. R. 15 Mad. 70

110 ———— Material alteration —*Addition of a witness's signature subsequent to execution of the bond* —The fact that the signature of an attesting witness has been affixed to a bond after execution is not a material alteration and does not make the bond void VENKATESH PRABHU *v* BABA SUBRAYA I. L. R , 15 Bom 44

(b) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)

111. ———— Power of Court—*Alteration of without consent of parties* —The Court has no power without the consent of the parties to alter the contract or substitute for it terms which the Court may prefer RAGHO GOBIND PARANJPE *v* DIPCHAND [I. L. R. 4 Bom. 96.

KOTOO *v* KO PAY YAH 6 W R , 255

DIGAMBUREE DABEE *v* NUNDGOPAL BANERJEE [1 W R. Mis., 1

But *see* JUDOBUNSEE BHUGTABE *v* MUKEIM KOWAREE 1 W R Mis 6

112. ———— *Power of Government in its executive capacity* —It is not within the power of a Court of law in the face of the contracts originally made between the mula vargdars (superior holders) and their mul-gamidars (permanent tenants) to relieve the former from the hardship caused to them by reason of the enhancement by Government of the assessment on their lands to an amount exceeding or equal to the rent received by them (mula var dars) from the mula gaimdars It is doubtful whether Government in its executive capacity has any more power than Courts of law to interfere with contracts made between private persons The remedy lies rather in the hands of the Legislature RANGA *v* SUBA HEGDE [I. L R., 4 Bom. 473

113 ———— Nature of alteration.—The Court should not by its decree make for the parties a different contract from that which they themselves had entered into. BALA VALAD SANKIA *v* GADAJI BALVANT KULKARNI [3 Bom 175 2nd Ed. 168

114. ———— Inequitable agreements—*Alteration of rate of interest—Act XXVIII of*

CONTRACT—*continued*

8 ALTERATION OF CONTRACTS—*continued*

with interest at 36 per cent per annum The defendant having made default in payment the plaintiff brought the present suit The defendant pleaded his minority The Court found he was not a minor at the time he entered into the contract but on the merits of the case the lower Court (PHEAR, J) found that the agreement was unconscionable and one which a Court of Equity would not enforce *Held* by the Appeal Court (GARTH C J and MACPHERSON J) in accordance with the decision of PHEAR J that the plaintiff was only entitled to a decree for the amount actually received by the defendant from him with interest at 6 per cent MOTHOORMOHUN ROY v SOORENDRO NARAIN DEB I L R 1 Calc 108

125 —————— *Unconscionable bargain—Usurious agreement—Contract Act s 74* —Plaintiff sued to recover R643 10 6 value of 1 230 paras of paddy, due under an account dated 8th September 1876 The account on a cadjan was for R315 payable with 12 per cent interest within fifteen days and in default plaintiff to be paid on 14th November 1876 paddy for the amount due calculated at the rate of 4 annas 7 pies per para Immediately after the execution of this agreement the price of rice rose the defendant did not pay within the fifteen days and in the plaint in this suit the price of rice was calculated at 8 annas per para *Held* that the bargain was unconscionable Under the Contract Act s 74 in a case falling within its terms only reasonable compensation could be given which in the present case would be interest at a somewhat high rate The contract in effect was that if the principal with 12 per cent were not paid on 22nd September double the amount should be payable on the 15th November Such a contract a Court of Equity would not enforce VENKITTARAMA PATTAR v KESHAVA MENON [I L R 1 Mad 349

126 —————— *Unconscionable bargain—Purda nashin lady* —Fraud apart a loan to a purda nashin woman from her own mukhtear at an exorbitant rate of interest the security being ample may be a hard and unconscionable bargain on which the contract for such rate of interest will not be enforced *Benyon v Cook L R 10 Ch Ap 389* referred to and followed. KAMINI SUNDARI CHOWDHRANI v KALI PROSSUNNO GHOSE I L R 12 Calc 225 [L R 12 I A 215

127 —————— Undue influence—*Ground for setting aside deed* —In this case an ikrarnamah whereby the three plaintiffs (two of them being under age) parted with half of their property without consideration whilst not fully acquainted with their rights without professional advice and during a state of things likely to overawe them and materially affect the free exercise of their will was set aside IRAM NARAIN SINGH v LARASRAM SINGH IREM NARAIN SINGH v POODER NARAIN SINGH [L R 4 I A 101

128 —————— *Contract Act (IX of 1872) s 16 Avar l ma le under—Coercion—Civil Procedure Code ss 522 526* —Under s 16 of the Indian Contract Act 1872 as it stood before amended by Act VI of 1899 it is not sufficient in order to render a contract voidable on account of undue influence that the party claiming to avoid the contract should have been at the time he entered into it in a state of fear amounting to mental distress which enfeebled the mind but there must further be action of some kind the employment of pressure or influence by or on behalf of the other party to the contract *Jones v Merionethshire Buildings Society L R 1892 1 Ch 173* referred to GOBARDHAN DAS v JAI KISHEN DAS I L R 22 All, 224

129 —————— *Voluntary transfer—Act IX of 1872 (Contract Act) s 16* —In a transaction between two persons where one is so situated as to be under the control and influence of the other the Courts in this country have to see that such other does not unduly and unfairly exercise that influence and control over such person for his own advantage or benefit or for the advantage or benefit of some religious object in which he is interested and will call upon him to give clear and cogent proof that the transaction complained of was such a one as the law would support and recognize Where a fiduciary or *quasi* fiduciary relation had existed Courts of Equity have invariably placed the burden of sustaining the transaction upon the party benefited by it requiring him to show that it was of an unobjectionable character and one which it ought not to disturb The exercise of this beneficial jurisdiction is not confined to cases only between guardian and ward attorney and client father and son but the relief thus granted stands upon a general principle applying to all the variety of relations in which dominion may be exercised by one person over another The plaintiff who on the death of the widow of his brother became entitled to the estate of the deceased found himself resisted in his claim by wealthy relatives. He was a man without means The defendant took him to his house kept him there found him all the money for the purpose of carrying on his litigation with his relatives, in which the plaintiff succeeded While the litigation for mutation of names in respect of the property was pending in the Revenue Court and while plaintiff was residing with the defendant he executed the sale deed in favour of defendant's brother for the nominal consideration of R9 500 or half the property he claimed and again shortly after the mutation case had terminated in his favour he executed a deed of endowment of the remaining half in favour of a temple founded by the ancestor of the defendant and in which the defendant was interested, and the result was that plaintiff was left as poor as he was when he first came into the defendant's hands Plaintiff sued for cancellation of the deed of endowment on the ground that the same had been obtained from him by the exercise of undue influence and by means of fraud and obtained a decree On appeal by the defendant it was *held* that looking at all the facts such a relation between plaintiff and defendant in the course of the year 1885 had been established as to cast upon the latter the obligation of satisfying the Court that the transaction which was given effect to by the deed of endowment was an honest *bona fide* transaction

CONTRACT—*continued*

8 ALTERATION OF CONTRACTS—*continued*

and on that ought to be upheld. SITAL PRASAD *v* PARBU LAL. I. L. R. 10 All. 535

130 ———— Unconscionable bargain—*Equitable relief—Promissory note—Interest deducted in advance from the sum lent—Inadequacy of consideration—Grossly exorbitant interest*—The Court will afford no protection to persons who wilfully and knowingly enter into extortionate and unreasonable bargains. It is only where a person has entered into an extortionate bargain and it is shown that he was in ignorance of the unfair nature of the transaction that the Court is justified in interfering. MACKINTOSH *v* WINGROVE

[I. L. R., 4 Calc. 137 2 C. L. R. 433

131. ———— Oppressive conditions in deed—*Inadequacy of consideration*—Where money lenders dealing with ignorant illiterate peasants made use of the necessitous position of these peasants who were seeking to raise a sum of money for the purpose of stocking and tilling their lands to impose upon them a contract in the form of a mortgage by which they agreed in default of punctual payment of the half produce and other events to sell their land at a gross undervalue, *viz.*, one third of the amount of the mortgage debt which in itself was not more than equal to half the value of the annual produce of the land and to remain liable to the remaining two thirds of that debt with interest and even if no default should occur on their parts in payment of a moiety of the annual produce or the performance of their other covenants and notwithstanding full payment of the principal to continue for fifteen years to pay the half produce of the lands to the mortgagees—*Held* (reversing the decrees of both the Courts below) that the deed of mortgage should only stand as security for the payment of the principal sum of R300 and interest at 9 per cent and in all other respects should be set aside as inequitable fraudulent and grossly oppressive. *Held* also that if in execution of the reversed decrees the lands had been made over to the mortgagees as purchasers they should be restored to the mortgagors and that the rents profits and produce received by the mortgagees while in possession should be set off on account against the said principal sum and interest and that the balance should be paid by the party against whom the same might be found. Mere inadequacy of consideration unless it be so great as to amount to evidence of fraud is not sufficient ground for setting aside a contract or refusing to decree specific performance of it. But inadequacy of consideration when found in conjunction with any such other circumstances as suppression of true value of property misrepresentation fraud surprise oppression urgent necessity for money weakness of understanding or even ignorance is an ingredient which weighs powerfully with a Court of Equity in considering whether it should set aside contracts or refuse to decree specific performance of them. KEDARI BANU *v* ATMARAMBHAT 3 Bom. A. C. 11

132. ———— Extortionate claims made by professional persons to litigants—*Fiduciary relationship*—All litigants are entitled to the protection of the Court from extortionate claims made upon them by those whose professional aid they seek. Brokers and meddlers in litigation who avail themselves of the weakness and ignorance of suitors to obtain from them under a pretence of services to be rendered engagements for the payment of money will find that protection will be afforded by the Court against them also. ROOP NARAIN MISR *v* KUSHI RAM SINGH TANBIRAM 2 N. W., 67

133 ———— Parties dealing on unequal terms—*Inequitable contract*—Assuming that the same principles are applicable here as in the English Court of Chancery the High Court held that although in a class of cases without positive fraud a contract may be set aside unless it is shown to have been made upon adequate consideration yet as a general rule before the defendant is called upon to prove that he has given full value for property sold to him the plaintiff must first make out that the parties to the bargain were dealing on terms so unequal as to render it improper for a Court of Justice to enforce any contract they may have made unless it can be shown that the contract was in fact one which a prudent person with proper advice and assistance might well have made. JUGO BUNDHOO TEWAREE *v* KARUM SINGH 22 W. R., 341

134 ———— *Release by widow—Suit to set aside—Duress—Coercion—Fraud—Grounds on which relief is granted*—B R the widow of a zamindar having for valuable consideration released all her claims on her husband's estate in favour of V S her husband's brother by a deed executed five days after the death of her husband brought a suit against V S to set aside the deed of release on the ground that it was obtained by threats and fraud and to recover the estate. *Held* that it was not sufficient to find that the consent given by the plaintiff was not caused by coercion as defined in the Contract Act nor by duress as known to the English law but that the questions to be decided were (1) whether undue advantage had been taken of the plaintiff's position (2) whether the plaintiff had been sufficiently informed as to her rights or had proper advisers (3) whether the contract was an unconscionable or catching bargain. BUCHI RAMAYYA *v* JAGAPATHI I. L. R. 8 Mad. 304

135 ———— *Inequitable contract*—In a suit brought upon two bonds for R2,000 and R1,000 respectively where the transaction was found to be that defendant's property having been about to be sold in execution of a decree for a sum much more than R3,000 he was made to appear to borrow from the plaintiff at 75 per cent interest R3,000 which were immediately applied to the payment of the debt the defendant deriving no other benefit and the plaintiff not binding himself to stay execution—*Held* that the contract in these bonds was of such a nature as to involve the conclusion that defendant was imposed upon and was not a free agent and that the transaction was of a kind not to be supported by a Court of Equity. LAL BEHAREE AWUSTEE *v* BHOLANATH DEY CHAKLADAR

[23 W. R. 49

CONTRACT—*continued*

8 ALTERATION OF CONTRACTS—*continued*

136 ——— **Unconscionable bargain**—*Interest— Dharta —Illiterate agriculturist*—The High Court as a Court of equity possesses the power exercised by the Court of Chancery of granting relief in cases of such unconscionable or grossly unequal and oppressive bargains as no man of ordinary prudence would enter into and which from their nature and the relative positions of the parties raise a presumption of fraud or undue influence The principles upon which such relief is granted apply to contracts in which exceedingly onerous conditions are imposed by money lenders upon poor and ignorant persons in rural districts The exercise of such power has not been affected by the repeal of the usury laws *Chesterfield* v *Janssen 2 Ves 155 O'Rorke* v *Bolingbroke L R 2 Ap Cas 814 Earl of Aylesford* v *Morris L R 8 Ch Ap 484 Nevill* v *Snelling L R 15 Ch D 679* and *Beynon* v *Cook L R 10 Ch Ap 389* referred to An illiterate Kurmi in the position of a peasant proprietor executed a mortgage deed in favour of a professional money lender to whom he owed R97 by which he agreed to pay interest on that sum at the rate of 24 per cent per annum at compound interest He further agreed that dharta or a yearly fine at the rate of one anna per rupee should be allowed to the mortgagee to be calculated by yearly rests It was also provided that the interest should be paid from the profits of certain malikana land of the mortgagor and that if the interest were not paid for two years the mortgagee should be put in possession of this land. As security for the debt a six pies zamindari share was mortgaged for a term of eleven years The effect of the stipulation as to dharta was that one anna per rupee would be added at the end of every year not only to the principal mortgage money but also to the interest due and the total would be again regarded as the principal sum for the ensuing year Ten years after the date of the mortgage the mortgagor brought a suit for redemption on payment of only R97 or such sum as the Court might determine as due to the mortgagee At that time the accounts made up by the mortgagee showed that the debt of R97 with compound interest had swollen to R873 of which the dharta alone amounted to R111 *Held* that the stipulation in the deed as to dharta was not of the kind referred to in s. 74 of the Contract Act (IX of 1872) and that there was no question of penalty but that looking to the relative positions of the parties and the unconscionable and oppressive nature of the stipulation the benefit thereof should be disallowed to the mortgagee and the mortgagor permitted to redeem on payment of the mortgage money and interest no appeal having been preferred by him from the decree of the first Court making redemption subject to the payment of interest LALLI *v* I AM I RASAD **I. L. R. 9 All, 74**

137 ——— *Bond—Compound interest*—In a suit for the recovery of a principal sum of R99 due upon a bond with compound interest at 2 per cent per mensem it was found that advantage was taken by the plaintiff of the fact that the defendant was being pressed in the tahsil for immediate payment of revenue due to induce him to execute the bond charging compound interest at the above mentioned rate notwithstanding that ample security was given by mortgage of landed property It was also found that although under the terms of the bond the plaintiff had power to enforce the same at any time by bringing to sale the mortgaged property he had wilfully allowed the debt to remain unsatisfied in order that compound interest at a high rate might accumulate *Held* that the bargain was a hard and unconscionable one which the Court had undoubted power to refuse to enforce and which under all the circumstances it would be unreasonable and unequitable for a Court of justice to give full effect to and that under the circumstances compound interest should not be allowed. *Kamini Sundari Chaodhrani* v *Kali Prosunno Ghose I L R 12 Calc 225 Beynon* v *Cook L R 10 Ch Ap 389* and *Lall* v *Ram Prasad I L R 9 All 74* referred to. The Court decreed the principal sum of R99 with simple interest at 24 per cent per annum up to the date of institution of the suit MADHO SING *v* KASHI RAM **[I. L. R, 9 All, 228**

138 ——— *Contract to pay expenses of litigation*—The result of the English cases regarding hard or unconscionable bargains is that in dealings with expectant heirs reversioners or remaindermen the fact that the bargain was declined by others as not being sufficiently advantageous does not raise a presumption that it was fair and reasonable and that until the contrary is satisfactorily proved by the party trying to maintain the bargain, the Court may presume that a bargain which apparently provides in the opinion of the Court for an unusually high return or for an exceptionally high rate of interest is a hard and unconscionable bargain against which relief should be granted. The doctrine of equity on the subject of such bargains is applicable in England only to dealings with expectant heirs reversioners or remaindermen. The judgment of the Privy Council in *Kamini Sundari Chaodhrani* v *Kali Prosunno Ghose I L R 12 Calc 225 L R 12 I A 215* does not imply that the doctrine is to be applied in India to cases except where it would have been applied in England or except where the case is in some way analogous to a case of snatching a bargain with an expectant heir reversioner or remainderman or except there is some fiduciary relationship between the lender and the borrower although there may be no fraud or undue influence or except there is some incapacity such as ignorance on the part of the borrower to appreciate the true effect of his bargain For the purposes of meeting the expenses of an appeal to the High Court the appellant on the advice of his legal advisers executed a bond for R25,000 in consideration of the obligee agreeing to defray such expenses The obligor agreed to pay the R25,000 within one year from his recovering possession of the property in

CONTRACT—*continued*

8. ALTERATION OF CONTRACTS—*continued*

ent; and, at the request of the obligor's pleader the obligee advanced R3,700 which was applied to the expenses of the appeal The High Court dismissed the appeal and in a deed executed by the obligor in favour of the obligee and others for the purpose of defraying the expenses of a further appeal to the Privy Council he admitted his liability under the former bond. The Privy Council decreed his appeal and he obtained possession of the property in suit but declined to pay the R25,000 upon which the obligee sued upon the bond. It was found that apart from the moneys borrowed by the obligor from time to time he was without even the means of subsistence that he executed the bond with his eyes open and perfectly understood his position and the effect of both the instruments executed by him that no fraud or improper pressure appeared to have been allowed to him that his legal advisers had acted honestly and to the best of their ability in his interests that there was nothing to show that having regard to the risks of the litigation he could have obtained the assistance necessary for the prosecution of his appeal on better terms than those contained in the bond that without such assistance he could not have appealed to the High Court and that the obligee gave him such assistance upon his application *Held* that although there was nothing to show that the obligor could have obtained an advance on terms more advantageous to himself it was for the obligee to establish to the Court's satisfaction without reasonable doubt that he could not have done so and that this not having been established and the reasonableness and fairness of the bargain not being proved by showing that there had been difficulties in negotiating it or that others had refused it as not sufficiently advantageous to them the Court should hold the bargain to be a hard and unconscionable one which should not be enforced. The Court gave the plaintiff a decree for the R3,700 actually advanced with simple interest at 20 per cent per annum from the date of the bond to the date of the decree with costs in proportion and interest at 6 per cent per annum on the R3,700 interest and costs from the date of the decree until payment CHUNNI KUAR *v.* RUP SINGH

[I. L. R. 11 All. 57

139 ——————— *Gambling in litigation—Agreement opposed to public policy—Act IX of 1872 (Contract Act) s 23* —For the purpose of meeting the expenses of an appeal to the Privy Council from concurrent decrees of the Subordinate Judge and the High Court the plaintiff appellant executed a deed of sale of certain property worth over R 0,000 in consideration of the vendees providing the necessary security and moneys The plaintiff experienced considerable difficulty in procuring the means of appeal The vendees were not *professional money lenders they did not put pressure on the plaintiff* but *on the contrary he and his* agent put pressure on them to agree to the terms of the deed. It appeared that apart from the moneys borrowed by him from time to time he was without even the means of subsistence that he fully understood the nature of the deed that his agents negotiated the transaction *bona fide* and to the best of their powers in his interest that there was no fraud or deception on the part of the vendees and that they performed all that they undertook as regards meeting the expenses of the appeal Under the deed the plaintiffs were liable to furnish security to the extent of R4,000 and to advance R8,500 for other necessary expenses and they did in fact furnish such security and advanced sums aggregating R7,512 The appeal was successful The appellant having failed to put the vendees in possession of the property conveyed by the deed and recovered by him under the Privy Council's decree the vendees sued him for possession of the property and mesne profits afterwards agreeing that the Court should in lieu thereof award them compensation in money equivalent thereto *Held* that although the case was very different from cases in which persons interfered for their own benefit in litigation not their own or in which mukhtars *vakils* or persons of that class of professional money lenders taking advantage of the borrower's position sued to enforce a contract obtained by them from him and although the defendant was not entitled to sympathy yet judging by the disproportion between the liability incurred by the plaintiffs under the contract and the reward which they were to obtain in the event of defendant's success it must be concluded either that they did not believe his claim to be well founded and consequently entered though unwillingly *into* a gambling transaction or if they believe the claim to be well founded that the reward contracted for was excessive and unconscionable and in either case the contract could not be enforced in its terms. *Held* also that if the doctrine of equity applicable to such cases were applied in favour of the borrower it should also be applied in favour of the lender that as there was no reason to suspect the plaintiff's motives it would be inequitable to relieve the defendant from all liability that it was only fair that he should compensate the plaintiffs for the use of their security bonds from the date when they were deposited in the High Court to the earliest date after the judgment of the Privy Council when the plaintiffs could have obtained them back that simple interest at 12 per cent per annum on the amounts of the bonds for the period would be reasonable compensation for such use that the defendant should also repay the amounts advanced by the plaintiffs for the expenses of the litigation with interest on each advance at 20 per cent from the date on which it was made to the date of the decree in the present case and that he should pay interest on the whole amount thus decreed at 6 per cent from the date of the decree till payment *Chunni Kuar* v *Rup Singh I L R 11 All 57 Prahlad Sen* v *Budhu Singh 12 Moore's I A 275* and *Bowes* v *Heaps 3 V and B 117* referred to. LOKE INDAR SINGH *v.* RUP SINGH I. L. R. 11 All. 118

See HUSAIN BUKSH *v.* RAHMAT HUSAIN [I. L. R., 11 All. 128

CONTRACT—*continued*

8 ALTERATION OF CONTRACTS—*continued*

136 ———— **Unconscionable bargain**—*Interest—' Dharta —Illiterate agriculturist*—The High Court as a Court of equity possesses the power exercised by the Court of Chancery of granting relief in cases of such unconscionable or grossly unequal and oppressive bargains as no man of ordinary prudence would enter into and which from their nature and the relative positions of the parties raise a presumption of fraud or undue influence The principles upon which such relief is granted apply to contracts in which exceedingly onerous conditions are imposed by money lenders upon poor and ignorant persons in rural districts The exercise of such power has not been affected by the repeal of the usury laws *Chesterfield* v *Janssen 2 Ves 125 O'Rorke* v *Bolingbroke L R 2 Ap Cas 814 Earl of Aylesford* v *Morris L R 8 Ch Ap 484 Nevill* v *Snelling L R 15 Ch D 679* and *Beynon* v *Cook L R 10 Ch Ap 389* referred to An illiterate Kurmi in the position of a peasant proprietor executed a mortgage-deed in favour of a professional money lender to whom he owed R97 by which he agreed to pay interest on that sum at the rate of 24 per cent per annum at compound interest He further agreed that dharta or a yearly fine at the rate of one anna per rupee should be allowed to the mortgagee to be calculated by yearly rests It was also provided that the interest should be paid from the profits of certain malikana land of the mortgagor and that if the interest were not paid for two years the mortgagee should be put in possession of this land. As security for the debt a six pies zamindari share was mortgaged for a term of eleven years The effect of the stipulation as to dharta was that one anna per rupee would be added at the end of every year not only to the principal mortgage money but also to the interest due and the total would be again regarded as the principal sum for the ensuing year Ten years after the date of the mortgage the mortgagor brought a suit for redemption on payment of only R97 or such sum as the Court might determine as due to the mortgagee At that time the accounts made up by the mortgagee showed that the debt of R97 with compound interest had swollen to R873 of which the dharta alone amounted to R111 *Held* that the stipulation in the deed as to dharta was not of the kind referred to in s. 74 of the Contract Act (IX of 1872) and that there was no question of penalty but that looking to the relative positions of the parties and the unconscionable and oppressive nature of the stipulation the benefit thereof should be disallowed to the mortgagee and the mortgagor permitted to redeem on payment of the mortgage money and interest no appeal having been preferred by him from the decree of the first Court making redemption subject to the payment of interest LALLI v RAM PRASAD **I. L. R. 9 All. 74**

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CONTRACT—*continued*

8. ALTERATION OF CONTRACTS—*continued*

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139. ——————— *Gambling in litigation—Agreement opposed to public policy—Act IX of 1872 (Contract Act), s. 23.*—For the purpose of meeting the expenses of an appeal to the Privy Council from concurrent decrees of the Subordinate Judge and the High Court the plaintiff appellant executed a deed of sale of certain property worth over R10,000 in consideration of the vendees providing the necessary security and moneys. The plaintiff experienced considerable difficulty in procuring the means of appeal. The vendees were not professional money lenders they did not put pressure on the plaintiff but on the contrary he and his agent put pressure on them to agree to the terms of the deed. It appeared that apart from the moneys borrowed by him from time to time he was without even the means of subsistence that he fully understood the nature of the deed that his agents negotiated the transaction *bonâ fide* and to the best of their powers in his interest that there was no fraud or deception on the part of the vendees and that they performed all that they undertook as regards meeting the expenses of the appeal. Under the deed the plaintiffs were liable to furnish security *to the extent of R4,000 and to advance R8,500* for other necessary expenses and they did in fact furnish such security and advanced sums aggregating R7,542. The appeal was successful. The appellant having failed to put the vendees in possession of the property conveyed by the deed and recovered by him under the Privy Council's decree the vendees sued him for possession of the property and mesne profits afterwards agreeing that the Court should in lieu thereof award them compensation in money equivalent thereto. *Held* that although the case was very different from cases in which persons interfered for their own benefit in litigation not their own or in which mukhtars vakils or persons of that class of professional money lenders taking advantage of the borrower's position sued to enforce a contract obtained by them from him and although the defendant was not entitled to sympathy yet judging by the disproportion between the liability incurred by the plaintiffs under the contract and the reward which they were to obtain in the event of defendant's success it must be concluded either that they did not believe his claim to be well founded and consequently entered though unwillingly into a gambling transaction or if they believe the claim to be well founded that the reward contracted for was excessive and unconscionable and in either case the contract could not be enforced in its terms. *Held* also that if the doctrine of equity applicable to such cases were applied in favour of the borrower it should also be applied in favour of the lender that as there was no reason to suspect the plaintiff's motives it would be inequitable to relieve the defendant from all liability that it was only fair that he should compensate the plaintiffs for the use of their security bonds from the date when they were deposited in the High Court to the earliest date after the judgment of the Privy Council when the plaintiffs could have obtained them back that simple interest at 12 per cent per annum on the amounts of the bonds for the period would be reasonable compensation for such use that the defendant should also repay the amounts advanced by the plaintiffs for the expenses of the litigation with interest on each advance at 20 per cent from the date on which it was made to the date of the decree in the present case and that he should pay interest on the whole amount thus decreed at 6 per cent from the date of the decree till payment. *Chunni Kuar v. Rup Singh, I. L. R. 11 All. 57; Prahlad Sen v. Budhu Singh, 12 Moore's I. A. 275* and *Bowes v. Heaps, 3 V. and B. 117* referred to. LOKE INDAR SINGH *v.* RUP SINGH. I. L. R. 11 All. 118

See HUSAIN BUKSH *v.* RAHMAT HUSAIN

I. L. R. 11 All. 128

CONTRACT—*continued*

9 BREACH OF CONTRACT

140 ——— **Contract to carry coolies by ship**—*Appointment of master prohibited from taking ship—Acting against Emigration Act XIII of 1864*—Where a contract was entered into for the carriage of coolies the ship-owner was held guilty of breach of contract in appointing a master who was prohibited by an order of Government from commanding a ship carrying emigrants EALES *v* RUTTONJEE EDULJEE 1 Ind. Jur N S, 131

141 ——— **Act alleged to be not a breach of contract**—*Onus of proof*—An agreement entered into between the plaintiff and defendants members of the same caste contained a stipulation that in the event of the defendant objecting to the receiving of a girl from or the giving a girl to the plaintiffs in marriage the defendant should be bound to return R500 with interest which the plaintiffs had paid to the defendant under the agreement. It was found by the Civil Judge that the fifteenth defendant's son was engaged to be married to the second plaintiff's daughter and that the marriage was broken off on the part of the fifteenth defendant *Held* on special appeal that this was *primâ facie* a breach of the agreement which entitled the plaintiffs to recover and that it was for the defendants to show that it did not bring them within the terms of the agreement KONI CHETTY *v* VERIAPPA CHETTI [4 Mad, 325

142 ——— **Time for performance**—*Reasonable time—Conditional grant of lease*—When an agreement to grant a lease was incomplete and conditional upon an advance within eight days or a reasonable time required to meet pressing demands a delay of nineteen days was held to be unreasonable and likely to defeat the object of the lease FISCHER *v* KAMALA NAICKER [3 W R P C, 33 8 Moore's I A 170

143 ——— *Contract for sale of seed—Excess refraction*—A contract for the sale of seed contained the following provision —

Refraction guaranteed at four per cent with usual allowance up to six per cent exceeding which the seller is to reclean the seed at his expense within a week failing which buyers to have the option of cancelling that portion of the contract tendered or of buying against the seller or of taking the parcel as it stands with usual allowance for excess refraction Delivery from seller's godown in pile up to the 15th of July next On the 10th July the vendor tendered the seed. On examination the refraction was found to be above the contract rate It was agreed that the vendor should reclean the seed and on the 15th July the purchasers went to take delivery of the seed which was found still to be not sufficiently cleaned On the 15th July the vendor said that he should require a week longer for that purpose The purchasers then cancelled the contract. In a suit by the vendor for damages for breach of contract,—*Held* (1) that the breach of the contract was with the plaintiff (2) that the week allowed for recleaning commenced from the 10th July; and that as the plaintiff had not succeeded in reducing the rate of refraction to the contract rate the defendants had a right to reject the seed; and that the plaintiff was not entitled to further time to reclean it again. BUDDREE DOSS *v* PALLI [I. L. R. 6 Calc 678 8 C L R., 294

144 ——— **Agreement to deliver goods at specified place**—*Tender of goods—Right to rescind contract*—If a person contracts to deliver goods at a specified place he must be there in person or by agent and be ready to deliver them if to deliver them by a certain time he must tender them so as to allow sufficient time for examination and receipt But when a thing is to be performed at a certain place on or before a certain day to another party to a contract the tender must be to the other party at that place and that other party must be present at some particular part of the day before sunset so that the act may be completed by daylight. Where a thing is to be done anywhere a tender at a convenient time before midnight is sufficient. In case of violation of a contract by one party the other party may ordinarily rescind it totally or partially provided he himself is guilty of no default or violation and exercises the right within a reasonable time If after default of the other party he does an act recognizing the contract he cannot afterwards rescind it. KARTICK NATH PANDEY *v* GOVERNMENT 11 W R, 58

145 ——— **Failure in performance of stipulation giving party right to rescind**—*Impossibility of strict and literal performance*—When an agreement provides that an act is to be done by one of the parties within a limited time and if the party fails to perform the act within such time if the other party elects notwithstanding to take the benefit of the contract the latter must perform his part of it and though exact and literal performance of the original stipulation has become impossible the terms of the contract must be carried out as nearly as possible BROJO SOONDUREE DEBIA *v* COLLINS [13 W R., 359

146 ——— **Revocation of contract by new agreement**—*Breach of new contract*—If a second contract be entered into between two parties in revocation of a previous one the contractee cannot fall back upon the conditions of the first contract, on the ground of the breach by the contractor of the subsequent one unless there be express conditions in the latter agreement to that effect KALLIPERSAD SINGH *v* GRANT 2 Hay 329

147 ——— **Prevention by one party of completion of contract**—*Contract to cut trees—Right of action*—Plaintiff purchased at advertised Government sale by auction, certain felled trees then lying in the forest of A He also contracted for the delivery to Government of certain "sleepers" to be cut in the said forest. The Government refused to admit plaintiff's agent to the forest and thereby prevented him from completing his contract. The remedy for such loss is by a common law action and not by bill in equity and a bill for the purpose

CONTRACT—*continued*

9 BREACH OF CONTRACT—*continued*

ought consequently to be dismissed with costs JOHNSON v SECRETARY OF STATE [Cor 71 2 Hyde 153

148 ——— Difference between articles contracted for and those tendered— *Action for non acceptance* —The plaintiffs contracted to supply the defendants with from 250 000 to 300 000 of gunny bags described as No 6 quality size 40 by 28 inches, the defendants to have the option of taking bags of a longer or shorter length at proportionate prices duly giving a fortnight's notice to the plaintiffs delivery to be taken in August 1870 The defendants, after taking delivery of 11 000 of the bags found that the bags tendered were mixed in size some being longer and some being shorter than the contract size and refused to take delivery of the remainder In an action for breach of contract in not accepting the bags the Court below found on the evidence that out of 2 000 bags which were examined 100 were short by from a quarter to half an inch but that the bags which were really short were very few out of a large quantity which came up to contract size and held therefore that there had been a substantial performance of the contract on the part of the plaintiffs On appeal the Court found that the parties did not contemplate any large margin of difference in the size of the bags and that the proportion of those which differed was large enough to justify the defendants in refusing to take delivery and held that the tender of such bags by the plaintiffs was not a substantial performance of the contract MILLER v GOURIPORE COMPANY 8 B L R 285

149 ——— *Part acceptance of goods by defendant not according to contract—Rate payable for such goods* —The defendants contracted to purchase from the plaintiffs 2 000 maunds of fresh clean and good up-country indigo seed guaranteed growth of season 1870 71 at R11 per maund to be delivered to the defendants agent at Hajipore all in February next In part performance of this contract the plaintiffs delivered and the defendants' agent at Hajipore accepted 865 maunds of seed no objection as to quality being then taken But when the remainder of the seed was tendered in February the defendants refused to accept it on the ground that it was not according to contract At the same time and upon the same grounds they refused to pay the contract price for the seed already accepted and tendered instead the marked price at the time of delivery In an action to recover the contract price of the 865 maunds delivered and damages for loss on re sale of the remainder of the seed the Judge of the Court below found on the facts that the seed was not seed of the growth of 1870 71 as far as it was reasonably possible to procure it; and that though there was evidence to show that seed of the previous season if of good quality and in good preservation was occasionally mixed with the new seed and that seed so mixed had been accepted as a performance of contracts for 1870 71 yet there was no evidence that under such contracts as the present the seller was by custom at liberty to mix seeds of two crops so as to bring the sample up to an average quality and further that a custom so directly at variance with the express terms of the contract could not if proved be allowed to prevail *Held* also that the defendants had waived any objection to the 865 maunds which must therefore be taken as a good delivery *pro tanto* under the contract and must be paid for accordingly *Held* on appeal (affirming the decision of the Court below) that the plaintiffs had not delivered seed according to the contract but reversing the decision of the Court below) that the contract was a contract for the delivery of the entire quantity of 2 000 maunds and that the plaintiffs could only recover for the 865 maunds as on a new contract arising at the time when the seed was accepted such contract being to pay for the seed according to its value and not according to the rate stipulated for the 2 000 maunds MACFARLANE v CARR 8 B L R 459 17 W R 244

150 ——— Endorsement by parties on original contract— *Transfer of contract—Action for non acceptance* —On the 16th April 1878 the plaintiffs contracted to purchase from *F M & Co* of Bombay at R18 per ton *the entire cargo of coal per Culzean amounting to 900 tons or thereabouts* On 18th April the plaintiffs transferred the contract to the defendants and one Nanabhai Bomansha and the following endorsement was made — *The contract to be transferred to Messrs Tullockchand and Shapurji and Nanabhai Bomansha at R20½ For C H B Forbes and Selves W Tennent & Co'* Underneath this endorsement the transferees wrote as follows — *Accepted 450 tons at R20½ per ton Nanabhai Bomansha Accepted 450 tons at R20½ per ton Tullockchand and Shapurji* The *Culzean* arrived at Bombay with a cargo of 2 167 tons of coal on board of which it appeared that 1 300 tons had been shipped to the Bombay Baroda and Central India Railway Company and 867 tons to the order of the shippers *F M & Co* were agents at Bombay for the shippers The defendants refused to take delivery of the coal on the ground that the contract transferred to them and Nanabhai Bomansha was a contract for an entire cargo The plaintiffs sued the defendants for non acceptance contending that there had been no transfer to defendants and Nanabhai Bomansha of the original contract but a new several contract for separate portions of the cargo *Held* that the joint effect of the endorsement and the original contract was that the defendants agreed to purchase 450 tons part of an entire cargo of 900 tons or thereabouts; that inasmuch as the cargo of the *Culzean* consisted of 2 167 tons the defendants were not bound to accept any part of such cargo and that the suit was not maintainable *Borrowman* v *Drayton L R 2 Ex D 15* followed. FORBES v TULLOCKCHAND MANOCKCHAND I. L. R., 3 Bom., 386

151 ——— Dispute as to quality of goods tendered— *Right to examine goods—Survey—Reasonable time for examination of goods by purchaser—Contract Act IX of 1872 s 38* —The defendant agreed to purchase from the plaintiffs one

CONTRACT—*continued*

9 BREACH OF CONTRACT—*continued*

hundred full pressed bales fully good fair Kishli cotton at R208 8 per candy to be delivered from March 15th to April 1st On March 21st the plaintiffs sent the defendant a letter reminding him of the contract and requesting him to take delivery On receipt of this letter the defendant put the matter into the hands of *V* The plaintiff had then no cotton of the specific kind to deliver nor did the letter refer to any particular bales At 11 30 o'clock A M on March 30th, the plaintiffs sent the defendant a letter enclosing a sampling order directed to an employe of *Messrs H and S* on whose premises the bales referred to in the order were lying *V* on behalf of the defendant got samples taken of the cotton and examined them but without reference on that day to any standard. He then however conceived doubts as to the quality of the cotton and expressed his doubts to the plaintiff in the evening of that day On 31st March the plaintiffs sent the defendant a delivery order enclosed in a letter from their solicitors calling on the defendant to attend with his surveyor at 1 P.M on that day to survey the cotton as otherwise an *ex parte* survey would be held. This letter reached the defendant at 11 30 o'clock A.M. and was given by him to *V* at noon of the same day *V* applied to *M* to attend as surveyor but *M* was unable to do so. The plaintiffs had an *ex parte* survey held by *Messrs C and B* at 1 P M and they pronounced the cotton samples of which were submitted to them to be fully good fair Kishli cotton. While this survey was going on the defendant was on the Cotton Green but declined to attend saying that *V* and his surveyor were coming Shortly afterwards *V* did come and subsequently wrote a letter to plaintiffs in the defendant s name stating that the cotton was not of the description contracted to be sold by them and asking for a survey This letter reached the plaintiffs at 2 10 o'clock P M After this there was a discussion between plaintiffs and defendant and *V* On that afternoon (the 31st March) the plaintiffs solicitors sent a letter to the defendant stating the result of the survey and requiring him to take delivery This was answered by a letter of next day (April 1st) from the defendant s solicitors denying that the cotton was of proper quality or that proper notice of the survey had been given alleging that the defendant had that morning attended with his surveyor and asked leave to survey the cotton which had been refused and stating that the contract must be treated as cancelled. The cotton was sold by auction on April 5th The plaintiffs brought this suit to recover R1 631 1 11 as damages for non acceptance of the cotton The defendant contended that there had been no reasonable time allowed by the plaintiffs for the examination of the cotton and that a joint survey should have been held. *Held* that a joint survey was not necessary under the terms of s 38 of the Indian Contract Act (IX of 1872) and that the defendant having had a period of twenty four hours for inspection had had a reasonable opportunity of seeing whether the cotton offered by the plaintiffs was such cotton as the plaintiffs were bound by their contract to deliver A purchaser of goods is not entitled to continue inspecting and examining the goods offered by the vendor until the expiration of the period for delivery A reasonable opportunity for such inspection and examination is all that he is entitled to PURTONSEY MORARJI *v* JAMNADAS PITAMBERDAS

[I. L. R., 6 Bom., 692

152 ———— Breach of warranty—*Goods not agreeing with sample—Conduct of parties—Estoppel*—In a suit for damages for breach of warranty where the dispute was whether the goods tendered (shellac) were according to the contract it appeared that a sample had been taken by the plaintiff's sircar and referred to the selling broker to decide whether the goods from which it had been taken ought to be accepted and he decided that they should be taken at one rupee per maund less than the contract rate which award the parties agreed to abide by The sircar then went to the godown of the defendants thoroughly examined the undelivered shellac and removed it to the godown of the plaintiffs *Held* that after this the parties could not be allowed to raise the question whether there had been a breach of that contract and to ask for damages by reason of the goods not being of the quality contracted for FORNARO *v* LAMNARAIN SOOKDEB

[14 B. L. R., 180 23 W R., 136

153 ———— *Alleged breach of warranty by vendor on a sale and delivery of goods—Burden of proof after acceptance following upon an examination by purchaser*—Under five contracts for the sale of good Burma cutch to be delivered to a Calcutta firm in Calcutta by the vendors who knew that it was bought for the export market delivery and acceptance followed upon a searching examination of the cutch by the purchasers The latter having sent advices of this purchase to a New York firm with which they were in partnership parcels of cutch were sold to different buyers in America to whom under such forward contracts the cutch was shipped in separate shipments by the Calcutta firm On the arrival of the cutch objection was taken to its quality by the American buyers who refused to take delivery The Calcutta firm thereupon sued the vendors under the five contracts above mentioned. The burden of proof being upon the plaintiffs who had accepted the cutch after full examination in Calcutta to prove the breach of contract by the vendors by cogent evidence sufficient to rebut the presumption of due performance that arose from such acceptance—*Held* that this presumption was not rebutted in the absence of evidence as to the treatment of the cutch on its re-shipment by the plaintiffs, on the voyage from India to America and at the port of arrival GAN KIM SWEE *v* RALLI BROTHERS

[I. L. R., 13 Calc. 237
L. R. 13 I. A. 60

154 ———— Executory sale—*Delivery order—Appropriation of goods to contract—Substitution of liability—Condition precedent—Delivery in certain months—Payment in advance—Refusal to deliver—Damages*—In January 1883 R & Co., of Madras contracted to deliver to J & Co.

CONTRACT—*continued*

9 BREACH OF CONTRACT—*continued*

Madras certain goods of a certain quality subject to survey before shipment at a certain price f o b Cocanada, delivery in April and May terms full advance and local exchange ¾ per cent payable at Madras This contract was contained in bought and sold notes It was further agreed that the goods were to be delivered on board any ship *P & Co.* might direct at the port of Cocanada *P & Co* paid the full amount of the purchase money in January On the 31st March *P & Co* wrote to *W & Co* requesting that the goods might be marked in a certain way On the 18th May *W & Co* wrote to *P & Co.* enclosing a letter from *W & Co* to *S N & Co of Cocanada requesting S N & Co to hold the* goods (which were said to have been purchased by *W & Co* from *S N & Co* and to be in godown) at the disposal of *P & Co* In the letter to *P & Co* from *W & Co* the goods were also said to be in godown at that date On the same day *P & Co* wrote to *S N & Co* enclosing a delivery order for the goods (which *P & Co* stated they believed to be in godown) requesting that they might be marked in a particular way On the 25th May *S N & Co* wrote to *P & Co* informing them that they held the goods at *P & Co* s disposal On the 28th May *P & Co* received this letter On the 31st May *P & Co* chartered a ship to take on board the said goods and other goods bought by *P & Co* from *S N & Co* and others and wrote to *S N & Co* informing them that the ship would arrive about the 12th June On the 5th June *P & Co* wrote to *S N & Co* acknowledging receipt of a letter which stated that only a portion of the goods to be shipped was ready On the 9th June *P & Co* received a letter from *S N & Co* stating that all the goods were ready On the 17th June the ship arrived at Cocanada On the 21st June *S N & Co* stopped payment and ceased to carry on business No goods were delivered according to the contract *S N & Co* never had the goods to deliver between 18th May and 17th June In a suit by *P & Co* to recover from *W & Co* the price paid and damages for breach of contract to deliver the goods it was contended for *W & Co* (1) that *the transfer of the delivery order of the 18th May* amounted to a delivery of the goods *Held* that as *S N & Co* had neither had possession of the goods to be delivered nor had appropriated any goods to the contract the delivery order was inoperative (2) That the acceptance of the delivery order by *P & Co* amounted to an agreement that *S N & Co* should deliver to *P & Co* the goods when ready and that the liability of *S N & Co* was substituted for that of *W & Co* *Held* that such an agreement could not be inferred. (3) That as *S N & Co* by accepting the delivery order were estopped from denying that they had possession of the goods as against *P & Co* *S N & Co* were discharged as against *W & Co* and therefore *P & Co* had no remedy against *W & Co* *Held* (1) that *S N & Co* were not discharged as against *W & Co* as *S N & Co* s representations were false (2) that even if *S N & Co* were discharged this could not affect *P & Co* (4) That as *P & Co* had not supplied a ship in May they had failed to perform their part of the contract and could not recover *Held* distinguishing *Bowes* v *Shand (L R 2 App Ca 455)* and *Reuter* v *Sala (L R 4 C P D 239)* that the presence of the ship in May was not a condition precedent to *P & Co* recovering (5) That *W & Co* had rescinded the contract on the 29th June by refusing to deliver and therefore *P & Co* were only entitled to recover the price paid *Held* that *W & Co* were not entitled to rescind the contract *Held* also that *P & Co* having paid in advance were entitled to a reasonable time after the 29th June to prepare to purchase other goods and were entitled to the difference between the contract price *and the market price on the 1st of July as damages* for the breach to deliver SHAW *v* BILL

[I. L. R. 8 Mad. 38

155 ——— Sale of unascertained goods—Appropriation by vendor—*Passing of property—Power of re sale—Contract Act (IX of 1872) s 107—Measure of damages*—The contract *was for sale by description of 15 bales of grey* shirtings (to arrive) at an agreed price It was found that the 15 bales which were tendered by the plaintiff did answer the description but the defendants refused to accept them alleging that they were wrongly marked Under the contract of sale the plaintiffs had an express power of re sale After giving notice to the defendants they had the goods re-sold at auction and bought them in themselves as the highest bidders Then they brought an action for the difference between the contract price and the price realized at the re sale framing the suit as for loss on re sale and not for damages for breach of the contract *Held* the defendants having refused to accept the goods the property in them remained *in the vendors (plaintiffs) and the re sale had no* effect whatever To such a case as this neither s 107 of the Contract Act nor the proviso for re sale in the contract itself can have any application Such power is required when the property in the goods has passed to the purchaser subject to the lien of the vendor for the unpaid purchase money The plaintiffs were entitled to receive only the difference between the market price of the day and the contract price and that was the true measure of damages YULE & Co *v* MAHOMED HOSSAIN

[I. L. R. 24 Calc. 124
1 C W N 71

156 ——— *Passing of property—Power of re sale—Contract Act (IX of 1872), s 107—Measure of damages*—The plaintiff under several contracts with the defendant produced by manufacture goods answering to the description of the contracts and appropriated them to the several contracts On notice of the production of the goods being given to the defendant he directed the goods so appropriated to be marked and despatched for shipment according to certain instructions The plaintiffs carried out these instructions but the goods could not be shipped as the vessels in which they were to be shipped were not available at their usual place. *Held* the ownership in the goods was transferred to the defendant and the

CONTRACT—*continued*

9 BREACH OF CONTRACT—*continued*

plaintiffs became entitled under s 107 of the Contract Act after due notice to re sell them on the defendant s refusal to take delivery and to recover as damages the difference between the contract price of the goods and the price at which they were re sold CLIVE JUTE MILLS CO v EBRAHIM ARAB

[I. L. R 24 Calc 177

See PRAG NARAIN v MULCHAND

[I. L. R 19 All, 535

See BASHDEO v SMIDT I. L. R 22 All. 55

157 ———— *Breach of contract—Power of re sale Contract Act (IX of 1872) s 107—Damages* —The plaintiffs sold to the defendant under an Indent contract ten cases of tobacco at an agreed price On arrival the defendant refused to pay for and take delivery of the goods on the ground that they were not the goods contracted for After notice to the defendant the plaintiffs re sold the goods and sued to recover the expenses of the re sale and the difference between the price realized and the contract price with interest *Held* that cl 1 of the Indent contract gave the plaintiffs a right to re sell the goods and sue for the damages mentioned therein S 107 of the Contract Act had no bearing on the case *Tule & Co v Mahommed Hossain I L R 24 Calc 124* dissented from MOLL SCHUTTE & CO v LUCHMI CHAND I L R. 25 Calc. 505

[2 C W N 283

158 ———— Failure to take delivery under indent of goods—*Right of re sale—Contract Act (IX of 1872) s 107—Liability for loss* —Plaintiffs had procured certain goods in pursuance of indents signed by defendants which provided that in the event of defendants failing to take due delivery of the goods plaintiffs should be at liberty to re-sell them on defendants account and that defendants should pay to plaintiffs any deficiency arising from such re sale Goods were re sold at a loss and in a suit to recover such loss it was contended in defence that the property in the goods had not passed to the defendants and that plaintiffs only remedy was by way of damages *Held* that a clause such as that contained in the indent came into operation notwithstanding that the property had not passed to the buyers and that plaintiffs were entitled to recover the deficiency arising from the re sale. BEST v MUHAMMAD SAIT

[I. L. R., 23 Mad. 18

159 ———— Carriers—*Railway receipt—Jus tertii—Title* —In March 1871 *T & Co.*, brokers in Calcutta sold to *S & Co* on account of *C* an up-country seed merchant 200 tons of poppy seed and allowed *C* to draw upon them to the extent of the value of fifty tons before despatch on the terms of a previous contract by which they had allowed *C* to draw against cotton to arrive in Calcutta before the drafts matured *C* authorizing them to receive payment on his account on goods sold and delivered through them Towards the end of March *C* entered into an agreement with *E* a merchant in Calcutta under which *E* accepted bills to a large amount for *C* upon *C*'s promise to cover the bills before maturity In June *C* ordered the defendant Railway Company to consign all goods despatched from Fyzabad to *E* s address and empowered *E* to take delivery of and give receipts for all such goods In the same month *C* despatched from Patna in bags supplied by *S & Co* fifty five tons of poppy seed to Calcutta and sent the railway receipt to *E* who was therein named as the consignee One of the terms printed on the receipt stated that goods would only be delivered to the consignee named in the receipt or to his order In advising *E* of the despatch of poppy seed *C* informed him that it had been sold to *S & Co* and that delivery was to be made through *T & Co* and *E* had also seen letters which passed between *C* and his agents in which the following passages occurred Our Calcutta firm will deliver the poppy to *T & Co* and Do your best and hurry off despatches of fifty tons of poppy the rest of the poppy and linseed can go to *E*" *E* endorsed the railway s receipt to *S & Co* who paid the freight and arrears of *E* and *S & Co* together went to the railway station and demanded delivery which the Railway Company at first promised to give but afterwards under an order from *C* to deliver fifty tons to *T & Co* and to no other party the rest of the seed to be delivered according to documents, they at *T & Co* s request delivered the whole fifty five tons to them In an action by *E* against the Railway Company for non delivery of the seed to him —*Held (per* MARKBY *J)* *E* was mere agent of the vendor for the delivery of the goods *T & Co* had superior title to the goods of which *E* had notice *Held (per* COUCH *C J* and MACPHERSON *J* on appeal) the Railway Company was bound to deliver to *E* The property in the goods and the right of possession was in him he had an authority coupled with an interest which *C* could not revoke he had no notice of the title of *T & Co* which was an equitable right only EAGLETON v EAST INDIAN RAILWAY COMPANY

[8 B L R 581 17 W R 532

160 ———— Betrothal—Marriage—*Breach of promise of marriage—Reciprocal contingent contract—Damages—Uparnyaman—Halai Bhatia caste* —The plaintiffs alleged that by a written agreement dated the 18th March 1889 the first defendant and her deceased son *L* agreed that the second defendant *K* who was the daughter of the first defendant should be given in marriage to the second plaintiff who was the son of plaintiff No. 1 and that the betrothal of these two persons took place accordingly The agreement was executed by the said *L* as eldest male member of his family in the name of his deceased father In pursuance of this agreement the plaintiffs paid to the first defendant R700 as uparnyaman and they presented *K* with ornaments and clothes of considerable value The plaintiffs complained that the first defendant subsequently refused to carry out the contract of marriage and had married her daughter *K* (defendant No 2) to another person They claimed in

CONTRACT—*continued*

9 BREACH OF CONTRACT—*continued*

this suit to recover the ornaments and clothes, together with the R 00 paid to the first defendant as "upariyaman and R10 000 as damages The first defendant was sued both in her personal capacity and as heir and legal representative of her son *L* The first defendant pleaded that neither she nor the second defendant were bound by the betrothal agreement as they were not parties to it that the contract had been a contingent contract inasmuch as her son *L* had agreed to give *K* (defendant No. 2) in marriage to the second plaintiff only on condition that he (*L*) should obtain in marriage *U* the daughter of the third plaintiff and that *L* and *U* were accordingly betrothed that *L* had died in 1884, and that the contract had been thereby determined that she had been willing to renew it and had proposed that a younger son of hers (*J*) should be accepted as the husband of *U* but that the plaintiffs had declined this offer In proof of her allegation that the contract was a reciprocal contingent contract the first defendant relied upon the following clause in the agreement — At the time when the marriages are to take place the marriages of the two girls are to be performed together When you shall give your daughter in marriage I also am at the same time to give my daughter in marriage *Held* that the agreement of betrothal was not a reciprocal contingent contract and that the first defendant had committed a breach of the agreement by not giving her daughter *K* (defendant No 2) in marriage to the second plaintiff and that the plaintiffs were entitled to recover from the first defendant the value of the ornaments and the R,00 paid by the plaintiffs as upariyaman together with R600 damages for the breach of contract The second defendant being a minor was held not liable and the suit as against her was dismissed. MULJI THAKERSEY *v* GOMTI

I. L. R. 11 Bom. 412

161. ———— Building contract—*Breach of contract—Power of re entry—Certificate of architect how far conclusive*—By a building contract entered into between plaintiff and defendants it was agreed that plaintiff should erect certain premises on behalf of the defendants at the rates specified in the bill of quantities annexed. The agreement provided that defendants should pay to plaintiff at the rate of 90 per cent upon the value of work executed and materials laid down as certified by the architect and that should defendants make default in so doing for a period beyond fourteen days after the amount thereof shall have been certified plaintiff should be at liberty to suspend the works and require payment of all works executed and materials laid down The agreement further provided that if the contractor shall suspend or delay the performance of his part of the contract the defendants might through their architect give notice requiring the works to be proceeded with and in case of default on the part of the contractor for a period of twenty eight days might enter upon and take possession of the premises. It was further provided that the decision of the architect with respect to

CONTRACT—*concluded*

9 BREACH OF CONTRACT—*concluded*

the amount state and condition of the works actually executed or in respect to any questions that may arise shall be final During the continuance of the works disputes arose as to the amount due to the plaintiff although certified by the architect as agreed and in consequence plaintiff refused to continue the work whereupon defendants after giving due notice entered upon the premises Plaintiff sued for damages in consequence of the defendants having taken possession and for the balance due on the accounts *Held* (1) that the defendants committed a breach of the contract by refusing to pay the full amount due under the architect s certificate (2) that the plaintiff thereupon rescinded the contract and that therefore defendants were entitled after due notice to enter and take possession (3) that in the absence of proof of collusion between the architect and the plaintiff the defendants were bound by the architect s certificate as to the amount due to the plaintiff KUPPUSAMI NAIDU *v* SMITH & Co I. L. R. 19 Mad 178

10 LAW GOVERNING CONTRACT

162 ———— Contract made out of British India—*Principal and surety—Lex loci contractus*—Under a contract made and to be performed in the territory of an Independent State between the State and contractors the latter received an advance of money for the repayment whereof in case the contract should fail a third party became surety to the State The contract failed and was terminated by the State to which the surety repaid on its demand the money advanced with some deduction on account of a part performance For this amount the surety sued the principals who were subject to the jurisdiction of the Courts in British India In deciding whether the contract had or had not failed within the meaning of the suretyship undertaken by the plaintiffs —*Held* that not the law of British India but what was in the contemplation of the parties as to the result of the contract when they entered into it must be regarded SUJAN SINGH *v* GUNGA RAM I. L. R. 8 Calc 337

[L. R. 9 I. A. 58

CONTRACT ACT (IX OF 1872)

See CASES UNDER CONTRACT

1. ———— Operation of—*Semble*—The Contract Act is not retrospective OMDA KHANUM *v* BROJENDRO COOMAR ROY CHOWDHRY

[12 B. L. R. 451 20 W R. 317 and 21 W R. 352

2 ———— Illustrations appended to sections How far binding —*Per* STUART C.J —Remarks on the legal character of the "Illustrations attached to Acts of the Indian Legislature and opinion expressed that they form no part of these Acts NANAK RAM *v* MEHIN LAL

[I. L. R. 1 All., 487

CONTRACT ACT (IX OF 1872)—*continued*

3 ———— Illustrations appended to sections—The practice of looking more at the illustrations in the Contract Act than at the words of the sections of the Act pointed out as a mistake OMED ALI *v* NIDHEE RAM 22 W R. 387

———— s 2

See PROMISSORY NOTE—FORM OF [I. L. R , 16 Mad., 283

———— s 2 cl. (d)

See CONSIDERATION [I. L. R. 4 Mad., 137
I. L. R., 6 Mad. 351

———— ss 2 (d) and 25—*Services rendered during the defendant s minority at his desire and continued at his request after his majority—Agreement to compensate for services*—Services rendered at the desire of a minor expressed during his minority and continued at the same request after his majority form a good consideration for a subsequent express promise by him in favour of the person who rendered the services. By s. 2 (*d*) of the Contract Act services already rendered at the desire of the promisor are placed on the same footing with such services to be rendered and constitute a good consideration for a definite agreement Cases where a person without the knowledge of the promisor or otherwise than at his request does the latter some service and the promisor undertakes to compensate him for it are covered by s 2‥ of the Contract Act (IX of 1872) in them the promise does not need a consideration to support it SINDHA SHRI GANPAT SINGJI HIMATSINGJI *v* ABRAHAM [I. L. R , 20 Bom. 755

———— s 4.

See PROMISSORY NOTE—FORM OF [I. L. R. 13 Bom. 669

See STAMP ACT s 34 [I. L. R. 13 Bom. 669

———— *Letter of acceptance incorrectly addressed*—A letter of acceptance to a proposer not correctly addressed could not although posted be said to have been put in a course of transmission to him within the meaning of s 4 of the Contract Act (IX of 1872) *Townsend s case L R 13 Eq 148* referred to RAM DAS CHAKARBATI *v* OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY I L R. 9 All 366

———— s 10

See CHARTER PARTY [I. L. R 14 Bom 241
I L R 15 Bom 389

See MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS [I L R 11 Calc 552
I L R 23 Bom 146

———— s 11.

See DOMICILE I. L. R. 19 Bom. 697

CONTRACT ACT (IX OF 1872)—*continued*

See MAJORITY AGE OF [I. L. R. ‹ All., 490 7

See MINOR—LIABILITY OF MINOR ON A RIGHT TO ENFORCE CONTRACTS [I L. R., 13 Bom.
I. L. R. 19 Bom., 6
I. L. R. 18 Mad., 4
I. L. R. 20 Calc., 50
I L. R., 26 Calc., 3
I. L. R. 27 Calc., 2
3 C W N., 46

See RIGHT OF SUIT—CONTRACTS A AGREEMENTS I L R., 13 Bom.,

See SPECIFIC PERFORMANCE—SPECI CASES I L R , 18 Mad., 4
[I L. R. 22 Calc 54
I. L R 27 Calc 27

———— s 13

See LACHES I. L. R., 4 All., 33

———— ss 13 and 14.

See CHARTER PARTY [I. L. R 14 Bom. 24
I. L. R 15 Bom., 38

———— ss 15 and 16—*Obstructing remova of corpse of husband until widow has accepted boy in adoption and signed a deed of adoption*—The minor widow of a deceased Hindu (who ha authorized her to adopt a son) corporally accepte a boy as in adoption from his natural father wh belonged to a different gotra from *her deceased hus*band At the time when the child was handed over t the widow her husband s corpse was still in th house and the relatives of the child and othe members of the caste obstructed the removal of th corpse until the child had been accepted in adoption and until the widow had executed a deed of adoption *Held* that obstructing the removal of the corps by deceased s widow or her guardian unless she mad an adoption and signed a document was an unlawfu act and amounted to coercion and undue influence such as are defined in s 1‥ or 16 of the Contract Act RANGANAYA RAMMA *v* ALWAR SETTI I L R. 13 Mad., 214

———— s 16

See DEED—CANCELLATION [I L. R., 10 All., 535

———— ss 16 and 17

See DEBTOR AND CREDITOR [I. L. R. 11 Bom. 666

See GIFT I L. R. 23 Calc 15

———— s 17

See REGISTRATION ACT s 35 [I. L. R. 21 Calc., 873

———— ss 17 and 19

See VENDOR AND PURCHASER—FRAUD [I. L. R., 11 Mad., 410

CONTRACT ACT (IX OF 1872)—*continued*

——— ss. 18 and 19

See CHARTER PARTY [I. L. R. 14 Bom 241
I. L. R. 15 Bom. 389

See COMPANY—POWERS DUTIES AND LIABILITIES OF DIRECTORS [4 C W N 369

——— s. 20

See COMPROMISE—CONSTRUCTION EN FORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE [I. L. R. 6 Calc. 687

See LACHES I. L. R. 4 All. 334

See SETTLEMENT—CONSTRUCTION [I. L. R. 17 Bom 407

1. ——— ss. 20 21—*Mistake of facts—Erroneous expectation* —The defendant executed to the plaintiff in 1847 a mulgeni kabuliat (corresponding to a lease at a fixed rental) agreeing to pay to the plaintiff R150 annually At the date of the execution of the mulgeni the Government assessment was R56-8-0 but in 1872 it was enhanced to R129 8 0 and a local fund cess of R4 9 0 imposed in addition The plaintiff sued the defendant to recover from him the enhanced assessment and the cess *Held* that the plaintiff was not entitled to recover inasmuch as the defendant s liability was fixed by the terms of the mulgeni which was binding although it had been executed by both parties in the belief that the Government assessment would not be increased A mistake as to existing facts may invalidate a contract but an erroneous expectation which events entirely falsify has no effect BABSHETTI *v* VENKATARAMANA I. L. R 3 Bom. 154

2. ——— *Mula vargdars Power of to raise rent of mul gaimdar—Enhancement of assessment—Power of the State* —A mula vargdar or superior holder cannot raise the rent of his mul gaimdar or permanent tenant holding at a fixed rent on the ground that the assessment on the land has been enhanced at the Government survey *Babshetti v Venkataramana I L R 3 Bom 154* and *Ramkrishna Kane v Narsh va Shanbog S A No 46 of 1879* followed. *Vyakunta Bapuji v Government of Bombay 12 Bom Ap 1* referred to RANGA *v* SUBBA HEGDE [I. L. R 4 Bom. 473

——— s 21—*Mortgage with proviso that in case of non redemption in a prescribed time it should become a sale—Razinama by mortgagor declaring sale to mortgagee—Transfer of possession to mortgagee—Extinction of equity of redemption—Subsequent sale by mortgagor of equity of redemption—Mistake of law* —Under the Indian Contract Act (IX of 1872) s 21 error of law does not vitiate a contract much less will it annul a conveyance after the lapse of many years unless there has been some fraud or misrepresentation and an absence of negligence In 1818 B and R mortgaged a piece of land to I It was to be redeemed in eight years or else to become the absolute property of the mortgagee It was not redeemed; and in 1859 *B* in whose name the land was entered in the Government records executed a razinama in favour of *V* and *V* passed a kabuliat accepting the land *B* and *R* then became *V* s tenants, and were as such successfully sued by him for rent in 1863 In 1872 V sold the land to N who again sold it to the defendant The plaintiff as purchaser from the original mortgagors (*B* and *R*) of their alleged equity of redemption filed the present suit to redeem the property *Held* that as the razinama given by *B* contained no reservation and as it was accompanied by a transfer of possession it had the effect of a conveyance of all the mortgagor s rights to the mortgagee It operated to extinguish the equity of redemption notwithstanding any misconception or ignorance on *B* s part of his rights as mortgagor VISHNU SAKHARAM PHATAK *v* KASHINATH BAPU SHANKAR [I. L R., 11 Bom. 174

——— s 22

See PLAINT—AMENDMENT OF PLAINT [I. L. R. 9 Bom. 358

——— s 23

See ACT XL OF 1858 s 18 [I L R. 2 All. 902

See BENGAL TENANCY ACT s 29 [I. L. R 24 Calc 895

See CHAMPERTY I. L. R. 11 All. 58

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY COURT [I. L. R 11 All. 118

See CONTRACT—WAGERING CONTRACTS [I L R 5 All. 443
I L R 9 Bom 358

See EXECUTOR I. L. R. 22 Calc 14

See INJUNCTION—UNDER CIVIL PROCEDURE CODE I L. R 9 All 497

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I. L R., 7 All 511 878

ILLEGAL CONTRACTS

(*a*) GENERALLY

1 ——— *Contract void as contrary to law—Agreement partly void and partly valid* —When the void part of an agreement can be properly separated from the rest the latter does not become invalid but where the parties themselves treat debts—void as well as valid—as a lump sum the Court will regard the contract as an integral one and wholly void upon which neither the principal nor the sureties can be sued. DAVLATSING *v* PANDU [I L R 9 Bom 17

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

2 ——— *Contract between brokers to divide profits*—A contract between two brokers to divide the profits of a transaction is not an illegal contract and an action to enforce it is therefore maintainable SUHAI v BISHUN DYAL [1 Agra 269

3 ——— *Contract in consideration that person will give evidence in civil suit—Void contract—Consideration*—A contract to pay money upon the consideration that the plaintiff would give evidence in a civil suit on behalf of the defendant cannot be enforced. Such a contract is either for true evidence and then there is no consideration or for favourable evidence either true or false and then the consideration is vicious. *Semble*—If the consideration had been the plaintiff s promise not to evade process that would still be no consideration for the defendant s undertaking SASHANNAH CHETTI v RAMASAMY CHETTI 4 Mad 7

4. ——— *Contract illegal and fraudulent as against third parties but enforceable between the parties to it*—A contract between several persons to make separate tenders to Government and that whoever should obtain a contract from Government should share the profits with the others although fraudulent towards the Government will be enforced against any of such persons at the suit of any one of them who may have made the tender in pursuance of the contract ISSER CHUNDRA GHOSE v BHOOBUN MOHUN BANERJEE Bourke O C 313

5 ——— *Agreement to join Somaj*—A suit brought to enforce a penalty for breach of an agreement by which the defendant contracted to join a certain Somaj of which the plaintiffs were members and agreed that he would not without the plaintiffs permission leave the community or join any other it was held must be dismissed the contract not being one capable of being enforced in a Court of law NITAI SHAHA v SHUBAL SHAHA

[2 B L R, S N 4 10 W R, 349

6 ——— *Contract made by company before Registration Act XIX of 1857 s 2*—In a suit filed on the 28th of April 1860 and brought by a joint stock company after registration to recover damages for breach of a contract made with the defendants before registration—*Held* (by COUCH *C J* and ARNOULD *J* affirming on appeal the decree of SARGENT *J*) that the contract was illegal under s 2 of Act XIX of 1857 and that the plaintiffs could not sue upon it GUJERAT TRADING COMPANY v TRIKAMJI VEIJI 3 Bom. O C 45

7 ——— *Contract made by company before Registration Act XIX of 1857 s 2*—In a suit brought by a transferee of shares in a joint stock banking company formed after the passing of Act VII of 1860 and neither incorporated nor registered when the plaint was filed, to compel the directors trustees and public officers of the company to give up the share certificates which had come into the possession of the bank or to pay damages to the plaintiff—*Held* (by COUCH *C J* and SARGENT *J* affirming on appeal the decree of ARNOULD *J*) that the company being illegal under s 2 Act XIX of 1857 the suit was not maintainable. MANECKJI SORABJI v CAMA 3 Bom O C, 159

8 ——— *Payment in consideration of releasing person from prison*—The plaintiff's husband being in jail the plaintiff agreed with the defendants to pay them R50 in consideration of their obtaining her husband s release which they stated they could do. She accordingly paid the money In an action for breach of contract—*Held* the action would not lie as the contract was an illegal one IBOTIMA AURAT v DUKHIYA SIRKAR [9 B L R., Ap, 38 18 W R 450

9 ——— *Contract to obtain more favourable assessment by means not stated*—In a written agreement the defendant in consideration of a sum of money received by him promised to obtain a more favourable assessment upon certain villas in respect of waste and cultivated lands and in case of failure to repay the amount received. In a suit to recover the amount paid to the defendant—*Held* that the contract was not vitiated by reason of illegality *Aliter* if it appeared upon the face of the plaint or if it were established by evidence independently of written agreement that the arrangement was that the defendant should use corrupt or illegal means or improperly exercise any personal influence which he possessed or professed to possess over a public servant ICHARKUTTY MUDALI v NARAYANAPPA AIYAN [2 Mad. 213

10 ——— *Suit to recover bribe to Ameen*—A civil suit does not lie to recover money paid to a Civil Court Ameen to induce him to make a favourable report GOGUN CHUNDER DUTT v JANOKEE 20 W R., 235

11. ——— *Contract not to alienate—Agreement—Consideration*—By a written instrument duly registered, *T* agreed in consideration of the recognition by his two brothers of his rights in the joint and undivided property of the three brothers, not to sell transfer or mortgage his share except to them and should he desire to dispose of it to dispose of it to them for a certain sum In breach of this agreement he gave a usufructuary mortgage of his share to *L* *Held* in a suit by *L* to enforce the mortgage that the agreement was valid and that the mortgage was bad against *T*'s brothers LAKHMI CHAND v TORI LAL I. L. R. 1 All. 618

12 ——— *Agreement for release of attached property—Contract Act s 20—Mistake of fact*—Where the property of a judgment debtor had been attached in execution for a sum claimed to be due under a decree but which sum in fact included interest not awarded by the decree—*Held* that an agreement whereby the debtor obtained the release of his property on condition of paying by instalments the entire amount claimed inclusive of the interest was not unlawful and void under cl. 2 s 23 of the Indian Contract Act and that the mistaken belief of the parties to the agreement that interest could be recovered by proceedings in execution was not a mistake of fact rendering the agreement

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

voidable under s. 20 of that Act SETH GOKUL DAS GOPAL DAS *v* MURLI

[I. L. R. 3 Calc. 602 2 C L. R 156 L. R. 5 I A 78

13 ———— *Agreement to become surety for good behaviour on amount of security being deposited with surety—Illegal consideration—Lord assessment—Suit to recover deposit*—F was required by the Magistrate under the Code of Criminal Procedure to furnish two sureties who should be responsible for his good behaviour each in a certain sum. *S* agreed to become a surety on condition that *F* would deposit with him the amount of the security *F* made the deposit and *S* became a surety The period for which *S* was responsible for *F's* good conduct having expired without *F* committing any act to forfeit the security and *S* refusing to return the deposit *F* sued *S* to recover the deposit *Held* that as the consideration for the agreement defeated the object of the law the consideration was unlawful and *F* was not entitled to relief FATEH SINGH *v* SANWAL SINGH

[I. L. R. 1 All 751

14. ———— *Champerty and maintenance—Assignment of chose in action—Illegal consideration*—A *bonâ fide* purchase of a share in a claim about to be enforced by a suit is not void under s. 23 of the Indian Contract Act and a suit may after such purchase be properly brought by the vendee and vendors as co-plaintiffs *A* and B having a claim against *C* for R13 099 3 but not being in circumstances themselves to institute a suit for its enforcement sold fourteen annas or fourteen sixteenths of their claim to *D* for R1 000 and a suit was then instituted by *A B* and *D* against *C C* pleaded that the sale to *D* was void under s 23 of the Indian Contract Act and that *A* and *B* could not sue for two annas only of their entire claim *Held* that the sale to *D* was not void that the suit was properly framed and that even if the sale had been void the suit by *A* and *B* was not liable to dismissal ABDOOL HAKIM *v* DOORGA PROSHAD BANERJEE

[I. L. R 5 Calc. 4

15 ———— *Sale made to defeat execution of decree*—There is nothing in ss. 23 and 24 of the Indian Contract Act (IX of 1872) to support the opinion that a sale made with the view of defeating a probable execution is a sale with fraudulent and unlawful object and therefore void within the meaning of those sections RAJAN HARJI *v* ARDESHIR HORMUSJI WADIA I. L. R. 4 Bom. 70

16 ———— *Government ferry—Lease—Ben Reg VI of 1819—Illegality of contract*—*M* took a lease for three years of a Government ferry and covenanted with the Magistrate who granted the lease not to underlet or assign the lease without leave or license of the Magistrate *M* subsequently admitted *B* as his partner to share with him equally in the profits to be derived from the lease *Held* that such partnership was not void by reason of the covenant not to underlet or assign the lease *S A*

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

No 119 of 1782 decided on the 1st August 1872 overruled GAURI SHANKAR *v* MUMTAZ ALI KHAN

[I L. R. 2 All 411

17 ———— *Contract entered into in violation of the law—Partnership—Illegal partnership—Right of partner to sue for a share—Abkari Act (Bombay Act V of 1878) s 45—Breach of license—Penalty*—A contract entered into for the purpose or with the necessary effect of defeating a statute will not be enforced or recognized by the Courts at any rate where both parties stand *in pari delicto* *A* and *B* took a liquor contract from the Government By the terms of their license they were forbidden to take a partner and under s 45 of the Bombay Abkari Act (V of 1878) they were liable to a penalty of R100 for a breach of their license *C* entered into partnership with *A* and *B* with full knowledge of the conditions of the license and afterwards filed a suit for an account of the partnership transactions *Held* that *C* was not entitled to any relief having entered into the partnership in direct violation of the law HORMASJI MOTABHAI *v* PESTANJI DHANJIBHAI

[I L. R. 12 Bom. 422

18 ———— *Excise Act XXII of 1881 s 42—License—Sub lease—Breach of conditions—Consideration forbidden by law—Immoral consideration—Consideration opposed to public policy*—The plaintiff obtained from the excise authorities a license to manufacture and sell country liquor such license containing a condition against sub letting the benefits of the license By s 42 of the Excise Act (XXII of 1881) the violation of any condition of a license granted under the Act is made a punishable offence The plaintiff sub let the license to defendants who on the 5th of September 1884 executed an agreement to pay to the plaintiff a certain sum of money in which was included the sum of R1 500 which the defendants had undertaken to pay to plaintiff as rent reserved on the sub lease The plaintiff instituted a suit for recovery of the amount due to him on the agreement and it was decreed by the Court of first instance but dismissed by the lower Appellate Court. On second appeal the plaintiff contended on the authority of *Gauri Shankar* v *Mumtaz Ali Khan I L R 2 All 411* that his suit had been wrongly dismissed *Held* that the sub letting of a license to manufacture and sell country liquor having been made punishable as an offence is to be deemed as an act contrary to law within the meaning of s. 23 of the Contract Act (IX of 1872) and the claim to recover money due on such sub lease was therefore not enforceable in a Court of Justice *Gauri Shankar* v *Mumtaz Ali I L R 2 All 411* distinguished. DEBI PRASAD *v* RUP RAM I. L. R 10 All. 577

19 ———— *Lease of a farm to retail opium at certain shops in a district—Sub lease of such shops without the Collector's permission—Opium Act (I of 1878) s 4—Rules made under Opium Act ss 43 44 45 and 52—Right to recover advances made for an illegal purpose subsequently carried out*—The plaintiff who held the

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

as the consideration for the making of that note by *T* was the defendant's withdrawing his opposition in the Insolvent Court that that arrangement was brought about by plaintiff to secure to himself and defendant an undue share of the insolvent's property and was an arrangement contrary to the policy of the Insolvent Act and therefore void. AGAR CHAND *v.* VIRARAGHAVALU CHETTI [3 Mad 172

31 ——— *Prohibiting discharge of obligation attaching under decree of Court*—*A* became surety for certain judgment debtors whose property had been attached in execution of a decree but who had agreed with the decree holder to liquidate the amount of the decree by yearly instalments. An agreement between *A* and the judgment-debtors contained the following conditions: If any of the instalments be paid by the said *A* the obligors shall not be at liberty to liquidate the remaining instalments either from their own funds or by borrowing money but that *A* shall continue to pay the instalments as they fall due and shall hold possession of the estate. The judgment debtors afterwards satisfied the decree in full. *Held* in a suit against them by *A* that the above condition was void as contrary to public policy as it prohibited the discharge of an obligation which by decree of Court the judgment debtors were ordered to pay. LALL MUNEE *v.* PYAG DUT DOOBEY 1 N W 137 Ed. 1873 220

32 ——— *Agreement to officiate as patil—Illegal contract as opposed to public policy—Act XI of 1843*—An agreement between two members of a patil family that they are to officiate in turns is not illegal as being opposed to public policy. The Court will not however compel the actual patil to vacate office under such an agreement as long as his appointment under Act XI of 1843 is unrevoked. VAKU VALAD RAM PATIL *v.* PAND VALAD MALJI PATIL 6 Bom., A C 243

33 ——— *Agreement to remunerate vakil proportionately to the amount recovered—Public policy—Quære*—Whether a special agreement entered into by the agent of a Hindu widow acting on behalf of a minor under which the vakil in an appeal he was conducting for her was to receive for his services a stated fee and in case of success a further reward proportional to the amount recovered was one which the Court would enforce. RAO SAHEB V N MANDLIK *v.* KAMALJABAI SAHEB NIMBALKAR [10 Bom. 26

See per WESTROPP C J IN VINAYAK RAGHUNATH *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY 7 Bom. O C 118

34. ——— *Unlawful consideration—Illegal contract*—The defendant with the expressed intention of benefiting the judgment debtor and of thwarting the judgment creditor against whom he had a grudge and for whom he entertained ill feeling entered into a contract with a pleader of the Court in which the decree had been obtained to pay him R500 if he could get the case which was decreed dismissed struck off or anyhow rejected from the file of the Court. *Held* that the contract was one against public policy and could not be enforced. BAMANDAS BANERJEE *v.* HAROLAL SHAHA [1 B L R S N 10 10 W R 140

35 ——— *Contract of partnership with overseer in Public Works Department—Fraud*—Where an overseer in the Public Works Department who is prohibited by the rules of his office from entering into any trade or contracts with that Department enters into an agreement of partnership for carrying on business under contract with the Department such agreement is a fraud upon the public and is therefore one which a Court of Justice ought to treat as an absolute nullity. SHARODA PERSHAD ROY *v.* BHOLA NATH BANERJEE [11 W R 441

36 ——— *Marriage Contract to invalidate Public policy—Hindu law*—A contract entered into by Hindus living in Assam by which it is agreed that upon the happening of a certain event a marriage is to become null and void is contrary to the policy of the law and a suit cannot be maintained upon it. SITARAM *v.* AHEEREE HEERAHNEE [11 B L R., 129 20 W R 49

37 ——— *Contract by person with license letting house or shop licensed—Beng Act II of 1866—Contract against public policy*—The intention of Bengal Act II of 1866 is that the person who has the license shall keep i.e. dwell in and have the management and control of the shop or place of entertainment. A contract by which he lets the shop and the use of the license for a fixed term receiving rent is contrary to the policy of the law and comes within the rule that a contract which is illegal or is contrary to public policy cannot be enforced. JUDOONATH SHAHA *v.* NOBIN CHUNDER SHAHA 21 W R 239

38 ——— *Husband and wife—Divorce—Promise of marriage*—In consideration of advances of money made by *N* to *V* a married woman (both being of the Kunbi caste) in order to enable her to obtain a divorce from her husband, *V* promised to marry *N* as soon as she should obtain a divorce. *N* subsequently sued *V* to recover the advances. *Held* that the agreement having for its object the divorce of the defendant from her husband and her marriage with the plaintiff was *contra bonos mores* and therefore void. BAI VIJLI *v.* NANA NAGAR I L R 10 Bom., 152

39 ——— *Agreement executed in consideration of staying criminal proceedings*—Plaintiff sued to recover from defendants his brothers, R2 000 with interest on a deed of assignment B granted to him by one *R G* dated 30th October 1870 transferring to plaintiff a promissory note A for R25 000 executed by first and second defendants to the aforesaid *R G* as one of the mediators in conjunction with one *S G* in a division of family property between plaintiff and defendants and others agreeing to pay over on demand by the 30th September 1870 to plaintiff through the mediators aforesaid R25 000 in lieu and on account of

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

family property in possession of defendants The defendants admitted the execution by them of the document for R13,000 to be paid by them to plaintiff, and pleaded that it was given on consideration of the withdrawal of a criminal prosecution, and further that there was no consideration at all and that, at the time of its execution by them, there was no dispute or question between them and plaintiff as to partition of family property which had been definitely settled by the Civil Court at Salem in Original Suit No. of 1868 under the decree in which the defendants had recovered R13,000 and odd from the plaintiff They denied any division of family property by mediation as also that they agreed to pay R13,000 on account of family property in their possession also the validity of A and that it was legally binding upon them The Court of first instance found (1) that a partition of family property was effected by mediation and the document A was executed to the mediators by defendants on account of family property in defendants possession (2) that A was valid in law and binding on defendants and gave judgment for plaintiff for the amount sued for Upon appeal by the first defendant — *Held* by the High Court that as the decree in original suit No 2 of 1868 (finally disposed of in appeal by the High Court) settled all the rights of the parties and among other matters the question of this alleged concealment or theft which the Court found the present plaintiff to have falsely asserted there was here therefore no *res dubia* or *lis incerta* nor could either party believe that there was such The final judgment of a competent Court in a suit to which the plaintiff was a party had determined the matter That on the facts of the case it seemed impossible to doubt that the note was executed as a consideration for getting rid of the criminal proceedings and that as such a consideration is not only null but vicious the decree of the Civil Judge should be reversed. NAMASIVAYA GAUNDAN *v* KYLASA GAUNDAN 7 Mad. 200

See PUDISHARY KRISHNEN *v* KARAMPALLY KUNHUNNI KARUP 7 Mad. 378

40 ———— *Contract not enforceable relating to social and religious customs—Public policy* —A Court cannot take notice of an agreement (*e g* in the way of awarding damages for breach thereof) which has reference to social and religious customs and which cannot be enforced by a Civil Court An agreement between members of different Somajes to have social intercourse with each other and to intermarry is not opposed to public policy but rather in accordance therewith HURONATH PATTLE *v* NITTO PARAMANICK 22 W R 517

41 ———— *Transaction defeating Government right of escheat Contract Act s 65—Specific Relief Act s 35* —Where the plaintiff and her mother executed in favour of the defendant a document which purported to divest the plaintiff and her mother of the entire property of the illom of which they were the sole proprietors and to vest it in the defendant in consideration of his promising to marry and raise up heirs to the illom and to maintain the plaintiff and her mother till death — *Held* by INNES J that the document aimed at defeating the right of escheat of the Government and the transaction was against public policy with reference to the decision in *Caraly Vencata Narasinappa's case* 8 Moore's I A 500 but that the plaintiff being *in pari delicto* with the defendant could not recover the property *Held* by KINDERSLEY J that as no claim was made by the Crown it was not necessary to decide as to rights which may or may not be claimed by the Crown and that if plaintiff and her mother were not as apparently they were not in the position of ordinary Hindu widows there was nothing opposed to public policy in their disposing of the property as being the last owners and competent to dispose of it absolutely TAMARA SHEREI SIVITHRI ANDARJANOM *v* MAHANAT VASUDEVAN NAMBUDRIPAD I L R. 3 Mad. 215

42 ———— *Agreement to divide property—Hindu law—Public policy* —There is nothing in Hindu law which makes illegal an agreement entered into by expectants to divide a particular property in a certain way on the happening of a particular contingency Nor is such an agreement contrary to public policy *Wethered* v *Wethered* 2 *Sim* 183 *Harwood* v *Tooke* 2 *Sim* 192 *Hyde* v *White* 5 *Sim* 524 followed RAM NIRUNJUN SINGH *v* PRAYAG SINGH

I L R. 8 Calc 138 10 C L R 66

43 ———— *Contract in consideration of marriage—Public policy* —Where a Hindu contracting a second marriage agreed to confer on the party whose sister was to be his second wife a talukh which was to be carved out of his estate and until it was carved out to make a yearly payment of a fixed sum —*Held* that the undertaking was for ample consideration and was not opposed to public policy LALLUN MONEE DOSSEE *v* NOBIN MOHUN SINGH 25 W R 32

44 ———— *Contract to give in marriage—Consideration money Suit for return of—Public policy* —The defendant in consideration of R100 promised to give his minor daughter in marriage to the plaintiff; the defendant failed to fulfil his part of the promise and the plaintiff brought a suit to recover the money paid as consideration for the promise *Held* that such a suit would lie *Jogeswar Chuckerbutty* v *Panch Cowri Chuckerbutty* 5 *B L R* 395; 14 *W R* 154 approved *Quære*—Whether the Court could have enforced the payment of the R100 to the father of the minor as against the person engaging to marry the minor RAM CHAND SEN *v* AUDAITO SEN

I L R., 10 Calc 1054

45 ———— *Unlawful considerations—Marriage brokage agreement* —Plaintiff agreed to give his daughter in marriage to defendant's nephew in consideration of a payment of R400 It was not alleged that the money was to be a dowry or settlement for the bride R200 were paid and defendant executed a bond for the balance The marriage took place in the asura form The plaintiff now sued on

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

the bond *Held* the consideration for the bond was not unlawful nor was the contract illegal as being one contrary to public policy under s 23 of the Contract Act VISVANATHAN v SAMINATHAN
[I L R 13 Mad., 83

46 ———— *Contract for marriage—Consideration Suit for return of—Marriage brokage* —The plaintiff sued to recover the value of certain ornaments which he had presented to the defendant s daughter on his agreeing to marry her to plaintiff s brother The plaintiff alleged that the defendant broke the agreement and gave his daughter in marriage to another person He therefore asked for the restoration of the ornaments but the defendant refused to return them hence the present suit. *Held* that the suit was maintainable there being nothing in the plaintiff s claim which was either against morality or public policy RAMBHAT v TIMMAYA I L R, 16 Bom, 673

47 ———— *Illegal agreement—Agreement against public policy—Guardian and ward—Agreement for marriage by a guardian to give a ward in marriage on payment of a sum of money* —The plaintiff stated as her cause of action that a young girl had been left in her charge and had been maintained by her for a number of years that in January 1888 arrangements had been made with a Bhatia to get this girl married and that she (the plaintiff) was to receive R2 500 on the marriage that the defendant had also agreed to pay her (the plaintiff) R2 000 if she would give the girl to him in marriage and that before the marriage ceremony could be performed the defendant had induced the girl to quit the plaintiff's house for immoral purposes She claimed R2 500 as damages *Held* that the alleged agreement on which the suit was brought was immoral and against public policy and that the action was not maintainable DULARI v VALLABDAS PRAGJI
[I L R 13 Bom, 126

48 ———— *Agreement to procure marriage in consideration of a money payment—Marriage brokage—Illegal agreement—Public policy* —The defendant was the eldest of three brothers whose mother on her marriage had been put out of the Lovana caste for having married a man belonging to a different caste. The defendant was anxious that he and his brothers should be re admitted to the caste and in 1864 he entered into an agreement with the plaintiff who was at that time one of the setias of the caste whereby the latter agreed to procure the admission of the plaintiff and his bothers and get them married to girls belonging to the caste In consideration for these services the defendant was to pay the plaintiff the sum of R5 000 which sum was to become due on the marriage of the defendant s youngest brother to a girl of the caste and to be expended in purchasing caste utensils which were to be kept for the use of the caste The plaintiff alleged that part of this money had been already paid to him and that on the marriage of the defendant s youngest brother in 1880 he had demanded payment of the balance (R3 149) which the defendant had not paid. He now sued to recover this balance *Held* that the contract sued on in so far as it promised a money payment for the negotiations of a marriage by a third party was immoral and contrary to public policy PITAMBER RATANSI v JAGJIVAN HANSRAJ
[I L R, 13 Bom. 131

49 ———— *Agreement to procure marriage—Marriage brokage contract—Hindu law* —An agreement to assist a Hindu for reward in procuring a wife is void as being contrary to public policy VAITHYANATHAM v GANGARAZU
[I. L. R, 17 Mad, 9

50 ———— *Contract to pay money to a father for giving his child in marriage—Public policy* —A contract which entitles a father to be paid money in consideration of giving his son or daughter in marriage is against public policy and cannot be enforced in a Court of law DHOLIDAS ISHVAR v FULCHAND CHHAGAN
[I. L R, 22 Bom., 658

51 ———— *Assignment of chose in action Validity of—Void contract—Transfer of mortgage bond for valuable consideration* —An assignment of a mortgage-bond for a valuable consideration is not void under s 23 of the Indian Contract Act (IX of 1872) as being opposed to public policy KEVAL VANMALI v FAKIRA JIVAN
[I L R, 13 Bom, 42

52 ———— *Agreement opposed to public policy* —For the purpose of meeting the expenses of a suit for possession of immoveable property the plaintiff who was in straitened circumstances agreed with the defendant that the latter in consideration of paying such expenses from the Court of first instance up to the High Court should have half the property and half the mesne profits with all his costs in the event of success. The suit was brought and was conducted by the plaintiff and the defendant jointly and was decreed by the High Court on appeal and the defendant obtained possession of half the property The plaintiff sued to recover possession of the half on the ground that the agreement was illegal and void. It appeared that the amount actually spent by the defendant in the former litigation was R308 and that if that suit had failed he would have lost about R600 It was found that the value of the half share of the property was about R1 000 *Held* that the agreement was unfair unreasonable extortionate and contrary to public policy within the meaning of s 23 of the Contract Act (IX of 18) and that the plaintiff was entitled to recover possession of the land in suit on payment of compensation for the advances made by the defendant in the form of litigation with interest at 12 per cent per annum *Chunni Kuar v Rup Singh I L R 11 All 57* and *Loke Indar Singh v Rup Singh I L R 11 All 118* referred to HUSAIN BAKHSH v RAHMAT HUSAIN I L R. 11 All., 128

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

53 ——— *Bengal Act VII of 1878* —*Revenue Protection of—Public policy*—The Bengal Excise Act of 1878 is not an Act framed solely for the protection of the revenue, but is one embracing other important objects of public policy as well. An agreement therefore for the sale of fermented liquors entered into by a person who has not obtained a license under that Act is void and cannot be recovered on. BOISTUB CHURN NAUN *v.* WOOMA CHURN SEN. I. L. R. 16 Calc 436

54 ——— *Breach of condition in lease —Illegal contract—Bombay Tolls Act (Bom Act III of 1875) s 10—Bombay Tolls Act Amending Act (Bombay Act V of 1891) s 2*—Under s 10 of the Tolls Act (Bombay Act III of 1875) Government leased to plaintiff the levy of tolls on certain conditions. One of the conditions was that plaintiff should not sublet the tolls without the permission of the Collector previously obtained. One of the clauses of the lease provided that for a breach of any of the conditions of the lease the Collector might impose a fine of rupees two hundred. The plaintiff sublet the tolls to the defendants without the permission of the Collector and sued to recover a certain amount which the defendants promised to pay for the sublease. The defendants contended that the contravention of the condition of the lease was illegal and opposed to public policy, that therefore the contract was void under s 23 of the Contract Act and that the plaintiff was not entitled to recover the amount. *Held* that the plaintiff was entitled to succeed. The agreement to sublet was not illegal or opposed to public policy merely because it was forbidden under a pecuniary penalty by conditions in the lease to the plaintiff. The penal consequences of the breach were limited to the specific penalty and did not make the contract void. BHIKANBHAI *v.* HIRALAL RAMDINSHAT MARWADI [I. L. R. 24 Bom. 622

55 ——— *Mortgage—Pre-emption —Covenant to give mortgagee right of pre-emption*—An agreement by the mortgagor to give the mortgagee a preference of pre-emption in case of sale is not contrary to public policy and may be enforced against a purchaser with notice of the covenant. HARIS PAIK *v.* JAHURUDDI GAZI [2 C W N 575

56 ——— *Contract relating to purchase of land within his circle by a patwari—N W P Land Revenue Act XIX of 1873 s 207*—A contract entered into by a patwari for the purchase for his benefit of land situated within his circle is a contract which is opposed to public policy even though it may not be rendered void by the rules framed by the Board of Revenue for the guidance of patwaris. SHIAM LAL *v.* CHHAKI LAL [I. L. R. 22 All 220

57 ——— *Champerty—Speculative purchase—Agreement not opposed to public policy*—In a suit for land worth R2,300 the plaintiff claimed under a conveyance executed to him by defendant No 1 shortly before suit in consideration of R250. The property had previously belonged to the father since deceased of the first defendant's wife and her sister defendant No 2. Shortly after the father's death a suit for maintenance was brought by his sister-in-law against his widow and two daughters in which the then defendants alleged that the property now in question had been given by him to the wife of the plaintiff's vendor and the Court recorded a finding that the gift was valid. *Held* that the plaintiff's purchase which was found by the District Judge to be though not a champertous transaction one of a very speculative character was not void as being contrary to public policy. *Gopal Ramchandra v Gangaram Anandshet I L R 14 Bom 72* followed. RAMANUJA AYYANGAR *v.* NARAYANA AYYANGAR. I L R 18 Mad. 374

58 ——— *Suit on ekrar executed by priest of Hindu idol—Consideration—Right to succeed to office of priest*—In a suit on an ekrar executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the charai (offerings to the idol) and recoverable from the defendant's successors in office—*Held* there having been at the date of the ekrar a *bona fide* dispute as to the right to succeed to the office of priest there was consideration for the contract and the contract in the circumstances of the present case was not opposed to public policy. *Miles v New Zealand Alford Estate Co L R 32 Ch D 266* referred to. *Parson v Thompson 1 H Bl 322. Waldo v Martin 4 B & C 319. Juggurnath Roy Chowdhry v Kishen Pershad Surma 7 W R 266. Durga Bibi v Chanchal Ram I L R 4 All 81. Narasimma Thatha Acharya v Anantha Bhatta I L R 4 Mad 39. Kuppa Gurukal v Dorasami Gurukal I L R 6 Mad 76. Vurmah Valia v Ravi Vurma Kunhi Kutty I L R 1 Mad 235* distinguished. *Manchharam v Pranshankar I L R 6 Bom 298* and *Sitaram Bhat v Sitaram Ganesh 6 Bom H C 250* referred to. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA. I. L. R. 23 Calc. 645

(c) COMPOUNDING CRIMINAL OFFENCES

59 ——— *Contract compounding an assault*—A contract compounding an assault is not illegal and may be sued upon. The fact of two of the defendants being Mahomedans does not affect the principle of this decision. MOTHOORANATH DEY *v.* GOPAL ROY. 5 W R. S C C Ref. 16

60 ——— *Contract to pay money in consideration of foregoing a criminal prosecution*—A contract to pay money in consideration of foregoing a criminal prosecution is opposed to public policy and will not be enforced. The consideration to support the promise in such a contract is a vicious consideration. *Keir v Leeman 6 Q B 308 S C on appeal 9 Q B 371* observed upon. KANDAY CHETTI *v.* COOREGE SETT. 2 Mad. 187

61 ——— *Execution of deed of sale in consideration of abstaining from criminal*

CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*continued*

proceedings —Where the defendant agreed to execute a kebala of certain lands in favour of plaintiff in consideration of the latter's abstaining from taking criminal proceedings against the former with respect to an offence which is compoundable —*Held* that the contract could not be regarded as forbidden by law or as against public policy and that it might be enforced AMIR KHAN *v* AMIR JAN

[3 C W N, 5

62. ——————— *Consideration in part illegal—Stifling a prosecution*—The plaintiff claiming to be entitled together with two of the defendants to the office of archaka of a temple sued in 1883 for a declaration of his title and for a declaration that an agreement entered into by them in 1880 with the other defendants was void as having been executed under coercion and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them These averments were proved. *Held* that the agreement was void although the withdrawal of the criminal proceedings formed part only of the consideration for it. SRIRANGACHARIAR *v* RAMASAMI AYYANGAR

[I. L R., 18 Mad. 189

63 ——————— *Agreement to abstain from prosecuting for giving false evidence* —A Court cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence QUEEN *v* BALKISHEN

[3 N W 166 Agra F B. Ed. 1874 252

64. ——————— *Compounding charge of fraudulent abstraction of documents—English Common Law rule*—The plaintiff a resident of Pondicherry held a bond from one of the defendants (the second) for a certain sum of money This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry and he obtained the arrest and extradition from the British territory of the second defendant as also of his brother the first defendant The latter on his way to Pondicherry met the plaintiff and a settlement of accounts took place The fifth sixth seventh and eighth defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff and took indemnity bonds to themselves from the first defendant the consideration being the agreement of the plaintiff to discontinue further proceedings in the criminal charge The Court at Pondicherry sanctioned the agreement as a compromise by civil redress and suspended further proceedings in accordance with the law in force in the settlement *Held* that the contract was enforceable the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India or injurious to the good order and interests of society in regard to the administration of public justice The English Common Law rule that contracts for the compounding or suppression of criminal charges for offences of a public nature are illegal and void has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the municipal law of a foreign country The rule of international law that the law of the place of a contract governs its validity is subject to the qualification that every State may refuse to enforce a contract when it is for the fraudulent evasion of its law or is injurious to its public institutions or interests SUBBAYA PILLAI *v* SUBBAYA MUDALI

[4 Mad., 14

65 ——————— *Compounding charge of wrongful restraint—Offence legally compoundable—Suit to recover consideration*—Where *A* was criminally prosecuted by *B* for wrongful restraint and he came to terms with *B* to pay him for the withdrawal of the complaint or to deposit money or property with *C* to be paid over to *B* on the disposal of the case according to *B's* petition of withdrawal and the Magistrate instead of allowing the withdrawal of the charge punished *A* criminally—*Held* that *A* could sue for the recovery of the money or property as the charge was not one out of which it would have been illegal for *A* to withdraw with the consent of the Magistrate the offence charged consisting of an act for which *B* might have sued for damages in the Civil Court MATHOORA NATH BHOOMIK *v* KENARAM KURMOKAR 7 W R. 33

66 ——————— *Transfer of property as compensation for criminal charge—Illegal pressure*—Certain parties convicted of a criminal offence in order to avoid apprehension entered into a compromise with complainant who agreed to accept a sum of money as costs and as compensation for the disgrace he had suffered They accordingly transferred to him some property in lieu of cash *Held* that the transfer was not made under illegal pressure and they could not sue to set it aside Though the offence was one in which a compromise could not legally be admitted the error of the Magistrate in admitting it the parties acting in good faith, ought not to affect the position of the parties KHERDEE BUKSH *v* HINGON 8 W R. 413

67 ——————— *Contract based on condonation of criminal offence—Onus of proof*—In a suit to enforce a contract should the defendant plead that the contract was based upon the condonation of a criminal complaint against the plaintiff which might have been of a nature not condonable by law and that the contract was therefore void it would be for him to show what was *the nature of the offence* complained of KUMALA NATH SEIN *v* BEHAREE KANT ROY 11 W R. 314

68 ——————— *Money paid to condone offence—Causing death accidentally*—Where to suppress a criminal prosecution for having accidentally caused the death of his wife plaintiff voluntarily paid money to defendant knowing the defendant to be the nearest relative of the deceased who could take a part in the prosecution *the contract* was held to be void as against morality and public policy and

CONTRACT ACT (IX OF 1872)—*continued.*

ILLEGAL CONTRACTS—*continued*

plaintiff was entitled to sue for the money so paid JETOO MAHATO v MONTRAM MAHATO [17 W R. 84

69 ———— *Agreement to withdraw charge of breach of criminal trust—Unlawful agreement—Void consideration—Public policy*—The plaintiff sued the defendant for possession of a house and premises which he had bought from the latter. The defence was that the sale was made for the purpose of raising money to be given to certain third parties as a bribe to induce them to withdraw a charge of criminal breach of trust which they had preferred against the defendant. The lower Appellate Court held that the defence was bad on the ground that there was no evidence to show that the plaintiff was a party to or in any way concerned in the unlawful agreement, and gave the plaintiff a decree. *Held* that the decree was correct, as there was no evidence to show either that the plaintiff knew of the agreement to suppress the criminal prosecution, or that any money had been paid in pursuance of such unlawful agreement. RAJKRISTO MOITRO v KOILASH CHUNDER BHUTTACHARJEE [I. L. R. 8 Calc 24

70 ———— *Criminal breach of trust—Consideration—Guarantee on condition of not taking criminal proceedings—Compounding felony*—S gave to the creditors of H a guarantee for the payment of the debts due to them by H. As a consideration for this guarantee the creditors were to abstain from taking criminal proceedings against H for criminal breach of trust for fifteen days, and by implication were to abstain from taking such proceedings altogether if the said debts were paid within that time. *Held* that such a guarantee could not be enforced by the creditors. A man to whom a civil debt is due may take securities for that debt from his debtor even though the debt arises out of a criminal offence and he threatens to prosecute for that offence provided he does not in consideration of such securities agree not to prosecute. He must not, however, by stifling a prosecution obtain a guarantee from third parties. KESSOWJI TULSIDAS v HURJIVAN MULJI [I. L. R. 11 Bom., 566

(d) ILLEGAL CESSES

71. ———— *Cess not authorized—Beng Reg VII of 1822, s 9, cl 1*—A claim for a cess or collection not avowed and sanctioned at the time of settlement nor taken into account in fixing the Government jumma is illegal under cl 1, s 9, Reg VII of 1822 and consequently inadmissible. HUSHMUT ALI v SEETA RAM 1 Agra 333

72 ———— *Cess not authorized—Beng Reg VII of 1822, s 9, cl 1*—*Held* that a suit substantially brought to prove a right to collect cesses not authorized under the provisions of cl 1, s 9, Reg VII of 1822 being for an illegal object was not maintainable. KUTRAT ALI v MAHOMED YASEEN KHAN 2 Agra, 207

CONTRACT ACT (IX OF 1872)—*continued.*

ILLEGAL CONTRACTS—*continued.*

73 ———— *Contract relating to illegal cess*—Every contract relating to the collection from raiyats and payment to the zamindar of an illegal cess is absolutely void. KAMALA KANT GHOSE v KALU MAHOMED MANDAL [3 B L R A C 44 11 W R 395

74. ———— *Stipulation to pay collection charges—Lease Condition in*—A condition in a lease that the tenant will pay to the landlord collection charges, can be enforced if the condition is definite and certain in its nature and forms part of the consideration for the lease. MAHOMED FAYEZ CHOWDHRY v JAMOO GAZEE [I. L. R., 8 Calc., 730

75 ———— *Payment added to rent—Customary payment*. Where a raiyat has for many years been paying a tulluh besides 2 annas in each rupee in addition to the asal jumma of his holding, and the two payments have been incorporated in time and have actually formed the subject of a single receipt which the zamindar challenged the raiyat to produce but which the raiyat failed to produce,—*Held* that if a raiyat for the purpose of preventing disputes with his landlord and for securing his own interests agrees to make a definite payment to his landlord in addition to his rent the additional payment cannot be treated as an illegal cess for the law favours such arrangements and provides for their being enforced. SERAJGUNGE JUTE COMPANY v SORABDEE AKOOND [25 W R., 252

But *see* OBJOON SAHOO v ANUND SINGH [10 W R 257

76 ———— *Suit for recovery of illegal cess*—In the absence of a special agreement a claim for an illegal cess cannot be recovered in a Court of law. SONYUM DOOGUL v ELAHEE BUKSH [7 W R 453

77 ———— *Collection by tahsildar of present for zamindar for birth ceremonies*—A sum collected by a tahsildar as purruthhika or present for the zamindar on the annaprasbun ceremony (first eating of rice after birth) considered as an illegal cess and therefore irrecoverable in a suit under Act X of 1859, s 24. NOBIN CHUNDER POY v GOORA GOBIND SURMAH 14 W R., 447

78 ———— *Kuntagara Levy of—Public policy*—There is nothing illegal or contrary to public policy in the levying by riparian owners of kuntagara or a charge imposed upon boatmen for driving stanchions or pegs into the river bank for the purpose of attaching their boats thereto. DHUNPUT SINGH v DENO BUNDHO SAHA 9 C L R 279

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CONTRACT ACT (IX OF 1872)—*continued*

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CONTRACT ACT (IX OF 1872)—*continued*

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CONTRACT ACT (IX OF 1872)—*continued*

ILLEGAL CONTRACTS—*concluded*

73. ——————— *Contract relating to illegal cess.*—Every contract relating to the collection from raiyats and payment to the zamindar of an illegal cess is absolutely void. KAMALA KANT GHOSE *v.* KALU MAHOMED MANDAL [3 B. L. R. A. C. 44: 11 W. R. 395

74. ——————— *Stipulation to pay collection charges—Lease Condition in.*—A condition in a lease that the tenant will pay to the landlord collection charges can be enforced if the condition is definite and certain in its nature and forms part of the consideration for the lease. MAHOMED FAYEZ CHOWDHRY *v.* JAMOO GAZEE [I. L. R. 8 Calc. 730

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79. ——————— *Agreement to pay prohibited tax.*—An agreement to pay a tax prohibited by an Act of the Legislature would defeat the object of the Act and was consequently void and could not be enforced. Indian Contract Act IX of 1872, s. 23. GOSVAMI SHRI PURUSH OTAMJI MAHARAJ *v.* ROBB I. L. R. 8 Bom. 398

CONTRACT ACT (IX OF 1872)—*continued*

——— s 24

See BENGAL TENANCY ACT s 29
[I L R. 24 Calc, 895

See HINDU LAW—CONTRACT—HUSBAND AND WIFE 4 C W N, 488

See SONTHAL PERGUNNAS SETTLEMENT REGULATION s 6
[I L R 26 Calc, 238

——— s 25

See CASES UNDER CONTRACT ACT s 23—ILLEGAL CONTRACTS—GENERALLY

See LIMITATION ACT, 1877 s 19 (1871 s 20)—ACKNOWLEDGMENT OF DEBTS
[I L R 1 Bom 590
I L R, 2 Bom., 230
I L R., 6 Bom, 683
I L R 8 Bom, 405
I L R. 11 Bom 580
I L R. 23 Mad. 94

See POWER OF ATTORNEY
[11 C L R. 581

See STAMP ACT 1879 sch I cl I
[I L R 8 Bom. 194

See VENDOR AND PURCHASER—CONSIDERATION I L R. 22 Bom 176

1 ——— *Consideration—Void agreement* —While certain hundis were running the acceptor gave the holder the drawer having become bankrupt a mortgage of certain immoveable property as security for the payment of the hundis in the event of their dishonour when they became due *Held* in a suit on the mortgage-deed the hundis having been dishonoured that there was no consideration within the meaning of that term in Act IX of 1872 for the agreement of mortgage and the same was void under s 25 of that Act MANNA LAL v BANK OF BENGAL
[I L R., 1 All 309

2 ——— *Consideration—Vakil and client—Promise of additional sum in case of success in suit* —An agreement executed by a client to his vakil after the latter had accepted a vakalutnama to act for the former in a certain suit whereby the client bound himself to pay to the vakil in the event of his conducting the suit to a successful termination a certain sum in addition to the vakil s full fees held *nudum pactum* and a suit founded upon it dismissed as unsustainable LAKHMICHAND BA CHINTAMAN v KALU PAJUTA I L R 2 Bom. 362
NUTHOO LALL v BUDREE PERSHAD
[3 Agra 286
FULLER v BISHOON KOOER 3 N W 25

3 ——— *Consideration—Inam chithi—Vakalutnama—Act I of 1846 s 7—Nudum pactum* —Where the acceptance of a vakalutnama by a pleader and the execution of an inam chithi (agreement) by his client intended as a remuneration for the professional services of the pleader were contemporaneous and the vakalutnama was not filed by the pleader until after the execution of the inam chithi —*Held* that the acceptance of the vakalutnama and the execution of the inam chithi constituted one transaction and that the agreement was not illegal under Act I of 1846 s 7 SHIVARAM HARI v ARJUN I L R., 5 Bom. 258

4 ——— *Consideration—Void agreement—Immoral consideration—Past cohabitation* —Past cohabitation would not be an immoral consideration if consideration it can properly be called for a promise to pay a woman an allowance Such a promise however is to be regarded as an undertaking by the promisor to compensate the promisee for past services voluntarily rendered to him for which no consideration as defined in the Contract Act would be necessary DHIRAJ KUAR v BIKRAMAJIT SINGH I L R, 3 All, 787

5 ——— *Consideration—Post nuptial contracts—Contract partly legal and partly illegal* —The defendant a Mahomedan husband executed a kabinnama in favour of his wife by which he agreed among other things that he would maintain her and make over to her whatever money he should earn that he would never exercise any violence upon her that he would not take her away from home that it should not be within his power to marry or make any nika without her permission that he would do nothing without her permission and if he did she should be at liberty to divorce him and realize from him the amount of denmohur forthwith and the nika would then be null and void The plaintiff sued her husband upon this document, which was registered to recover from him all his earnings amounting to R565 after deducting R54 which she admitted having received from him The lower Appellate Court held reversing the decision of the Munsif that the agreement had been made subsequently to the marriage and was though registered void for want of consideration *Held* on appeal that the agreement being registered came within s 25 of the Contract Act and was not void on the ground that there was no consideration Although some parts of the agreement might be illegal as being contrary to public policy and therefore void yet those which were legal could be enforced (*See Dinlal Singh v Pandu I L R 9 Bom 17*) The Court treated the suit as one to enforce that part only of the contract which was legal and considered the plaintiff entitled to recover a fair sum for her maintenance
POONOO BIBEE v FYEZ BUKSH
[15 B L R Ap 5 23 W R., 63

6 ——— *Consideration—Agreement to postpone execution proceedings—Suit on agreement when execution is barred* —In execution of a decree dated the 28th May 1843 under which certain persons were jointly liable the 10th February 1881 was fixed for the sale of the debt or property which was then under attachment but on that day all the debtors except one K arranged with the decree holders that the money should be paid by them in Bysack full wine ve by the 12th May 1881 that in the meantime the execution proceedings should be struck off the attachment still subsisting and that if

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default should be made execution should proceed and no objection on the ground that the decree was more than two years old should be made by the debtors. The terms of the arrangement were embodied in a petition and sanctioned by the Court which thereupon struck off the case. The debtors having made default on the 13th September 1881 the decree-holders applied for execution but A who had not agreed to the arrangement objected that the application was barred under s. 230 of the Civil Procedure Code and the objection was held to be valid. The decree-holders then sued to recover the money for which execution had been taken out basing their suit upon the arrangement made by the defendants on the 10th February 1881. *Held* that the plaintiffs were entitled to succeed on proof that there was a contract between the parties in good consideration and that the petition of 10th February 1881 though not a contract giving the plaintiffs a right of suit might be regarded as evidence corroborating other evidence of such a contract. SYAM SINGH *v.* BAIDYANATH LAL [13 C. L. R. 176

7. ———— *Consideration—Voluntary alienation or conveyance—Gift.*—A decree-holder instituted a suit against his judgment-debtor and the latter's son for a declaration that a gift by the judgment-debtor to his son of certain property was fraudulent and that such property was liable to be taken in execution of the decree. *Held* that such gift having been made by the donor out of natural love and affection for the donee and in order to secure a provision for him and his descendants and therefore for good consideration and having operated and the donor having reserved to himself sufficient property to satisfy the decree the mere fact that the donor reserved to himself no property within the jurisdiction of the Court which made the decree was not a ground for holding that such gift was fraudulent and not made in good faith and for setting it aside and allowing the decree-holder to proceed against the property transferred by it. The law relating to voluntary alienations explained. NASIR HUSAIN *v.* MATA PRASAD I. L. R. 2 All. 891

8. ———— *Consideration—Agreement without consideration.*—The plaintiff sued to establish an agreement in writing by which the defendants promised to pay him a commission on articles sold through their agency in a bazar in which they occupied shops in consideration of the plaintiff having expended money in the construction of such bazar. Such money had not been expended by the plaintiff at the request of the defendants nor had it been expended by him for them voluntarily but it had been expended by him voluntarily for third parties. *Held* that such expenditure was not any consideration for the agreement within the meaning of s. 2 (d) of Act IX of 1872 and the agreement did not fall within cl. (2) s. 25 of that Act and was void for want of consideration. DURGA PRASAD *v.* BALDEO I. L. R. 3 All. 221

9. ———— *Promise to pay—Balancing accounts—Account stated.*—The Gujerati words

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baki d[illegible] which are of common use in balancing accounts import no more than the English words "balance due" from which an unwritten contract may be inferred but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872 s. 25 cl. 3. RANCHODAS NATHUBHAI *v.* JEYCHAND KHUSALCHAND [I. L. R. 8 Bom. 405

10. ———— *Promise to pay—Acknowledgment—Account stated—Adjusted account—Adjustment of accounts, Effect of—Ruzu—Limitation Act (XV of 1877), s. 19.*—The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as evidence of a new contract furnishing a basis for a new cause of action it must contain a promise in writing duly signed as required by the Contract Act IX of 1872, s. 25 cl. 3; a bare statement of an account not being such a promise. RAMJI *v.* DHARMA [I. L. R. 6 Bom. 683

11. ———— *Consideration—Judgment-debt—Debt barred by limitation.*—A judgment-debt is a debt within the contemplation of s. 25 cl. 3 of the Contract Act IX of 1872. SHRIPATRAV *v.* GOVIND NARAYAN I. L. R. 14 Bom. 390

12. ———— *Promise to pay a debt barred by limitation—Judgment-debt.*—The holder of a decree for money dated the 22nd June 1868 applied for execution on the 23rd February 1869. In September 1869 before the decree had been executed the judgment-debtor admitting that a certain amount was due under the decree agreed to pay such amount by instalments; and that if default were made the decree should be executed for the whole amount thereof. Default having been made early in 1873 the decree-holder applied at once for execution of the decree. On the 5th May 1873 a petition signed by the judgment-debtor was preferred on his behalf to the Court executing the decree, such petition being in effect as follows: "Execution case for R6,839-15-3. In this case the decree-holder has filed an application for execution of his decree in consequence of a default in payment of instalments; the fact is that the petitioner has failed to pay the instalments simply owing to illness, otherwise he has no objection to the decree-holder's demand; in future he will not fail to pay instalments; he has written a letter to plaintiff asking him to pardon his breach of promise and to agree to realize the decree-money by the instalments formerly fixed and to stay execution of the decree for the present. The decree-holder has granted this request; the petitioner therefore presents this petition and prays that monthly instalments of R150 may be fixed and execution of the decree be postponed for the present; in case of default being made in payment of two instalments in succession the decree-holder will be at liberty to realize the balance of the decree-money with interest at twelve per cent. per annum." At the time such petition was preferred execution of the decree was barred by limitation. *Held* that a debt within the meaning

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on the expiry of the five years or sooner determination of the service, they would not carry on within 800 miles from Madras any business carried on by the firm and also covenanted that on such expiry or sooner determination they would whenever requested by the firm so to do return to England. In pursuance of the agreement *D* and *E* went to Madras, and entered into the service of the firm. After it had continued for about 2½ years the service was determined by notice from the firm *D* and *E* then in violation of their said covenants refused to return to England though requested to do so by the firm and proceeded to set up and carry on on their own account, business of the same kind as that carried on by the firm. *Held* in a suit by the firm against *D* and *E* for damages for breaches of the said covenants and for a perpetual injunction restraining *D* and *E* from carrying on in Madras, or within 800 miles from Madras any business carried on by the firm that treating the covenant in restraint of trade as one entered into in England it could not even if valid by the law of England be enforced in India inasmuch as its object was to contravene the law of India (s. 27 of Act IX of 1872) *Held* further that that covenant would have been void by the law of England because the limit of the restriction was unreasonable and as no narrower limit had been mentioned in the agreement this was not a case where the covenant could have been enforced within a narrower and reasonable limit. *Held* also that the covenant to return to England, except so far as it operated improperly in restraint of trade was a covenant the breach of which did not in any way cause damage to the firm and therefore such breach did not entitle them to any damages OAKES v JACKSON I. L. R., 1 Mad 134

5 ——— *Contract in restraint of trade—Public policy*—In a suit upon an agreement binding defendants to remain subject to the orders of plaintiff the head of their caste not to carry on their trade with the assistance of any other persons than their own caste and imposing penalties for non performance —*Held* that it would be contrary to public policy to give effect to such an agreement. VAITHELINGA v SAMINADA I. L. R., 2 Mad. 44

6 ——— *Contract in restraint of trade*—*Held* that a stipulation in a contract prohibiting any sales of goods to others during a particular period of a similar description to those bought under the contract is not a stipulation in restraint of trade under s. 27 of Act IX of 1872. CARLISLE NEPHEWS & Co v PICKNATH BUCKTEAR MULL [I L R 8 Calc. 809

7 ——— *Contract in restraint of trade*—A contract under which a person is partially restrained from competing after the term of his engagement is over with his former employer is bad under s. 27 of the Contract Act *Quære*—As to the effect of an agreement of service by which a person binds himself during the term of his agreement not directly or indirectly to compete with his employer BRAHMAPUTRA TEA COMPANY v SCARTH [I. L. R. 11 Calc., 545

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8 ——— *Contract in restraint of trade—Contract void for uncertainty*—Plaintiff who was a broker agreed to give up an admitted claim to brokerage on 2,000 corahs previously disposed of in consideration of defendant who was a commission agent for different kinds of goods, employing him to sell a like quantity of other corahs and all his other goods for the future employing plaintiff alone as his broker for the sale of his goods. It was also agreed that if defendant did not sell the second batch of corahs through plaintiff the brokerage on the whole would be payable by defendant. *Held* that the agreement was not void either as being in restraint of trade or for uncertainty BUSKIN v RAMKISSEN SEAL 23 W R., 146

9 ——— *Contract in restraint of trade—Construction of contract*—A contract under which goods were purchased at a certain rate for the Cuttack market containing a stipulation that if the goods went to Madras, a higher rate should be paid for them is not one in restraint of trade; and where the purchaser sold the goods to a person in Calcutta who in turn resold to another who took them to Madras —*Held* that the original purchasers were under the terms of the contract, liable to pay at the enhanced rate. PREM SOOK v DHURUM CHAND I. L. R., 17 Calc., 320

10 ——— *Partial restraint of trade*—S 27 of the Contract Act does away with the distinction observed in the English cases between partial and total restraint of trade and makes all contracts falling within its terms void unless they fall within its exceptions. The section was intended to prevent a partial as well as a total restraint of trade *A* and *B* two ghat serangs entered into a contract with *X* and five others who carried on the business of dubashes at Chittagong, for the purpose of carrying on their respective businesses in unanimity and not injuring one another's trade The contract which was to last for three years provided *inter alia* that *A* and *B* were to act as ghat serangs only and do no service to ships in any other capacity that *X* and the other dubashes were to give *A* five vessels secured by them every year for him to act as ghat serang and that *A* was only to act as ghat serang to the said five ships, and with the exception of ships for which he had previously acted as ghat serang he should not act as ghat serang or do any other services for ships belonging to any one else The contract also contained provisions as to the apportionment of the five ships so to be given to *A* amongst the various dubashes, and amongst such an agreement by *X* to give *A* the third ship he should secure It also contained a provision for the payment of R1,000 as damages by any one breaking the contract to the person who should suffer by the breach. In a suit by *A* against *X* alleging a breach of the contract by the latter in not giving him the third ship as agreed, and claiming R1,000 by way of damages, *X* pleaded that the contract was void under s. 27 of the Contract Act as being in restraint of trade *Held* that the contention was sound and that the suit must be dismissed.

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The consideration for the promise by Y to give the ships to A was the agreement by A not to carry on any other business than that of a ghat serang and that only in respect of his old ships and the five agreed to be so furnished to him by the dubashes. The effect of this agreement was absolutely to restrain A from carrying on the business of a dubash and to create a partial restraint on his power to carry on the business of a ghat serang and whether or not (even had the latter stipulation not been illegal) the contract would have been void under the provisions of s. 24 of the Act by reason of part of the consideration being the undertaking by A absolutely to refrain from carrying on the business of a dubash it was void for both reasons under the provisions of s. 27 and A was not entitled to recover any damages under it. NUR ALI DUBASH *v* ABDUL ALI I. L. R. 19 Calc., 765

11. ——————— *Contract in restraint of trade—Divisibility of contract*—One having a license for the manufacture of salt entered into a contract with a firm of merchants whereby it was provided that he should not manufacture salt in excess of the quantity which the firm at the commencement of each manufacturing season should require him to manufacture and that all salt manufactured by him should be sold to the firm for a fixed price. The agreement was to be in force for a period of five years. In a suit by the merchants for an injunction restraining *the licensee from selling his salt to others,*—*Held* that whether or not the first of these clauses was invalid under s. 27 of the Contract Act it was separable from the second clause which was not bad as being in restraint of trade. MACKENZIE *v* STRIRAMIAH I. L. R., 13 Mad. 472

SADAGOPA RAMAIYIAH *v* MACKENZIE [I. L. R., 15 Mad., 79

12. ——————— *Contract in restraint of trade*.—The defendant obtained a license to sell salt in the salt factory at Krishnapatam and he executed an agreement by which he was to manufacture salt in the said factory as long as the excise system should be in force and deliver the same to the plaintiffs for sale and the plaintiffs were to give him a fixed price for it. *Held* that the agreement so far as it restrained the sale of salt to others than the plaintiffs was bad. RAGAVAYYA *v* SUBBAYYA I. L. R. 13 Mad., 475

13. ——————— *Agreement to share profits of trade—Restraint of trade*.—Four persons each of whom owned a ginning factory entered into an agreement which (*inter alia*) provided that they should charge a uniform rate of R4 8 0 per palla for ginning cotton that of this sum R 8-0 should be treated as the actual cost of ginning and *that the remaining R2 should be carried to a common fund to be divided each year between the parties* to the agreement in proportion to the number of ginning machines which each of them possessed. The agreement was to be in force for four years. The other parties had carried out the agreement but the defendant although he had carried the R. to a separate account, refused to pay the plaintiff his share of the amount. He also refused to pay the other two parties their shares. The accounts had been duly made up *showing the sums which the defendant under the agreement had to pay both to* the plaintiff and the two other parties to the agreement. The plaintiff sued the defendant for his share. The defendant contended that the *agreement* was in restraint of trade and was *therefore* not enforceable. *Held* that the plaintiff was entitled to recover his share from the defendant. The only agreement sought to be enforced in this suit was the agreement to divide the profits. *That was a lawful agreement* founded upon consideration (*viz* the mutual agreement to share each other's profits) and it might be enforced. *Per* FARRAN C J—I am inclined to agree with the lower Appellate Court that the stipulation that the parties to the agreement are bound to charge at the rate of R4 8-0 per palla for ginning cotton is a stipulation in restraint of trade. *Per* CANDY J—I am not satisfied that the agreement *in question was, as a fact in restraint of trade and* further to accurately quote the words of s 27 of the Contract Act I am not satisfied that it was an agreement by which any one was restrained from exercising a lawful trade. HARIBHAI MANEKLAL *v* SHARAFALI ISABJI I. L. R., 22 Bom., 861

14 ——————— *Contract for personal service—Contract not to practise as physician—Restraint of trade*.—A agreed on certain terms to become assistant for three years to B who was a physician and surgeon practising at Zanzibar. The letter which stated the terms which B offered and which (as the Court found) A accepted contained the words "the ordinary clause against practising must be drawn up." At the end of a year a disagreement took place and A ceased to act as B's assistant and began to practise in Zanzibar on his *own account*. B sued for an injunction to restrain him. *Held* that this was not a contract in restraint of trade and that B was entitled to an injunction restraining A from practising in Zanzibar on his own account during the period of three years. CHARLESWORTH *v* MACDONALD I. L. R., 23 Bom. 103

See CALLIANJI HARJIVAN *v* NARSI TRICUM *Per* CANDY J I. L. R. 18 Bom., 702 (708)

1. ——————— s 28 excep 1—*Agreement to refer to arbitration Revocation of—Common Law Procedure Act of 1854 (17 & 18 Vic., c 125)—9 & 10 Will III c 15—3 & 4 Will IV c 42—Specific performance of agreement to refer—Suit for damages for breach of agreement to refer*.—A contract entered into by the plaintiffs with the defendants contained a clause providing in case of any dispute for a reference to two arbitrators in England one to be appointed by each of the contracting parties, whose decision in the matter was to be final. The contract contained no provision for making the submission to arbitration a rule of Court so that 9 & 10 Will III c 15 and 3 & 4 Will. IV c 42 s 39 did not apply. Matter of dispute arising the defendants refused to appoint an arbitrator and an award was made by arbitrators

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appointed by the plaintiffs Previous to the making of the award the plaintiffs under the provisions of the Common Law Procedure Act 1854 had the submission to arbitration made a rule of the Court of Common Pleas In a suit in which the plaintiffs claim was for damages awarded by the arbitrators and incurred by the plaintiffs in respect of the breach of the contract —*Held* the award was invalid The making the submission a rule of Court has not the effect of depriving a party of his right to revoke at any time before the award the authority of arbitrators whom he has appointed still less could it have any effect to prevent him from declining to appoint an arbitrator *Held* also the contract was not within the scope of s 28 Act IX of 1872 To make an agreement conform to excep 1 of that section the jurisdiction of the Courts must be excluded in all respects except the matter which is the result of the arbitrators award Agreements which exclude the jurisdiction of the Courts until an award is made as in *Scott* v *Avery 2 Jur., N S 815 5 H L C 811* are within that exception and are not illegal *Quare*—Whether it was intended by that exception to authorize the Court to entertain a suit for specific performance of an agreement to refer to arbitration S 28 Act IX of 1872 does not forbid an action for damages for the breach of such an agreement KOEGLER *v* CORINGA OIL COMPANY

[I. L R. 1 Calc 42

Held on appeal that the contract was not one of the nature referred to in s. 28 Act IX of 1872 That section only refers to contracts which wholly or partially prohibit the parties absolutely from having recourse to a Court of Law The first exception in that section applies only to a class of contracts where the parties have agreed that no action shall be brought until some question of amount has first been decided by the arbitrators *Semble*—A suit will not lie to enforce an agreement to refer to arbitration even in the case referred to in the first exception to s 28 of Act IX of 1872 CORINGA OIL COMPANY *v* KOEGLER

[I. L R 1 Calc 466

2. ———————— *Agreement not to appeal—Void agreement* —Where in consideration of *A* giving *B* time to satisfy a decree against him held by *A* *B* agreed not to appeal against the decree and did appeal —*Held* that the agreement was not prohibited by s. 28 of Act IX of 1872 and that the Appellate Court was bound by the rules of justice equity and good conscience to give effect to it and to refuse to allow *B* to proceed with the appeal which he had instituted in contravention of it. ANANT DAS *v* ASHBURNER & Co

[I. L. R. 1 All. 267

See JATI RAM TALUKHDAR *v* DASS RAM KOLITA

[3 C L R. 574

3 ———————— *Agreement not to appeal —Release of judgment debtor* —Where a plaintiff had obtained a decree and under it in execution arrested his judgment debtor the latter filed a petition in Court agreeing not to prefer any appeal against the judgment obtained by the plaintiff in consideration of his release and being allowed to pay by instalments. *Held* s. 28 of the Contract Act had no relation to such an undertaking PROTAP CHUNDER DASS *v* ARATHOON

[I. L R 8 Calc., 455 10 C L. R., 443

4 ———————— excep 1—*Agreement not to appeal—Arbitration—Misconduct of arbitrators—Civil Procedure Code ss 521 523 524*—In an agreement to submit to arbitration which was filed in Court under the provisions of s. 523 of the Code of Civil Procedure it was stipulated that the decision of the arbitrator should be accepted as final, and that no appeal therefrom should be made by either party *Held* that this stipulation did not prevent the Court from setting aside the award on the ground of misconduct on the part of the arbitrator RANGA *v* SITHAYA I. L R., 6 Mad., 368

5 ———————— *Agreement to refer to manager questions arising under agreement—Tramways Company—Agreement with conductor —Manager Power of—Jurisdiction of Courts of Justice* —The plaintiff became conductor of the Calcutta Tramways Company in accordance with an agreement which amongst other things, provided that the Company will retain a sum of money deposited by the conductor together with all his wages for the current month as security for the discharge of his duties and in case of any breach by him of the rules the manager of the company shall be the sole judge as to the right of the Company to retain the whole or any part of the deposit and wages and his certificate in writing in respect of the amount to be retained and the cause of such retention shall be binding and conclusive evidence between the parties in all Courts of Justice On a reference from the Calcutta Court of Small Causes as to the effect of this agreement —*Held* that it was a contract to refer to arbitration rendered valid by s 28 example 1 of the Contract Act and that the certificate of the manager was conclusive AGHORE NATH BANERJEE *v* CALCUTTA TRAMWAYS COMPANY

[I. L. R. 11 Calc., 232

———————— s 29

See MORTGAGE—CONSTRUCTION OF MORTGAGES I L. R., 13 All., 175

1. ———————— *Agreement void for uncertainty—General charge on property* —A promise to pay out of the debtor's property and finally and an indefinite order for the satisfaction of a decree out of the assets of a deceased person in whose hands soever they may be found create no charge on specific property such as will bind it in the hands of a purchaser unless he purchases it in fraud BURRI DORAYYA *v* MADDIPATU RAMAYYA

[I. L. R 3 Mad., 35

See also DEOJIT *v* PITAMBAR

[I. L. R., 1 All., 275

CONTRACT ACT (IX OF 1872)—*continued*

2. ———— *Agreement void for uncertainty*—In a suit for maintenance the defendant alleged that after the plaintiff had left his house an agreement had been made between them to refer their dispute to arbitration, and that the agreement of reference had been actually signed but that on the day fixed by the arbitrators for making their award the plaintiff had given notice to them not to make an award and accordingly they had not done so The alleged agreement to refer was in the following terms —" To Bhai Dass Morarji and Dwarkadass Damodar We the undersigned two persons give in writing to you as follows —We used to reside and act in the house together in peace and harmony Lately a few days ago in consequence of a disagreement amongst the women *V* resided separately Upon persuasion having been used towards her *V* again resides in the house together with the rest so now all are residing in the house in peace and harmony If any occasion should arise and if any disagreement should take place amongst the women in order to find a remedy for that we the undersigned two persons give in writing to you as follows —As to whatever award or settlement you two persons together will make in accordance therewith we agree to receive or pay As to that we are truly to act on our true religious faith and we have written and delivered this writing of our free will and pleasure The same is agreed to and approved of by our heirs and representatives all the 11th Jyesth Vadya Samvat 1939 the day of the event Friday the 1st June 1883 And as to this you are truly to make and deliver a settlement within fifteen days time *Quære*—Whether the above agreement was not void by reason of uncertainty *Quære*—Whether the actual submission of a subject in dispute to named arbitrators followed by the attempt of one of the parties to such submission to withdraw from or to prevent an award being made upon the submission falls within the concluding paragraph of s 21 of the Specific Relief Act I of 1877 ADHIBAI *v* CURSANDAS NATHU I. L. R 11 Bom 199

———— s 30

See CONTRACT—WAGERING CONTRACT
I. L. R., 9 Bom 358
I. L. R 5 All. 443
I. L. R. 22 Bom 899
I. L. R. 23 Bom 191
I L R. 24 Bom 227

———— s 38

See CONTRACT—BREACH OF CONTRACT
I L R. 6 Bom. 692

See DEBTOR AND CREDITOR.
I. L. R. 20 Mad, 461

See TENDER 5 C L. R. 105

———— s 39

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R. 18 Mad., 63

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT I L. R. 14 Mad. 18

CONTRACT ACT (IX OF 1872)—*continued*

1. ———— *Right to rescind—Refusal to perform—Time of essence of contract—Suit for damages for non delivery*—S 39 of the Contract Act only enacts what was the law in England and in India before the Act was passed—*viz* that where a party to contract refuses altogether to perform or is disabled from performing his part of it the other party has a right to rescind In a suit for damages for the non delivery of linseed upon a contract the terms of which as to payment were cash on delivery part delivery had been made by the defendants and a sum of R1 000 had been paid on account by the plaintiffs The plaintiffs then made a claim against the defendants for excess refraction and the defendants thereupon refused to deliver the remainder of the linseed unless the plaintiffs paid the full amount owing for the portion that had been delivered. The plaintiffs declined to accept these terms and the defendants then cancelled the contract *Held* that there was not such a refusal on the part of the plaintiffs to perform their part of the contract as to entitle the defendants to rescind under s 39 of the Contract Act SOOLTAN CHAND *v* SCHILLER
I. L. R 4 Calc 252 3 C L R. 237

2 ———— *Expression of—Intention not to perform contract—Right to sue for non performance—Rescinding contract*—Where a vendor contracts to deliver goods within a reasonable time payment to be made on delivery if before the lapse of that time he merely expresses an intention not to perform the contract the purchaser cannot at once bring his action unless he exercise his option to treat the contract as rescinded MANSUK DAS *v* PANGAYYA CHETTI 1 Mad 162

3 ———— *Mortgage—Part breach of contract by mortgagee—Rescission of contract—Acquiescence—Suit by mortgagee for interest due under the mortgage as regards the part fulfilled*—*A* mortgaged certain land to *B* for R800 Under the terms of the mortgage deed *B* was to pay R500 of the advance to *C* in discharge of a previous mortgage executed by *A* in favour of *C* Of the balance of R300 *B* was to retain R200 in payment of a previous debt of *A* due to him and the balance of R100 was to be paid to *A*. *B* paid the said R100 retained the R200 but neglected to pay the said R500 to *C* who sued *A* and recovered the debt by attachment and sale of *A*'s moveable property After eight years from the date of the mortgage *B* brought a suit to recover the interest due under the mortgage on R300 only *Held* that under s 39 of the Contract Act *A* was entitled to cancel the contract of mortgage owing to *B*'s conduct but that he was bound to give up the benefit he had received *viz* R300, and pay interest thereon up to the date of cancellation. *B* was not entitled to treat the original mortgage as a mortgage in force with all its stipulations for R300 instead of R800 and on that view to sue for interest alone. SUBBA RAU *v* DEVU SHETTI
I L R. 18 Mad., 126

———— s 42

See RIGHT OF SUIT—JOINT RIGHT
I. L. R. 7 All, 313

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——— ss 42 43, and 44

See DEBTOR AND CREDITOR
[I L R, 20 Mad, 461

——— s 43

See PARTIES—PARTIES TO SUITS—PARTNERSHIP SUITS CONCERNING.
[I L R. 6 Bom 700
I L R 21 Mad 257

1 ——— *Suit against joint contractors—Res judicata*—A suit in which a decree has been obtained against one of the several joint makers of a promissory note is a bar to a subsequent suit against the others The effect of s 43 of the Contract Act is not to create a joint and several liability in such a case That section merely prohibits the defendant in such a suit pleading in abatement and thus places the liability arising from the breach of a joint contract and the liability arising from a tort on the same footing The rule laid down in the case of *King* v *Hoare 13 M and W 494* and *Brinsmead* v *Harrison L R 7 C P 547* is one of principle not merely of procedure HEMENDRO COOMAR MULLICK v RAJENDRO LALL MOONSHEE
[I L R 3 Calc 353 1 C L R. 488

See LAKSHMISHANKAR DEVSHANKAR v VISHNURAM
I. L. R. 24 Bom 77

2 ——— *Decree against member of joint family for trading debt—Suit to declare son's property liable for father's debt*—*V* and his three infant sons constituted an undivided trading Hindu family in 1875 when part of the family property was sold to pay a trading debt of *V* In February 1877 *V* at the request of his wife as compensation to his sons for the loss of their interests in the property sold *bonâ fide* assigned to his sons his share in a house No 9 *A* Street In October and November 1877 *M* and *S* each obtained decrees against *V* for *bonâ fide* trading debts and issued execution against the house No 9 *A* Street The mother of the infant sons intervened and the attachment was raised and *M* and *S* were referred to a regular suit to establish their claims In January 1878 *V* was declared insolvent *M* and *S* respectively sued to have it declared that the house No 9 *A* Street was liable to be attached and sold in satisfaction of their decrees against *V* *Held* reversing the decree of KERNAN J that the plaintiffs by obtaining decrees against *V* had exhausted their remedy and that a second suit against the sons of *V* was not maintainable *Hemendro Coomar Mullick* v *Rajendro Lall Moonshee I L R 3 Calc 353* approved. GURUSAMI CHETTI v SAMURTA CHUMIA MANNAR CHETTI. GURUSAMI CHETTI v SADASIVA CHETTI
I L. R 5 Mad. 37

And *see* CHACKALINGA MUDALI v SUBBARAYA MUDALI
I. L. R. 5 Mad., 133

3 ——— *Liabilities of joint contractors*—Where five brothers had made themselves jointly liable for a sum of money under a bond and mortgaged a certain mouzah as security for the debt and the mortgagee having subsequently taken a separate bond from each of two of the brothers for

CONTRACT ACT (IX OF 1872)—*continued*

one-fifth of the whole amount now sought to recover the remaining three fifths of the said amount from the remaining three brothers; but the latter contended that the claim, being jointly held against all five could not be broken up—*Held* that any one of the five might be sued for the whole amount and that the plaintiff was entitled to recover the three-fifths from the three brothers. MAHTAB SINGH v SADHOORAM BHUGUT
25 W R 419

4. ——— *Joint contract—Right of promisee to sue any or all of the joint promisors—Right of joint promisors to be joined as defendants—Decree against some only of several joint promisors—Effects of such decree—Civil Procedure Code s 29*—The effect of s 43 of the Contract Act 1872 being to exclude the right of a joint contractor to be sued along with his co-contractors the rule laid down in the cases of *King* v *Hoare 13 M and W., 494* and *Kendall* v *Hamilton L R 4 A C 504* is no longer applicable to cases arising in India at all events in the mofussil since the passing of that Act and a judgment obtained against some only of the joint contractors and remaining unsatisfied is no bar to a second suit on the contract against the other joint contractors *In re Hodgson L R 31 Ch D., 177 Hammond* v *Schofield L R (1891) 1 Q B., 453 Nathoo Lall Choudhry* v *Shoukee Lall, 10 B L R 200 Hemendro Coomar Mullick* v *Rajendrolall Moonshee I L R 3 Calc 353 Gurusami Chetti* v *Samurti Chinna Mannar Chetti I L R., 5 Mad., 37 Lukmidas Khimji* v *Purshotam Haridas I L R 6 Bom 700 Rahmubhoy Hubibbhoy* v *Turner I L R 14 Bom 408 Chockalinga Mudali* v *Subbaraya Mudali I L R., 5 Mad 133 Narayana Chetti* v *Lakshmana Chetti I L R 21 Mad 256 Sitanath Koer* v *Land Mortgage Bank of India I L R 9 Calc 888 Nobin Chandra Roy* v *Magantara Dassya Roy I L R 10 Calc 924 Lutchmiput Singh* v *Land Mortgage Bank of India I L R 9 Calc 469 note Radha Pershad Singh* v *Ramkhelawan Singh I L R 23 Calc 302 Bhukandas Vibhukandas* v *Lallubhai Kashidas I L R., 17 Bom 562 Lakshmishankar Devshankar* v *Vishnuram I L R., 24 Bom* —, *Dharam Singh* v *Angan Lal I L R 21 All. 301 Motilal Bechardass* v *Ghellabhai Hariram I L R 17 Bom 6 Brinsmead* v *Harrison L R., 7 C P 547 Wilson Sons & Co* v *Balcarres Brook Steamship Co L R (1893) 1 Q B 422 Robinson* v *Geisel L R (1894) 2 Q B 685 Balmakund* v *Sangri L R 19 All., 379 Priestley* v *Fernie 2 H & C 977 Bir Bhaddar Sewak Pande* v *Sarju Prasad I L R., 9 All 681 Bhawani Pershad* v *Kallu I L R 17 All., 537 Dinapal Singh* v *Sham Soonder Mitter I L R., 5 Calc 291* referred to The plaintiff sued *B* and *M* alleged to be the managing members of a joint Hindu family for sale upon four mortgages executed by them in respect of property owned by the joint family and obtained a decree in 1894 He brought the present suit against defendants 1 to 15 the other members of the same family (said to be the brother brother's sons and cousins of *B* and *M* claiming enforcement of the same mortgages against the defendants by



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time was of the essence of the contract and that under s 55 of the Contract Act the vendors were entitled to rescind. BULDEO DOSS *v* HOWE
[I L R 6 Calc., 64 6 C L R 582

——— s 56

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT I L R., 17 Calc, 432

1 ——— *Breach of contract—Impossibility to perform a portion arising after execution* —A contract was entered into between the plaintiff and the defendant by which the plaintiff agreed to cultivate indigo for the defendant for a specified number of years in certain specified lands situated in different villages with respect to portion of which lands the plaintiff was a sub tenant only Subsequently during the continuance of the contract the plaintiff lost possession of those lands through his immediate landlord having failed to pay the rent and having been in consequence ejected therefrom by the owner In a suit by him under the above circumstances to have so much of the contract as related to those lands cancelled on the ground that it had become impossible of performance through no neglect on his part — *Held* that such a case came within the provisions of cl 2 s 56 of Act IX of 1872 (Contract Act) and that the mere fact that the plaintiff could have paid up the debt due by his immediate landlord and so retained possession of the land was not sufficient to constitute such an omission or neglect on his part as to take it out of the provisions of that section INDER PERSHAD SINGH *v* CAMPBELL
[I L R 7 Calc 474 8 C L R 501

2 ——— *Contract to carry passengers in ship—Passengers infected with disease—Excuse for non performance of contract—Implied term in contract—Performance become illegal—Penal Code (XLV of 1860) s 269* —By a contract made with the plaintiffs the defendants agreed to carry from Bombay to Jeddah in their steamer *Mobile* 500 pilgrims who were about to arrive in Bombay from Singapore in the plaintiffs' ship the *Stura* The defendants were to be paid at the rate of R26 per head and the ship *Mobile* was to receive the pilgrims on the 3rd May 1888 The *Stura* arrived in Bombay on the 1st May with about 600 pilgrims on board and on the 2nd May the plaintiffs gave notice to the defendants that 500 of them were ready to go on board the *Mobile* on the next day in accordance with the contract The defendants refused to receive the pilgrims on board the *Mobile* on the ground that they had come to Bombay in the *Stura* and that during the voyage of that ship to Bombay there had been an outbreak of small pox on board that the 500 pilgrims had been in close contact with those who had been suffering from the disease and that on the 3rd May fresh cases were occurring among the pilgrims brought from Singapore They pleaded that under these circumstances they were not bound to ship and carry the 500 pilgrims contending (1) that it was an implied term in the contract that the 500 pilgrims should be free from small pox or other dangerous disease and (2) that the performance of the contract had under the circumstances become unlawful (s 269 of the Penal Code and s. 56 of the Contract Act) *Held* that the defendants were bound to carry out the contract. In the absence of proof, that a term providing that the pilgrims should be free from small pox was to be implied by the usage of the pilgrim carrying trade there could be no reason for implying it The possibility that some of the 500 pilgrims might have the germs of the disease in them owing to their exposure to infection might make carrying them more expensive and onerous but it was a contingency which from the very nature of the trade must have been known to the defendants and if they wished to provide against it they should have done so by express terms. *Held also* that the performance of the contract had not become unlawful The risk of disease was not greater than would necessarily be incurred in every crowded emigrant ship But even if special precautions were desirable under the circumstance it was for the defendants who had entered into an absolute agreement to have taken them BOMBAY AND PERSIA STEAM NAVIGATION CO *v* PURATTINO COMPANY
[I. L. R., 14 Bom, 147

——— s 60

See APPROPRIATION OF PAYMENTS
[W R. 1864, Act X, 15
I L R 13 Calc 164
I. L. R., 28 Calc 39
2 C W N., 633

——— s 62

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS
[I L R 16 Bom, 441

1 ——— *Substitution of new contract for old one* —The mere fact of one party alleging that a new contract has been substituted for an old one does not of itself put an end to the old contract even as against the party so alleging unless the allegation is proved to be true. LOCHAN BIBEE *v* HURRAY KRISTO NATH I. L R., 6 Cal, 928

2 ——— and s 63—*Novation—Contract Novation of—Satisfaction of contract* —The plaintiff sued to recover the sum of R1 143 due on a bond It was found as a fact that after the due date of bond an arrangement was come to between the plaintiff and the defendant by which the plaintiff agreed to accept in satisfaction of what was due to him at the time of the arrangement R400 in cash and a fresh bond for R701 payable by instalments, and it was further found that the plaintiff never intended or agreed to accept the naked promise of the defendant to pay the R400 and to give the bond for R701 The defendant did not pay the R400 or give the bond but pleaded that there had been a novation of the original contract by reason of the subsequent agreement and that the suit being based on the original contract could not be maintained, and he relied on the provisions of ss. 62 and 63 of the Contract Act in support of his contention. *Held* that neither section had any bearing on the case and that upon the breach by the defendant of the terms which he had made and upon the non performance by him of

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the satisfaction which he had promised to give the parties were relegated to their rights and liabilities under the original contract and that consequently the plaintiff was entitled to the relief he claimed *Held* further that s 62 of the Contract Act is merely a legislative expression of the common law and the provisions thereof do not apply to a case where there has been a breach of the original contract before the subsequent agreement is come to MONOHUR KOYAL *v* THAKUR DAS NASKAR [I. L R 15 Calc 319

1. ——— s 63—*Agreement extending time for performance of contract—Consideration*—An agreement extending the time for the performance of a contract falling under s 63 of the Contract Act does not require consideration to support it DAVIS *v* CANDASAMI MUDALI I. L. R. 19 Mad 398

2. ——— *Mortgage—Power of sale—Suit to set aside sale under power of sale—Promise by mortgagee to postpone sale*—The plaintiff mortgaged certain property to the first defendant on 28th December 1895 By the mortgage-deed the mortgage debt was made repayable on the 28th December 1896 On the 12th May 1897 the first defendant sold it by auction under the power of sale contained in the mortgage deed and the second defendant was the purchaser The plaintiff now sued to set aside the sale and be allowed to redeem alleging that on the day before the sale the first defendant had orally promised and agreed to postpone the sale for four days and that the second defendant had notice of this fact before he purchased the property *Held* that the said promise or agreement if made by the mortgagee was not an extension of time for the performance of the plaintiff's (mortgagor's) promise to him which was to pay the mortgage debt on the 28th December 1896 but was an agreement to refrain from exercising for a stated period the right of sale arising from non performance and therefore s 63 of the Contract Act (IX of 1872) did not apply TRIMBAK GANGADHAR RANADE *v* BHAGWANDAS MULCHAND I. L. R 23 Bom 348

——— s 64

See GUARDIANS—DUTIES AND POWERS OF GUARDIANS I L R. 22 Mad 289

See MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS [1 C W N 453

1 ——— *Money advanced to minor on mortgage declared void—Restoration of benefit by minor*—If money advanced to an infant on a mortgage declared void is spent by him then there is no benefit which he is bound to restore under the provisions of s 64 of the Contract Act (IX of 1872) DHURMO DASS GHOSE *v* BRAHMO DUTT [I L R. 25 Calc 616
2 C W N 330

Affirmed on appeal in BROHMO DUTT *v* DHARMO DAS GHOSE I L R 26 Calc 381
[3 C W N 468

2. ——— Person —Party—*Contract Act (IX of 1872) s 11*—The words "person and party in s 64 of the Contract Act are interchangeable and mean such a person as is referred to in s 11 of that Act *i e* a person competent to contract BROHMO DUTT *v* DHARMO DAS GHOSE [I L R 26 Calc 381
3 C W N 468

——— s 65

See ACT XL OF 1858 s 18 [I L R 9 All 340

See CONTRACT CONSTRUCTION OF CONTRACTS I L R. 9 Mad 441

See CONTRACT—WAGERING CONTRACTS [I L R 9 Bom 358

See CONTRACT ACT s 23 ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY [I L R 3 Mad 215

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS I. L R 9 All. 340

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET I L R 23 Bom 15

See SETTLEMENT—CONSTRUCTION [I L R 17 Bom 407

1 ——— *Obligation of person receiving advantage under void agreement—Restitution*—S 65 of the Contract Act should not be read as if the person making restitution must actually have been a party to the contract but as including any person whatever who has obtained any advantage under a void agreement GIRRAJ BAKHSH *v* HAMID ALI [I L R 9 All 340

2 ——— *Retention by debtor of debt as part of consideration for another contract*—In contemplation of a sale of land by the debtor to the creditor it was agreed that the book debt should be retained by the former in satisfaction of part of the price but the parties failing to agree as to certain other terms a suit brought by the intending vendor for specific performance was dismissed on the ground that no effectual agreement had been made *Held* that this decree brought about a new state of things and imposed a new obligation on the debtor who could no longer allege that he was absolved by the creditor's being entitled to the land instead of the money He became bound to pay that which he had retained in payment of his land the date of the decree giving the date of the failure of an existing consideration within the meaning of art 97 of the Limitation Act 1877 The matter might also be regarded as falling under s 65 of the Contract Act (IX of 1872) under which when the agreement was decreed ineffectual the debtor having previously received an advantage under it was made liable to restore that advantage or to make compensation for it BASU KUAR *v* DHUM SINGH [I L R. 11 All. 47

——— s 68

See MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS [I. L. R. 21 Calc 872

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See MINOR—REPRESENTATION OF MINOR IN SUITS   I L R, 7 Calc 140

——— s 69

See CHARTER PARTY
[I. L R. 7 Bom. 51

1. ——— *Payment for which another person is liable*—S 69 of Act IX of 1872 was intended to include cases not only of personal liability but all liabilities to payment for which owners of land are indirectly liable when such liabilities are imposed upon lands held by them That section must be held to include such a case as a sub-lessee paying rent to a superior landlord for which the intermediate lessee is liable under a covenant MOTHOORANATH CHUTTOPADHYA v KRISTOKUMAR GHOSE
[I L R 4 Calc, 369

2 ——— *Money paid under compulsion of law—Voluntary payment*—A mortgagee of two separate properties became by purchase the owner of the equity of redemption of one of them and of this property the value was so proportioned to his payments that the mortgage debt was in effect satisfied This mortgagee however, obtained a decree and order in execution for the sale of the other property on which his mortgage was the second Of the latter property the plaintiffs who also represented the first mortgagee had become purchasers and they filed objections to the sale. These were disallowed and they thereupon paid into Court money sufficient to satisfy the decree in order to prevent the sale *Held* that this was not a voluntary payment nor a payment of money equitably due but one made under compulsion of law i e under pressure of the execution proceedings And *held* that this might be recovered in a suit for a money decree the remedy not being confined to the execution proceedings DULICHAND v RAMKISHEN SINGH
[I. L. R., 7 Calc 648

See MOHESH CHUNDER BANERJEE v RAM PURSONO CHOWDHRY   I. L. R. 4 Calc, 539

3 ——— *Reimbursement of person paying money due by another in payment of which he is interested—Purchase of mortgaged property*—*M* and *R* conveyed certain property to *S* by a deed of sale in which the vendors asserted themselves to be in possession of the property and no mention was made of the property being mortgaged There was nothing to show that the purchaser purchased a mere equity of redemption nor that he was aware of the mortgage Before *S* obtained possession of the property the mortgagee sued to enforce his lien and obtained a decree and attached the property in execution and it was advertised for sale *S* satisfied the decree which was equal in amount to the purchase money and brought a suit to obtain possession of the property The Court of first instance decreed the claim conditionally on the payment of the purchase money to the defendants but the lower Appellate Court reversed the decree being of opinion that the plaintiff was entitled to an unconditional decree and its decree was affirmed in special appeal MAZHAR ALI v MAHOMED SAHIB KHAN   7 N W 336

CONTRACT ACT (IX OF 1872)—*continued*

4 ——— *Revenue Sale Law (Act XI of 1859) s 9—Payment of revenue*—Where two co sharers in a undivided estate took from a third co-sharer a farming lease of her interest in a portion of the said estate on the stipulation that they should meet the Government demand on the said co-sharer and take credit for the amount in the rent reserved and the two farmers leased out the same share in a dur ijara lease to a fourth person who, on the failure of the said farmers to meet the Government demand paid it in himself to save the estate and then brought a suit against the third co sharer to recover the amount, and the Munsif decided that the suit could only lie against the two farmers but the Judge ruled that the suit could only lie against the third co-sharer as proprietor;—it was found by the High Court that as the third co-sharer's share was not separate and the whole estate was liable to sale for default, the two farmers were generally liable as proprietors with the third co sharer and having recovered the rent for the share might have been made liable for the revenue even if the suit had been brought as supposed by the Judge under s 9 Act XI of 1859 but—*Held* that as the suit had not been brought under any particular section of the law s. 69 of the Contract Law applied to the suit as well as s 9 Act XI of 1859 and that the money paid by the dur ijaradar was recoverable from the two farmers who had realized the rent and were responsible both under their contract and as co proprietors, for the revenue TARINI alias SAWAH MONEE DEBIA v SREENATH MOOKERJI   25 W R., 385

5 ——— *Hindu Law—Liability of undivided brother of deceased Hindu to defray expenses of his niece's marriage—Improper refusal—Performance by widow—Maintainability of suit brought by widow—Person who is interested in the payment of money*—The defendant having improperly refused to perform the marriage ceremony of his niece the daughter of his undivided brother (deceased), the widow of the latter herself performed the ceremony borrowing money for the purpose and sued her late husband's said brother (the defendant) to recover the amount expended on the marriage On its being contended that defendant was under no obligation to provide for the expenses of his brother's daughter's marriage—*Held* that defendant was liable the marriage having been properly performed. *Held* further that the suit was maintainable though it had been brought by the mother of the bride and not by the bride herself *Semble*—That the mother was within the meaning of s. 69 of the Indian Contract Act interested in making the payment which had given rise to the action. It was not necessary for her to prove that she had been compelled to make it or that she had made it at the defendant's request. VAIKUNTAM AMMANGAR v KALLAPIRAN AYYANGAR
[I L R., 23 Mad. 512

——— ss 69 and 70

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE
[I L R., 11 Mad. 452

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See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRACT
[I. L. R. 4 All. 134 152
I. L. R. 15 Calc 652
I. L. R. 12 Mad. 349

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—CONTRACT
[I. L. R., 15 Calc 652
I. L. R. 12 Mad 349

See VOLUNTARY PAYMENT
[I. L. R. 23 Calc 28
I. L. R. 25 Calc. 305
I. L. R. 26 Calc 826
1 C. W. N. 458
2 C. W. N. 150

1. ———— *Illegal collection of cess—Bom. Act III of 1869 s 8—Suit to recover cess fraudulently levied*—The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain wanta lands belonging to the plaintiffs, the defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869 s 8. The defendant contended that in consequence of a demand from Government he had paid local cess on the whole of his talukh including the village in which the plaintiffs' lands were situated and was therefore entitled under ss. 69 and 70 of the Contract Act (IX of 1872) to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the defendant was not the proprietor of the lands held by the plaintiffs and that the relation of landlord and tenant did not exist between them also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands knowing that he had no lawful or just claim to them. *Held* that the defendant was not a person interested in the payment of the money made by him to Government within the meaning of s 69 of the Contract Act assuming that a portion of that sum was demanded by Government in respect of the plaintiffs' wanta lands and that they were bound by law to pay it to Government. *Held* further that the defendant did not lawfully make the payment within the meaning of s 70 of the Act inasmuch as he did so fraudulently and dishonestly. DESAI HIMATSING *v* BHAVABHAI
[I. L. R. 4 Bom 643

2 ———— *The Summary Settlement (Bom.) Act VII of 1863 ss 2 6 9—Inamdar—Suit for contribution*—The plaintiff was the jaghirdar of a village in which the defendant held certain land as inamdar on the annual payment of a certain quit rent. The plaintiff's jaghir was in point of time subsequent to the defendant's inam. Ever since the time of the jaghir the ancestors of the defendant (and after them the defendant himself) paid the quit-rent to the ancestors of the plaintiff and after them to the plaintiff himself. In 1869 the summary settlement was introduced into the village under Bombay Act VII of 1863. Under s 9 of that Act a notice was served upon the plaintiff by the Collector in respect of the village and he accepted the settlement provided in ss 2 and 6 of the Act. Government, accordingly granted the village to him at the summary settlement of two annas in the rupee of the full assessment. No notice was served upon the defendant under the Act nor did the plaintiff inform the defendant of the notice which the plaintiff had received in respect of the village. The certificate issued by the Collector to the plaintiff previously to the grant of the sanad regarding the settlement contained the following passage — Before the villages (Vesu and Sanya) were granted in jaghir lands were held by peta inamdars over which the jaghirdar has no right. They are entered in the sanad only for the purpose of receiving the settlement and paying it over to the Sarkar. In 1877 the plaintiff sued the defendant for the amount of three years summary settlement which he (plaintiff) had paid to Government on account of the defendant's land. *Held* that ss 69 and 70 of the Contract Act (IX of 1872) did not apply to the case. KAMALUDIN *v* PARTAP MOTA
[I. L. R. 6 Bom. 244

3 ———— *Suit for contribution—Payment by one person where both are liable—Quære*—Whether a suit for contribution where both plaintiff and defendants were liable for the money paid by the plaintiff falls within the scope of either s 69 or s 70 of the Contract Act which seems rather to contemplate persons who not being themselves bound to pay the money or to do the act do it under circumstances which give them a right to recover from the person who has allowed the payment to be made and has benefited by it. FUTTEH ALI *v* GUNGANATH ROY
[I. L. R. 8 Calc 113 10 C. L. R. 20

4 ———— *Contract Relations resembling—Money paid—Voluntary payment*—*B* sold certain immoveable property to *A* one of the terms of the agreement of sale being that *A* should retain a portion of the purchase money and therewith pay the amount of a simple decree for money against *B* held by *C*. *A* failed to pay the amount of *C*'s decree, and *B* therefore sued him for the balance of the purchase-money and obtained a decree. In the meantime *C* had the property attached in execution of his decree against *B*. *A* thereupon paid the amount of *C*'s decree. *B* subsequently took out execution of his decree against *A* for the balance of the purchase-money and *A* paid the amount of the decree. *A* then sued *B* to recover the amount which he had paid in satisfaction of *C*'s decree against *B*. *Held* that *A* was entitled under s. 70 of the Contract Act 1872 to recover such amount, *B* having enjoyed the benefit of the payment and the same not having been intended to be gratuitous. *Semble*—That the case came within the provisions of s. 69 of the Contract Act and of the principle laid down in *Dulichand v Ramkishen Singh I. L. R. 7 Calc 648*. AJUDHIA PRASAD *v* BAKAR SAJJAD
[I. L. R., 5 All., 400

5 ———— *Vendor and purchaser—Arrears of Government revenue*—On the date of

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the purchase of a revenue paying estate there were arrears of revenue due The instrument of sale was silent as to the party liable to pay such arrears The purchaser was compelled to pay such arrears *Held* that the purchaser could not recover the money so paid from the vendor DOST MUHAMMED *v* SAJJAD AHMAD I L R 6 All, 67

6 ——————— *Meaning of lawfully*—*Mortgage—Decree enforcing hypothecation—Satisfaction of decree by person not subject to legal obligation thereunder—Suit for contribution brought by su h person against judgment debtor—Gratuitous payment* —The widow of *D* a separated Hindu hypothecated certain immoveable property which had belonged to her husband The immediate reversioners to *D*'s estate were his nephew *S* and the three sons of his brother *O* After the widow's death the mortgagee put his bond in suit impleading as defendants *S* two of *S*'s four sons and the three sons of *O* Only the three last mentioned persons resisted the suit and the mortgagee obtained a decree directing the sale of the mortgaged property in satisfaction of his claim From the operation of this decree *S* was wholly exempted and his sons were made liable only to pay their own costs Before any sale in execution of the decree could take place the sons of *S* paid the amount of the decree into Court thus saving the property from sale They subsequently sued the sons of *O* for contribution in respect of this payment It was found that at the time when the payment was made *S* was a member of a joint Hindu family with the defendants and that his sons the plaintiffs had at that time no interest in the property by transfer from him *Held* that at the time of the payment the plaintiffs could not properly be regarded as in the position of co mortgagors with the defendants so as to have an equitable lien upon the property they had saved from sale that it was not a case of a payment which the defendants were bound to make in which the plaintiffs were interested within the meaning of s 69 of the Contract Act; and that therefore the fiction of an implied request by the defendants to the plaintiff to make the payment could not be imported into the case and the plaintiffs were not entitled to contribution *Held* also that there was no such relationship between the parties as would create or justify the inference of any right in the plaintiffs to look to the defendants for compensation so as to make s 70 of the Contract Act applicable and that if the plaintiffs as mere volunteers chose to pay the money not for the defendants but for themselves they could not claim the benefits of that section The principle of the decision in *Pancham Singh v Al Ahmed I L R 4 All 58* has been recognized and provided for in the Transfer of Property Act By the use of the word lawfully in s. 70 of the Contract Act the Legislature had in contemplation cases in wl ich a person held such a relation to another as either d rectly to create or reasonably to justify the inf r n e that by s me act done f r another pers th pers n loing the act was entitled to look f r c u n n ti n to the person for whom it was done *Ra n Tutal S ngh v Bi s ar Lal Sahoo L R 2 I A 131* referred to CHEDI LAL *v* BHAGWAN DAS I L R, 11 All 234

7 ——————— *Payment of Government revenue by person wrongfully in possession of land* —*B* who was in wrongful possession of land which by right belonged to *K* collected rents and paid the Government revenue *K* eventually established her title to the property obtained possession and recovered the rents from the tenants and *B* was obliged to refund the same Subsequently *B* sued *K* to recover the sum which he had paid on account of revenue —*Held* that the claim did not fall within the provisions of ss 69 and 70 of the Contract Act and the fact that the plaintiff had been a loser by his wrongful act or that the defendant had been benefited by the payment he made would give him no right of action against her *Tilak Chand v Soudamini Dasi I L R 4 Calc 566* referred to. BINDA KUAR *v* BHONDA DAS [I L R, 7 All 660

8 ——————— *Voluntary payment—Landlord and tenant—Government revenue Payment of by patnidar—Defaulting proprietor Liability of to recoup patnidar who pays Government revenue for him when a separate account has been opened—Revenue Sale Law (Act XI of 1859) ss 9 10 11 13 14 and 54* —A patnidar who had made certain payments on account of Government revenue due by his superior landlords who had defaulted although a separate account had been opened f r the payment of such Government revenue brought a suit to recover the amount so paid. In such suit it was contended that the payments were merely voluntary and that the plaintiff could not recover them *Held* that the plaintiff was interested in making the payments and was therefore entitled to recover under s 69 of the Contract Act. *Held* further that s 70 of the Contract Act applied to the case inasmuch as the word does in that section includes payments of money and also that the plaintiff was entitled to recover under s 9 of the revenue sale law as he believed in good faith that his interest would be endangered by a sale taking place The liability of a landlord under s 9 of the revenue sale law to recoup a person paying Government revenue for him does not depend upon the question of whether the money was originally deposited or not but accrues upon its being credited in payment of the arrears. SMITH *v* DINONATH MOOKERJEE [I L R, 12 Calc 213

——————— s 70

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRACT [I L R, 3 All 68
I L R, 4 All, 134 153
I L R 16 Calc., 653

——————— *Repairs by Government to a tank in which zam ndar is interested—Suit agai st zam ndars for share of cost* —The Government repaired a certain tank from which were irrigated lands in the zamindari of the defen lants, and also raiyatwari villages held under Government which had been sever d from the zamindari. It was f und that the defendants knew that the repairs wh h were necessary for the preservati n of the tank were

CONTRACT ACT (IX OF 1872) *continued*

being carried out and did not wish to execute them themselves except as contractors and that they had enjoyed the benefit of the work done and further that Government had carried out the repairs not intending to do them gratuitously for the defendants. It was not found that there was any request either express or implied on the part of the defendants to the Government to execute the repairs In a suit by the Secretary of State to recover from the defendants their share of the cost incurred —*Held* that the plaintiff was entitled under the Contract Act s 70 to recover part of the cost incurred estimated with reference to the irrigable area of the villages owned by the plaintiff and defendants respectively DAMODARA MUDALIAR *v* SECRETARY OF STATE FOR INDIA I. L. R. 18 Mad., 88

——— s 72

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DAMAGES
[I L R 2 All., 671

1 ——— *Liability of person to whom money is paid by mistake—Principal and agent* —A treasury officer under the imposition of a gross fraud, paid money to the defendant who was the innocent agent of the person who contrived the fraud In paying the money the treasury officer neglected no reasonable precaution nor was he in any way guilty of carelessness *Held* that the defendant was bound to repay the money received by him and that he could not defend himself by the plea that he had paid it to his principal nor could the Court allow that the circumstance that the principal was himself a servant of the plaintiff and in the course of his employment obtained facilities for committing the fraud relieved the defendant from his liability SHUGAN CHAND *v* GOVERNMENT NORTH WESTERN PROVINCES I. L. R. 1 All 79

2 ——— *Arrears of revenue—Voluntary payment—Mistake—Payment under a mistake* —The plaintiffs believing that they held a four annas share and the defendants the remaining twelve annas share in a patni the revenue of which was in arrears paid to the zamindar on the 8th of March 1876 a portion of the arrears corresponding *to the share in the patni to which they considered* themselves entitled It was afterwards decided, in a suit between the parties that the plaintiffs were not entitled to any share in the patni and that the defendants were entitled to the whole sixteen annas thereof Subsequently to this decision the defendants in paying up the arrears of revenue due on the patni took the benefit of the payment made by the plaintiffs on the 8th of March 1876 and paid in only so much as *together with the previous payment made up the* whole arrear The plaintiffs then brought the present suit to recover from the defendants the amount of the payment made to the zamindar on the 8th of March 1876 *Held* that the payment was not a voluntary payment and that the plaintiffs were entitled to recover NOBIN KRISHNA BOSE *v* MON MOHUN BOSE I. L. R 7 Calc. 573 9 C L R., 182

CONTRACT ACT (IX OF 1872)—*continued*

But *see* TILUCK CHAND *v* SOUDAMINI DASI
[I L R, 4 Calc. 566 3 C L R. 456

3 ——— *Payment of debt erroneously supposing person was liable to contribute* —Where the plaintiff purchased property and discharged a debt for which the property was hypothecated believing that certain persons were liable to contribute of whom one was subsequently declared not liable to contribute —*Held* not to be such a payment by mistake as to give him a right of suit NILKUNTH SAHEE *v* HUNOOMAN PERSHAD
[3 N W 136

4. ——— *Money paid under mistake —Fraud inducing a mistake* —*A* a gomastah of *B*'s deceased husband represented to *B* that he had her husband's will in his possession containing a legacy in *A*'s favour and obtained from *B* an agreement for R2 000 expressed to be in consideration of the alleged will being given up to *B* of *A* forgoing his legacy and of services to be rendered by *A* in winding up the affairs of the shop In pursuance of this agreement *B* paid a sum of money to *A* but upon discovering that the alleged will was not a will at all sued to recover back the money so paid by her *Held* that under the circumstances the taking of the agreement was a fraud upon *B* that the payment of the sum of money by *B* was not a voluntary payment and could be recovered back and that the Court could not apportion the amount (if any) that might be claimable by *B* for work done under the agreement RUPABAI *v* PARDHURAM KIRPASHANKAR 8 Bom A C, 102

5 ——— *Voluntary payment—Money paid but not due and paid under compulsion* —In execution of a decree the plaintiff purchased certain property Subsequently the defendant in execution *of another decree against the former owner of the pro*perty proceeded to execute his decree against the same property The plaintiff thereupon preferred a claim which was disallowed as he had not then obtained and consequently could not produce the sale certificate In order to prevent the sale he then paid the amount of the defendant's decree into Court and subsequently instituted a suit against the defendant to recover the amount so paid into Court to *prevent the sale The defendant contended that the* amount was paid voluntarily and could not be recovered back. *Held* following *Dooli Chand* v *Ram Kishen Sing L. R 8 I A., 93 I L R 7 Calc., 648* that it was not a voluntary payment and that the plaintiff was entitled to a decree *Fatima Khatoon Chowdrain* v *Mahomed Jan Chowdhry 12 Moore's I A 65 10 W R P C 29* referred to *Asibun* v *Ram Proshad Das 1 Shome 25* doubted JUGDEO NARAIN SINGH *v* RAJA SINGH
[I. L. R. 15 Calc. 656

——— s 73

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT
[I L. R., 12 Bom. 242

CONTRACT ACT (IX OF 1872)—*continued*

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
[I L R 18 All, 240

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED
[I L R, 20 Mad 481

See LIMITATION ACT 1877 ART 116
[I L R 3 Mad 76
I L R 12 Calc 357

——— s 73 and ss 77 83, 84 and 107—*Re sale Notice of Right of unpaid vendors—Nominal damages*—The defendant purchased from the plaintiffs a cargo of Watson s Hartley steam coal at R21 per ton to arrive by ship *Grecian* but on its arrival the defendant on being called upon to do so refused to take delivery on the ground that the usual certificate that the coal was what it was stated to be did not accompany the cargo The plaintiffs thereupon gave notice to the defendant that unless delivery were taken the coal would be sold on his account and at his risk, and on the defendant repeating his refusal to take delivery the plaintiffs caused the coal to be sold and it was purchased in the name of *M & Co* for R13 per ton In a suit which was stated in the plaint to be for the loss sustained by the plaintiffs on the re-sale the Court found that the plaintiffs themselves were the real purchasers and that the sale had taken place without proper notice and under the circumstances was invalid. *Held* both in the lower Court and on appeal that the plaintiffs had by the way in which they had dealt with the coal rendered themselves accountable to the defendant in respect thereof and that notwithstanding the defendant had committed a breach of the contract in refusing to take delivery of the coal the plaintiffs were bound to give an account of the coal and prove that they had sustained a loss on the re-sale and on their omission to do so they were not entitled to recover any damages. *Held* on appeal *per* MARKBY *J* that the plaintiffs were not entitled to put aside the sale as invalid and treat the case as one for damages for breach of contract Under the circumstances they were not entitled to even nominal damages. The mere shipment on board the *Grecian* did not pass the property in the coal to the defendant under s 77 of Act IX of 1872 *Per* PONTIFEX *J*—Whether by virtue of the contract and the subsequent appropriation and shipment the property in the coal passed or did not pass to the defendant within the meaning of s. 84 or s 83 of Act IX of 1872 even if the sale were invalid the plaintiffs were not entitled considering their conduct in dealing with the coal and the concealment of their interest in the purchase and in the absence of satisfactory evidence of what ultimately became of the coal to recover any damages. BUCHANAN *v* AVDALL 15 B L R. 276

——— s 74

See ADMINISTRATION BOND
[I. L R, 10 All. 29

See CONTRACT—ALTERATION OF CONTRACT—ALTERATION BY COURT
[I L R 1 Mad. 340

CONTRACT ACT (IX OF 1872)—*continued*

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT
[20 W R, 481
I L R 5 All, 238
I. L. R., 12 Bom 242
I L R. 22 Mad. 453
3 C W N, 43

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

See MADRAS DISTRICT MUNICIPALITIES ACT, s 261 I. L. R. 16 Mad, 474

——— *Penalty—Suit by a joint proprietor for arrears of rent—Bengal Tenancy Act (VIII of 1885) s 29 (b)—Kabuliat executed prior to—Covenant for a higher rate—Enhancement of rent—Bengal Rent Act (VIII of 1869) s 5*—In a kabuliat executed in 1881, it was stipulated that upon the expiry of the term of seven years fixed therein a fresh lease should be executed that should the defendant cultivate the lands without executing a fresh kabuliat he would pay rent at the rate of R4 a bigha (a rate much higher than that fixed for the term). No fresh kabuliat was executed on expiry of the term and the plaintiff a part proprietor collecting rent separately brought this suit for arrears of rent at the new rate of R4. The defendant objected *inter alia* that the plaintiff being a part proprietor, was not entitled to sue for enhanced rent and that the stipulation for the higher rate was a mere threat and not intended to be carried out. The first Court gave a decree at an enhanced rate or an addition of two annas in the rupee in terms of s. 29 (b) of the Bengal Tenancy Act On appeal the Subordinate Judge dismissed the whole suit on the ground that the suit being one for enhanced rent and the plaintiff a part proprietor the suit did not lie *Held* that, the kabuliat having been executed before the Bengal Tenancy Act was passed, the present case did not come within the operation of that Act and the plaintiff although a part proprietor could bring this suit *Ram Chunder Chackrabutty* v *Giridhur Dutt* I L R 19 Calc 755 followed. *Held* by PRINSEP and GHOSE JJ (RAMPINI J dissenting)—That the additional rent was intended to be enforceable only on default to execute a fresh kabuliat and the so-called agreement to pay at the enhanced rate of R4 was in the nature of a penalty *Held* by RAMPINI J—The plea that the rate of R4 was a penalty was not taken by the defendant in his written statement, and in any case the stipulation did not come within the purview of s 74 of the Indian Contract Act and the suit was not for compensation for breach of contract but for rent at a rate which the defendant has agreed to pay from a certain time *Held* also, that s. 29 (d) of the Bengal Tenancy Act has no retrospective effect and does not apply to the present kabuliat which was executed before the passing of that Act. That s. of Bengal Act VIII of 1869 did not debar an agreement by an occupancy raiyat to pay whatever rate he pleased. *Banke Behari* v *Sundar Lal* I L R, 15 All, 232 referred to TEJENDRO NARAIN SINGH *v* BISSI SINGH I. L. R., 23 Calc., 658

CONTRACT ACT (IX OF 1872)—*continued*

1. ———— s 76 —*Government currency note Theft of*—A Government currency note was stolen from *A* and cashed by *B* in good faith for *C* On the conviction of *C* for theft the Magistrate ordered the note to be given to *B* *A* appealed to the Sessions Judge who was of opinion that he was not competent to interfere as a Court of Appeal under s. 419 of the Criminal Procedure Code but submitted the case for the orders of the High Court *Held* that the provisions of s 76 of the Contract Act did not apply as the change of a currency note for money is not a contract of sale and that as the note came honestly into the hands of *B* the order of the Magistrate was right EMPRESS v JOGESSUR MOCHI I. L. R. 3 Calc 379

2. ———— *Government currency note—Goods*—A Government currency note is not goods within the meaning of the Contract Act. IN THE MATTER OF MICHELL 1 C L. R 339

1. ———— s 78—*Sale of goods—Ascertained goods—Transfer of ownership—Contract Act s 86—Breach of warranty—Ordinary diligence*—*A* contracted with *B* to sell him 975 maunds of rice the whole contents of a certain golah at Kallygunge (near which place *B* resided) at a certain rate *B* paid to *A* certain earnest money and agreed to remove the whole of the rice after weighing on or before a certain date *B* transferred his contract to *C* who through his servant took delivery from *A* of 130 maunds paying to *A* R1 000 but subsequently refused to take delivery of the residue as he alleged it to be of inferior quality to that contracted for The golah was accidentally burnt and the residue of the rice destroyed In a suit by *A* to recover from *B* the balance of the purchase money (after deducting the payments made) under the contract—*Held* that the sale was complete and the ownership with the risk of loss in the rice sold passed to *B* under ss 78 and 86 of the Contract Act because the contract was for ascertained goods for which *B* had paid earnest money and taken part delivery and that it was not open to *B* to rescind the sale on alleging and proving a breach of warranty on the part of *A* unless he could bring the case within the provisions of s 19; but that he was precluded from so doing because he might have discovered the inferiority of the quality of the rice by using ordinary diligence SHOSHI MOHUN PAL CHOWDHRY v NOBO KRISHTO PODDAR I. L. R. 4 Calc 801

2 ———— *Sale of goods by description—Purchaser's right to reject—Whether goods according to contract or not how relevant—Delivery of part of the goods—Suit for prices of goods rejected—Contract Act s 92*—*B K* agreed to buy from *M R* five bales of chrome orange twists "or any part thereof that may be in a merchantable condition ex *City of Cambridge* or other vessel or vessels with specific marks and numbers each bale containing 500 lbs at so much per lb to be paid for on or before delivery *B K* took delivery of and paid for only one bale but rejected the others *M R* brought a suit for the price of the four bales rejected *Held* that the property in the goods did not pass to the defendant by the terms of the contract nor was the delivery that was taken by him of the one bale a delivery of part of the goods within the meaning of ss. 78 and 92 of the Contract Act the suit therefore did not lie *Held* also that the question whether the defendant was entitled to refuse the goods—in other words whether the goods were according to the contract or not—was one that was unnecessary for the purposes of the present suit but it would have been otherwise if the suit were one for damages on the ground of the defendant's refusal to accept the goods A purchaser's right to reject goods by reason of their not answering the description in the contract may be independent of the question whether the property in the goods has passed to him or not MITCHELL REID & Co. v BULDEO DOSS KHETTRY I. L. R. 15 Calc. 1

———— s 90

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION
I. L. R. 6 All 634

———— s 93

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS
I. L. R. 15 Bom 1

———— *Suit for damages for non-delivery—Obligation to deliver*—In a suit for damages on account of failure to deliver goods (kulaye) sold where the contract was to deliver by weight the weighment taking place in the seller's own premises—*Held* that as plaintiffs did not apply for delivery the sellers defendants were not under the Contract Act s 93 bound to deliver the goods KANOO RAM SRIMAN v GOLAP CHAND NOWLUCKHA
24 W R. 178

———— s 94

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R. 24 Calc. 8
L. R. 23 I A 119

———— s 103

See VENDOR AND PURCHASER—VENDOR RIGHTS AND LIABILITIES OF
I. L. R. 14 Bom. 57

———— s 107

See CONTRACT—BREACH OF CONTRACT
I. L. R. 24 Calc. 124 177
I. L. R 19 All. 535
I. L. R., 23 Mad. 18
I. L. R. 25 Calc 505
2 C W N 283

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT
I. L. R. 24 Calc. 124, 177
I. L. R., 19 All. 535
I. L. R. 25 Calc., 505
2 C W N., 283
I. L. R., 23 Mad. 18

———— s 108

See DELIVERY ORDER.
I. L. R., 8 Bom 501

CONTRACT ACT (IX OF 1872)—*continued*

1 ——————— excep 1—*Possession of goods by person other than owner—Title conveyed by vendor to vendee*—The plaintiff let to *D* a piano on hire on the following terms — At R30 per month if duly paid for and kept three years shall then become the property of hirer These terms were embodied in a voucher which was signed by *D* The monthly hire was not regularly paid and the plaintiffs sued for and obtained a decree for a portion of the hire up to May 1873 Subsequently in that month *D* sold the piano to the defendant who obtained delivery of it in June In a suit by the plaintiff in trover for conversion of the piano the Judge found that the defendant acted in good faith *Held* that the possession acquired by D was not possession by consent of the owner within the meaning of s 108 of Act IX of 1872 excep 1 and that he did not by sale to the defendant transfer the owner ship in the piano to him Excep 1 of s 108 does not apply where there is only a qualified possession such as a hirer of goods has or where the possession is for a specific purpose GREENWOOD v HOLQUETTE 12 B L R 42 20 W R., 467

2 ——————— *Possession with consent of owner—Bailment—Bailee—Sale by bailee of goods bailed—Title of vendee*—The general rule laid down by s 108 of the Contract Act that no seller can give to a buyer a better title than he has himself is qualified by excep 1 to that section But the possession contemplated by that exception does not extend to every case of detention of chattels with the owner's consent The exception has particular relation to the cases of persons allowed by owners to have the *indicia* of property or possession under such circumstances as may naturally induce others to regard them as owners and constituting some degree of negligence or defect of precaution imputable to the true owners Where, however the detention of a chattel is allowed for a particular limited purpose there is not a possession such as is required by the exception In the case of a gratuitous bailment of a chattel the possession remains constructively with the owner *S* left with *C* a buffalo and a calf to be taken care of during his absence from home *C* sold the animals to *M* *S* sued to recover them *Held* that the bailment by *S* to *C* was a gratuitous one or else a mere custody by *C* for *S* that *S* was therefore at the time of sale in constructive possession of the animals and *C* could not transfer to *M* an ownership that he had not himself SHANKAR MURLIDHAR v MOHANLAL JADURAM [I. L R 11 Bom 704

——— s 124

See VOLUNTARY PAYMENT [I. L. R 14 Bom. 299

——— ss 126 147

See DEKKAN AGRICULTURISTS RELIEF ACT s. 72 I. L. R. 5 Bom 647

——— s 127

See PRINCIPAL AND SURETY—RIGHTS AND LIABILITIES OF SURETY [I. L. R., 1 All 487

CONTRACT ACT (IX OF 1872)—*continued*

——— s 128

See PRINCIPAL AND SURETY—RIGHTS AND LIABILITIES OF SURETY [4 C L R. 145

See SURETY—LIABILITY OF SURETY [I. L R., 19 Bom., 697

——— s 130

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL [I L R 19 Mad. 140

See MINOR—CASES UNDER BOMBAY MINORS ACT (XX OF 1864) [I. L R., 19 Bom 245

——— s 131.

See GUARANTEE [I. L R., 10 All., 531

See HINDU LAW—DEBTS [I. L. R., 11 Mad. 373

——— ss 132 139

See BILL OF EXCHANGE [I. L. R., 3 Calc 174

——— ss 133 143

See CASES UNDER PRINCIPAL AND SURETY

——— ss 141 142

See VOLUNTARY PAYMENT [I. L. R. 14 Bom. 299

——— s 142

See GUARANTEE I. L. R. 6 Mad. 406

——— ss 148 161.

See CASES UNDER CARRIERS

See CASES UNDER RAILWAY COMPANY

——— ss 150 151 152.

See ONUS OF PROOF—BAILMENTS. [I. L. R., 9 All. 398

——— s 151.

See BILL OF LADING [I L R 10 Calc 489

——— ss 151 152

See HOTEL-KEEPER AND GUEST [I. L. R 22 All., 164

——— s 170

See BAILMENT I. L. R., 6 All. 138

See LIEN I L. R., 8 Calc., 313

——— s 171.

See ATTORNEY AND CLIENT [I. L. R. 6 Calc., 1

See BANKERS I. L. R., 10 Mad., 234

See LIEN I L. R. 8 Calc., 313 [I. L R. 13 Bom., 314

——— s 178

See LIEN I. L. R. 18 Calc 573 [L. R., 18 I A., 73

CONTRACT ACT (IX OF 1872)—*continued*

1. ———— *Custody of servant—Possession—Pledge of goods* —A servant entrusted by his mistress with the custody of goods pawned them during her absence The mistress sued in *trover* for the goods *Held* that the custody of the servant was not "possession within the meaning of s. 178 of the Contract Act and that if he was to be regarded as having taken the goods into his possession for the purpose of pawning them the case came within the second proviso to that section and that accordingly the action would lie BIDDOMOYE DABEE DABEE *v* SITTARAM. BIDDOMOYE DABEE DABEE *v* SOOBUL DAS MULLICK

[I. L. R. 4 Calc. 497
3 C L. R. 398

See GREENWOOD *v* HOLQUETTE

[12 B L. R. 42

2. ———— *Goods obtained by offence or fraud—Bailment—Pawner—Pawnee—G* went to the plaintiff's place of business in Calcutta, and representing to him that he wanted some jewellery on inspection and would purchase it if he did not return it within ten days obtained from the plaintiff a quantity of jewellery depositing as security R2,000 with the plaintiff *G* having thus obtained *the jewellery took it to K at his residence which* was out of the local limits of the jurisdiction of the Court, and pledged the jewellery to *K* for R6 000 In a suit brought against *G* and *K* to recover the jewellery or its value *G* did not appear and *K* alone defended the suit *Held* that the plaintiff was entitled to recover the jewellery from *K* under s. 178 of the Contract Act *G* having obtained it from the plaintiff by an offence or fraud within the meaning of that section KARTICK CHURN SETTY *v* GOPALKISTO PAULIT

[I. L R 3 Calc 264

3 ———— *Pledge—Husband and wife—Possession required for valid pledge* —The plaintiff sued to recover from the defendant the value of certain ornaments pledged with the defendant by the plaintiff's deceased wife The plaintiff and his wife had lived together and the latter with the knowledge and consent of the plaintiff had charge of the jewel-case containing the ornaments in question which however belonged exclusively to the plaintiff Without the knowledge or consent of the plaintiff his wife pledged these ornaments with the defendant as security for the repayment of certain promissory notes passed by her in favour of the defendant. After her death the defendant claimed payment of the promissory notes from the plaintiff The plaintiff refused to pay and sued the defendant for the value of the ornaments *Held* that the plaintiff's wife had not in the beginning, nor did she subsequently acquire such possession as would validate the pledge by virtue of the provisions of s 178 of the Contract Act To create a pledge under that section the pledgor must be in juridical possession of the goods mere custody will not suffice SEAGER *v* HUKMA KESSA

[I. L R 21 Bom. 458

CONTRACT ACT (IX OF 1872)—*continued*

———— s 192.

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS 11 C L. R. 547

———— ss. 201, 218

See LIMITATION ACT 1877 ART 89
[I. L. R. 12 All. 541

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS I. L. R 12 All. 541
[I. L. R. 28 Calc 715

———— s 202.

See PRINCIPAL AND AGENT—COMMISSION AGENTS I. L. R. 20 Mad. 97

———— ss. 202 203

See PRINCIPAL AND AGENT—REVOCATION
[I. L R 5 Bom 253
I. L. R 24 Bom 403

———— ss 215 216

See PRINCIPAL AND AGENT—COMMISSION AGENTS I. L. R. 16 Mad 238

———— ss 217 221.

See LIEN I L. R. 13 Bom. 302

———— s 230

See CHARTER PARTY
[I. L R., 7 Bom. 51

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS I L. R 5 Calc. 71
[I L. R. 5 Bom. 584
I. L R. 17 Calc., 449
I. L. R 22 Bom 754

———— s 231.

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R 24 Calc 8
[L. R. 23 I A., 119

———— ss 231 232 233 234.

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL I. L. R. 4 Bom , 447
[I. L. R. 9 All. 681
I L R 23 Mad 597

———— s 235

See CHARTER PARTY
[I. L. R., 7 Bom 51

See RIGHT OF SUIT—MISREPRESENTATION
[I. L. R. 24 Bom 166

———— s 237

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS 22 W R. 156

———— ss 239 240

See PARTNERSHIP—WHAT CONSTITUTES PARTNERSHIP I. L. R., 4 All. 74

———— s 247

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS
[I. L. R. 3 Calc 733

CONTRACT ACT (IX OF 1872)—*concluded*

either assume the administration of the estate of the firm or decline to do so according to circumstances subject to appeal and in the former case it may either itself deal with all questions arising between the ex partners or if these be of such a kind as to form separate subjects of adjudication it can direct the party in each case interested to proceed on the particular alleged cause of action in the Court having ordinary jurisdiction and itself use the result as an element of its administration ADARJI DORABJI v EDAKSHAH DHANJI I L R, 8 Bom 272

11 ———— *Jurisdiction of District Court—Jurisdiction of Subordinate Court—Practice*—S 265 of the Contract Act (IX of 1872) assumes that there has been a partnership and enables the District Court to wind it up but does not deprive the ordinary Courts of their jurisdiction in cases seriously contested as to the existence of partnership Such contests ought to be decided as in ordinary cases KISANDAS HAJARIMAL v GULABCHAND I L R. 8 Bom 494

12 ———— *Partnership—Suit to recover share of profits realized*—A suit to compel the defendant to account for and pay over a share of a sum realized on a joint speculation or to provide for the plaintiff a share out of another fund realized under the joint orders of the parties is not affected by the provisions of s. 265 of the Contract Act 1872 PITCHAYYA v NARASAYYA [I L R. 7 Mad 246

CONTRACTORS

See NEGLIGENCE [I L R. 17 Bom, 307

———— Damage done by—

See CALCUTTA MUNICIPAL ACT 1863 [8 B L R., 265

CONTRADICTORY STATEMENTS

See CASES UNDER FALSE EVIDENCE—CONTRADICTORY STATEMENTS

CONTRIBUTION SUIT FOR—

	Col
1 CO-SHARERS LIABILITY OF	1728
2 VOLUNTARY PAYMENTS	1730
3 PAYMENT OF JOINT DEBT BY ONE DEBTOR	1731
4 JOINT WRONG DOERS	1740
5 INTEREST	1743

See CASES UNDER CONTRACT ACT, ss 69 70

See CASES UNDER DECREE—FORM OF DECREE—CONTRIBUTION

See CASES UNDER LIMITATION ACT 1877 ART 99 (1871 ART 100)

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CONTRIBUTION, SUIT FOR—*continued*

See LIMITATION ACT 1877 ART 120 [I L R., 23 Calc, 241

See LIMITATION ACT 1877 ART 132 [I L R., 12 All 110

See MULTIFARIOUSNESS [5 N W., 215
7 N W., 83
25 W R., 41
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See CASES UNDER SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRIBUTION

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS 12 Bom 97 [I L R, 26 Calc. 254 262 note

1 CO SHARERS LIABILITY OF

1 ———— **Liability under decree for costs**—*Division of liability*—A suit having been brought before a Subordinate Judge against co sharers in a joint property for contribution on account of costs levied from plaintiffs in a suit which had been preferred by all the co-sharers (plaintiffs and defendants) together a decree was given ordering the defendants to contribute *per capita* in equal shares. On application made to the Subordinate Judge's successor a review was granted and additional evidence called for as to the respective shares of the parties in the property *Held* that the parties were liable for contribution according to their respective interests in the property and not simply *per capita* MURDAN ALI v TUFUZZUL HOSSEIN 16 W R., 78

2 ———— **Allegation and proof of specific liability**—In a suit for contribution where a joint decree cannot be passed the specific liability of each co-sharer must be not only alleged but clearly established PITAMBUR CHUCKERBUTTY v BHYRUB NATH PALEET 15 W R., 53

3 ———— **Unequal distribution in execution of decree**—*Proportionate liability*— In execution of a decree for an enhanced rent against the holders of a jote jumma, the landlord put up for sale and caused to be sold a talukh which was also the joint property of the same parties One of these parties accordingly sued others of them on the allegation that his share of the property sold exceeded the lands occupied by him in the jote jumma, and asked the Court to give him a joint and several decree against all the defendants for the entire amount of the difference *Held* that plaintiff could not be entitled to such a decree but should have asked that the defendants might be directed to contribute to him in proportion to their respective shares if his complaint was well founded. But as defendants alleged that although plaintiff held that small quantity it was compensated for in other ways it was for plaintiff to show that he did not derive from or by virtue of his share in the jote jumma a profit or increase

CONTRIBUTION SUIT FOR—*continued*

1 CO-SHARERS LIABILITY OF—*continued*

equivalent to the interest he held in it UNNODA PERSHAD ACHARJEE v SHEBBO OONDEREE DEBIA [11 W R 453

4. ——— **Suit for revenue paid by lumberdar for co sharers**—Until the share holders formally take steps to set aside as lumberdar a co-sharer whose rights and interests in the mouzah have been sold their relative positions continuing unaltered the lumberdar can sue in the Revenue Court to recover from them their quotas of revenue which he has been obliged to pay as lumberdar GONESH PERSHAD v SALIG RAM 6 N W 278

5 ——— **Costs of suit for possession of accreted lands against zamindars**—*Proportionate liability*—*B* having obtained a decree against *T* and other zamindars of pergunnah Mymensingh for possession of certain accreted lands as pertaining to pergunnah Jaffershye took out execution and recovered costs, etc from *T* alone who sued his co-debtors for contribution no quest on being raised as to separate liabilities *T* obtained a joint decree took out execution, and recovered from *R* alone who then brought a suit for contribution against the other co-debtors, obtaining a decree in both Courts. In special appeal it was contended *inter alia* that the principle of the decree was wrong and that the defendants were liable only for that portion of the land of which they were in wrongful possession *Held* that as in the original suit there was no plea that the lands were in the occupation of the answering defendants in any other way than under their zamindari title the only way in which the habilities could be awarded was by making each party pay according to the shares they held in the parent zamindari OBHOY KANT LAHOREE v RAM SOONDUREE DABEE CHOWDHRANI 20 W R 209

6 ——— **Sums expended in maintaining common property**—*Consent of co sharers*—A co owner is liable to contribute to the payment of all sums necessarily expended by an other co-owner in maintaining the common property But he cannot be called upon to contribute in respect of money expended on improvements to which he has not assented. MAHOMED KHAN v SHAISTA KHAN [2 N W 248

7 ——— **Repair of common water course by one co-owner**—Where a water-course was for the common benefit of joint owners and one party repaired it at his own cost he was held entitled to call upon the other owner for contribution BUZ ZOOL HOSSEIN v GUNPUT CHOWDHRY [25 W R 170

8 ——— **Rent suit against recorded tenants**—*Co-owners liability of in a suit for contribution*—All the co owners of a taluk are jointly liable for the rent during the period over which their ownership extends and although the landlord sues only the recorded tenants for the rent this would not relieve the unrecorded tenants from the equitable liability of paying their share of the rent to those of the recorded tenants who are obliged to pay the whole The fact that one of the co-owners (whose name is not recorded and who is not a party to the suit for rent) sold away his interest before the date of the suit he having been a co-owner at the time the liability arose would not relieve him of the liability although he may not have derived any advantage from the payment made GOBINDO CHUNDER CHUCKERBUTTY v BASANT KUMAR CHUCKERBUTTY 3 C W N 384

CONTRIBUTION SUIT FOR—*continued*

1 CO SHARERS LIABILITY OF—*concluded*

2 VOLUNTARY PAYMENTS

9 ——— **Payment for support of family idols**—*Moral obligation*—When a Hindu ancestor makes no endowment or trust for the support of the family idols no legal obligation rests on his descendants to support the idols nor can any suit for contribution lie against any of them for payments made for the expenses of the idols SHAM LALL SET v HURO SOONDUREE GUPTA [5 W R 29 1 Ind. Jur N S 36

10 ——— **Payment of debt by one of several co-guarantors**—*Principal and surety*—*Co sureties*—If one of several co guarantors on the default of the principal pays the whole debt or more than his proportion of it he may recover for such excess above his proper share by contribution from the others An action by one guarantor against his co-guarantors will lie where a single guarantor has paid the debt and it is not necessary in order to maintain such an action to show that the liquidating guarantor had previously applied to or proceeded against the principal with a view to recover the debt from him NURO NARAIN DOSS v BROJO MOHUN DOSS W R 1864 70

11. ——— **Payment for arrears of rent by one of several co tenants**—*Sureties*—In a suit to recover contribution on the allegation that plaintiff and defendant were joint tenants and that there was an arrear of rent due from them for which the zamindar was about to sue when the plaintiff paid it together with several other cesses and expenses it was *held* that as there had been no demand upon the defendant nor any suit nor other effectual proceeding for the recovery of the rent the payment by the plaintiff was voluntary and officious and that as the demand with which plaintiff complied was an excessive demand his compliance with it would not bind the defendant to pay the amount of contribution sued for *Held* further that the rules which govern Courts in England in matters of suretyship could not be applied to a case like this where joint and several liability was not found as a fact and where the sum alleged to be due was not certain but contested. LUCKHEE KANT DOSS v SHIBCHUNDER CHUCKERBUTTY 12 W R 462

PITAMBAR CHUCKERBUTTY v BHYRUBNATH PALEET 15 W R, 52

12 ——— **Payment of arrears of rent by purchaser**—The plaintiff brought a suit against the defendants to recover as contribution their share of a sum paid by him for arrears of rent due on a farming lease in a zamindari which had been

CONTRIBUTION, SUIT FOR—*continued*

3 PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued*

sued the mortgagor and the plaintiff for the mortgage money claiming to recover it by the sale of the portion of such estate purchased by the plaintiff Having obtained a decree the mortgagee caused a portion of such portion to be sold in the execution of the dec[illegible] In order to save the remainder of such portion from sale in the execution of the decree the plaintiff satisfied the judgment debt The plaintiff then sued the defendants for contribution *Held* that assuming that the mortgagee by not including the defendants in his suit upon the mortgage bond had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants as purchasers it did not follow that the plaintiff s equitable right to recover a fair contribution from the defendants on the ground of his having paid the whole debt due to the mortgagee was thereby invalidated JAGAT NARAIN *v* QUTUB HUSAIN

[I. L. R 2 All. 807

27 ——— **Sale of property subject to mortgage in execution of money decrees against mortgagors**—*Subsequent suit by mortgagee to recover his mortgage debt by sale of part of mortgaged property only—Payment of mortgage debt by holder of part of mortgaged property—Right on such payment to sue for contribution from other holders of the mortgaged property* —The owner of a portion of property comprised in a mortgage who in order to save his share from sale has satisfied a decree obtained by the mortgagee on the mortgage against him can exact contribution from the owner of another portion of the mortgaged property who was not a defendant in the mortgagee's suit *Jagat Narain* v *Qutub Husain* I L R 2 *All* 807 followed. CHAGANDAS MAGANDAS *v* GANSING I. L R 20 Bom 615

28 ——— **Joint mortgage**—*Purchase of share in mortgage at sale in execution* —*T* and *D* in May 1867 jointly mortgaged their respective two biswas shares of a certain village In August 1877 the mortgagee sued to recover the mortgage money by the sale of the mortgaged property and obtained a decree Before this decree was executed *L* obtained a decree against *D* in execution of which his two biswas share was put up for sale on the 20th June 1878 and was purchased by *A* Subsequently the mortgagee applied for execution of his decree and *D*'s two biswas share were attached and advertised for sale in execution thereof In order to save such [illegible] from sale *A* on the 29th June 1878 satisfied the mortgagee's decree He then sued *P* *L* [illegible] to recover half the amount he had [illegible] paid by the sale of *L*'s two biswas. *Held* that [illegible] when *A* discharged the whole amount of the mortgage-debt he not only became entitled to a contribution of half such amount from *P* but [illegible] the rights of the mortgagee was [illegible] *P*'s two biswas share *A* [illegible] decree as claimed [illegible] SINGH *v* ALI AHMAD I L R. 4 All 58

CONTRIBUTION, SUIT FOR—*continued*

3 PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued*

29 ——— **Mortgage debt**—*Apportionment of decree according to share of purchased property—Payment of money for which other person is liable* —In execution of a decree the right, title and interest in two parcels of property of a judgment debtor who had previous to the attachment executed a single mortgage thereof to *A* were sold and *B* and *C* respectively purchased them at different prices *A* sued the mortgagor and the purchasers *B* and *C* for enforcing his lien on the two parcels of property The suit was dismissed by the first Court, but on appeal the order was Appeal decreed *A* entered into a compromise with *B*, and entered satisfaction of a moiety of the decree He afterwards issued execution of the other moiety against *C* and compelled him to pay *C* now sued *B* for recovery of the proportion of the amount paid by him to *A* but which according to the valuation of the respective properties should have fallen into the share of *B* *Held* that the debt due upon the mortgage bond was a general burden upon the two properties, for which no portion of those two properties was more liable than the other *Held* also that, as between the plaintiff and defendant the liability was not joint but several in proportion to the respective values of the properties and that the plaintiff having been compelled to pay money for which the property of the defendant was legally liable was entitled to recover the amount from the defendant BHAIRAB CHANDRA MADAK *v* NADYAR CHAND PAL

[3 B L. R, A C, 357

S C BHYRUB CHUNDER MUDDUCK *v* NUDDIAR CHAND PAL 12 W R, 291

30 ——— **Sale of mortgaged property to different persons**—*Undertaking by one to discharge liabilities* —*A* and *B* respectively at different dates purchased portions of a property on which there was a mortgage On the mortgagee obtaining a decree against the property *B* paid off the entire debt and brought a suit against *A* for contribution. *Held* that he was entitled to recover notwithstanding in the deed of sale to *B* there was an undertaking by *B* that he would discharge all the liabilities of the mortgagor including the mortgage on the property MOTHOORANATH CHUTTOPADHYA *v* KRISTOKUMAR GHOSH I L. R. 4 Calc 369

31. ——— **Release granted to one debtor**—*Payment of more than proper share of debt* —Any debtor paying more than his share is entitled to sue his co-debtors for contribution, whether a release has been granted or not SHEO CHURN LALL *v* RAM SURUN SAHOO 16 W R, 40

32. ——— **Joint bond**—*Payment by one debtor on bond* —*A* and *B* jointly executed a bond in favour of *C* When the bond fell due *A* alone executed a second bond for a larger amount in favour of *C* covering the amount of the debt under the former bond together with a further advance to him (*A*) At the same time *C* cancelled the former bond. *Held* that thereupon *A* could maintain his su-

CONTRIBUTION SUIT FOR—*continued*

3 PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued*

against *B* for contribution. TRAILAKHANATH ROY *v* KASHINATH ROY 6 B L R 633 [14 W R. 458

33 ———— Decree against one of several joint debtors—*Cause of action*—The mere existence of a decree against one of several joint debtors does not afford ground for a suit for contribution against the other debtors PAM PERSHAD SINGH *v* NEERBHOY SINGH [11 B L R 76 19 W R. 24

SERAJOOL HUQ *v* ROY LUCHHEPUT SINGH [20 W R 242

34 ———— Payment of joint decree by one of Hindu co parceners —A decree having been passed against the plaintiff and defendant undivided Hindu brothers jointly for a family debt and the decree-holder having levied the sum decreed from the plaintiff a suit was brought by him in a Small Cause Court for contribution against the defendant *Held* that the suit would not lie under the circumstances of the case. CHELLAPILLA RAU PANTULU *v* BALARAMA KRISHNAMA PANTULU [I. L R 6 Mad. 424

35 ———— Purchase of decree by one of several judgment-debtors—*Execution of decree*—One of several joint judgment-debtors who has taken an assignment of the decree cannot execute it against his co debtors His only remedy is to sue them for contribution towards the amount he paid for the decree in the proportion in which they were bound *inter se* to satisfy the decree IN THE MATTER OF THE PETITION OF DIGUMBUREE DABEE IN THE MATTER OF THE PETITION OF SOROOP CHUNDER HAZRA B L R. Sup Vol. 938

S C DEGUMBUREE DABEE *v* ESHAN CHUNDER SEIN SUROOP CHUNDER HAZRA *v* TROYLUCKONATH ROY 9 W R 230

DIGAMBUREE DEBIA *v* ESHAN CHUNDER SEIN [15 W R 372

OBHOY CHURN ROY CHOWDHRY *v* NOBIN CHUNDER ROY CHOWDHRY 23 W R 95

DIGAMBUREE DEBIA *v* SHARODA PERSHAD ROY [5 W R Mis, 46

KHOSHALEE *v* NUND LALL 6 N W 1

36 ———— *Execution of decree against another*—One of nine judgment debtors paid the whole of the debt and then applied to execute the decree against one of the others *Held* that he was entitled to receive only one ninth of the debt from him KISHEN KAMINEE CHOWDRAIN *v* MOHIMA CHUNDER ROY [Marsh. 339 2 Hay 459

37 ———— Suit for contribution against joint judgment-debtor—*Right of suit—Remedy by separate suit and not in execution of decree—Civil Procedure Code s 244*—S 244 of the Code of Civil Procedure does not apply to a suit brought by one of two joint judgment debtors who has been compelled to satisfy the decree in full against the other joint judgment debtor for contribution RAM SARAN PANDE *v* JANKI PANDE [I. L. R 18 All 106

38 ———— Execution against one of several joint debtors—*Barred decree*—A decree having been executed for the full amount due against a joint debtor the latter sued his co debtors for contribution who pleaded that at the time of payment the decree had been barred in consequence of a certain proceeding in the execution case not having been *bond fide* *Held* that the question raised by the defendants was necessarily considered in the execution case that the Court must be assumed to have acted rightly in granting execution and that the plaintiff having been compelled to pay the joint debt was entitled to reimbursement SHIB CHUNDER BIDYARUTTUN *v* HUREE DASS BHUTTACHARJEE [13 W R 298

39 ———— Payment of debt by one of several joint debtors—*Form of decree*—When parties are bound by a joint liability and one of them discharges the whole debt due to the creditor he may bring an action against his co debtors for a contribution by each of them for his share of the sum due to the original creditor The plaintiff in such a case can only sue each of the co debtors for his share of the amount paid and the decree should not be given jointly and severally but severally against each of the defendants for the contribution due by each EBLINTON *v* KOYLASHNATH MOZOOMDAR W R. 1864 303

ROGHOONATH DOSS *v* ALLADEEN PATTUCK [8 W R. 201

40 ———— *Small Cause suit to recover money paid by the plaintiff in discharge of a decree debt against him and the defendants—Jurisdiction of Court to go into facts of former suit*—*A* sued four persons against whom together with *A* a money decree had been passed in a previous suit to recover a proportionate part of a sum paid by *A* in discharge of the decree debt Two of the defendants pleaded that they had not appeared in the former suit and had been unnecessarily brought into the record by *A* *Held* that the Court had jurisdiction to inquire into the circumstances of the previous suit *Siput Singh v Imrit Tewary I L R 5 Calc 720* followed THANGAMMAL *v* THYYAMMUTHU I L R 10 Mad. 518

41 ———— Where a judgment was passed against several defendants jointly and severally and some of them paid the whole of the judgment debt —*Held* that they might sue the others for contribution SUPPANACHARI *v* CHAKKARA PATTAN 1 Mad. 411

42 ———— Judgment-debtors under summary order of inferior Court for execution of decree—*Effect of payment under order*—

CONTRIBUTION SUIT FOR—*continued*

3 PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued*

A summary order of an inferior Court for the execution of a decree may be conclusive as between the decree holder who obtained it and those against whom it was made but is not necessarily so against the latter as between themselves only Such an order has not necessarily the same effect, so far as contribution is concerned as if it were the original decree in the suit NUND COOMAR SINGH v GAN A PERSHAD [3 W R., 207

43 ——— Payment of debt by one debtor—*Partition of property among debtors*—Where there had been disputes respecting family property and an agreement was entered into by which the parties made a division of the property and agreed to pay a debt in equal shares, and one of the parties had been made under a decree to pay the whole debt,—*Held* that he had a clear right to recover from the others their proportion of the debt unless they could show some answer to his claim. DOMAN SINGH v KASEERAM 5 W R., P C., 39 [1 Moore's I A., 366

44. ——— Joint liability for a debt paid by one debtor in suit for debt—*Costs*—If one of several persons jointly liable for a debt is sued and is compelled to satisfy the debt and the costs of the suit he can only call on the others to contribute in respect of the debt and not in respect of the costs PUNJAB v PETUM SINGH [6 N W., 182

45 ——— Payment to stay sale for arrears of rent—*Liability of person in use and occupation*—The land of a jote jama belonging to plaintiff and one *P* having been attached in satisfaction of a joint decree for arrears of rent plaintiff deposited the entire amount of the decree He then sued *M* who had obtained *P's* share of the jote for contribution on the ground that *M* was in use and occupation. *Held* that the case against *M* was not met by the plea that he was not a party to the suit in which the decree was obtained. GUDADHUR CHOWDRY v SHAMA CHURN MITTER 16 W R., 8

46 ——— Costs payable jointly and severally—*Intervenor*—In a suit for possession an intervenor claimed the lands in dispute upon a title distinct from that of plaintiff whereupon the intervenor was made a defendant and a decree was ultimately passed in plaintiff's favour with costs payable jointly and severally by all the defendants. The original defendants having been obliged to pay the whole amount of these costs in execution they brought a suit for contribution against the legal representatives of the intervenor *Held* that in the absence of any contract or agreement there was no equity between the parties to justify a suit for contribution KRISTO CHUNDER CHATTERJEE v WISE [14 W. R., 70

47 ——— *Joint decree for costs against defendants having separate defences*—*Right of* ——In a suit against one defendant for possession of certain property which was claimed as his by the original defendant certain third persons got themselves added to the array of parties as defendants and put in a defence in opposition to and exclusive of that of the first defendants. The plaintiff in that suit obtained a decree the claims of both sets of defendants being found to be unsupported, and the decree gave costs jointly against all the defendants. The decree having been executed for costs against the first defendant he sued the other defendants for contribution. *Held* that the suit would not lie. *Kristo Chunder Chatterjee* v *Wise* 14 W R., 70; *Sreeputty Roy* v *Loharam Roy* B L R., Sup Vol., 657: 7 W R., 384 *Abdul Wahid Khan* v *Shaluka Bibi* I L R., 21 Calc., 496 and *Sarju Singh* v *Imrit Tewari* I L R., 5 Calc., 720 referred to FAKIRE v TASADDUQ HUSAIN [I. L. R., 19 All, 482

48 ——— Separate suits where joint debtors are sued for debt paid by one—*Ascertainment of shares*—Ordinarily claims for contribution should be brought in separate suits against the individual contributors, but there may be cases where by reason of special difficulty in the ascertainment of the shares, convenience may suggest a departure from the ordinary rule of separate suits In those cases the ascertainment of the shares should form a portion of the relief sought for. PUTTEE BAI v MAHOMED ALI KHAN 5 N W., 215

4 JOINT WRONG DOERS

49 ——— Liability of wrong-doers as amongst themselves—One tort feasor cannot recover contribution against another SUPPANA CHARI v CHAKKARA PATTAN 1 Mad., 411

50 ——— Costs of suit rendered necessary by wrong doers—The plaintiff and defendants jointly opposed and prevented the agents of a zamindar from measuring certain lands. The zamindar thereupon brought a suit against them to have his right to measure declared, and obtained a joint decree with costs. In execution of the decree for costs, the property of the plaintiff was attached, and he solely paid the whole amount due for costs. The plaintiff now sued the defendants for contribution. *Held* that such a suit would lie. PUTTEE SIRDAR v SAJOO LOHAMANICK [11 B L R., 345 20 W R., 235

51 ——— Wrong-doers with intention—*Bona fide exercise of right*—The question as to whether as between persons against whom a joint decree has been passed there is a right of contribution at all depends upon the question were whether the defendants in the former suit were wrong doers in the sense that they knew or ought to have known that they were doing an illegal or wrongful act In that case no suit for contribution will lie If the defendants in the former suit were not guilty of wrong in that sense but acted under a *bona fide* claim of right and had reason to suppose that they had a right to do what they did then they may have a right of contribution inter se and

CONTRIBUTION SUIT FOR—*continued*

4. JOINT WRONG DOERS—*continued*

In such case the Court should enquire what share they each took in the transaction because according to circumstances one or more of them might be excused altogether or in part from contributing —as for instance one of them might have acted as a servant and by the command of the others; or the others might have been the only persons benefited by the wrongful act; in which case those who were benefited or who ordered the servant to do the act would not be entitled to contribution S 22 of Act XV of 1877 does not apply to a case in which the persons to whom a right of suit is assigned after the institution of the suit obtains leave to carry on the suit. SUPUT SINGH *v* IMRIT TEWARI

[I. L. R 5 Calc 720 6 C L R 62

52. ——— Unintentional wrong-doer —*Ignorance of illegal act*—An objection to the attachment and sale of certain immoveable property raised by one who claimed to have purchased the same at a sale in execution of a prior decree was disallowed on the ground that under the prior decree the rights of one only of the present judgment debtors had been sold and purchased by the objector In accordance with this order two-thirds of the property under attachment were sold and the objector thereupon brought a regular suit for a declaration of his right as a purchaser of the whole property in execution of the prior decree To this suit he impleaded as defendants the decree-holder and the judgment debtors The suit was decreed and in the result the decree-holder alone was compelled to pay the whole of the costs Subsequently he brought a suit for contribution in respect of these costs making defendants to the suit (i) *R* one of his co defendants in the previous suit personally and as heir of *A* who was another of those co-defendants, (ii) *N* and (iii) *S* these two being sued in the character of heirs of *A* *Held* that inasmuch as the rule preventing one wrong doer from claiming contribution against an other was confined to cases where the person seeking relief must be presumed to have known that he was acting illegally and in this case there was no evidence to show that the plaintiff in attaching and advertising the property for sale in execution of his decree knew he was doing an illegal act but the inferences were all the other way he was fully entitled in law to maintain the suit and to recover from the defendants the proportionate amount of the costs which he had to pay for them *Merryweather* v *Nixon 2 Sm L C 5th Ed 456 Adamson* v *Jarvis 4 Bing 66 Dixon* v *Fawcus 30 L J Q B 137* and *Suput Singh* v *Imrit Tewar I L R 5 Calc 720* referred to KISHNA RAM *v* RAKMINI SEWAK SINGH

[I L. R. 9 All., 221

53. ——— Joint tort feasor—*Adjustment of a loss arising from an illegal contract*—A deed of partition between *A* and *B* members of an undivided Hindu family provided that *A* who took over all the debts due to the family should bear the loss if any incurred in an appeal then pending in a suit brought by the family on a bond The bond was held to evidence a fraudulent transaction and the appeal was dismissed with costs. The decree for costs was executed against *B* and satisfied by him he now sued the son of *A* (deceased) to recover the amount paid by him. *Held* that the plaintiff was entitled to recover the claim not being barred by the rule against contribution between joint tort feasors LAKSHMANA AYYAN *v* RANGASAMI AYYAN

[I L. R 17 Mad. 78

54. ——— Costs of suit in which false defence is set up —Where a decree for costs against two defendants jointly was executed against one of them who had set up a false defence in the suit in collusion with the other and the former brought a suit to recover one moiety of the amount paid by him from the latter —*Held* that the suit would not lie VAYANGARA VADAKA VITTIL MANJA *v* PARIYANGOT PADINGARA KURUPPATH KADUGOCHEN NAYAR

[I L R. 7 Mad., 89

55 ——— Decree for costs—*Evidence to prove collusion—Proceedings in former case not between same parties—Admissibility in evidence of finding in former case*—*S* granted to *G* and *A* a patni of a certain share in a zamindari and thereupon *P* brought a suit against *G S* and *A* for specific performance of an agreement to grant to him (*P*) a patni of the same share That suit was decreed with costs the whole of which were realized from *G* In a suit for contribution brought by *G* against *S* and *A* the lower Appellate Court found that *G S* and *A* had conspired in setting up a false defence in the former suit in order to defeat *P*'s claim *Held* in second appeal that assuming such collusion were proved the suit for contribution was not maintainable *G S* and *A* being joint wrong-doers *Vayangara Vadaka Vittil Manja* v *Pariyangot Padingara Kuruppath Kadugochen Nayar I L R 7 Mad 89* followed *Brojendro Kumar Roy Chowdhry* v *Ras Behari Roy Chowdhry I L R 13 Calc 300* distinguished The only evidence on which the lower Appellate Court had acted as establishing such collusion was the finding of the Court in the former suit (gathered from the grounds of appeal in that suit) *Held* that that finding was inadmissible in evidence as laid down in *Surendar Nath Pal Chowdhry* v *Brojo Nath Pal Chowdhry I L R 13 Calc., 352* being the finding in a case in which *G S* and *A* were all co-defendants and a third party the plaintiff and the case was remanded for the determination of the question whether *G S* and *A* were wrong doers and were as such held liable for the costs of the former suit GOBIND CHUNDER MUNDY *v* SRIGOBIND CHOWDHRY I. L. R. 24 Calc., 330

[1 C W N 179

56 ——— Payment of damages under decree by one of several joint wrong-doers. —Where one of several joint wrong doers liquidates the whole amount of the damages obtained in satisfaction of the wrong committed by them all he is not entitled to contribution from the rest. HARNATH *v* HAREE SINGH 4 N W., 116

57 ——— Payment of decree by one of several joint wrong-doers—*Cause of action—Breach of covenant—Damages for breach*

CONTRIBUTION SUIT FOR—*continued*

3 PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued*

A summary order of an inferior Court for the execution of a decree may be conclusive as between the decree holder who obtained it and those against whom is was made but is not necessarily so against the latter as between themselves only Such an order has not necessarily the same effect so far as contribution is concerned as if it were the original decree in the suit NUND COOMAR SINGH v GANGA PERSHAD [3 W R., 207

43 ———— Payment of debt by one debtor—*Partition of property among debtors* —Where there had been disputes respecting family property and an agreement was entered into by which the parties made a division of the property and agreed to pay a debt in equal shares and one of the parties had been made under a decree to pay th whole debt —*Held* that he had a clear right to recover from the others their proportion of the debt unless they could show some answer to his claim DOMAN SINGH v KASEERAM 5 W R P C 39 [1 Moore s I. A 366

44. ———— Joint liability for a debt paid by one debtor in suit for debt—*Costs* —If one of several persons jointly liable for a debt sued and is compelled to satisfy the debt and th costs of the suit he can only call on the others t contribute in respect of the debt and not in resp of the costs PUNJAB v PETUM SINGH [6 N W., 1

45 ———— Payment to stay sale f arrears of rent —*Liabil ty of person in use o occupation* —The land of a jote jama belongin plaintiff and one *P* having been attached in satis tion of a joint decree for arrears of rent plai deposited the entire amount of the decree He th sued *M* who had obtained *D* s share of the jote contribution on the ground that *M* was in u occupation *Held* that the case against *M* wa met by the plea that he was not a party to the su which the decree was obtained. GUDADHUR CH DRY v SHAMA CHURN MITTER 16 W

46 ———— Costs payable jointly severally—*Intervenor* —In a suit for pos an intervenor claimed the lands in dispute u title distinct from that of plaintiff whereup intervenor was made a defendant and a decr ultimately passed in plaintiff s favour witl payable jointly and severally by all the def The original defendants having been obliged the whole amount of these costs in executi brought a suit for contribution against t representatives of the intervenor *Held* tha absence of any contract or agreement ther equity between the parties to justify a su tribution KRISTO CHUNDER CHATTERJEE [14 W

47 ———————— *Joint costs aga st defendants having separate Right of su t* —In a suit against one d f possession of ce tain property which was his by the original def ndant certain th

CONTRIBUTION SUIT FOR—*concluded*

4 JOINT WRONG DOERS—*concluded*

of contract—Breach of contract —In a suit for damages against *A* and others for breach of a covenant not to open a ferry at a particular place a decree was obtained against all the defendants The amount of this decree was levied by execution from *A* alone who thereupon brought a suit for contribution against his co defendants in the former suit Both the lower Courts dismissed the suit on the ground that the plaintiff and the defendants had been joint wrong doers and that no suit for contribution would lie as between them On second appeal to the High Court —*Held* that the rule of law relied on by the Courts below had no application to the circumstances of the present case and that the plaintiff was entitled to maintain his action BROJENDRO KUMAR ROY CHOWDHRY *v* RASH BEHARY ROY CHOWDHRY

I L R 13 Calc 300

58 ——— **Payment to secure property** —*Mesne profits* —In a claim for contribution arising out of a former suit in which a District Judge had given a decree against the present plaintiff and defendant and in the execution of which the Munsif had allowed mesne profits to the plaintiff although the Judge's decision which entered fully into other details had omitted to award mesne profits —*Held* that as the Judge's decision had made no mention of mesne profits the present plaintiff was not entitled to recover as contribution the sum which in order to secure his property against the joint decree he had paid on behalf of the defendant BUNWAREE LALL SAHOO *v* SUDHIST LALL

25 W R 269

5 INTEREST

59 ——— **Discretion of Court**—*Act XXXII of 1839* —In suits for contribution it is in the discretion of the Court to allow or refuse interest on the amount claimed whether there has been a written demand for it or not inasmuch as Act XXXII of 1839 does not apply to such suits BISTOO CHUNDER BANERJEE *v* NITHORE MONEE DABEE

10 B L R 352 19 W R 98

LULLEET BISWAS *v*. PROSONNOMOYEE DOSSEE

10 B L R 353 note

CONTRIBUTORY

See COMPANY—WINDING UP—GENERAL CASES

I L R 5 Bom 223,
I L R 11 Bom 241

——— **Liability of—**

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS

CONVERSION

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS

I L R 4 Calc 116

See HUNDI I L R 18 Bom 516

See PLEDGOR AND PLEDGEE

I L R 19 Calc. 322

CONVERSION—*concluded*

1. ——— **Stolen notes** —Two notes are stolen from *A* which *B* (not a *bond fide* holder for valuable consideration) tenders to *C* in payment for certain articles. *C* not knowing *B* refuses to deal with him whereupon *B* brings *D* who is known to *C* and the purchase is made by him. *Held* that the part which *D* performed in the transaction amounted to a conversion of the notes to his own use and that he is liable to *A* KISSORYMOHUN ROY *v* RAJNARAIN SEN

1 Hyde 263

2 ——— **Appropriation of goods as to which there is dispute**—*Delivery to party without title* —*K* received into his godown certain goods belonging to the plaintiff and in charge of his servant, concerning which there was a dispute between the plaintiff's agent and *B* of which circumstances *K* was aware and he advanced money to *B* on the security of such goods which were subsequently delivered to *B* and sold by him with the acknowledgment of *K* and notwithstanding the plaintiff's servant objected to it delivered them to the purchaser *Held* that *K* was liable for damages at the instance of the plaintiff in an action for conversion of the goods ANUNT DASS *v* KELLY

1 N W Part 7 p 107 Ed 1873 194

3 ——— **Trespass on land**—*Conversion of moveables lying on land—Civil Procedure Code s 43* —Defendants having forcibly taken possession of plaintiff's land upon which was (1) standing timber and (2) logs of timber lying stored on the ground, plaintiff had in a prior suit recovered possession and damages Subsequently to the institution of such prior suit defendants (1) cut and removed certain standing trees and (2) removed the logs which lay stored on the ground Upon plaintiff bringing a second suit to recover damages on both grounds, objection was raised as to the logs that a claim for their value might have been included in the former suit since their conversion was effected when the plaintiff was dispossessed of the land upon which they lay and that under s 43 no claim could now be made in respect of them *Held* that a trespass on a piece of land is by itself no proof of any conversion of moveables lying upon the land at the time that the trespass takes place that notwithstanding plaintiff's eviction from the land possession of the timber lying stored upon it should be presumed to have continued in him in the absence of proof of any act on the part of the defendant with special reference to such timber and showing unequivocally that the plaintiff was entirely deprived of the use of them; and that conversion of the logs was not effected by the trespass, but only by their removal subsequently to the institution of the previous suit MOTI *v* AYTHRAMAN

I L R 22 Mad 197

CONVERTS

See BIGAMY

3 Mad. Ap., 7
I L R 4 Bom 330
I L R 10 Mad. 11
I. L R 18 Calc. 264

See DIVORCE ACT s 2

I L R 14 Mad., 382
I L R 18 Calc 252

CONVERTS—*continued*

See FALSE EVIDENCE—GENERAL CASES
[4 Mad 185

See HINDU LAW—CUSTOM—ADOPTION
[I. L R 17 Calc 518

See HINDU LAW—INHERITANCE—DIVESTING OF EXCLUSION FROM AND FORFEITURE OF INHERITANCE—MARRIAGES
[I L R. 19 Calc 264

See HINDU LAW—INHERITANCE—DIVESTING OF EXCLUSION FROM AND FORFEITURE OF INHERITANCE—OUTCASTES 2 Agra 311
[I. L R 8 Mad 169
I L R 11 All 100

See HINDU LAW—MARRIAGE—DISSOLUTION OF MARRIAGE
[I L R 8 Mad 169
I. L R. 18 Calc 264

See MARRIAGE 10 B L R 125
[16 W R 249

See SALSETTE LAW APPLICABLE IN
[I L R 19 Bom 680

See SUCCESSION ACT s 331
[I L R 19 Bom 783

1 ———— **Hindu convert to Christianity** —*Law governing converts—Hindu law*—Upon the conversion of a Hindu to Christianity the Hindu law ceases to have any continuing obligatory force upon the convert He may renounce the old law by which he was bound, as he has renounced the old religion or if he thinks fit he may abide by the old law notwithstanding he has renounced the old religion. The profession of Christianity releases the convert from the trammels of Hindu law but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern such as his rights and interests in and his powers over property The convert though not bound as to such matters either by the Hindu law or by any positive law may by his course of conduct after his conversion have shown by what law he intended to be governed as to these matters ABRAHAM v ABRAHAM
[I W R. P C 1 9 Moore s I A 195

2 ———————— *Law governing converts—Succession Act s 331*—Native Christians are governed by the Succession Act but if a family of native Christians continued to observe the Hindu law of succession until the Succession Act altered their rule of succession the members of the family born before the Succession Act came into operation could not be deprived of the rights acquired by them under Hindu law PONNUSAMI NADAN v DORASAMI AYYAN I L R 2 Mad. 209

3 ———————— *Marriage Validity of—Succession to estate of Hindu who has become a Christian—Succession Act s 35*—If a Hindu becomes a convert to Christianity and dies intestate succession to his estate is governed by the Indian Succession Act 1865 *A K* a Brahman went through a Hindu marriage ceremony with *S* a Brahman girl of eight years of age in 1850 The marriage was never consummated nor was the consummation ceremony performed In 1851 *A K* was converted to Christianity *S* refused to live with him because he was an outcaste and in 1857 *S* renounced all claims on him or his estate In 1858 *A K* went through a Christian form of marriage with *M* In 1881 *A K* died intestate and possession was taken of his estate by the Administrator General *S* claimed the estate from the Administrator General Her suit was dismissed on the ground that *A K* having died an outcaste and degraded and his degradation not atoned for under Hindu law no right of inheritance remained to her Before judgment was delivered *S* died and the suit abated In a suit filed by the Administrator General to have the estate administered by the Court the claimants were (1) the father of *A K* (2) the brother of *A K* undivided from his father and (3) the executor of *M* *Held* that *S* was the wife of *A K* when he went through the form of marriage with *M* and that but for the fact that *S* had relinquished her rights *S* would have been entitled on the death of *A K* to such portion of his estate as the law assigned to her as his widow *Held* also that under s 35 of the Indian Succession Act 1865 the father of *A K* was entitled to the whole of the estate ADMINISTRATOR GENERAL OF MADRAS v ANANDACHARI I L R 9 Mad. 466

4 ———————— *Survivorship*—*Succession Act 1865—Effect of Act on estates of native Christians previously following Hindu law*—*A* and *J* brothers native Christians descendants of Brahmins were living in co-parcenary and owned certain land on the date when the Indian Succession Act 1865 came into force In 1872 no partition having been made *A* died. *Held* that *J* did not take the whole estate on the death of *A* by survivorship TELLIS v SALDANHA
[I L R. 10 Mad 69

5 ———————— *Native Christians*—*Change of religion—Law applicable to converts—Succession—Inheritance*—Where in consequence of the conversion of a person from one form of religion to another the question arises as to the law to be applied to such person that question is to be determined not by ascertaining the law which was applicable to such person prior to the conversion but by ascertaining the law or custom of the class to which such person attached himself after conversion and by which he preferred that his succession should be governed. LASTINGS v GONSALVES
[I L R. 23 Bom 539

6 ———— **Hindus becoming Mahomedans**—*Succession of property*—*Held* that the question as to succession of property between parties who though originally Hindus subsequently embraced the Mahomedan religion and professed that religion for successive generations must be disposed of under the Mahomedan law and the plea of usage opposed to Mahomedan law must not be recognized. SURMUST KHAN v KADIR DAD KHAN
[1 Agra F B 39 Ed 1874 29

CONVERTS—*continued*

7 ———— A Hindu embracing the Mahomedan religion is bound by the Mahomedan law of inheritance SOJAN *v* ROOP RAM [2 Agra, 61

LALLA OUDH BEHAREE LALL *v* MEWA KOONWAR [3 Agra 82

8 ———— **Converts from Hindu to Mahomedan religion**—*Custom as to inheritance*—The general presumption arising from the intimate connection between law and religion in the Mahomedan faith is that the Mahomedan law governs converts from the Hindu religion to Mahomedanism But a well established custom in the case of such converts to follow their old Hindu law of inheritance would override that general presumption and a usage establishing a special rule of inheritance as regards a special kind of property would be given the force of law even though it be at variance with both Hindu and Mahomedan laws MAHOMED SIDICK *v* HAJI AHMED ABDULLAH HAJI ABDSATAR *v* HAJI AHMED I L R. 10 Bom 1

9 ———— *Suni Borah Mahomedans - Conversion Effect of—Hindu converts to Mahomedanism Custom and usage of—Inheritance among such converts—Native Christians—Law applied to Native Christians prior to Indian Succession Act (X of 1865)—Burden of proof*—The Suni Borah Mahomedan community of the Dhandhuka Taluka in Gujarat are governed by the Hindu law in matters of succession and inheritance *Held* therefore that in this community a widow is entitled to succeed to her husband's estate to the exclusion of a daughter or a step daughter As to the law governing Hindu converts to Mahomedanism the following principles may now be regarded as settled —(1) Mahomedan law generally governs converts to that faith from Hinduism; but (2) a well established custom of such converts following the Hindu law of inheritance would override the general presumption (3) This custom should be confined strictly to cases of succession and inheritance (4) If any particular custom of succession be alleged which is at variance with the general law applicable to these communities the burden of proof lies on the party alleging such special custom If evidence is given as to the general prevalence of Hindu rules of succession in a Mahomedan community in preference to the rules of Mahomedan law the burden of proof is discharged and it then rests with the party disputing the particular Hindu usage in question to show that it is excluded from the sphere of the proved general usage of the community Among Native Christians certain classes strictly retain the old Hindu usages others retain these usages in a modified form and others again wholly abandon them Before the Indian Succession Act (X of 1865) the Christian convert could elect to attach himself to any one of these particular classes and he would be governed by the usage of the class to which he so attached himself *Abraham v Abraham 9 Moo I A 195* These same principles are applied to the case of Hindu converts to Mahomedanism such as Khojas and Cutchi Memons BAI BAIJI *v* BAI SANTOK I. L. R. 20 Bom., 53

CONVERTS—*concluded*

10 ———— *Molesalam Girasias—Hindu converts to Mahomedanism—Retention of Hindu law and usages—Hindu law—Inheritance*—The Hindu law of inheritance and succession applies to Molesalam Girasias who were originally Rajput Hindus but were subsequently converted to Mahomedanism FATESANGJI JASVATSANGJI *v* KUVAR HARISANGJI FATESANGJI [I L R. 20 Bom. 181

11.———— **Forfeiture of property**—*Omission to take property forfeited Effect of*—*Quære*—Whether when a person becomes a convert and his property is under Hindu law forfeited to his son the mere omission by the son to enter upon the property vested in him by the forfeiture or otherwise assert his right to it would re vest it in the convert and make it descendible to his heirs LALLA OUDH BEHAREE LALL *v* MEWA KOONWAR 3 Agra 82

CONVEYANCE

See REGISTRAR OF HIGH COURT [I L R 16 Calc. 330

See STAMP ACT 1869 s 3 ART 11 [10 Bom. 354 8 Mad., 112

See STAMP ACT 1869 SCH I ART 15 [16 W R. 208 I. L. R., I Mad., 133

See STAMP ACT 1869 SCH I ART 21 [I. L. R., 13 Calc. 43 I L. R 20 Bom 432 I. L. R 23 Calc 283 I. L. R 20 Mad. 27

See STAMP ACT 1879 s 3 ART 9 [I. L. R. 7 Mad. 350 I L R. 7 Calc., 21 I. L. R. 21 Mad. 423

See STAMP ACT 1879 s 24 [I L R., 15 Bom, 875

———— **Return of by Purchaser**

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER I. L. R., 2 Bom 547

CONVICTION

———— **for several offences**

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES

———— **Previous**—

See CRIMINAL PROCEDURE CODE s 403. [I. L. R., 23 Calc., 174

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION

———— **Setting aside for error in law**

See CASES UNDER ACCOMPLICE

———— **Validity of**—

See EXCISE ACT 1871 [I. L. R., 1 All., 630 635 639

CONVICTION—*continued*

1. ———— **Conviction without evidence** —*Illegal conviction* —A conviction on no evidence is wrong in point of law QUEEN v CHAND BAGDEE [7 W R Cr 6

QUEEN v POORNO CHUNDER DOSS [8 W R Cr 59

2. ———— **Want of complaint and of evidence**—*Illegal conviction*.—Where a Magistrate acting merely on certain information contained in a letter addressed to him convicted a person for obstruction and nuisance the High Court set aside the conviction on the ground that there was no complaint and no evidence IN THE MATTER OF RAM COOMAR [10 C L R 521

3 ———— **Conviction on evidence taken in absence of accused**—*Illegal conviction* —A conviction based upon evidence taken in the absence of the accused is illegal ANONYMOUS [3 Mad Ap, 34

QUEEN v RAJCOOMAR SINGH 8 W R Cr 17

QUEEN v LALLA CHOWDRY 2 N W 49

QUEEN v RAMNATH 7 W R Cr, 45

QUEEN v HOSSEIN ALI CHOWDHRY [8 W R Cr, 74

4. ———— **Conviction on statement of complainant.**—A conviction on the statement of a complainant is lawful KULUM MUNDUL v BHOWANI PROSAD 22 W R Cr 32

5 ———— **Conviction on plea of guilty without assessors**—*Criminal Procedure Code (Act XXV of 1861) s 362* —A conviction of a prisoner on a plea of guilty before a Court of Session is valid although there were no assessors QUEEN v SRIKANT CHABAL 2 B L R F B 23 [10 W R Cr 43

6 ———— **Conviction of deaf and dumb person without attempt to make him understand the charge**—*Illegal conviction* —A deaf and dumb prisoner was convicted of an offence Upon the trial no attempt was made to communicate with the prisoner respecting the charge against him The High Court quashed the conviction ANONYMOUS [6 Mad Ap 7

7 ———— **Conviction for one offence under Penal Code and Act I of 1871**—*Illegal conviction* —A conviction under the Penal Code and also under a special law as the Cattle Trespass Act (I of 1871) in respect of one and the same offence is illegal QUEEN v HOSSEIN ALI 5 N W 49

8 ———— **Conviction under both ss 471 and 474 of Penal Code**—*Illegal conviction* —Convictions of using forged documents (s 471) and of having them in possession with intent to use them (s 474 of the Penal Code) cannot stand together QUEEN v NUZUR ALI 6 N W 39

9 ———— **Conviction without jurisdiction**—*Trial under Act I of 1849—Omission to record order giving jurisdiction* —Where a tindal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese possession of Goa but no order giving himself jurisdiction was recorded by the Sessions Judge of Mangalore who tried the case under s 9 of Act I of 1849 —*Held* that the conviction was illegal and that there ought to be a new trial ANONYMOUS [5 Mad. Ap 13

10 ———— **Order for imprisonment for future default**—*Punishment for contingent failure to work—Act XIII of 1859 s 2* —An order of a Magistrate passed under s 2 of Act XIII of 1859 that the prisoner should work for a certain period and in case he failed to do so should suffer rigorous imprisonment for one month annulled as to the latter part the Magistrate having no power to make that order until the failure had occurred and been proved before him REG v JOMA BIN BALU [4 Bom Cr 37

11 ———— **Conviction of offence without specific charge**—*Criminal Procedure Code 1872 s 457—Conviction of minor charge on charge for graver offence* —When a person is charged with an offence consisting of parts a combination of some only of which constitutes a complete minor offence he may under s 457 of the Code of Criminal Procedure be convicted of the latter without being specifically charged but only when the graver charge gives notice of all the circumstances going to constitute the minor offence Hence where a man charged with murder was convicted of abetment of it the High Court annulled the conviction and sentence and ordered him to be re tried on the latter charge REG v CHAND NUR 11 Bom. 240

See REG v RAMAJIRAV JIVBAJIRAV [12 Bom 1

12 ———— **Double conviction for same offence**—*Illegal conviction* —*F* brought a charge of assault against *M* before a Bench of Magistrates who finding no evidence to show by whom complainant s arm had been broken treated the case as one of simple hurt and sentenced the accused accordingly Complainant then applied for compensation to the District Magistrate who instituted fresh proceedings and convicted the accused of grievous hurt *Held* that as the whole matter was one transaction and went as a whole before the Bench of Magistrates and as the facts were deposed to by the same witnesses before the Magistrate the two convictions could not stand side by side The proceedings before the Bench of Magistrates were accordingly quashed. IN THE MATTER OF THE PETITION OF FAKEER MAHOMED [24 W R Cr., 46

13 ———— **Alternative conviction**—*Doubt as to which of several offences accused is guilty of* —Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged but where it is doubtful of which of those offences he is guilty such an alternative conviction is illegal QUEEN v JAMURHA [7 N W 137

14 ———— **Conviction of one offence and acquittal on others where several are proved**—*Cognate offences—Illegal conviction* —

CONVICTION—*continued*

When more than one offence is proved it is not proper to convict only of one and to acquit of the others although the offences may be cognate REG v MURAR TRIKAM 5 Bom. Cr 3

15 ———— Conviction on evidence taken before another Magistrate—*Illegal conviction* —When a prisoner is convicted by one Magistrate upon evidence previously recorded before another the defect cannot be cured by the evidence being again recorded and the conviction confirmed QUEEN v POORNO CHUNDER DOSS [8 W R. Cr, 59

And *see* QUEEN v GOPI NOSHYO [21 W R Cr 47

16 ———— Power to quash conviction.—A lower Court has no power to quash its own conviction though illegal IN RE GUNOWREE BHOOPA [6 W R. Cr 70

17 ———— *Valid conviction in case improperly originated* —*Per* MACLEAN J —The High Court may without reference to the local Government set aside a conviction on a trial improperly originated. IN THE MATTER OF THE PETITION OF NOBIN CHUNDRA BANIKYIA. EMPRESS v NOBIN CHUNDRA BANIKYIA [I. L R 8 Calc 560 10 C L R. 369

18 ———— Ground for setting aside conviction—*Police Act V of 1861 s 29—Offence under Penal Code* —That the facts proved would also constitute an offence under a section of the Penal Code seems to be no reason for quashing a conviction under the special law Act V of 1861 QUEEN v KASSIMUDDIN 8 W R Cr 55

19 ———— *Subsequent evidence* —A valid conviction arrived at by a Magistrate who had jurisdiction in the matter cannot be set aside simply because subsequent to the trial and conviction fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted. QUEEN v RAMDOYAL MAHARA 21 W R Cr 47

20 ———— *Conviction under sanction obtained after trial—Want of jurisdiction* —A conviction having been set aside as arrived at without jurisdiction no sanction to the prosecution having been obtained from the Court against which the offence was committed formal sanction was obtained the accused re-arrested and without being called upon to plead ordered to undergo the sentence previously passed *Held* that the whole of these proceedings were illegal IN THE MATTER OF THE PETITION OF EDOO KHANSAMAH [24 W R. Cr., 64

21 ———— *Irregular proceedings of Magistrate—Illegal conviction under Stamp Act* —Conviction and sentence for an offence under the Stamp Act (XXXVI of 1860 s. 26) reversed on reference by the Sessions Judge as the proceedings of the Magistrate who tried the case were highly irregular REG v DEVBANTAT BIN SHIVRAM SANTAT [3 Bom., Cr., 34

CONVICTION—*concluded*

22. ———— *Irregular proceedings by Magistrate* —A conviction and sentence for criminal breach of trust as a public servant reversed owing to irregularities in the preliminary enquiries and irregular procedure as to the examination of the prisoner in the Court of Session. REG v DIAZ 3 Bom, Cr 51

23 ———— *Dispute between civil suitors—Improper prosecution—Illegal conviction.*—As a general rule one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit or if he does so the hearing of the criminal case ought to be postponed until the suit is concluded But although that is a good ground for questioning the propriety of a prosecution it is not a ground for questioning the legality of a conviction QUEEN v ACHEET LALL 17 W R. Cr 46

24. ———— *Irregularity in criminal proceedings—Prejudging defence*—Upon the single charge of wrongful confinement preferred under s 342 of the Penal Code before a Joint Magistrate the prisoners raised a defence justifying the confinement on the ground that the persons confined had been caught by them under circumstances which led to the belief that they had committed house breaking by night with intent to commit theft. Enquiry having been made the Magistrate committed the prisoner not only for wrongful confinement, but disbelieving the defence for fabricating false evidence and for bringing a false charge The prisoners were tried by the Sessions Judge and found guilty on all three charges at one and the same time *Held* that the conviction on the last two charges was illegal as by adding the additional charges the Magistrate had really prejudged the defence to the first charge Where the Court without having first heard the evidence for the prosecution examines the witnesses for the defence he commits an irregularity but if the prisoners are not materially prejudiced thereby the conviction will not be set aside IN THE MATTER OF TURIBULLAH 4 C L R. 338

COOCH BEHAR.

———— Court of the Dewan Ahilkar of—

See CIVIL PROCEDURE CODE 1882 s 20 [4 B L R. A C. 131 13 W R. 154

CO PARCENERS

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP
[I Mad. 419
I L R. 3 Bom. 151
I. L R., 4 Bom 37
I. L R., 3 Mad. 145
I L R. 7 Mad. 453
I. L R. 18 Calc. 151
L. R. 17 I. A. 128

See CASES UNDER HINDU LAW—JOINT FAMILY

CO PARCENERS—*concluded*

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY
[I. L. R. 5 Bom. 48
8 Mad., 6 13 note

See CASES UNDER MAHOMEDAN LAW—PRE EMPTION—RIGHT OF PRE EMPTION—CO SHARERS

——— Consent of—

See PARTITION—MODE OF EFFECTING PARTITION I. L. R. 3 Calc 514
[5 W R. 208

CO PRISONER.

——— Evidence of—

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY

COPIES OF DOCUMENTS

See COURT FEES ACT 1870 SCH I ART 8
[I L R. 11 Bom. 526

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS ETC

See STAMP ACT 1862 s 14
[4 Mad. Ap 58

See STAMP ACT 1879 SCH I ART 22
[I. L. R 15 Bom 687
I. L R 19 All. 293

COPY OF COPY OF DOCUMENT

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS
[7 B L R. 621
3 B L R. A C 54
15 W R 102
6 W R 80
5 Bom. A C 48

COPY OF DECREE OR JUDGMENT

———Deduction of time necessary for obtaining—

See CASES UNDER LIMITATION ACT 1877 s 12 (1871 s 13)

——— Necessity for—

See LIMITATION ACT 18 7 ART 177
[I L R. 1 All 644
I L R. 15 Mad. 169
I. L. R 19 Bom 301

See MADRAS RENT RECOVERY ACT s 69
[8 Mad 44
I. L. R. 20 Mad. 476

See REVIEW—FORM OF AND PROCEDURE ON APPLICATION
[I L R 17 All 213

COPYRIGHT

1 ——— Infringement of copyright—*Evidence* —Where there is no original matter in the work the strongest evidence of servile imitation and piracy must be afforded before an action for an infringement of copyright can be successful ROUSSAO *v* THACKER & CO 1 Hyde 9

2. ——— *Annotated edition of an ancient religious work—Originality—Colourable imitation—Injunction—Damages—Account—Act XX of 1847 s 12* —The plaintiff a bookseller in 1884 brought out a new and annotated edition of a certain well known Sanskrit work on religious observances entitled Vrtraj having for that purpose obtained the assistance of Pundits who re cast and re arranged the work introduced various passages from other old Sanskrit books on the same subject and added foot notes In 1885 the plaintiff registered the copyright of this work In 1886 the defendants printed and published an edition of the same work the text of which was identical with that of the plaintiff's work which moreover contained the same additional passages and the same foot notes at the same places with many slight differences *Held* that the plaintiff's work was such a new arrangement of old matter as to be an original work and entitled to protection and that as the defendants had not gone to independent sources for their material but had pirated the plaintiff s work they must be restrained by injunction *Held* also that an account of the net profits made by the defendants by the sale of the plaintiff s book could be ordered notwithstanding the provisions of s 12 of Act XX of 1847 as the result of the account would be to give to the plaintiff what he could have claimed as damages under that section GANGAVISHNU SHRIKISONDAS *v* MORESHVA BAPUJI HEGISHTE I L R. 13 Bom. 358

3 ——— *Translation—Act XX of 1847—Act XXV of 1867* —A person who translates a book into another language is not thereby guilty of an infringement of copyright ABDUR RUHMAN *v* MAHOMED SHIRAZI
[I. L R. 14 Bom. 586

4. ——— *Translations—Jurisdiction—Cause of action—Stat 5 § 6 Vic c 45—Act XX of 1847 s 8—Order for books sent from Bombay to Delhi—Registration of copyright—Notice of disputed proprietorship*.— The plaintiffs were publishers in London The defendant carried on a printing and publishing business at Delhi Between the years 1869 and 1891 the defendant translated certain English works (*e g* Todhunter's Mensuration Barnard Smith s Algebra, etc) into the Urdu language for the use of native students and sold and distributed copies of such translations in various parts of India. The plaintiffs alleged that they were the proprietors of the copyright in the said books and they sued in Bombay for a declaration of their ownership and that the said books printed and sold by the defendant were an infringement of the said copyright and for an injunction etc It appeared that in June 1891 the plaintiffs agent who was then in India, instructed the Bombay firm of *S* to order copies of the said translations from the defendant A letter was

CONVICTION—*continued*

When more than one offence is proved it is not proper to convict only of one and to acquit of the others although the offences may be cognate REG v MURAR TRIKAM 5 Bom, Cr 3

15 ——— Conviction on evidence taken before another Magistrate—*Illegal conviction* —When a prisoner is convicted by one Magistrate upon evidence previously recorded before another the defect cannot be cured by the evidence being again recorded and the conviction confirmed QUEEN v POORNO CHUNDER DOSS [8 W R. Cr, 59

And *see* QUEEN v GOPI NOSHYO [21 W R Cr 47

16 ——— Power to quash conviction.—A lower Court has no power to quash its own conviction though illegal IN RE GUNOWREE BHOOPA [6 W R. Cr 70

17 ——— *Valid conviction in case improperly originated* —*Per* MACLEAN J — The High Court may without reference to the local Government set aside a conviction on a trial improperly originated IN THE MATTER OF THE PETITION OF NOBIN CHUNDRA BANIKYIA. EMPRESS v NOBIN CHUNDRA BANIKYIA [I L R 8 Calc 560 10 C L R. 369

18 ——— Ground for setting aside conviction—*Police Act V of 1861 s 29—Offence under Penal Code* —That the facts proved would also constitute an offence under a section of the Penal Code seems to be no reason for quashing a conviction under the special law Act V of 1861 QUEEN v KASSIMUDDIN 8 W R Cr 55

19 ——— *Subsequent evidence* —A valid conviction arrived at by a Magistrate who had jurisdiction in the matter cannot be set aside simply because subsequent to the trial and conviction, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted QUEEN v PAMDOYAL MAHARA 21 W R Cr 47

20 ——— *Conviction under sanction obtained after trial—Want of jurisdiction* —A conviction having been set aside as arrived at without jurisdiction no sanction to the prosecution having been obtained from the Court against which the offence was committed formal sanction was obtained the accused re-arrested and without being called upon to plead ordered to undergo the sentence previously passed *Held* that the whole of these proceedings were illegal IN THE MATTER OF THE PETITION OF EDOO KHANSAMAH [24 W R. Cr 64

21. ——— *Irregular proceedings of Magistrate—Illegal conviction under Stamp Act* —Conviction and sentence for an offence under the Stamp Act (XXXVI of 1860 s 26) reversed on reference by the Sessions Judge as the proceedings of the Magistrate who tried the case were highly irregular REG v DEVSANVAT BIN SHIVRAM SANVAT [3 Bom., Cr., 34

CONVICTION—*concluded*

22. ——— *Irregular proceedings by Magistrate* —A conviction and sentence for criminal breach of trust as a public servant reversed owing to irregularities in the preliminary enquiries and irregular procedure as to the examination of the prisoner in the Court of Session. REG v DIAZ 3 Bom Cr 51

23 ——— *Dispute between civil suitors—Improper prosecution—Illegal conviction* —As a general rule one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit or if he does so the hearing of the criminal case ought to be postponed until the suit is concluded But although that is a good ground for questioning the propriety of a prosecution it is not a ground for questioning the legality of a conviction QUEEN v ACHEET LALL 17 W R Cr 46

24 ——— *Irregularity in criminal proceedings—Prejudging defence* —Upon the single charge of wrongful confinement preferred under s 342 of the Penal Code before a Joint Magistrate the prisoners raised a defence justifying the confinement on the ground that the persons confined had been caught by them under circumstances which led to the belief that they had committed house breaking by night with intent to commit theft. Enquiry having been made the Magistrate committed the prisoner not only for wrongful confinement, but disbelieving the defence for fabricating false evidence and for bringing a false charge The prisoners were tried by the Sessions Judge and found guilty on all three charges at one and the same time *Held* that the conviction on the last two charges was illegal as by adding the additional charges the Magistrate had really prejudged the defence to the first charge Where the Court without having first heard the evidence for the prosecution examines the witnesses for the defence he commits an irregularity but if the prisoners are not materially prejudiced thereby the conviction will not be set aside IN THE MATTER OF TURIBULLAH 4 C L R. 338

COOCH BEHAR.

——— Court of the Dewan Ahilkar of—

See CIVIL PROCEDURE CODE 1882 s 902 [4 B L R. A C 134 13 W R. 154

CO PARCENERS

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP

[1 Mad. 412
I L R. 3 Bom., 151
I L R., 4 Bom 37
I L R. 3 Mad. 145
I L R. 7 Mad. 459
I L R. 18 Calc. 151
L R. 17 I A. 128

See CASES UNDER HINDU LAW—JOINT FAMILY

CO-PARCENERS—*concluded*

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY
[I. L. R. 5 Bom. 48
8 Mad 6 13 note

See CASES UNDER MAHOMEDAN LAW—PRE EMPTION —RIGHT OF PRE EMPTION—CO SHARERS

———— Consent of—

See PARTITION—MODE OF EFFECTING PARTITION I. L. R., 3 Calc 514
[5 W R. 208

CO PRISONER.

———— Evidence of—

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY

COPIES OF DOCUMENTS

See COURT FEES ACT 1870 SCH I ART 8
[I L R. 11 Bom. 526

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS ETC

See STAMP ACT 1862 s 14
[4 Mad. Ap 58

See STAMP ACT 1879 SCH I ART 22
[I. L. R. 15 Bom 687
I. L R 19 All. 293

COPY OF COPY OF DOCUMENT

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS
[7 B L R. 621
3 B L R. A C 54
15 W R. 102
6 W R 80
5 Bom. A C 48

COPY OF DECREE OR JUDGMENT

————Deduction of time necessary for obtaining—

See CASES UNDER LIMITATION ACT 1877 s 12 (1871 s 13)

———— Necessity for—

See LIMITATION ACT 1877 ART 177
[I. L R. I All 644
I L R. 15 Mad. 169
I. L R 10 Bom 301

See MADRAS RENT RECOVERY ACT s 69
[6 Mad 44
I. L. R. 20 Mad. 476

See REVIEW—FORM OF AND PROCEDURE ON APPLICATION
[I L R 17 All 21

COPYRIGHT

1 ———— Infringement of copyright—*Evidence* —Where there is no original matter in the work the strongest evidence of servile imitation and piracy must be afforded before an action for an infringement of copyright can be successful Roussac v THACKER & Co 1 Hyde 9

2. ———————— *Annotated edition of an ancient religious work—Originality—Colourable imitation—Injunction—Damages—Account—Act VI of 1847 s 12* —The plaintiff a bookseller in 1884 brought out a new and annotated edition of a certain well known Sanskrit work on religious observances entitled Vrtraj having for that purpose obtained the assistance of Pundits who re-cast and re-arranged the work introduced various passages from other old Sanskrit books on the same subject and added foot notes In 1885 the plaintiff registered the copyright of this work In 1886 the defendants printed and published an edition of the same work the text of which was identical with that of the plaintiff's work which moreover contained the same additional passages and the same foot notes at the same places with many slight differences *Held* that the plaintiff's work was such a new arrangement of old matter as to be an original work and entitled to protection and that as the defendants had not gone to independent sources for their material but had pirated the plaintiff s work they must be restrained by injunction *Held* also that an account of the net profits made by the defendants by the sale of the plaintiff s book could be ordered notwithstanding the provisions of s 12 of Act XX of 1847 as the result of the account would be to give to the plaintiff what he could have claimed as damages under that section GANGAVISHNU SHRIKISONDAS v MORESHVA BAPUJI HEGISHTE I L R. 13 Bom., 358

3 ———————— *Translation—Act XX of 1847—Act XXV of 1867* —A person who translates a book into another language is not thereby guilty of an infringement of copyright ABDUR RUHMAN v MAHOMED SHIRAZI
[I. L. R. 14 Bom. 586

4. ———————— *Translations—Jurisdiction—Cause of action—Stat 5 & 6 Vic c 45—Act XX of 1847 s 8—Order for books sent from Bombay to Delhi—Registration of copyright—Notice of disputed proprietorship* —The plaintiffs were publishers in London The defendant carried on a printing and publishing business at Delhi Between the years 1889 and 1891 the defendant translated certain English works (*e g* Todhunter's Mensuration Barnard Smith s Algebra etc) into the Urdu language for the use of native students and sold and distributed copies of such transl ns in various parts of India The plaintiffs alle that they were the proprietors of the copy ri the said books and they sued in It mbay for r ration of their ownership and that the said printed and sold by the defendant were an ment of the said copyright and for an in n etc It appeared that in June 1894 the iffs agent who was then in India instructed mbay firm of S to order copies of the said ations from the defendant A letter was

COPYRIGHT—*continued*

accordingly sent by *S* to the defendant at Delhi requesting him to send the books to Bombay by value payable post which the defendant did and he received payment for them from the post office at Delhi The defendant pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction and he denied that he had infringed the plaintiffs copy right *Held* that no part of the plaintiffs cause of action arose in Bombay and that the High Court of Bombay had no jurisdiction The act of *S* in paying for and *receiving the goods formed no part of the* defendant s offence which was completed when he posted the books at Delhi The English Copyright Act (Stat 5 & 6 Vic c 45) extends to all parts of India. Having regard to s 15 of that Act it is *clear that a person who infringes copyright must be* sued if he offends in India not only within the limits of that country but also in that part of India in which the offence has been committed See also s 13 of the Indian Act XX of 1847 *Held* also *that translations are not copies and that the defen*dant by translating the books had not infringed the plaintiffs copyright The plaintiffs had registered themselves as the proprietors of the copyright of the books in question both in London and in India The defendant had not given notice of *his* intention to dispute the plaintiffs copyright as required by s 8 of Act XX of 1847 *Held* that the plaintiffs copy right in the book had been established. MACMILLAN v SHAMSUL ULAMA M ZAKA

[I. L. R. 19 Bom. 557

5 ———————— *Form of registration— Selection of poems Copyright in—Infringement of copyright by publication of copy before registration—Assignments of copyright previous to registration—Limitation of suits for infringement of copyright—Stat 5 & 6 Vic c 45 —The plaintiffs the partners of a firm M & Co* were the proprietors registered under 5 & 6 Vic c 45 of the copyright of a selection of songs and poems composed by numerous well known authors which was prepared by one *P* and originally published in 1861 Since the original publication the book ran through several editions one of which was published in the year 188– The book was registered under the provisions of the above statute on the 8th February 1889 the name of both the publisher and proprietor being entered in the register as *M & Co* the firm s address being given and the date of the first publication was entered as the 19th July 1861 *The poems contained in the book were* arranged by *P* not in chronological order of their production but in gradation of feeling and subject and at the end of the book were given some n t s critical and explanatory On the 15th January 18 9 the defendant published at Calcutta a book containing the same selection of poems and songs as was contained in *P*'s book The arrangement however of the defendant s book differ d from *P* s in that the poems of each author w ple l together and in order of their composition I f the poems the defendant printed forty l i whi h were contained in the work by the original a th r but which were omitted by *P* and in another poem one line In many places there were differences of reading in the two books and in more of punctuation In the defendant s book some of the titles to the poems which had been assigned thereto by *P* and not by the original authors appeared as well as good many of *P* s notes some with acknowledgment and some without With each poem the defendant gave a mass of notes critical and explanatory and he also prefixed to the poems of each author a biographical notice *The suit* was instituted on the 27th February 1890 and the plaintiffs complained that the publication of defendant s book constituted a breach of their copyright and prayed for the usual *relief by* way of injunction and damages They contended that, *although the copyright in the* works of the original authors had long lapsed, they were entitled to the copyright in the selection made by *P* It was contended on behalf of the defendant that there could be no copyright in such a selection; that if any existed the defendant s book did not infringe it that the plaintiffs book being registered as first published in 1861 and the infringement charged being in respect of the *edition of* 188– and there being no evidence to show that the same selection was contained in the latter as in the former edition the plaintiffs were not entitled to the relief prayed for that the author of the plaintiffs book being *P* in whom *the copyright* would *primâ facie* be and the property being registered as in the plaintiffs firm the registry was bad as the assignment of the copyright to the plaintiffs was not shown that the registration was also bad as the entry *merely contained* the name and address of the plaintiffs firm and not the individual names and addresses of the partners of the firm; that the publication of the defendant s book having been before the date of registration the suit would not lie and *that the suit* was barred by the special limitation provided by s 26 of the stat 5 & 6 Vic c 45 *Held* that such a selection could be the subject matter of copyright the true principle applicable to such cases being that one person is not at liberty to use or avail himself of the labour which another has been at for the purpose of producing his work and so take away the result of the other's labour or in other words his property *Held* further that the defendant s book constituted a piracy of the plaintiffs book and had infringed their copyright and that they were entitled to the relief *they sought* *Held* also that in the absence of any evidence to the contrary it was reasonable to assume that successive issues of a book of this kind und r the same name are substantially the same book th at it was unnecessary that the r gistry should show an assignment of the copyright by *P* to the plaintiffs; *Weldon v Dicks L R 10 Ch D 247* followed; that the registration was not bad by reason of the names and addresses of the partners of the firm not being given: *Low v Routledge 33 L J Ch 717* and *Weldon v Dicks L R 10 Ch D 247* followed; that the title to copyright is complete before registration which is only a condition precedent to the right to sue and that the plaintiffs had not therefore lost their right of action by reason of the defendant s book bein

COPYRIGHT—*concluded*

published before theirs was registered *Tuck* v *Priester L R* 19 *Q B D* 629 and *Gourband* v *Wallace* 25 *W R* 604 *All W N* 1877 *p* 130 followed and that assuming that the rule of limitation provided by s 26 of the Statute was applicable in this country the suit was not barred by limitation *Hogg* v *Scott L R*, 18 *Eq* 444 followed. MACMILLAN v SURESH CHUNDER DEB
[I. L R 17 Calc 951

6 ——— *Copyright of ornamental design—5 & 6 Vic c 100—24 & 25 Vic, c 73* —A registered proprietor of the copyright of an ornamental design within the United Kingdom under 5 & 6 Vic c 100 (amended by 6 & 7 Vic c 65 13 & 14 Vic c. 104 and 21 & 22 Vic. c 70) cannot sustain an action against any person who applies such design to articles or who sells any articles to which such design has been applied in British Burma. BAKER v SUTHERLAND
[8 B L R. 298 16 W R. 90

COPYRIGHT ACT (XX OF 1847).

See LIMITATION ACT 1877 ART 40 (1871) CL 11 I. L. R 3 Calc 17

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—COPYRIGHT
[I. L. R. 6 Calc 499

——— 1876

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—COPYRIGHT
[I. L. R. 6 Calc 499

CORONER

——— Power of Coroner of Calcutta—*Power to commit to prison* —The Coroner of Calcutta has no power to commit any person to prison pending an inquest In cases where he has authority to commit a commitment to the officers deputed to receive prisoners by the statute in force is valid and it is not necessary that the commitment be directed to the Sheriff IN RE TAYLOR 2 Ind. Jur N S 101

CORONER S ACT (IV OF 1871)

——— s 25

See PRESIDENCY MAGISTRATE
[I L R. 16 Bom 159

CORONER S INQUEST

See CRIMINAL PROCEDURE CODES s 176 PARA 1 (1872 s 135)
[I L R 3 Calc 742

CORPORATION

——— Interference of Court with—

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 42 I L. R 19 Bom 212

——— Principal Officer of—

See PLAINT—VERIFICATION AND SIGNATURE I. L. R. 21 Calc 60
[L R 20 I. A 139

CORPORATION—*concluded*

See WRITTEN STATEMENT
[I. L. R. 22 Calc. 208

——— restraining libel in resolution of—

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS
[I L. R. 1 Bom 132

——— Suit against—

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS
[2 B L R S N 6
15 W R. 534
I. L. R., 14 Bom 286

——— Suit by—

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS
[I. L R. 12 Calc. 41
I L. R. 20 All. 167

CORPUS DELICTI

See MURDER 11 W R. Cr 20
[I L R 3 All. 383
I. L. R., 11 Calc 635

See THEFT 7 Mad. Ap 10

CO SHARERS

See COSTS—SPECIAL CASES—CO SHARERS

See CASES UNDER DECREE — FORM OF DECREE—POSSESSION

See CASES UNDER HINDU LAW—JOINT FAMILY

See CASES UNDER JURISDICTION OF REVENUE COURT — N W PROVINCES RENT AND REVENUE CASES

See CASES UNDER MAHOMEDAN LAW—PRE EMPTION—RIGHT OF PRE EMPTION —CO-SHARERS

See PARTITION—RIGHT TO PARTITION—GENERAL CASES 3 B L R. Ap 120
[I. L. R., 20 Calc 379
I. L. R., 21 Bom 458

CO SHARERS—*continued*

1 GENERAL RIGHTS IN JOINT PROPERTY —*continued*

155 and in *Ram Dutt Singh* v *Horakh Narain Singh* I L R, 6 Calc 549

See also HURRI MOHUN BAGCHI v GRISH CHUNDER BANDOPADHYA 1 C L R, 152

DEO NUNDUN AGHA v DESPUTTY SINGH [8 C L R. 210 note

18 ———— *Payment of arrears of Government Revenue by one co sharer Effect of—Charge—Lien—Act XII of 1881 (N W P Rent Act) ss 93 177 178 181—N W P Land Revenue Act (XIX of 1873) ss 146 148—Jurisdiction of Civil Court—Salvage Maritime Civil Principle of—Act IV of 1882 (Transfer of Property Act) s 100*—A co sharer in a mehal who was also the lumberdar paid arrears of Government revenue for the years 1882 1883 and part of 1884 in respect of certain lands in the mehal which were the exclusive property of another co sharer These lands were subject to simple mortgages executed in 1873 upon which decrees were obtained in 1884 and had been sold in execution of these decrees in 1887 The co sharer lumberdar having obtained a decree in a Court of revenue against the mortgagors under s 93 (*g*) of the N W P Rent Act (XII of 1881) for recovery of the arrears of revenue paid by him sought to execute that decree under s 177 of the Act by sale of the lands which had been sold in 1887 and thereupon the auction purchaser at that sale objected under s 178 and the objection having been overruled brought a suit as authorized by s. 181 in a Civil Court to establish his title to the lands and to have them protected from sale in execution of the Court of Revenue decree This suit was decreed and the decree not having been appealed against became final Subsequently the co sharer lumberdar brought a suit in the Civil Court in which he claimed a decree for enforcement of lien by sale of the land for the amount of the Court of Revenue decree and for a declaration that the said lien which is on account of Government be declared preferential to the mortgages of 1873 the decrees thereon of 1884 and the sales under those decrees of 1887 He claimed this lien not only in respect of the arrears of Government revenue paid but also in respect of future interest *Held* by the Full Bench (MAHMOOD J dissenting)—(i) That the Legislature had not given or recognized in the North Western Provinces any such right of charge or lien in favour of a person paying Government revenue as was claimed here or provided any means by which such a charge could be enforced and that any such charge would be at variance with the policy and intention of the Government as disclosed in its legislative enactments. (ii) That no Civil Court had jurisdiction to entertain the suit and no Court of revenue had jurisdiction to make a decree for sale of the immoveable property or a decree in execution of which the immoveable property could be sold to the prejudice of incumbrances to which it was subject (iii) That it was not the intention of the Legislature that a Civil Court should have jurisdiction to invest by declaration or otherwise a decree of a Court of revenue with the attributes of a decree for sale such as could be passed by a Civil Court in a suit for sale under the Transfer of Property Act 1882 (iv) That there is no general principle of equity to the effect that whoever having an interest in an estate makes a payment in order to save the estate obtains a charge on the estate and therefore in the absence of a statutory enactment a co sharer who paid the whole revenue and thus saved the estate does not by reason of such payment acquire a charge on the share of his defaulting co-sharer *Kinu Ram Das* v *Mozaffer Hosain Shaha* I L R 14 Calc 809 approved. (v) That the principle of Maritime Civil Salvage had no application to the case and that no analogy could exist between the case of a salvor in Maritime Civil Salvage and the case of a co sharer in a mehal to whom s. 146 or s 148 of the North Western Provinces Land Revenue Act (XIX of 1873) applied. *Leslie* v *French* L R 23 Ch D 552 and *Falcke* v *Scottish Imperial Insurance Company* L R 34 Ch D 34 referred to SETH CHITOR MAL v SHIB LAL [I. L. R, 14 All 273

19 ———— Payment of revenue by one co sharer—*Payment to stay sale*—Where a co sharer of a portion of a talukh is compelled to pay a quota of the Government revenue due on account of a share not his own in order to save the portion of the talukh from being sold he is entitled to a charge upon such share for the money so paid and such share should be charged even when it has passed subsequently into the hands of a third party *Enayet Hossein* v *Muddun Monee Shahoon* 14 B L R 155 S C 22 W R. 411 followed. NOBIN CHUNDER ROY v RUP LALL DAS [I. L. R 9 Calc. 377

20 ———— *Payment of arrears of revenue by one co-sharer Effect of—Charge—Act XI of 1859 s 9 Construction of—Lien—Held* (MITTER and NORRIS JJ dissenting) —that there is no general rule of equity to the effect that whoever having an interest in an estate makes a payment in order to save the estate obtains a charge on the estate and therefore in the absence of a statutory enactment, a co-sharer who has paid the whole revenue and thus saved the estate does not by reason of such payment acquire a charge on the share of his defaulting co sharer *Enayet Hossein* v *Muddun Monee Shahoon* 14 B L R 155 overruled. *Nogendro Chunder Ghose* v *Kamini Dasi* 11 *Moore's I A.* 258 explained and distinguished. *Kristo Mohini Das* v *Kal prosono Ghose* I L R 8 Calc 402 approved *In re Leslie* L R. 23 Ch D 552 relied on KINU RAM DAS v MOZAFFER HOSAIN SHAHA. KINU RAM DAS v HAJJATULLA SHAHA. KINU RAM DAS v KAMARUDDIN SHAHA [I. L. R. 14 Calc. 809

CO-SHARERS—*continued*

1 GENERAL RIGHTS IN JOINT PROPERTY —*continued*

See KHUB LALL SHAHU *v* PUDMANUND SINGH I. L. R. 15 Calc 542

21. ——— *Bengal Tenancy Act (VIII of 1885) s 174—Payment of decretal amount by one co sharer to set aside sale for arrears of rent Effect of—Lien or charge on property*—Where the plaintiffs and defendants were co-tenants of certain jotes which were sold by auction in execution of a decree for rent, and the plaintiffs by paying the decretal amount and auction purchaser's fees under s. 174 Bengal Tenancy Act had the sale set aside —*Held* that the plaintiffs did not by such payment acquire a charge on the shares of their defaulting co-tenants. *Kanu Ram Das v Mozaffer Hosain Shaha I L R 14 Calc 809* followed. GOPI NATH BAGDI *v* ISHUR CHUNDRA BAGDI I. L. R 22 Calc 800

22. ——— *Limitation Act 1877 arts 99 and 132—Suit to recover assessment paid by a co owner of property from other co owners*—In 1868 the uncle of the plaintiff brought a suit (No 176 of 1868) against five members of the undivided family to which the defendants in the present suit belonged and obtained a money decree In execution of that decree he attached and sold certain land in which all the members of the defendants' family were interested At the sale he purchased the land himself and was put into possession In 1873 he began to pay the assessment upon the whole property Subsequent litigation took place between him and the defendants family pending which the plaintiff separated from his uncle and obtained the property in question as his share The result of that litigation was a decree by the High Court on the 23rd September 1879 declaring that the plaintiff s uncle was only entitled to the interest of the five members of the family who had been defendants in his suit (No 176 of 1868) in execution of the decree in which the property had been sold The plaintiff brought the present suit in 1883 against the other members of the family to recover their proportionate share of the assessment for the years 1875—1878 during which period he had paid the whole assessment He prayed for a sale of their interest in the land. Both the lower Courts held that the payment of assessment did not create a charge on the property and that the plaintiff having omitted to sue within three years from the date of the payment made by him the present suit was barred. On appeal by the plaintiff to the High Court —*Held* confirming the lower Court s decree that the suit was barred. The plaintiff paid the assessment as full owner of the property and it was entirely by his own action that the defendants had been excluded from the property and did not pay their quotas of the assessment Under those circumstances the payments could be regarded as salvage payments so as to make them a charge according to equity justice and good conscience upon the shares of the other co-owners ACHUT RAMCHANDRA PAL *v* HARI KAMTI I. L. R., 11 Bom. 313

CO SHARERS—*continued*

1 GENERAL RIGHTS IN JOINT PROPERTY —*continued*

23 ——— *Joint ownership—Use of joint property as between co-owners—Rights amongst themselves of co-sharers of joint property where there is a profitable use by one of them without others being excluded—Ferry worked by one of the co owners of land*—Property does not cease to be joint merely because it is used so as to produce more profit to one of the joint owners who has incurred expenditure for that purpose than to the others where the latter are not excluded. Joint property being used consistently with the continuance of the joint ownership and possession without exclusion of the co sharers who do not join in the work there is no encroachment on the rights of any of them as regards common enjoyment so as to give ground for a suit The defendant a co sharer in village lands without claiming to restrain competition acted upon the right that a ferry may be established in India by a person on his own property taking toll from strangers and that he may acquire such a right by grant or user over the property of others whether a co sharer with them or not He used property that he owned jointly with the plaintiffs his co-sharers excluding none of them As no grant was ever made to him he could only have set up an exclusive right by showing that he had either dispossessed them or had had adverse possession for twelve years or that he had used the ferry for twelve years as of right The question however of any exclusive right in the defendant had not arisen For the parties being co owners the defendant had made use of the joint property in a way quite consistent with the continuance of the joint ownership and joint possession *Watson & Co v Ramchand Dutt I L R 18 Calc 10 L R 17 I A 110* distinguished in regard to the exclusion of co sharers which there took place and referred to as to caution to be exercised by Courts in interfering with the enjoyment of joint estates as between their co owners LACHMESWAR SINGH *v* MANOWAR HOSSAIN [I L R 19 Calc 253 L R 19 I A 48

24 ——— *Joint possession Suit for—Effect of purchase of a right of occupancy not transferable by custom by a co sharer landlord without the consent of the other co sharers—Abandonment—Right to partition*—In a suit to recover joint possession of an occupancy holding in respect of his share by a co-sharer landlord on the ground that the defendant acquired no title by the purchase of the said holding as it was not transferable by custom and that there was an abandonment of the holding by the former tenant the defence (*inter alia*) was that the plaintiff was not entitled to joint possession and that he could not get any relief except by bringing a suit for partition inasmuch as they (the plaintiff and the defendants) were joint proprietors *Held* that the plaintiff was entitled to the relief claimed and that the claim for joint possession without partition was maintainable *Watson & Co v Ram Chund Dutt I*

CO SHARERS—*continued*

1 GENERAL RIGHTS IN JOINT PROPERTY—*concluded*

L R 18 Calc 10 L R 17 I A 110 and *Lachmesuar Singh v Manowar Hossain I L R 19 Calc 253 L R 19 I A 48* distinguished DILDAR SARDAR *v* HOSEIN ALI BEPARI

[I L R 26 Calc 553

25 ———— *Right to joint possession—Evidence—Costs* —One of two co sharers by ancestral title in the under proprietary right in certain villages obtained in 1870 decrees against the talukhdar for sub settlement and getting possession had his name entered in the khewat The other co-sharer remained entitled to claim that this possession was held partly for him The present suit was brought upon two agreements purporting to have been made in 1870 between the two co sharers while proceedings to obtain the above decrees were pending to the effect that whereas both had claims against the talukhdar, one only was to sue him the other paying half of the costs and being entitled to receive half of what might be decreed The Judicial Committee upon the evidence concluded that the Appellate Court attributing too much to certain omissions and acts on the plaintiff's part which were more or less explained had erred in reversing the decree of the first Court which maintained the agreements depriving the plaintiff of his costs in that Court only MUHAMMAD YUSUF *v* MUHAMMAD HUSAIN

[I. L R 16 Calc 62

26 ———— *Fractional share holders in joint undivided estate—Lien on tenure for share of rent—Sale of tenure in satisfaction of decree* —The owner of a fractional share in a joint undivided estate has no lien on the tenure itself for his share of the rent although such share is collected separately and therefore cannot cause the tenure to be sold in satisfaction of a decree for his share of the rent BHADA NATH ROY CHOWDHRY *v* DURGA PROSUNNO GHOSE I L R 16 Calc. 326

2 ENJOYMENT OF JOINT PROPERTY

(*a*) CULTIVATION

27 ———— **Altering property without consent of co sharers**—*Growing indigo* —Several persons jointly held lands which were not divided by metes and bounds but in specified shares One of the shareholders leased out his share or interest in the lands The lessee sowed indigo on the joint lands The other shareholders brought a suit to restrain the lessee of their co sharer from growing indigo on the land *Held* that a co-sharer cannot use ijmali lands so as to alter the condition of the property as regards the other shareholders without their consent that indigo as a crop being valueless for purposes of distraint the lessee must be restrained from growing it without the consent of all the proprietors CHOWDHRY *v* BHEKDHARI SINGH

[8 B L R Ap 45 16 W R 41

HUNOOMAN SINGH *v* CHOWDRIE 23 W R 428 where the lease was found consent had been given.

CO SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY—*continued*

28 ———— **Cultivation by one co-sharer**—*Right to profits—Acquiescence* —Where one of two co owners of land who are not joint cultivates the land with the acquiescence of the other who stands by and offers no objection the latter cannot claim a share of the profits but only his proper share of rent RAJKISHEN MOOKERJEE *v* PEAREE MOHUN MOOKERJEE 20 W R., 343

29 ———— *Cultivation of indigo by one co-sharer without consent of others—Injunction as between co sharers—Practice of the English Courts in granting injunction Applicability of* —W while in possession of an entire mouzah as ijaradar had under an arrangement with the proprietors built factories and cultivated indigo by reclaiming a quantity of waste land. On the expiration of his lease W who still held a portion of the mouzah in ijara from a 2 annas co-sharer continued to cultivate indigo on the khas lands as before and, disregarding the opposition of the 14-anna co-sharers claimed an exclusive title to do so The 14-anna co-sharers thereupon brought a suit against W for ijmali possession of the khas lands and prayed among other things for an injunction prohibiting the defendant from sowing indigo upon the ijmali lands without the plaintiffs consent and also for a general injunction to prohibit the defendant from throwing any obstacles in the way of plaintiffs holding ijmali possession of the lands The Court below granted an injunction prohibiting the defendant from growing indigo on the khas lands without the consent of the plaintiffs *Held* that the plaintiffs were entitled to an injunction but having regard to the circumstances under which the defendant cultivated the lands it was necessary to vary the injunction granted by the Court below by making it an injunction restraining the defendant from excluding by any means the plaintiffs from their enjoyment of the ijmali possession of the lands LAM CHAND DUTT *v* WATSON & CO

[I L. R. 15 Calc. 214

But *held* on appeal to the Privy Council (reversing the above decision) that the resistance being made by the co sharer in occupation simply with the object of protecting himself in the profitable use of the land in good husbandry and not in denial of the other's title such resistance was no ground for proceedings on the part of the other to obtain a decree for joint possession or for damages; nor would granting an injunction be the proper remedy As the Courts in Bengal in cases where no specific rule exists, are to act according to justice equity and good conscience so on its being found that where land was held in common between the parties one of them was in the act of cultivating a part of the land which was not actually used by the other it would not have been consistent with this rule to restrain the former from proceeding with his proper cultivation; but merely compensation at a proper rate in respect of the exclusive use by and benefit to the one who, though possessing in common was carrying on cultivation for

CO-SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY—*continued*

himself not unsuitable in itself was awarded between the parties. WATSON & CO *v* RAMCHAND DUTT [I L R 18 Calc 10 L R, 17 I A 110

30 ——————— *Willingness to pay rent*—One shareholder alone in a joint estate or his assignee cannot claim to cultivate any portion of the property which is not his zerait and without the consent of the other sharers merely on the ground that he is willing to pay a reasonable rent for it NUNDUN LALL *v* LLOYD 22 W R 74

31.——————Lease for cultivation given by one co-sharer—*Indigo cultivation—Landlord and tenant—Joint property—Estoppel*—*A* and *B* were joint owners of a certain piece of land In the year 1874, *A* leased his share to the defendant for a term ending in October 1880 for the purpose of growing indigo At the same time *B* leased his share to the defendant for the same purpose for a term ending in October 1881 *A* and *B* sold their shares to the plaintiff in the year 1879 In January 1881 plaintiff sued to prevent the defendant from growing indigo on the land and for khas possession on the ground that the lease of *A*'s share having expired the defendant was not entitled to retain the land for the purpose of growing indigo under the lease given by *B* *Held* that the plaintiff having by his own act become the owner of both shares he could not as owner of one share exercise a right which he was precluded from exercising as owner of the other share and that the suit should have been dismissed. HOLLOWAY *v* MUDDUN MOHUN LALL

[I L R 8 Calc 446 10 C L R 381

32.——————Waste lands common to all sharers—*Enjoyment and use by one co sharer*—An individual sharer cannot without the consent express or implied of other co sharers make use of waste land common to the whole village in such a way as to exclude permanently other co sharers from all use or enjoyment of it The law of joint property entitles another co sharer to interfere and obtain restoration of the land to its former condition DOULAT RAM *v* TARA 1 Agra 12

DIRGPAL RAI *v* BHONDO RAI 2 Agra 341

33.——————Co sharer as tenant cultivating land separately—Proprietors are not entitled to oust their co proprietors from lands which the latter have as tenants brought into cultivation PRAN KISHORE GOSSAMI *v* DINOBUNDHOO CHATTERJEE 9 W R 291

34 ——————Exclusive possession and cultivation of land by one co-sharer—*Restraining cultivation of land—Damages*—Where a suit was brought to recover possession of certain lands in which plaintiff and defendant were co sharers and to secure damages for the exclusive possession which defendant had enjoyed for some years and to obtain an injunction against defendant to prevent him from cultivating indigo on the land in suit without the consent of the plaintiff—*Held* that though a suit for partition is the best means of settling difficulties between co sharers who will not agree every co sharer in an estate is entitled to joint possession with every other co sharer and has a right to prevent any one not having a right of occupancy from cultivating any portion of the land contrary to his or their wishes and is also entitled to damages for any exclusive possession which can be shown to have been enjoyed *Held* also that it would be an ineffectual way of enforcing plaintiff's right in this case to allow the adverse possession of the defendant and to let plaintiff recover damages from time to time LLOYD *v* SOGRA 25 W R 313

35 ——————— *Mesne profits Right to of co sharer kept out of joint possession*—Where a five anna shareholder in an estate sought to be put in joint possession of it with the representative of the owners of the remaining eleven annas and the latter contended that he had for many years held the entire land in suit and cultivated indigo on it and that plaintiff's right in the said land was confined to the receipt of rent for it—*Held* that plaintiff was entitled to joint possession and management of the land that defendant could not cultivate indigo on it without the consent of the plaintiff and that the consent said to have been given to the defendant by the other co-sharers could not bind plaintiff *Held* also that plaintiff was entitled to mesne profits with interest DEBEE PERSHAD SAHOO *v* GUGADHUR PERSHAD NARAIN SINGH

[25 W R 374

36 ——————Cultivation of sir land on partition—*Reference to arbitration—N W P Land Revenue Act (XIX of 1873) s 125*—When the co sharers of a mehal agree to have such mehal partitioned by an arbitrator they must be understood to agree to the arrangements made by such arbitrator and if he provides by his award that the sir land of one co sharer that falls by lot into the share of another co sharer should be surrounded that land must be given up by the co sharer who has hitherto cultivated it Such co sharer's consent to such arrangement must be understood to have been given when he agreed to arbitration S 125 of Act XIX of 1873 must not be regarded as empowering a co-sharer who has once given his consent to surrender the cultivation to continue to cultivate the land against the will of the co sharer who has become the owner of it by partition ABHAI PANDEY *v* BHAGWAN PANDEY

[I L R 3 All 818

37 ——————— *N W P Land Revenue Act (XIX of 1873) s 125*—Sir land of one sharer included on partition in the mehal assigned to another sharer is to be treated in the same way as sir land is dealt with after its proprietor has lost his proprietary right therein In both cases alike the right of ex proprietary tenancy comes into

CO SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY—*continued*

f rce of law into existence RAM PRASAD RAI v DINA KUAR I L R. 4 All 515

Dissented from in KASHI PRASAD v KEDAR NATH SAHU I L R 20 All., 219

38 ———— Planting trees on joint land without consent—*Permission by one co sharer to cultivator to plant* —Where it was stipulated in the wajib-ul urz that trees could only be planted by cultivators on the common land with the consent of the proprietors —*Held* that one out of several co-proprietors (unless he was properly authorized to manage the joint estate) was not competent to give an ijazutnamah to a cultivator to plant a bagh and could not by his single consent dispense with the performance of a condition of which the other sharers had a right to call for the fulfilment If such an ijazutnamah was given without their consent express or implied they have a right to have it set aside GHAZEEOODEEN HYDER v BHOOLUN 2 Agra, 344

(b) ERECTION OF BUILDINGS

39 ———— Erection of buildings by one co-sharer—*Right to removal of buildings* —*A* sued *B* for possession of certain land on which *B* had erected a building on the allegation that it belonged jointly to them as well as for removal of the building from the land. It was found as a fact that the land was held jointly by *A* and *B* *Held* that *B* had no right to do anything which altered the condition of the joint property without the consent of his co sharer and it was rightly ordered that *B* should remove the building from the land. GURU DAS DHAR v BIJAYA GOBIND BARAL

[1 B. L R A. C., 108 10 W R 71

HOLLOWAY v WAHID ALI

[12 B. L R 191 note 16 W R. 140

40 ———— *Right to removal of buildings* —The plaintiff sued for possession of a one-third share of certain land after demolition of the buildings erected thereon by the defendants who were her co-sharers. *Held* that the plaintiff was not entitled to a decree for demolition of the buildings as she had no right to compel her co-sharers to adopt her views of the enjoyment of the property She could only get a decree for possession of an undivided one-third share. BINDABASINI DEBI v PATIT PABAN CHATTAPADHYA 3 B. L. R A. C 267

41. ———— *Right to removal of buildings* —Where two parties were joint owners of land, and one of them erected a wall upon the land without obtaining the consent of his co-sharer —*Held* that the Court would not interfere to order the demolition of the wall when there was no evidence to show that injury had been done to the co-tenant of the building by its erection LALA BISWAMBHAR LAL v RAJAB ALI

[3 B L. R. Ap., 67 13 W R 337 note 16 W R. 140 note 21 W R. 373 note

CO SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY—*continued*

42 ———— *Right to removal of buildings* —One of several co-sharers of joint undivided property has no right to erect a building on land which forms a portion of such property so as to materially alter the condition thereof without the consent of his co sharers. SHEOPERSAD SINGH v LEELA SINGH

[12 B L. R., 188 20 W R. 160

43 ———— *Right to removal of buildings* —In a suit in which it was sought to demolish a building which had been erected by the defendant on land belonging to himself and the plaintiff jointly —*Held* that as a co-partner the defendant was entitled to use the whole land and if in erecting the building he took possession of more land than he would be entitled to on partition the suit should have been for division of the lands, and not for demolition of the building DWARKANATH BHOOTRA v GOPENATH BHOOTRA

[12 B L. R. 189 note 16 W R., 10

44 ———— *Exclusive possession by one co-sharer—Erection of scaffold &c—Criminal Procedure Code 1872 s 530 Order under—Suit to recover joint possession* —One of several co-proprietors has no right to take exclusive possession of any portion of the land of which he is one of the co-proprietors without the sanction of all of his co-proprietors and when after he has taken such exclusive possession an order has been made by a Magistrate acting under s. 530 of the Code of Criminal Procedure confirming the possession taken by him such order is no answer to a suit brought by one of his co-proprietors to recover joint possession of the portion of land so wrongfully taken by him into his exclusive possession One of several co-proprietors has no right to erect a nowbutkhana, or a scaffolding for the purpose of supporting a platform for the accommodation of musical performers, upon land of which he is only one of several co-proprietors, without the sanction of all his co-proprietors. RAJENDRO LALL GOSSAMI v SHAMA CHURN LAHORI

[I L. R., 5 Calc. 188 4 C L R., 417

45 ———— *Removal of building erected by one of several co-sharers—Acquiescence* —In a case where a permanent building has been erected by some or one of several co-sharers on the land jointly held and another co-sharer subsequently seeks to have the building removed the principle upon which the Court acts is that, though it has a discretion to interfere and direct the removal of the building this is not a discretion which must necessarily be exercised in every case; and, as a rule it will not be exercised unless the plaintiff is able to show that injury has accrued to him by reason of the erection of the building and, perhaps further that he took reasonable steps in time to prevent the erection. NOCURI LALL CHUCKERBUTTY v BINDABUN CHUNDER CHUCKERBUTTY I. L. R., 8 Calc. 708

46 ———— *Right to removal of buildings* —In a suit to obtain an order for the

CO-SHARERS—*continued*

2. ENJOYMENT OF JOINT PROPERTY —*continued*

demolition of a house erected on land the joint property of the plaintiff and defendant even though in strictness the defendant had no right to erect the house without the consent of his co sharer the Court ought to enquire whether under all the circumstances the ends of justice could not be satisfied by some other remedy MASSIM MOLLAH *v* PANJOO GHORAMEE 21 W R 373

47 ——— *Rights of other co-sharers* —Defendant having spent large sums of money in improving what was originally putit land by locating raiyats and building houses upon it and turning it into a village —*Held* that plaintiff his co sharer was not entitled to claim possession of a specific share in that village but only to demand a partition in which plaintiff would obtain compensation by receiving elsewhere land equivalent to that brought into cultivation by the defendant at his own expense GOKOOL KISHEN SEN *v* ISSUR CHUNDER ROY [18 W R 12

48 ——— *Compensation for removal.*—If one sharer chooses to build against the wishes of the other co-sharers he must take the consequences and cannot ask for compensation in case his building is ordered to be pulled down BISHAMBHUR SHAHA *v* SHIB CHUNDER SHAHA [22 W R 286

49 ——— *Use of land for his own purposes—Removal of buildings* —In a suit to recover possession of a share of a talukh on the ground that a co sharer had dispossessed plaintiff by digging a tank building a schoolroom and manufacturing bricks for his own use the lower Courts refused to compel the defendant to restore the land to its former state As plaintiff had suffered no injury by what defendant had done the High Court refused to interfere *Quære*—Did the alleged acts constitute dispossession? MOHIMA CHUNDER GHOSE *v* MADHUB CHUNDER NAG 24 W R 80

50 ——— *Lessee of co sharers—Lease by some of several co sharers—Removal of buildings erected by lessee—Acquiescence* —A lessee of co-sharers stands in the place of a co-sharer and where some of the co sharers in an estate sought to get their right acknowledged in respect of some lands which other co sharers had leased out and also sought to have a thakoorbari which the lessee had built on it removed —*Held* that the right of the protesting co sharers to the land in suit was clear enough but that in order to acquire the right to remove a building it was necessary not merely to have alleged non consent but to prove that objections had been offered before the building was raised. DOORGA LALL *v* LALLA HULWANT SAHOY [25 W R 306

51 ——— *Rights of co sharers in matters affecting common property—Sale of property by one co sharer* —One of several owners of property is entitled to sue for a declaration that a sale deed executed by one of the co-owners which endangers his right will not affect that right and if the common property is a house or land he is also entitled to resist the erection of any building or addition to any building on the common property and if such building is erected without his consent to have the property restored to its original condition MEHDEE HOSSEIN KHAN *v* AUJUD ALI [6 N W 259

52 ——— *Suit for removal of buildings on joint land—Civil Procedure Code 1877 (1882) s 30—Parties—Suit by one of several co sharers against others affecting joint land* —A shareholder of an undivided piece of land sued three of his co sharers who, he alleged had trespassed on the land by building thereon for restoration of the land to its original condition The Court of first instance tried and determined the suit as brought and framed The lower Appellate Court dismissed the suit on the ground that there being many co sharers the plaintiff could not alone sue and under s 30 of the Civil Procedure Code the suit was bad *Per* STUART *C J*—That the lower Appellate Court was right in holding that s 30 of the Civil Procedure Code applied to the case but that it was not right in dismissing the suit but should have remanded it for the procedure provided by that section Also that the permission mentioned in s 30 is express and not constructive *Per* BRODHURST *J*—That s 30 was not applicable to the case that section contemplating a case in which there are numerous parties having the same interest in a suit who are all before the Court and are all anxious to have the matter in dispute disposed of but in order to save trouble and expense are desirous that one or more of them shall sue or defend on behalf of all in the same interest *Per* STRAIGHT and TYRRELL, *JJ*—That s 30 was not applicable to the case the first part of that section implying that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing they also wishing the same HIRA LAL *v* BHAIRON I L R, 5 All. 602

53 ——— *Suit to restrain erection of building and alteration of land* —The defendant was in possession of land under a pottah granted by the ijaradars of the proprietors and thereon commenced to build a house and plant a garden The plaintiff who had bought the right title and interest of one of the proprietors sued to restrain him He did not allege any injury *Held* that such suit would not lie SRICHAND *v* NIM CHAND SHAHEE

[5 B L R Ap 25 13 W R 337

See also NABIN CHANDRA MITTER *v* MAHES CHANDRA MITTER

[3 B L R Ap., 111 12 W R, 69

But see IN THE MATTER OF THAKOOR CHUNDER PARAMANICK

[B L R, Sup Vol. 595 at p 597 note

54. ——— *Erection of building on joint property—Building by one co-sharer against the wish of others—Suit for injunction to restrain building—Discretion of Court*—

CO SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY —*continued*

Act I of 1877 (Specific Relief Act), s 54—One of several co sharers in a mehal having begun to erect certain kachcha buildings upon the common land another co sharer three or four days after the building had commenced brought a suit for an injunction to restrain the continuance thereof on the ground that the defendant was ousting the plaintiff as a co-sharer from a portion of the common land It was found that the defendant was building upon land which was in excess of the share which would come to him on partition and that on partition the plaintiff could not be adequately compensated *Held* by the Full Bench that the plaintiff was entitled to a perpetual injunction restraining the defendant from proceeding further with the building and directing that the building so far as it had proceeded be pulled down and prohibiting the defendant from building on the land as exclusive owner at any future time *Paras Ram v Sherjit I L R 9 All 661* referred to *Per* STRAIGHT J that it was for the defendant appellant to show that the lower Appellate Court had exercised a wrong discretion in granting the injunction and that this not having been shown the High Court ought not to interfere SHADI *v* ANUP SINGH I L R., 12 All 436

55 ———— *Rights of co sharers as to erection of buildings on joint land—Injunction*—One of several joint owners of land is not entitled to erect a building upon the joint property without the consent of the other joint owners notwithstanding that the erection of such building may cause no direct loss to the other joint owners *Shadi v Anup Singh I L R 12 All 436* referred to NAJJU KHAN *v* IMTIAZ UD DIN [I L R, 18 All, 115

56 ———— *Suit by one co parcener for possession of a building erected by a stranger on the joint property and purchased by the other co parceners—Trespassers*—Where a stranger to the property built upon certain land jointly held by several co parceners, and some of the co parceners purchased from the stranger the building so erected it was *held* that the purchasers were *quoad* the building in suit trespassers and that a suit might be maintained by the remaining co-parcener to be put into joint possession of the building and this though it was not shown that any special damage had been suffered by the plaintiff by reason of the building *Paras Ram v Sherjit I L R 9 All 661* and *Najju Khan v Imtiaz ud din I L R 18 All 115* referred to MUHAMMAD ALI JAN *v* FAIZ BAKHSH I. L. R. 18 All. 361

57 ———— *Right to injunction to restrain building*—There is no such broad proposition as that one co-owner is entitled to an injunction restraining another co owner from exceeding his right absolutely and without reference to the amount of damage to be sustained by the one side or the other from the granting or withholding of the injunction SHAMNUGGER JUTE FACTORY CO *v* RAM NARAIN CHATTERJEE [I. L. R., 14 Calc. 189

58 ———— *Right to deal with joint property—Excavation of tank on joint property—Discretion of Court in granting injunction—Specific Relief Act (I of 1877) s 55*—Before a Court will in the case of co-sharers make an order directing that a portion of the joint property alleged to have been dealt with by one of the co-sharers without the consent of the other should be restored to its former condition (as for instance where a tank has been excavated) a plaintiff must show that he has sustained by the act he complains of some injury which materially affects his position *Lala Biswambhar v Rajaram Lal 3 B L R Ap 67* applied in principle *Shamnugger Jute Factory Co v Ram Narain Chatterjee I L R 14 Calc 189* approved The fact that a portion of the land on which a tank had been excavated by the defendant was fit for cultivation does not constitute an injury of a substantial nature such as would justify an order of that nature JOY CHUNDER RUKHIT *v* BIPRO CHURN RUKHIT [I. L. R., 14 Calc., 236

59 ———— *Right to deal with joint property—Building by one co sharer against the wish of others—Suit for demolition of building—Discretion of Court*—The mere fact of a building being erected by a joint owner of land without the permission of his co-owners and even in spite of their protest is not sufficient to entitle such co-owners to obtain the demolition of such building unless they can show that the building has caused such material and substantial injury as could not be remedied in a suit for partition of the joint land. *Lala Biswambhar Lal v Raja Ram 3 B L R Ap 67 Nocury Lal Chuckerbutty v Brindaban Chunder Chuckerbutty I L R 8 Calc 708 Girdhari Lal v Wilayat Ali W N All 1885 p 277 Wahid Ali Khan v Ghanshiam Narain W N All 1887 p 116* and *Joy Chunder Rukhit v Bipro Churn Rukhit I L R 14 Calc 236* referred to PARAS RAM *v* SHERJIT [I L R., 9 All 661

60 ———— *Excavation of tank by one co-sharer—Injury—Right of other co-sharer to have the same filled up*—Where on ijmali land one co-sharer excavates a tank and there is no proof of any injury caused thereby to the property the other co sharer has no right to have the tank filled up or the land restored to its former condition but he is entitled to a declaration of title to the extent of his share ATARJAN BIBEE *v* ASHAK [4 C W N., 768

61. ———— *Party wall—Erection on the wall by one co-sharer—Right of other co sharers to have building removed—Right of suit*—One of two tenants in common of a party wall raised the height of the wall with a view to building a superstructure on his own tenement. The

CO-SHARERS—*continued*

2. ENJOYMENT OF JOINT PROPERTY—*continued*

other tenant in common who had not consented to the alteration in the wall but had suffered no inconvenience therefrom now sued to enforce the removal of the newly erected portion *Held* that the plaintiff was entitled to the relief sought KANAKAYYA *v* NARASIMHULU I. L. R. 19 Mad. 38

62. ——— *Right to build temples on joint land*—The plea of limitation is not applicable to a suit for declaration of title regarding ijmali lands upon which a temple has been built and an idol established by another co-sharer If that shareholder claim exclusive use of the temple he must prove a possession and enjoyment different from those of a Hindu co-sharer of joint property particularly with regard to a temple added by him to an ancestral poojah bari. KISSORYNATH CHOWDHRY *v* HURRO KANT CHOWDHRY [2 W R. 183

63 ——— *Right to share in temple built by one co sharer with separate funds on joint land*—A co-sharer was held not entitled to a share in a temple built on common land by another co-sharer out of his separate funds on the ground that the temple was built on common land. KISHEN SARUP *v* DESRAJ 7 N W 179

64 ——— *Land dedicated to family idol—Land excluded from partition of family property and declared inalienable—Subsequent purchase from Escheat Department of Government—Sale in execution*—By a partition deed by the six members of a Hindu family it was provided that part of the land of the family should be set apart for the maintenance of the family idol and should be inalienable and the rest of the land was divided equally Subsequently the Government claimed the dedicated land as an escheat and sold it to the members of the family jointly of whom one built a house on part of it—less than one sixth—with the consent of the others The house and its site were sold in execution of a decree against the builder *Held* that the other members of the family were not entitled to have the house removed or the sale cancelled. MALLAN *v* PURUSHOTHAMA [I. L. R 12 Mad., 287

( ) EXCLUSIVE POSSESSION OF PORTION OF JOINT PROPERTY

65 ——— Right to exclusive possession—*Consent—Injunction*—One of several co sharers of joint undivided property has no right to take exclusive possession and alter the condition of any portion of the joint property without the consent of his co sharers and the Court will grant an injunction to restrain him from doing so STALKARTT *v* GOPAL PANDAY [13 B L R. 197 20 W R. 168

66 ——— *Co-parcener's right to joint possession of the whole or any part of the joint estate without necessity for partition—Hindu law—Joint family*—A co-parcener in the undivided property of a joint Hindu family is entitled to claim joint possession of a portion of the property and need not sue for a partition Where it appeared that the parties to the suit each held parcels of the undivided family property in exclusive possession and the plaintiff asked to be put in joint possession with the defendant—*Held* that he was entitled to a decree for joint possession A co parcener is entitled to a joint benefit in every part of the undivided estate RAMCHANDRA KASHI PATKAR *v* DAMODHAR TRIMBAK PATKAR I. L. R 20 Bom 467

67 ——— *Joint tenant—Partition*—A joint tenant is not entitled to khas possession of any portion of a joint and undivided property without a batwarah HUREE DYAL GOOHO MOJOOMDAR *v* GOBIND CHUNDER PAL [17 W R. 387

68 ——— *Arrangement as to occupation of joint property—Suit for profits of portion allotted to another*—An arrangement come to between the joint owners of land not being a joint Hindu family by which some parts of the property were to be exclusively in the possession of one or other of them is sufficient to bar one of them from suing for the profits derived from any portion allotted to the exclusive possession of any other OODOY TARA CHOWDHRANEE *v* KHAJA ASANOOLLAH [22 W R. 180

69 ——— *Arrangement for exclusive possession of one co sharer*—When one co sharer of a joint family is allowed by the other members of the family to have separate and exclusive possession of family property for a long period of years—such for instance as would give him a right on a batwara taking place to insist on having the land which he has enjoyed allotted to him—the other co sharers must be taken to have knowingly given him the opportunity of creating subordinate rights or allowing such rights to grow up and they cannot be permitted afterwards without showing that they have been deceived in the matter suddenly to start up and repudiate such subordinate rights JOTEE ROY *v* BHEECHUK MEAH 20 W R. 288

70 ——— *Liability for rent of some shareholders taking exclusive possession of house*—The co-sharers in a house who continued to occupy the whole house to the exclusion of one co-sharer after notice that he would charge them rent for his share of the house were declared just as liable to pay rent to the co sharer as they would be for rents of any other species of property CHUNDERKANT ROY *v* GOPEENEE DEBIA 6 W R. 17

71. ——— Exclusive use of portion of property—*Effect of on rights of the others*—By tacit agreement co-parceners in a joint property may have temporarily an exclusive use of different portions of it without prejudice to the common rights of all or to the right of each or any of them to enforce at pleasure a partition of the whole YUSAF ALI KHAN *v* CHUBBEE SINGH 5 N W., 122

CO SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY —*continued*

72. ———— *Adverse use of land by co-sharer* —*Held* that the defendants as joint proprietors with the plaintiff could not by the use of the land with the tacit assent of the plaintiff create a right contrary to his interest nor would their use of it before they became co-proprietors operate to create any such right JAHANOBY DEO NARAIN SINGH *v* UMBICA PERSHAD NARAIN SINGH [17 W R. 74

73 ———— Exclusive possession by one co-sharer—*Adverse possession* —Exclusive possession by *A* of property which originally had been admittedly joint does not *per se* amount to adverse possession as against *A*s co-sharers The Court should further ascertain whether *A*s exclusive possession was due to his title being really a separate one from the plaintiffs and could not be accounted for by the fact of some arrangement having been come to at a previous time between the parties. ASUD ALI KHAN *v* AKBAR ALI KHAN I C L. R. 364

74. ———— *Possession by one co sharer—Adverse possession* —The circumstances of a case may shew that mere occupation and enjoyment by one co-sharer does not *per se* constitute an adverse possession as against the other co sharer In this case the exclusive possession of one was held not to be adverse to the other *Asud Ali Khan* v *Akbar Ali Khan I C L R 364* followed. BARODA SUNDARI DEBY *v* ANNODA SUNDARI DEBY [3 C W N, 774

75 ———— *Adverse possession—Proof of intention to set up adverse possession* —When one co sharer sets up as against another adverse possession of land which had previously been waste but at some former time had been occupied and then been admittedly held jointly it is for him to show that he has held possession in such a way as to give distinct notice to his other co-sharers of his intention to set up a title adverse to them. RAKHAL DAS BUNDOPADHYA *v* INDU MONEE DEBI [I C L. R. 155

(*d*) LEASES BY ONE CO-SHARER

76 ———— Power to grant lease—*Consent*—One of several co-sharers in sir land cannot grant a lease of any portion of it without the consent of the others. CHAHEZ *v* NUND KISHORE [4 N W 15

77 ———— Effect of lease granted by one of several co-sharers —A pottah granted by one co-sharer in an estate is not binding on the other sharers. GOLUCK CHUNDER CHUCKERBUTTY *v* TEELUCK CHUNDER SHAH 2 Hay, 49

78. ———— *Powers of lumberdar to deal with co-parcenary lands—Lease of such lands for ten years at an inadequate rent* —*Held* that a lumberdar has no general power to grant any lease of co-parcenary land beyond such as the circumstances of the particular year or the particular season may require *Jagan Nath v Hardyal*

CO SHARERS—*continued*

2 ENJOYMENT OF JOINT PROPERTY —*concluded*

W N 1897, p 207 followed. BANSIDHAR *v* DIP SINGH I. L. R., 20 All., 238

79 ———— Effect of lease by one of several co sharers of his own share.—Although one co sharer cannot give a good lease of the whole sixteen annas of property which belongs to himself and his co-sharers yet one co-sharer may give a lease of his own share which would be binding against himself at least RAM DEBUL LALL *v* MIT TERJEET SINGH 17 W R. 420

80 ———— Lease by co-sharer of his own share—*Enjoyment of share of by lessee*—An undivided shareholder is not prohibited by law from granting a lease of his share to a third p rson; all that the other co-proprietor can insist upon is that the lessee should be prevented from dealing with the subject of the lease in any way *different from* that in which the lessor his co-proprietor *could deal* with it A joint shareholder or any lessee of a joint shareholder is at liberty to contract with the raiyats of the zamindari for any lawful purpose even without the consent of the other co-proprietors MACDONALD *v* LALA SHIB DYAL SINGH PAUREY 21 W R., 17

81. ———— Long possession under lease—*Acquiescence—Presumption of authority*—Long possession under an authentic pottah from one sharer without interference or disturbance from the others legally warrants the inference that the grantor had authority *to bind his co-sharers* HILLS *v* ABADHUN MUNDUL 10 W R., 369

82 ———— *Right of ejectment* —Where land is held jointly and there is no partition one part-owner cannot insist on the ejectment of a person who has been holding *under* the other part owner for 16 or 17 years. BISSESSUR KURMOKER *v* JUGGOBUNDOO KURMOKER [14 W R., 183

83 ———— Right of lessee of one co-sharer to hold possession without consent of others—*Right of ejectment* —*In a suit by a co*-sharer for ejectment of a lessee who was holding over after the expiration of his lease *at the end of* 1 5 and after sufficient notice the defendant pleaded a pottah from the plaintiff s shareholder under which he was entitled to remain *to the end of* 129 *Held* that as defendant s occupation and enjoyment of the land to the end of th *year* 12 had been by virtue and under the authority of two separate leases granted by each shareholder each co-extensive with his share only and as that granted by the plaintiff had expired in 12 the defendant had not had exclusive enjoyment *of the property* as tenant by virtue of the other lease And though *the other co-sharer* had granted a new lease when the first lease expired in 127 yet as the plaintiff *refused to* d so and had ever since treated the defendant as a trespasser the defendant had no right of occupation so far as regarded the plaintiff's share *HAMILTON v* BUDHOO NUNDUN SINGH 20 W R. 70

CO SHARERS—*continued*

3. SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY

(*a*) POSSESSION

84. ——— Suit for share of estate—*Sharers in estate sold for arrears of revenue—Act XI of 1859 ss 10 and 11*—An eight anna share holder in four mouzahs out of six which constituted an estate was held to be not entitled to sue alone under either s 10 or s 11 of Act XI of 1859 NUNHOO SHAHEE *v* RAM PERSHAD NARAIN SINGH [21 W R. 38

85 ——— Suit to recover joint property—*Parties*—In a suit to recover property belonging to co-sharers all the co-sharers must join. PARAM *v*. ACHAL I. L. R. 4 All. 289

BATAHEE BEGUM *v* KHOOSHAL 3 Agra 221

MOOKTA KESHEE DEBEE *v* OOMABUTTY [14 W R., 31 8 B L. R. 396 note

SUDABURT PERSHAD SAHOO *v* LOTF ALI KHAN [14 W R. 339

ALUM MANJEE *v* ASHAD ALI 16 W R. 138

86 ——— *Suit by some of several co sharers—Parties objecting to be plaintiffs*—All co-owners must join in a suit to recover property unless the law otherwise provides they may agree that property shall be managed and suits conducted by some or one of them but they cannot invest such person or persons with a right to sue in his own name on their behalf although perhaps a tenant might be estopped from denying the title of his lessor in such case If some co-owners refuse to sue the proper course for the rest to adopt is to make them defendants in the case. KUTTUSHERI PISHARETH KANNA PISHARODY *v* VALLOTIL MANAKEL NARAYANAN SOMAYAJIPAD [I. L R. 3 Mad 234

87 ——— *Suit for portion of estate—Shareholder in possession of whole estate on conditions*—It was held that a shareholder who was in possession of the joint estate on the understanding that he paid certain fixed allowances to his co-sharers could maintain alone a suit to recover possession of a portion of the estate AMIR SINGH *v* MOAZZUM ALI KHAN 7 N W 58

88 ——— *Suit for possession of property pledged in usufructuary mortgage*—One of several co sharers of a joint estate cannot sue in respect of his particular share to get rid of a mortgage entered into jointly by all the co sharers UNJOOR SINGH *v* FUZBOONNESSA 2 Hay 155

89 ——— *Suit for undivided share of patni talukh*—A suit to recover possession of an undivided share of a patni talukh where the title to the share as against the zamindar depends upon a grant made to the plaintiff and others jointly cannot rightly proceed until the co sharers are made parties. PARBUTTY CHURN DOSS *v* PROTAP CHUNDER SEN 23 W R. 275

90 ——— *Liability for rent*—A suit to recover possession is not maintainable against one s co sharer in respect of property still joint and undivided nor can rent be legally claimed from him except on the ground of some agreement or undertaking express or implied GOBIND CHUNDER GHOSE *v* RAM COOMER DEY 24 W R. 393

91. ——— Suit by puttidars of raiyatwari village—*Right to sue jointly—Custom*—The puttidars of a raiyatwari village have not such a common interest as puttidars in all their holdings that they can jointly sue for the recovery of them If in any case such a right exist it must be established by evidence MAYANDY TEVAN *v* NARANAIYAN 4 Mad. 103

92. ——— Suit by one co sharer for his share of jote—*Separation of interest—Evidence of separation*—The co sharers in a certain jote who were raiyats having a right of occupancy paid their rents separately to the patnidars who gave each party a separate receipt for his share of undivided tenure One of the raiyats who alleged that he had been dispossessed brought a suit to recover possession of his separate share of the jote against the other co sharers and the patnidars and put the receipts in evidence to show that the patnidars had consented to the jote being divided and held in separate shares *Held* that they were insufficient to do so and that the suit could not be maintained in its present form GOBARJAN *v* MOSHIATOOLAH [1 C L. R. 537

93 ——— Suit for possession against single shareholder for portion of joint estate held separately by agreement—A suit for possession of land will not lie against a single shareholder for a particular portion of a joint estate held separately under an existing arrangement acquiesced in by the plaintiffs and agreed to by the other co-sharers nor can the plaintiffs let to a tenant the property in the lawful possession of such shareholder CHOWDHRY NIL KANT PERSHAD SINGH *v* AHLAD SINGH 5 W R 287

94. ——— Suit by one co sharer to redeem more than his share—*Subsequent severance of interest—Parties—Time of taking objection*—In 1805 a two anna share in certain property held by co sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union In 1848 one of the co sharers redeemed his share of two pies in the mortgaged property and a further share of two pies therein was redeemed by a second co-sharer in 1867 The plaintiff was admittedly the owner of another two-pie share; but he now sued the defendant to redeem the whole of the property still unredeemed *viz* a one anna eight pies share of the original mortgage The defendant objected that the plaintiff could only redeem his own two pie share which had become separated from the rest. The plaintiff denied that the estate had been divided. *Held* that the plaintiff's claim being to redeem all that remained of the estate in the mortgagee s possession the suit could

CO SHARERS—*continued*

3 SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

109 ———————— Suit *against lumberdar for profits—Liability of heir of lumberdar*—The liability of a lumberdar to pay to a co sharer the profits which the lumberdar has failed through his gross negligence to collect is a personal liability and cannot be enforced against the lumberdar's legal representative *Gulab* v *Fateh Chand All W N (1886) 32* referred to MURAD UN NISSA v GHULAM SAJJAD I. L. R. 20 All, 73

BIR NARAIN v GIRDHAR LAL [I. L. R. 20 All. 74 note

110 ———— Suit by one co sharer to set aside alienation made without his consent—*Alienation by tenant of co-sharer*—Although one co sharer cannot eject a tenant from a holding in an undivided estate in which the tenants are tenants of the whole body of co-sharers yet a co-sharer is entitled to sue to set aside an alienation made by a tenant to a stranger without consent of the zamindars SOBHA RAM v GUNGA PERSHAD 2 N W 260

111. ———— Assignment of share by one co-sharer without consent of others—*Right of assignee*—*Held* in accordance with the principles laid down by the Privy Council in *Bujnath Lall* v *Ramoodeen Chowdhry 21 W R 233 L R 1 I A 106* viz that one co sharer in a joint and undivided estate cannot deal with his share so as to affect the other co-sharers but his assignee takes subject to their rights that the plaintiffs were not entitled to the relief they sought for and their suit must be dismissed SHARAT CHUNDER BURMON v HURGOBINDO BURMON I. L. R. 4 Calc 510

112 ———— Suit for cancellation of leave for forfeiture—*Parties—Breach of covenant*—Where it is optional with several joint lessors to avail themselves of a condition of re entry upon breach of certain covenants one or more of the lessors cannot insist upon a forfeiture without the consent of the others *Held* therefore in a suit which was brought for the cancellation of a mokurari lease and the recovery of sir possession on the ground of forfeiture for breach of covenant that all the co sharers should join as plaintiffs and that as some of the co-sharers who were made defendants appeared and opposed the cancellation of the lease the suit must be dismissed. PEARUT HOSSEIN v CHOWAR SING I. L. R. 7 Calc 470 [9 C L R., 260

113 ———— Suits for rents collected by one co sharer in respect of another's share—*Intermeddler—Suit for recovery of rents—Intermeddler Liability of*—The lessee of two thirds of a five biswas zamindari share asserted and exercised a right of collecting rents in respect not only of the two-thirds but also of the remaining one third It appeared that he made these collections not as a matter of contract but as an intermeddler and in defiance of the wishes of the holder of the one third share Subsequently a suit was brought against him by a purchaser of the five biswas for recovery of rents so collected the claim extending to rents which the defendant might have collected but neglected to collect and which were consequently lost to the plaintiff *Held* that the defendant not having been under any obligation to collect the rents of the one third share could not be made liable for any of such rents which he had not actually collected, and that as the collection expenses had exceeded the amount collected the suit must be dismissed BALWANT SINGH v GOKARAN PRASAD I L R 9 All, 519

114 ———— Damages Suit for—*Non-joinder of lessee as plaintiff—Parties*—In a suit by one of two lessees against the lessor for damages for cancelling the lease the other lessee was made a defendant *Held* that the suit was not bad for non joinder of the second lessee as plaintiff nor for the reason that the plaintiff could not prosecute the suit against him or obtain any relief against him; and that he was rightly made a defendant in the suit. *Kattusheri Pishareth Kanna Pisharody* v *Vallotil Manakel Narayanan Somayajipad I L R 3 Mad 234* followed. VITHILINGA PADAYACHI v VITHILINGA MUDALI [I L R. 15 Mad., 111

115 ———————— *Bengal Tenancy Act (Act VIII of 1885) s 188—Suit for recovery of damages by some of several joint landlords*—A suit for recovery of damages for recovery of value of trees cut down by tenant is maintainable at the instance of one of several joint landlords HRISIKES SINGHA v SADHU CHARAN LOHAR 2 C W N, 80

(c) EJECTMENT

116 ———— Ejectment of tenant taken by all the co sharers—*Stranger admitted without consent of all*—When all the co-sharers have allowed a tenant to enter and occupy land the tenant cannot be ejected without the consent of all. LUTCHMAN PERSHAD v DABEE DEEN 3 Agra 264

GOUREE SUNKUR SURMAH v TIRTHO MONEE [12 W R. 452

HULODHUR SEN v GOOROO DOSS ROY [20 W R., 126

DINOBUNDHOO GHOSE v DROBO MOYEE DOSSIA [24 W R. 110

117 ———— Suit by some co-sharers to eject tenant taken by others—One or more co-sharers cannot allow a stranger to occupy a portion of the mouzah without the consent of the other co sharers unless they are authorized to act on behalf of the other co-sharers and the dissenting co sharers may sue to eject him LUTCHMUN PERSHAD v DABEE DEEN 3 Agra 264

118 ———— Ejectment of person put in possession by all the co sharers—*Trespassers—Decree*—Where a tenant has been put into possession of ijmali property with the consent of all the co sharers no one or more of the co-sharers can turn the tenant out without the consent of the

CO-SHARERS—*continued*

3 SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

others but no person has a right to intrude upon ijmali property against the will of the co sharers or any of them if he does s he may be ejected without notice either altogether if all the co-sharers join in the suit, or partially if only some wish to eject him The legal means by which such a partial ejectment is effected is by giving the plaintiffs possession of their shares jointly with the intruder as explained in *Hulodhur Sen* v *Gooroo Doss Roy 20 W R 126* RADHA PROSAD WASTI v ESUF [I. L. R. 7 Calc 434 9 C L. R. 76

GHUNSHYAM SINGH v RUNJEET SINGH [4 W R., Act X 39

Contra MURDUN SINGH v NURPUT SINGH [2 W R. 290

and LUCHMUN SAHAE CHOWDHRY v SEAMI JHA [5 W R. Act X, 93

119 ———— **Partial ejectment and joint possession.**—A decree for partial ejectment and joint possession can be made in favour of a co owner of property *Hulodhur Sen* v *Gooroo Dass Roy 20 W R 126* and *Radha Prosad Wasti* v *Esuf I L R 7 Calc 434* approved of KAMAL KUMARI CHOWDHRANI v KIRAN CHANDRA ROY [2 C W N 229

120 ———— **Ejectment Suit for of trespasser**—*Tenant of one co sharer* —Any one of several joint tenants of land may sue to eject a trespasser The consent of one joint tenant to the possession of a trespasser does not make him less a trespasser with regard to other joint tenants TEELUK RAI v PAMJUS RAI 5 N W 182

121. ———— **Ejectment, Suit for, by some only of the co sharers**—Some of the co sharers are not entitled to sue for ejectment unless all the co sharers join in the suit Where however the lumberdar collects as manager for the whole community he can sue for and obtain ejectment without joining the co sharers as plaintiffs HIDAYATOOLAH v INDERJEET TEWAREE [2 Agra 282

122 ———— **Suit for ejectment by one of two co-sharers**—*Sole manager of estate* —Where a suit was brought by one of two co sharers to recover land from a tenant not only in the absence of but against the express desire of the other co sharer —*Held* that the suit was not maintainable and that the plaintiff could only sue jointly with his co-sharer though the plaintiff was sole manager of the joint estate *Umanna* v *Purshotam S A No 379 of 1873* followed. KRISHNARAV JAHAGIRDAR v GOBIND TRIMBAK 12 Bom. 85

123 ———— **Suit by one co-sharer as manager**—*Parties Failure of tenant to pay enhanced rent after notice* —A co sharer who is manager cannot even with the consent of his co sharers maintain a suit by himself and in his own name to eject a tenant who has failed to comply with a notice calling on him to pay enhanced rent. BALKRISHNA SAKHARAM v MORO KRISHNA DABHOLKAR I L R. 21 Bom 154

124 ———— **Suit to eject trespasser**—*Suit to restrain trespass* —If raiyats are interfered with in the occupation of their land they have a right to sue for an injunction restraining the trespasser from interference; but if they are ousted the zamindar has a right to bring an action against the trespasser to recover possession. Where land is held in joint proprietorship an action to recover it from a stranger in wrongful possession must be brought in the name of all the proprietors jointly NUNDUN LALL v LLOYD 22 W R 74

125 ———— **Suit for ejectment of tenant of a fishery** —A suit will not lie to eject a tenant of a joint fishery unless all the joint proprietors are joined as parties DOLI SATI v IKRAM ALI [4 C L R. 63

126 ———— **Suit by one co sharer for ejectment of tenant on determination of tenancy** —The purchaser of a two thirds share of a tank sued to obtain khas possession from the tenant whose sons had purchased the remaining one third share *Held* that on the tenancy being shown to have been determined the plaintiff was entitled to a decree for khas possession GOPI NATH CHATTERJEE v MODHU SUDUN DEY 11 C L R. 51

127 ———— *Act XL of 1858—Certificated guardian Power of to grant lease—Unauthorized transfer Effect of*—A lease for a term of 12 years but renewable at the pergunnah rate and transferable in its character granted by a certificated guardian without the authority of the Court is void *ab initio* and will therefore not avail the lessee even for the period of five years for which such guardian is at liberty to grant the lease *Held* accordingly that in the case of ijmali property whether such a lease was executed by the guardian conjointly with the co-sharers of the minor or separately the minor was entitled to eject the lessee as a trespasser in respect of his own share without making his co sharers parties to the suit *Quære*—Whether such a lease granted by a certificated guardian conjointly with the co sharers of a minor and thus creating one and the same tenancy is not also void as against the co sharers HARENDRA NARAIN SINGH CHOWDHRY v MORAN [I. L. R. 15 Calc. 40

(*l*) KABULIATS

128 ———— **Suit to enforce joint kabuliat** —Where a kabuliat creates an obligation from a tenant to two parties jointly the obligation can only be properly enforced by a suit brought by those parties jointly GOPAL CHUNDER GOOHO v JUGGODUMBA DOSSEE 10 W R., 411

Even where there is an allegation that the plaintiff has been realizing his quota of rent separately for years. KALEE CHURN SINGH v SOLANO [24 W R., 267

CO SHARERS—*continued*

3 SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

129 ———— **Suit by one co-sharer on joint kabuliat**—*Parties* —A kabuliat was executed by one of the defendants to the plaintiff for the entire sixteen annas of an estate of which the plaintiff admitted at the time of the execution of the kabuliat he was only proprietor of eight annas The owner of the other eight annas share was made a defendant in a suit brought by the plaintiff in the Revenue Court to recover his share of the rent under the kabuliat *Held* that the plaintiff was not entitled to sue separately for his share of the rent even though he made his co-sharer defendant to the suit KALINATH BANERJEE *v* MAHOMED HOSSEIN [6 B L R 528 note 13 W R., 469

130 ———— *Parties* —Where a tenant had executed a kabuliat to four persons — *Held* two of them could not sue him for arrears of rent in the Collector's Court making their other two co-sharers or their representatives defendants jointly with him GANGA GOBIND SEN *v* GOBIND CHANDRA ROY 4 B L R Ap 39

131 ———— *Parties* —A kabuliat was executed in respect of certain lands by *B P* and *K* in favour of *E* by which they agreed to pay to *E* an annual rent of R9 000 *E* died leaving two daughters. In a suit in the Revenue Court by one of the daughters against *B P* and the representatives of *K* to recover a moiety of the rents due for a certain period under the kabuliat the other daughter refused to join as a plaintiff and was not made a defendant *Held* that the plaintiff was not entitled to sue alone or without making her sister a party to the suit On her sister's refusal to join as a plaintiff she ought to have been made a defendant JAGADAMBA DASI *v* HARAN CHANDRA DUTT [6 B L R 526 note 10 W R 108

132 ———— It is not competent to landlords to whom a joint kabuliat has been given without any specification of shares to institute separate suits and to call upon the Collector on the original contract between the parties to apportion to each plaintiff that share of the rents to which he may be entitled KALEE CHURN SINGH *v* SOLANO [8 W R 200

133 ———— **Suit by one co sharer for kabuliat** —A proprietor of a fractional share of an undivided estate may sue to obtain a kabuliat from the raiyat without making his co-sharers parties when there is no dispute as to his share and when the tenant has paid him rent separately for his share RAMNATH RAKHIT *v* CHAND HARI BHUYA [6 B L R 356 14 W R 432

SALEHOONISSA KHATOON *v* MOHESH CHUNDER ROY 17 W R 452

134 ———— *Proprietor of fractional share in estate* —A proprietor of a fractional share of an undivided estate though receiving a definite portion of the rent from the raiyat is not entitled to maintain against him a suit for a separate kabuliat in respect of such undivided share. SARAT SUNDARI DEBI *v* WATSON [2 B L R., A C., 159

S C SURUT SOONDERY DABEE *v* WATSON [11 W R., 25

135 ———— *Proprietor of fractional share* —One of the shareholders of an undivided zamindari cannot institute a suit to obtain a separate kabuliat from a raiyat for his fractional share thereof UDAYA CHARAN DHAR *v* KALITARA DASI 2 B L R Ap 52

S C WOODOY CHUNDER DHUR *v* KALEE TARA DASSIA 11 W R., 393

See also INDRA CHANDRA DUGAR *v* BINDABAN BHARA 8 B L R 252 [15 W R., F B 21

136 ———— **Joint shrotriyamdars**—*Madras Rent Act (Madras Act VIII of 1865) s 9* —*Distinct contract by tenant in respect of a share* —The plaintiff was one of two joint shrotriyamdars In 1288 the defendant accepted a pottah from and executed a muchalka to, him in respect of the half share of the plaintiff The plaintiff sued to enforce acceptance of a pottah and execution of a muchalka for 1290 and for arrears of rent *Held* that the suit lay without joinder of the other joint shrotriyamdar PURUSHOTTAMA *v* RAJU I L R., 11 Mad, 11

137 ———— **Tenant taking lease from co sharer for his own separate share of holding** —When a tenant has taken a lease from one of several joint landlords in respect of his own share of the holding the landlord is entitled to sue for rent without joining his co sharers. BEHARY CHURN SEN *v* BHUT NATH PRAMANICK [3 C. W N., 214

(e) RENT

138 ———— **Parties.**—One of several joint landlords is competent to sue for the entire rent due from a tenant making his co-sharers parties to the suit PREM CHAND NUSKUR *v* MOKSHODA DEBI I L R. 14 Calc., 201

139 ———— **Suit for separate share of rent**—*Parties* —One of several co-sharers cannot sue for his separate share of the rent without making his co-sharers parties to the suit INDROMONEE BURMONEE *v* SUROOP CHUNDER PAUL [12 B L R. 291 note 15 W R. 395

HURKISHOR DAS BHOOYA *v* JOOGUL KISHOR SAHA ROY [12 B L R., 293 note 16 W R. 231

NANOO ROY *v* JHOOMUCK LALL DOSS [12 B L R. 292 note 18 W R., 376

140 ———— *Joint property* —*Form of suit*—*Parties* —If ijmali property is let to a tenant at an entire rent, the rent is due in its entirety to all the co-sharers and all are bound to sue for it no one co-sharer can sue to recover the amount of his share separately whether the other co-sharers are

CO-SHARERS—*continued*

3. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

made parties or not But if the land demised ceases to be ijmali and different portions of it become the property of different owners any one of the owners may sue for so much of the rent as he considers himself entitled to making the other owners parties to the suit Where co sharers of ijmali land let to a tenant at an entire rent brought a suit against their *tenant to recover their proportionate shares of the rent* and made the other co sharers defendants avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant —*Held* that as the area of the property had not been divided as the rent had always been paid in its entirety and as the title of all the co-sharers remained ijmali the suit would not lie ANNODA CHURN ROY *v* KALLY COOMAR ROY I. L. R. 4 Calc 89 2 C L R 464

141. ——— *Suit for arrears of rent by undivided co sharer against co sharer* —An undivided co sharer cannot maintain a suit for arrears of rent against an occupant of the estate without evidence that the rents due to such co sharer have been separately collected or that there was an agreement to pay them separately Still less can such a suit be maintained where the defendant is himself a co sharer DINOBUNDHOO CHOWDHRY *v* DINONATH MOOKERJEE 19 W R. 168

142. ——— *Extent of shares admitted* —In a mehal where by custom each co sharer collects his proportionate share of rent from the common tenants —*Held* that the several co sharers can where the extent of their shares is admitted by the tenants sue to recover their respective shares of rent HIDAYETOOLLAH *v* INDERJEET TEWAREE 2 Agra 282

143 ——— *Ascertained shares* —Share holders whose shares are clearly ascertained may sue for their respective shares of the rent payable to them without waiting for the other parties entitled to rent joining the suit or without adding them as parties UMRIT CHOWDHRY *v* HYDER ALI W R., 1864 Act X 63

MOHAMMED SINGH *v* MUGHY CHOWDHRAIN [1 W R 253

144 ——— *Separate allotment and arrangement to pay separately* —When by a specific arrangement the sharers in an undivided mehal had divided the cultivated lands assigning definite portions to the shareholders severally the rents of which they would be entitled to receive from the cultivators cultivating such plots respectively —*Held* that such sharers stand to such cultivators in the relation of landlord and tenant and are competent alone to bring suits against their cultivators *Hidayetoollah* v *Inderjeet Tewaree 2 Agra* 282 distinguished JANKEE DASS *v* MAHOMED [1 N W Part 2 p 16 Ed. 1873 76

145 ——— *Co sharer occupying more than his own share* —Where a co sharer occupies a larger portion than his own share or the whole estate by renting the land he occupies from one or more of his co sharers he may be sued for the rent by the person or persons with whom he engaged Where a co sharer occupies more than his own share or holds the whole estate by renting the land he occupies from one or more of his co sharers the liability of the cultivating shareholder to payment must in the absence of usage agreement or evidence be deemed single and entire But if there is an agreement express or implied that the occupying shareholder shall pay separately to each of his co-proprietors a definite sum such sum may be recovered by each co-proprietor by a separate rent suit KALEE PERSHAD *v* LUTAFUT HOSSEIN [12 W R. 418

146 ——— *Collusion of other sharers with tenant* —One of three co sharers of certain property the rent of which was paid by the tenant to a person acting as agent of the co sharers from whom they received it in proportion to their respective shares brought a suit against the tenant for her share of the rent of which she alleged her co sharers were colluding with the tenant to deprive her To this suit she made her co sharers defendants The defendants alleged that she had not received and was not entitled to receive the rent from the tenant but the lower Courts found these facts in her favour and gave her a decree It was objected on special appeal that the suit would not lie inasmuch as the plaintiff being one of several co-sharers was not competent to sue alone for her share of the rent *Held* that under the circumstances and the co sharers having been made defendants the suit was maintainable DOORGA CHURN SURMA *v* JAMPA DASSEE 12 B L R. F B 289 21 W R. 46

147 ——— *Agreement to pay separately* —A landlord one of several co sharers cannot sue a tenant of the joint estate for his separate share of the rent unless the tenant has paid or agreed to pay him separately GANGA NARAYAN DAS *v* SARODA MOHAN ROY CHOWDHRY [3 B L.R. A. C. 230 12 W R. 30

PAKHAL CHUNDER ROY CHOWDHRY *v* MAHTAB KHAN 25 W R. 221

BRIJOKISHORE BHUTTACHARJEE *v* OOMA SOONDUREE DEBIA 23 W R. 37

BYKUNT KYBURTO DOSS *v* SHUSHEE MOHUN PAUL CHOWDHRY 22 W R. 526

HARADHUN GOSSAMEE *v* RAM NEWAZ MISSRY [17 W R. 414

SREE MISSER *v* CHOWDY 15 W R. 243

NUSSURUT ALI *v* ABDOOL KAREEM CHOWDHRY [11 W R., 373

RAMJOY SINGH *v* NAGUR GAZEE [5 W R., Act X 68

148 ——— *Specification of land of which rent is sued for* —One of undivided joint sharers of land cannot sue alone for his share of the rent of the land without specifying the land in

CO SHARERS—*continued*

3 SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

respect of which the suit is brought BHYRUB MUNDUL v GUNGARAM BONERJEE

[12 B L R. 290 note 17 W R 408

149 ———— *Costs* —Each of two shareholders in a talukh sued separately for his share of the rent due from a tenant who held under one kabuliat *Held* that when both the shareholders were before the Court though in different suits the suits were maintainable but that no more costs were to be awarded to the plaintiffs than if they had sued jointly PYARI MOHAN SINO v GAZI

[2 B L R. A. C., 337 11 W R., 270

150 ———— *Landlord and tenant—Collusion of other sharers with tenant*—Where one of a number of co-sharers of certain property the rent of which was paid by the tenants to a person acting as agent of the co sharers from whom they received it in proportion to their respective shares brought a suit against the tenants for arrears of rent and it appeared that the agent had been dismissed by the other co-sharers without the consent of the plaintiff and contrary to her wish and that she had given notice to the tenants to continue the payment of her share as before and not to pay any newly appointed agent and it also appeared that the other co sharers were colluding with the tenants and the plaintiff made them parties defendants with the tenant —*Held* that such a suit would not lie and that the proper course to pursue was that pointed out in *Tara Chunder Banerjee* v *Ameer Mundle* 22 *W R* 394 JADOO SHAT v KADUMBINEE DASSEE

[I L. R. 7 Calc. 150 8 C L R 445

151. ———— *N W P Rent Act (XVIII of 1873) s 106—Lease to mortgagors*—*B* and *N* the mortgagees of a mehal granted the mortgagors a lease thereof the mortgagors agreeing to pay the mortgagees a certain rent half yearly on account of the right they held in equal shares and that in default in payment of such rent the mortgagees should be entitled to sue for payment The mortgagors having made default in payment of the rent and *N* refusing to join in a suit against the mortgagors to enforce payment *B* sued them alone for a moiety of the rent due *Held per* SPANKIE *J* that s 106 of Act XVIII of 1873 did not apply and *B* was entitled separately to sue for the whole of the rent SHIB GOPAL v BALDEO SAHAI

I L R. 2 All. 264

152 ———— *Joint payment of rent to co sharers*—Where a tenant who held under co-sharers to whom he had been accustomed to pay his rent jointly was sued by one of the co sharers the others being made defendants to the suit and pleaded that he had paid the rent to his co defendants who admitted receipt thereof —*Held* the suit should be dismissed the remedy of the co sharer who has not received his share of the rent is against his co sharers not against the tenant AHAMUDEEN v GRISH CHUNDER SHAMUNT

[I L. R 4 Calc 350

CO SHARERS—*continued*

3 SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

153 ———— *Suit for rent—Tenant settled on the land by a trespasser Portion of—Joint landlords—Payment of rent by a tenant to some of the landlords whether sufficient discharge from liability to other landlords—Bengal Tenancy Act (VIII of 1885) ss 157 and 189*—A suit was brought by the plaintiffs against a tenant for the entire rent making the co-sharer landlords also defendants to the suit. The defence of the tenant defendant No 1 was denial of relationship of landlord and tenant and payment to the co sharer landlords. *Held* that the payment to the co sharer landlords defendants Nos. 2 and 3 was not sufficient to discharge the defendant No 1 from liability to the plaintiffs. *Ahamudeen* v *Grish Chunder Shamunt I L R 4 Calc 350* distinguished. AZIM SIRDAR v RAMLALL SHAHA

[I. L. R., 25 Calc. 324

154. ———— *Collusion of co sharers with tenant—Parties*—A co sharer on the allegation that a tenant in collusion with the rest of the co-sharers in the estate had withheld the payment of his rent (hitherto paid jointly to all the co sharers) brought a suit for the recovery of his share of the arrears of rent making the tenant and all the colluding shareholders defendants to the suit *Held* that such suit was maintainable JADU DASS v SUTHERLAND

[I. L. R., 4 Calc. 556 3 C L. R., 223

155 ———— *Separate payment of rent—Admission of claim—Suit for fractional share of rent*—The plaintiff alleging himself to be a fourteen annas shareholder in a zamindari sued a tenant for a proportionate share of the rent due to him as such shareholder The other co-sharers were made defendants, but did not contest the suit *Held* that inasmuch as it had been shown that the tenant defendant had on previous occasions, paid the plaintiff rent separately though not in the proportionate share now demanded by him and it being further to be presumed that the co-sharers admitted the plaintiff's claim such suit would lie GUNGANARAIN SIRKAR v SREENATH BANERJEE

[I. L R. 5 Calc 915 6 C L. R. 16

156 ———— *Suit for arrears of rent—Liability of tenant acquiescing in arrangement for separate payment*—Where on the consent of all the shareholders landlords a tenant in an undivided property has agreed to pay the different sharers the rent of the tenure in proportion to their respective shares and can be and has been sued for the rent of a particular share it is not open to such tenant to cease from paying the proportionate fraction of the rent due in accordance with his agreement except on the consent of the owner of that particular share Where co-sharers in an undivided property acquiesce in a decision declaring one of their number the owner of a recognized share in such property it is not open to a tenant (who had previously agreed to pay his rent in accordance with the shares of the respective part owners) to refuse

CO SHARERS—*continued*

3. SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

payment of the proportionate share of the rent claimed by such co-sharer as the owner of the recognized share simply on the ground that he had never before paid rent so proportioned to such co-sharer LOOT ELLHUCK v GOPEE CHUNDER MOJOOMDAR

[I. L. R. 5 Calc., 941 6 C L. R. 402

157 ———————— *Arrangement for separate payment of rents—Evidence of arrangement—Parties—Suits for arrears of rent—Suit for kabuliat—Cancellation of lease*—Where it has been arranged between the co sharers of an estate and their tenant that he shall pay each co sharer his proportionate share of the entire rent each co sharer may bring a separate suit against the tenant for such proportionate share In the absence of such an arrangement no such suit can be maintained Such an arrangement may be evidenced either by direct proof or by usage from which its existence may be presumed and is perfectly consistent with the continuance of the original lease of the entire tenure. But an arrangement of this nature will not enable one co sharer to sue the tenant for a kabuliat for a co-sharer who obtains a kabuliat is bound at the request of the tenant to give him a pottah upon the same terms and the grant and acceptance of a binding lease of any separate share cannot exist contemporaneously with an original lease of the entire tenure The cancellation and determination of the original lease ought not to be presumed from the mere fact of a separate payment of rent to one or more of the co-sharers. GUNI MAHOMED v MORAN DOORGA PERSHAD MYTEE v JOYNARAIN HAZRA

[I. L R 4 Calc 96 2 C L R. 371

158 ———————— *Presumption as to separate payment of rent—Agreement for separate payment*—It has often been decided that from the fact of rent having been collected for some time by one of several co sharers separately an agreement for payment of the separate rent of a share could be presumed *Held* (on appeal from AINSLIE J) that the facts of this case were not sufficient to warrant the making of such a presumption. ANOO MUNDUL v KAMALOODDEEN 1 C L. R. 248

KAMALOODDEEN v ANOO MUNDUL

[1 C L R. 564

159 ———————— *Rent paid to person without title*—Where a tenant knowing that a co proprietor has been in possession of a share for a very long time and after distinct notice paid rent which belonged to the said sharer to another person who had no title at all it was held that a suit by that single proprietor for his share of the rent was maintainable DINOBUNDOO ROY v OOMA CHURN CHOWDHRY 23 W R. 53

160 ———————— *Lease—Suit by one of several joint lessors for balance of rent—Act XII of 1881 (N W P Rent Act) s 106*—M and S were joint lessors of certain land by a kabuliat which did not contain any specification of the shares of the lessors M stating that the share of rent due to S had already been paid sued the lessee for the recovery of his own share The amount claimed was all that remained due on the lease *Held* that the plaintiff was entitled as one of the joint lessors to sue for the balance of rent and that his suit was therefore not barred by the terms of s 106 of the North Western Provinces Rent Act (XII of 1881) *Manohar Das v Mantr Ali* I L R 5 All 40 referred to *Quære*—Whether the kabuliat whereon the suit was based might not be called a special contract within the meaning of s 106 of the Rent Act so as to render the section inapplicable MURLIDHAR v ISHRI PRASAD

[I. L R 6 All. 57

161 ———————— *Suit by some co sharers for proportionate amount of rent making others defendants*—Three out of five co sharer proprietors of certain mouzahs brought a suit against the patnidars for the proportionate amount of the rent due to them and for the determination of that amount making the two remaining sharers defendants *Held* that the suit was properly framed SREENATH CHUNDER CHOWDHRY v MOHESH CHUNDER BUNDOPADHYA 1 C L. R., 45

162 ———————— *Claim to whole rent or whole balance due*—One of several co sharers can bring a suit for rent making his co sharers parties only when he claims in such suit the whole rent due to all the shareholders or where any portion of it has been paid the whole unpaid balance DINO NATH LAKHAN v MOHURUM MULLICK

[7 C L. R., 13

163 ———————— *Suit by co sharer making another defendant without asking him to join as plaintiff*—Two of four persons who were jointly entitled to rent of a talukh purchased that talukh One of the two other co sharers thereupon sued the purchasers for the balance of rent after deducting the amount to which the purchasers were entitled as zamindars and he made the fourth co sharer a defendant without having asked him to join as a plaintiff The lower Appellate Court dismissed the suit as improperly framed. *Held* that the plaintiff was not bound to ask the first co sharer to join as plaintiff and that the suit was properly framed. TARINI KANT LAHIRI v NUND KISHORE PATRONOVIS 12 C L. R., 58

164. ———————— *Suit by co sharer making another defendant—Failure to show refusal to join as plaintiff*—When one of several co sharers brought a suit for arrears of rent due to all of them and made the other co-sharers defendants in the suit on the allegation that they were not willing to join as plaintiffs though asked to do so and the co-sharers did not appear the Courts below dismissed the claim for the entire rent on the ground that there was no evidence to show that the co-sharer defendants refused to join as plaintiffs *Held* that there was no authority for dismissing the claim on that ground. *Tarini Kant Lahiri v Nund Kishore Patronovis* 12 C L R 588 referred to

CO SHARERS—*continued*

3 SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

BISSESSWAR ROY CHOWDHRY *v* BROJO KANT ROY CHOWDHRY 1 C W N 221

165 ———— Rent, Suit for—*Parties—Right of some of several co sharers to sue alone—Refusal to join suit as plaintiffs*—It is only when plaintiffs can show that those entitled as co sharers to join with them have refused to join or have other wise acted prejudicially to the plaintiffs interests, that they are entitled to sue alone and make their co sharers defendants in the suit DWARKANATH MITTER *v* TARA PROSUNNA ROY [I. L. R. 17 Calc 160

JIBANTI NATH KHAN *v* GOKOOL CHUNDER CHOWDHRY I. L. R. 19 Calc, 760

166 ———— *Right of some of several co contractors to sue alone—Refusal to join in the suit as plaintiff Effect of*—Where two parties contract with a third party a suit by one of them making the other a co defendant ought not to be dismissed merely because the plaintiff has not proved that the co defendant had refused to join as a co-plaintiff PYARI MOHUN BOSE *v* KEDARNATH ROY I. L. R. 26 Calc 409

PYARI MOHUN BOSE *v* NOBIN CHUNDER ROY [3 C W N 271

167 ———— *Suit for rent by one of several co sharers—Rent suit—Landlord and tenant—Parties*—A suit for arrears of rent cannot be brought by one of several co-sharers unless it is shown that the co sharers are unwilling to join as plaintiffs SHOSHEE SHEKHARESWAR ROY *v* GIRIS CHANDRA LAHIRI 1 C W N 659

168 ———— *Co sharers Suit by one of several for separate share of rent or in alternative for whole rent due if more than share claimed should be found due—Parties*—The plaintiffs, some of the co sharers in certain lands instituted a suit against a tenant and the remaining co sharer *P* alleging that the tenant held under a pottah granted by all the co sharers that rent was due from him for the period in suit and that they had ascertained from *P* that he alleged that he had received his share of the rent for that period from the tenant and that he refused to join as plaintiff in the suit They accordingly prayed (*a*) for a decree for the amount of their share of the rent against the tenant (*b*) if it should appear that any part of *P*'s share of the rent remained unpaid the requisite extra Court fee might be received and a decree made for whole of the arrears in favour of themselves and *P* and that the latter might if he consented be made a co-plaintiff (*c*) that if it appeared that *P* had realized more than his share of the rent a decree might be made against him for the excess and against the tenant for the balance The plaint also asked for costs and further relief The tenant contested the suit and submitted that it was in effect a suit for plaintiffs share of the rent only and could not therefore be maintained. He further pleaded that the plaintiffs and *P* were members of a joint Hindu family of which *P* was the manager and that under arrangement with the latter he had applied the rent due under the pottah towards the liquidation of debts due under bonds in *P*'s name but for which the joint family were liable The first Court dismissed the suit on the preliminary issue that it was in substance a suit for a specific share of the rent by some only of the co sharers and that there being no agreement by the tenant to pay the co sharers their respective shares of the rent separately such a suit would not lie *Held* (upholding the order of the lower Appellate Court) that the order of the first Court was wrong The suit as framed, was necessarily a suit in the alternative and as the plaintiffs were necessarily not aware whether any portion of *P*'s share of the rent was due or not but believing that none was due they could only claim their share asking to have the plaint amended so as to include the whole rent due if it should appear that anything was due to *P* and thus bring the suit within the rule that in the absence of special agreement between a tenant and co sharers to pay their rateable proportion of the rent a suit by one of the co sharers must be for the entire rent due making his co sharers defendants if they refuse to join as plaintiffs. The prayer of the plaint fully provided for this and the suit should have been tried on its merits and the plaint amended if the facts proved showed that any rent remained unpaid and due to *P* as asked for by the plaintiffs PERGASH LAL *v* AKHOWRI BALGOBIND SAHOY [I L R., 19 Calc., 735

169 ———— *Parties—Plaintiffs—Suit for adjustment of proportionate share of rent by one co sharer—Lease Construction of*—A lease of certain land of which the plaintiff was a fractional co sharer provided as follows —"After the land in question is fully brought under cultivation you shall pay rent without default according to kists year after year as per measurement and jummabandi at the said rate of Company's 10 annas 10 gundahs for the quantity of land that will be left after deducting beds of khals pasture lands lands unfit for cultivation places of worship hajats pujai basha bris and your remuneration for reclamation upon measurement of all the lands by the standard rod used in the abads of the said talukh On no account shall any larger amount be demanded In a suit instituted when the land had been fully brought under cultivation and after measurement the plaintiff claimed only her own share of the rent and her co sharers did not join her as co plaintiffs nor were they made defendants *Held* that the suit was not maintainable What the lease contemplated under the circumstances which had arisen was a final adjustment of the rent and such an adjustment could be obtained only by a suit brought by all the co sharers or by some of them if the others refused to join but in that case the suit must be for the adjustment of the entire rent and all the necessary parties must be properly before the Court BINDU BASHINI DASI *v* PEARI MOHUN BOSE I. L. R. 20 Calc., 107

170 ———— *Suit by a joint proprietor for arrears of rent—Kabuliat executed*

CO-SHARERS—*continued*

3 SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

pr r to B ngal Ten ncy Act—Covenant f r a high rate—Enhancement f rent In a kabuliat executed in 1 81 it was stipulated that upon the expiry of the term of seven years fixed therein a fresh lease should be executed that should the d fendant cultivate the lands without executing a fresh kabuliat he would pay rent at the rate of R4 a bigha (a rate much higher than that fixed f r the term) No fresh kabuliat was executed on expiry of the term and the plaintiff a part proprietor collecting rent separately brought this suit f r arrears of rent at the new rate of R4 The defendant objected *inter alia* that the plaintiff being a part proprietor was not entitled to sue f r enhanced rent The first Court gave a decree at an enhanced rate On appeal the Subordinate Judge dismissed the wh le suit on the ground that the suit being one f r enhanced rent and the plaintiff a part proprietor the suit did n t lie *Held* that the kabuliat having been executed bef re the Bengal Tenancy Act was passed the present case did n t come within the operation of that Act and the plaintiff although a part proprietor could bring this suit *Ram Chunder Chakravutty* v *Girdhur Dutt* I L R 19 Calc 755 followed. TEJENDRO NARAIN SINGH *v* BAKAI SINGH I L R. 22 Calc. 658

171. ———————— *Suit for rent under contract—Right of suit by one of several co-sharers for rent making the rest parties* —Plaintiff the co-plaintiff defendant No 1 and other persons who also were defendants held a tenure under which defendant No 1 held an under tenure Plaintiff brought this suit for the whole of the rent claiming only his own share of it making those co-sharers defendants who did not join as plaintiffs. The terms of the defendant s pottah were that the whole of the lands being brought under cultivation the landlords would be at liberty to measure the lands of the ganti and if the land be found greater in quantity than 150 bighas the tenant would pay rent at the rate of 10 annas per bigha. The lands being found greater than the said quantity the plaintiff prayed for a decree for rent at that rate for the whole area The defendant pleaded *inter alia* that the plaintiff as a fractional sharer in the landlord s interest could not sue him alone *Held* that the plaintiff having sued for the whole rent and made all the non joining co sharers parties defendants there was no defect in the suit *Bindu Bashini Dasi* v *Peari Mohun Bose* I L R 20 Calc 107 *Tejendra Narain Singh* v *Bakai Singh* I L R 22 Calc 658 referred to DINTARINI DASI *v* BROUGHTON 3 C W N 225

(*f*) ENHANCEMENT OF RENT

See CASES UNDER S 188 OF THE BENGAL TENANCY ACT

172 ———— Suit for enhanced rent on agreement of one of several co-sharers —The rent of a joint undivided tenure cannot be enhanced on the strength of an ikrar executed by one of the c parceners HEMAYETOOLLAH CHOWDRY *v* NIL KANT MULLICK 17 W R. 139

173 ———— Suit to enhance share of rent—*Enhancement of rent Suit for by one co sharer* —Where rent whether payable in money or in kind to one person or several is rendered under an entire contract or obligation it is not competent for one of several co sharers to bring a suit to enhance his portion of such rent The fact of the claimant making the other co sharers parties defendants in the suit cannot alter his rights and there being a common interest in all the co sharers one of the number cannot proceed as if his rights were separate and distinct MAHOMED SAID OOD DEEN *v* MAHOMED HOSSEIN [2 N W 438

174. ———————— *Enhancement Suit for by one co sharer* —One co sharer cannot enhance the rent of his share such an enhancement being inconsistent with the continuance of the lease of the entire tenure GUNI MAHOMED *v* MORAN DOORGA PROSHAD MYTEE *v* JOYNARAIN HAZRA [I L R 4 Calc. 96 2 C L R. 371

overruling on this point DOORGA PROSHAD MYTEE *v* JOYNARAIN HAZRA I. L. R 2 Calc 474

and TROYLOCKOTARAN CHOWDHRY *v* MATHOORA MOHUN DEY W R. 1864 Act X 41

175 ———————— A suit will not lie by one co sharer for enhancement of the rent of a fractional part of the joint property *Quære*—Is the owner of a fractional share of a superior tenure competent to maintain a suit for enhancement of rent of a fractional share of an under tenure subordinate to the former? RAJ CHUNDER MOJOOMDAR *v* RAJARAM GOPE 22 W R., 385

176 ———————— *Holder of specific share* —The holder of a specific share in an estate not regularly partitioned may sue for enhancement of his share of the rent RAM LOCHUN GUPTE *v* PETUMBER PAUL W R 1864 Act X 111

177 ———————— A sharer in a joint estate not partitioned although he may collect separately his share of rent cannot enhance the rent without the concurrence of his co parceners SUJUN LOOLL *v* HEITOO 1 N W 165 Ed. 1873 244

178 ———— Right of sharer to enhance rent—*Admission of claim* —Where there is no joint lease and the plaintiff's share is not disputed a suit for a kabuliat at an enhanced rent will lie In such a case the suit must be for the enhancement of the rent of the whole of defendant s tenure, to enable the Courts to decide as to the portion payable to plaintiff DOOKEE RAM SIRCAR *v* GOWHUR MUNDUL 10 W R 307

179 ———————— *Joint notice of enhancement—Separate suit for rent* —Although an estate is joint and the notice of enhancement prescribed by s 13 Act X of 1859 was jointly issued by both the proprietors, yet where they collected their quota of rent from each of the common tenants separately according to their respective shares it was

CO SHARERS—*continued*

3 SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued*

competent to one of them to claim alone for his share of the rent enhanced by the notice ISREE PERSHAD RAE v TOOLSEE RAM 3 Agra 352

180 ———— *Enhancement of rent of a jote—Suit by one co sharer for separate payment of rent* —A suit by the owner of an undivided share to enhance the rent of a jote the tenant of which has been in the habit of paying his rent to each sharer separately will not lie even though plaintiff s co sharers be made defendants to the suit RAJENDRO NARAIN BISWAS v MOHENDRO LALL MITTER 3 C L R 21

181 ———— *Suit by one of two joint khots for enhanced rent—Notice* —One of several tenants in common joint tenants or co parceners (unless he is acting by consent of the others as manager of an estate) is not at liberty to enhance rent or eject tenants at his pleasure *Doorga Prosad Mytee Joynarain Hazra I L R 2 Calc 471,* distinguished BALAJI BAIKAJI PINGE v GOPAL BIN RAGHU KULI I L R 3 Bom, 23

KRISHNARAV v GOVIND [I L R 3 Bom 25 note

HIDAYETOOLLAH v INDERJEET TEWAREE [2 Agra 282

182 ———— *Evidence of previous enhancement in a suit by another co zamindar* —More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependent talukh the zamindari under which the talukh was held was partitioned under a batwara among three zamindars A ten anna share was allotted to one (the present plaintiff) a four anna share to another and a two-anna share to a third. The talukhdars continued to hold the entire property and paid the rent apportioned by law severally to each of the parties entitled In 1861 the owner of the two anna share obtained a decree against the talukhdars for enhancement of the rent of his share In the present suit against the same talukhdars the defendants contended that the rent of their talukh had not been changed for a period of more than twenty years before suit *Held* that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talukh that the plaintiff could avail herself of that decree although she was not a party to it SARAT SOONDARY DABEA v ANAND MOHUN SURMA GHUTTACK [I L R 5 Calc 273 4 C L R 448

See HEM CHANDRA CHOWDHRY v KALI PRASANNA BHADURI I L R 26 Calc 832

183 ———— *Arrangement for separate payment of rent—Suit for arrears of rent at enhanced rates—Beng Act VIII of 1869 s 29* —One co-sharer cannot (even if he make his co sharers parties to his suit) sue for the enhancement of his share of the rent such an enhancement being inconsistent with the continuance of the lease of the entire tenure BHAIRUB CHUNDER ROY v KALLY DAS DEY [I. L. R. 5 Calc 574 5 C L R 545

184 ———— *Parties—Enhancement of rent—Separation of shares—Act XI of 1859 s 10* —Two co-sharers joint owners of a zamindari caused their shares to be separately registered in the Collector's office under s 10 Act XI of 1859 Subsequently one of the co sharers sued certain persons (who held raiyati tenures in the co-sharers zamindari) for enhancement of rent without making the other co sharer a party *Held* that no such suit would lie *Guni Mahomed v Moran I L R. 4 Calc 96* followed JOGENDRO CHUNDER GHOSE v NOBIN CHUNDER CHOTTOPADHYA [I L R. 8 Calc 353

185 ———— *Notice of enhancement* —*Held* in a suit for enhancement by one co sharer to which the other co sharer was made a party that one co sharer is not competent to issue a proper notice of enhancement without the consent of the other co-sharers previously obtained though the rent has been paid to each co sharer separately Under the ruling of the Full Bench in the case of *Guni Mahomed v Moran I L R., 4 Calc 96* he must first establish his right to a separate contract to recover his rent separately on his individual share KASHEEKISHORE ROY CHOWDHRY v ALIP MUNDUL [I L R. 6 Calc 149 7 C L R., 107

But *see* CHUNI SINGH v HERA MAHTO [I L R 7 Calc 633 9 C L R. 37

and ABDOOL HOSSEIN v LALL CHAND MOHTAN [I. L. R 10 Calc 36 13 C L R., 323

186 ———— *Suit by one co sharer—Parties* —Even if a single shareholder can raise the rent of a joint tenant without the consent of his coparcener he can only do so in a suit to which all the sixteen annas proprietors must be made parties. GOPAL v MACNAGHTEN I. L R., 7 Calc 751

BHEEKOO v OOMAR KHAN [I N W Ed 1873 236

187 ———— *Notice of enhancement—Parties* —*A* and *B* were talukhdars of a certain village each having an eight anna share A certain raiyat held a jote within the village in respect of which he paid his rent separately—eight annas to *A* and eight annas to *B* *A* served a notice of enhancement on the raiyat but the notice was signed by *A* only and it did not appear that the consent of *B* had been previously obtained *A* afterwards instituted a suit for arrears of rent at the enhanced rate making *B* a defendant to the suit *Held* that the notice of enhancement was sufficient to maintain a suit so framed BIDHU BHUSUN BASU v KOMARADDI MUNDUL I. L. R 9 Calc 864

188 ———— *Suit for enhancement of a proportionate share of the rent by one co sharer—Collection of rent separately* —An eight anna sharer in an undivided estate who collected his portion of the rent separately brought a

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suit upon n tice issued by himself against a tenant in which he made the other co sharers parties defendants to recover arrears of rent at an enhanced rate in pro portion to his share *Held* that such a suit was not maintainable unless it could be shown that the co sharers had refused to join as plaintiffs *Bidhu Bhushun Basu* v *Komaradd Mundul I L R 9 Calc 864* distinguished. KALI CHANDRA SINGH v RAJKISHORE BHUDDEO

[I. L. R. 11 Calc 615

189 ——————— *Enhancement by one out of a number of co-sharers when possible—Ijmali mehal—Practice of separate leases by several co sharers*—The mere fact of their being other co-sharers in an undivided mehal is not sufficient to put the plaintiff out of Court in a suit for enhancement in respect of a particular plot of land and the proper issue in such a case is whether the defendant tenant has been holding under the plaintiff separately or under a joint lease from the plaintiff and his co-sharers in the mehal *Guni Mahomed* v *Moran I L R 4 Calc 96 Jogendro Chunder Ghose* v *Nobin Chunder Chattopadhya I L R 8 Calc 353* distinguished RASHBEHARI MUKHERJI v SAKHI SUNDARI DASI I. L. R. 11 Calc 644

COSTS

COSTS—*continued*

See CASES UNDER APPEAL—COSTS

See ATTORNEY AND CLIENT

[3 B L R O C 90
10 B L R 444
I. L. R., 3 Calc. 473
15 B L R Ap 15
I. L. R. 6 Calc., 1
8 Bom. O C 163

See COMPANY—WINDING UP—COSTS AND CLAIMS ON A ETS 3 B. L. R., Ap 11

COSTS—*continued*

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—COSTS

See CASES UNDER DECREE—FORM OF DECREE—COSTS

See CASES UNDER DIVORCE ACT S 35 AND S 37

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS
[I L R 17 Bom, 514

See CASES UNDER INTEREST—MISCELLANEOUS CASES—COSTS

See INTERPLEADER SUIT
[I. L R 18 Bom., 231

See LAND ACQUISITION ACT 1870 S 35
[13 B L R, 189

See LAND ACQUISITION ACT 1870 S 39
[8 Mad 192

See MINOR—REPRESENTATION OF MINOR IN SUIT
21 W R 312
[11 C L R 15
I. L R 7 Calc 140
I L R 11 Calc 213
I L R 17 Mad, 257

See CASES UNDER PLEADER—REMUNERATION

See CASES UNDER POSSESSION ORDER OF CRIMINAL COURT AS TO—COSTS

See PRACTICE—CIVIL CASES—COSTS
[I L. R 18 Calc 190

See CASES UNDER PRIVY COUNCIL PRACTICE OF—COSTS.

See CASES UNDER RIGHT OF SUIT—COSTS

See CASES UNDER SECURITY FOR COSTS

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—COSTS 6 Mad. 192

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—GENERAL CASES I L R 6 Calc 418

See CASES UNDER SPECIAL APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—COSTS

See WILL—CONSTRUCTION
[I. L. R 19 Bom., 221 770

——— in Criminal Court

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE
[I L R. 20 Calc 687

——— Recovery of when taxed

See RULES OF HIGH COURT BOMBAY—RULE NO 183 I. L. R. 16 Bom., 152

——— Taxation of—

See COMMISSION—CIVIL CASES
[12 B L. R. Ap 4

See LIMITATION ACT 1877 ART 81
[I. L. R. 22 Calc 943 952 note

COSTS—*continued*

1 SPECIAL CASES

1. ——— Abated suit—*Death of plaintiff—Cost of interlocutory order in abated suit—Civil Procedure Code 1859 ss 210 296*—Under ss 210 and 296 of Act VIII of 1859 the representative of the deceased plaintiff in an abated suit is liable for costs of interlocutory orders in the suit. MAKUDDEE ALLEE KHAN v I OHEEMOODEEN
[Bourke, O C., 154

2 ——— Abated appeal—*Death of appellant—No application for substitution—Civil Procedure Code (Act X of 1877) ss 582 583 365 and 366*—*Per* MITTER J (GARTH C.J *dubitante*—Notwithstanding that s 582 of the Code of Civil Procedure does not expressly direct that the word plaintiff occurring in s 366 shall be held to include an appellant' yet the power conferred by s. 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff may by analogy be taken to be conferred on the Appellate Court. *Lakshmibai* v *Balkrishna I L R 4 Bom 654* followed RAJMONEE DABEE v CHUNDER KANT SANDEL I L. R., 8 Calc. 440
[10 C L R 437

3 ——— Account Suit for—*Suit for account by principal against agent*—Where in a suit for an account by a principal against his agent the defendant falsely denied his fiduciary position he was ordered to pay the whole costs of the suit up to and including the costs of an appeal to the Privy Council without regard to the result of the account HURRINATH RAI v KRISHNA KUMAR BAKSHI
[I. L R. 14 Calc., 147
L R 13 I. A., 123

4. ——— Admiralty or Vice Admiralty—*Practice—Appeal from original side in exercise of Admiralty or Vice Admiralty jurisdiction—Increased costs caused by excessive bail in salvage case*—In an action of salvage in which a ship was arrested and the bail asked for was found to be excessive the Court held that the promovents must pay to the impugnants the costs required by the bail being excessive *The George Gordon L R 6 P D 46* followed Where an appeal was held to lie under the High Court Charter and the Letters Patent from the original side in the exercise of Admiralty or Vice Admiralty jurisdiction and the procedure was mainly governed by the Civil Procedure Code the usual practice as to costs on appeal was followed IN THE MATTER OF THE SHIP CHAMPION
[I. L. R. 17 Calc., 84

5 ——— *Consolidation of two separate salvage claims—Separate costs*—When two separate salvage actions are consolidated at the instance of the common impugnant, and no order is made giving the conduct of both to one plaintiff the promovents are entitled to separate costs Practice of the Court followed and costs given on the ordinary scale provided for in the rules under the Civil Procedure Code and not under the schedule relating to Vice-Admiralty actions. IN THE MATTER OF THE PETERSTER" v STEAMSHIP DRACHENFELS THE PETERSTER

COSTS—*continued*

1 SPECIAL CASES—*continued*

THE DRACHENFELS THE HUGHLI *v* THE "DRACHENFELS I. L. R. 27 Calc 860

6 ———— Appeal — *Appeal irregularly brought after time has been granted to apply to original Court* —Certain objections were taken in an execution proceeding and the Judge before whom the objections were heard passed an order disposing of the objections save as to two which he decided he had no jurisdiction to entertain The objector then made a special application to the Judge to obtain time to make an application with reference to these objections to the Court from which the decree had been transferred, and accordingly time was granted him to do so but, instead of applying the objector preferred an appeal to the High Court against the order of the Judge disposing of the objections. The High Court on hearing the appeal made the appellant pay the costs of the appeal disapproving strongly of the course taken by the objector JASSODA KOER *v* LAND MORTGAGE BANK OF INDIA

[I. L. R. 8 Calc 916
11 C L R 348

7 ———— *Laches in bringing appeal—Application to High Court's superintendence when appeal lay* —A suit was appealed to the Judge who remanded it to the lower Court for re trial the lower Court dismissed the suit The plaintiff then presented a petition to the High Court praying that the order of the Judge remanding the suit might be set aside under the provisions of s 35 Act XXIII of 1861 on the ground that as the value of the property in suit was admittedly more than Rs 5,000 the Judge had exceeded his powers in hearing the appeal. The High Court held that it had no power under s 35 of Act XXIII of 1861 to entertain the application as it was open to the petitioner to present an appeal against the order of the Judge remanding the suit and that he must proceed by way of appeal The plaintiff having appealed the order of the Judge was set aside but it was held that by reason of his laches the plaintiff was disentitled to his costs TUKEE ALI *v* SAADUT ALI

[5 N W 137

8 ———— *Costs of successful appellant refused—Failure to prove exclusive title when set up* —The costs of the appeal though successful were refused because the defendant appellant had set up as his defence an exclusive title, which he had failed to prove LACHMESWAR SINGH *v* MANOWAR HOSSEIN

[I. L. R. 19 Calc 253
L. R. 19 I. A 48

9 ———— *Dismissal of appeal—Time occupied in hearing of preliminary objection to appeal* —An appeal was dismissed with costs notwithstanding that almost the whole time occupied in the hearing of the case on appeal was taken up by the argument on a preliminary objection that no appeal lay which was taken by the respondents and was unsuccessful TOOLSEE MONEY DASSEE *v* SUDEVI DASSEE

[I. L. R. 23 Calc 361
3 C W N 347

10 ———— Attorney and client—*Attorney's lien for costs—Compromise of suit by parties —Collusion* —Where the parties to a suit came to a compromise between themselves without the knowledge of the plaintiff's attorney when the suit was at such a stage that it did not appear that the plaintiff was entitled to recover anything and there was no proof that he was to receive anything from the defendant on the compromise or that the compromise was not a *bonâ fide* one —*Held* the plaintiff's attorney was not entitled to have the compromise set aside on the ground that he might thereby be deprived of his costs A clear case of fraud and collusion must be made out to entitle the attorney to the interference of the Court RAMANATH DUTT *v* MATUNGINEE DOSSEE 12 B L R 110

11 ———— *Compromise of suit by parties out of Court without knowledge of attorneys—Taxation and payment of costs* —After the filing of the plaint a suit was compromised out of Court by the parties without the intervention or knowledge of the attorneys The plaintiff's attorney applied to his client for payment of costs and on his refusal to pay he applied to the Court that his bill should be taxed and that his client should thereupon pay it and the Court granted the application ISWAR CHANDRA DUTT *v* ISWAR CHANDRA GHOSE

[9 B L R Ap 19

12 ———— *Order directing client to pay costs* —It is not the practice to make an order directing a client to pay his attorney the costs of suit when taxed Such an order can only be made in a regular suit by the attorney against his client DOMUN *v* EMAUM ALLY

[I L R 7 Calc. 401

13 ———— *Suit for damages —Successful plaintiff's costs allowed between attorney and client* —In a case against a railway company for damages where damages were given costs were given between attorney and client so as not to exhaust the damages or the greater portion thereof EAST INDIAN RAILWAY CO *v* KALLY DASS MOOKERJEE I. L. R. 26 Calc 465

14. ———— *Mortgagor and mortgagee* —Where in a mortgage deed the mortgagee covenanted to re-convey on being paid principal and interest and all costs and charges as between attorney and client and the mortgagee in default of repayment of the mortgage money obtained an *ex parte* decree for sale the Court should award him costs as between attorney and client. CHUNDER COOMAR CHATTERJEE *v* ESSEN CHUNDER CHATTERJEE 1 Ind. Jur., N S. 222

15 ———— *Redempt on Suit for—Costs between party and party—Practice* — In a suit upon a mortgage of certain property *A* who had purchased the property in question subject to the mortgage sued upon, in execution of a decree

COSTS—*continued*

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—COSTS

See CASES UNDER DECREE—FORM OF DECREE—COSTS

See CASES UNDER DIVORCE ACT s 35 AND s 37

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS [I L R. 17 Bom 514

See CASES UNDER INTEREST—MISCELLANEOUS CASES—COSTS

See INTERPLEADER SUIT [I L R, 18 Bom 231

neys dur g a ... *neys reali ed by the* ... *lien for costs* —Case in which upon a change of attorneys during the pendency of a suit there being no express agreement as to the first attorney s costs it was *held* that the second attorney on recovering the costs of both attorneys from the client after notice that the costs of the first attorney were unpaid did so on behalf *of the first attorney to the extent of his* share of the costs ORR v NORENDRA NATH SEN [I L R 19 Calc 368

17 ——————— *Agreement as to costs between attorney and client—Change of attorney—Right of attorney to his taxed costs* —Where *F* an attorney agreed to conduct a suit for his client and to accept R150 for his personal services and not in respect of out of pocket costs and counsel s fees and in the event of his client being successful to recover his full costs from the opposite party and to refund the R150 it was *held* upon the client desiring to change to another attorney that he could do so upon payment to *F* of his taxed costs CHASSEE JEMADAR v NASSIRUDDIN MISTRY I L R 26 Calc 769

See BASANTA KUMAR MITTER v KUSSUM KUMAR MITTER 4 C W N 767

18 ——————— *Lien of attorney for costs—Application for costs to be paid out of money in hands of receiver in the suit—Practice* —The attorneys for the plaintiff claimed a lien on the amount in the hands of the receiver of the Court to the credit of the plaintiff in a partition suit for the costs of the suit which had been secured by the deposit with the attorneys of the title deeds of the plaintiff s family dwelling house which formed a portion of the property sold by the receiver under the decree in the suit *Held* on an application by the attorneys for payment to them of such costs that the lien could not be given effect to in summary proceedings of this nature but should form the subject of a regular suit Except in such a suit it is not the practice of the Court to make any order for payment of costs between an attorney and his client *Domun v Emaum Ally I L R 7 Calc 401* followed MAHOMMED ZOHURUDDEEN v MAHOMMED NOOROODDEEN I L R 21 Calc 85

19 ——————— *Attorney s lien for costs—General jurisdiction of High Court over attorneys—Compromise by parties without knowledge of attorney—Lien Notice of*—The decree obtained by the plaintiff in this suit was satisfied by

COSTS—*continued*

1 SPECIAL CASES

1. ——————— Abated suit—*Death of plaintiff—Cost of interlocutory order in abated suit—Civil Procedure Code 1859 ss 210 296* —Under ss 210 and 296 of Act VIII of 1859 the representative of the deceased plaintiff in an abated suit is liable for costs of interlocutory orders in the suit. MAHUDDEE ALLEE KHAN v IOHEEMOODEEN [Bourke, O C, 154

2 ——————— Abated appeal—*Death of appellant—No application for substitution—Civil Procedure Code (Act X of 1877) ss 582 368 365 and 366* —*Per* MITTER, J (GARTH C.J *dubitante*) —Notwithstanding that s 582 of the Code of Civil Procedure does not expressly direct that the word ... [r]ing in s 366 shall be held to ... the power conferred by ... tion to award ...

GHOSE

20 ——————— ... may —*Summary jurisdiction—Collusive and fra[udulent] compromise to deprive attorney of his costs—Compromising suit without knowledge of attorney* —An attorney applied for an order that the plaintiff and the defendant or either of them should pay to him his taxed costs on the ground that they had fraudulently and collusively compromised the suit with the object of depriving him of his costs *Held* that in cases of this kind where charges of fraud and collusion are made it is inconvenient for the Court to dispose of the issues on affidavits alone *Held* also that it is not the practice of the Court to interfere summarily between attorneys and their clients as regards claims for costs *Khettler Kristo Mitter v Kally Prosonno Ghose I L R 25 Calc 887* dissented from PAMDOYAL SEROWGIE v RAMDEO [I L R. 27 Calc 269 4 C W N 208

21 ——————— Award—*Application to file an award—Act VIII of 1859 s 327* —Where an application under s 327 Act VIII of 1859 was rightly considered as a regular suit the Judge was right in decreeing costs as in a regular suit ROY PRIYANATH CHOWDHRY v PRASANA CHANDRA ROY CHOWDHRY [2 B L R A C 249

S C PREONATH CHOWDHRY v RAMDHUN [11 W R 104

22. ——————— Bombay Minor s Act (XX of 1864)—*Suit to recover costs of proceedings under* —An action brought to recover costs of proceedings held under Act XX of 1864 is not maintainable when the Court before which such proceedings were taken has made no order as to the payment of such costs KABIR VALAD RAMJAN v MAHADU VALAD SHIWAJI I L R., 2 Bom., 360

23 ——————— Certificate under Act XL of 1858—*Costs of opposing grant of certificate* —Where the widow of a deceased proprietor as the guardian of his minor son put in a petition for a certificate under Act XL of 1858 in which she represented that she was in possession of the whole of the deceased s property specifying a particular pergunnah and its appurtenances —*Held* that though she did not expressly ask for a certificate to

COSTS—*continued*

1. SPECIAL CASES—*continued*

THE "DRACHENFELS." THE "HUGHLI" *v.* THE "DRACHENFELS" I. L. R., 27 Calc., 860

6. ——— Appeal—*Appeal irregularly brought after time has been granted to apply to original Court.*—Certain objections were taken in an execution proceeding and the Judge before whom the objections were heard passed an order disposing of the objections save as to two, which he decided he had no jurisdiction to entertain. The objector then made a special application to the Judge to obtain time to make an application with reference to these objections to the Court from which the decree had been transferred, and accordingly time was granted him to do so; but, instead of applying, the objector preferred an appeal to the High Court ... the order of the Judge competent to award such ... The High Court ... Collector. IN THE MATTER OF ... appellant ... OF TIRHOOT 14 W. R. 390

25. ——— Companies Act (Act VI of 1882) s. 162—*Extraordinary power of the Court under the Companies Act—Examination of witness—Costs.*—Certain persons connected with a company then in course of liquidation who were also some of the defendants in a pending suit brought by the company (and revived subsequent to the order for winding up by the official liquidator) for an account and for the recovery of certain sums alleged to have been paid to the promoters of the company having been examined under an order obtained under s. 162 of the Companies Act 1882 applied through their counsel for costs incurred on such examination. *Held* that no order as to such costs could be made. IN THE MATTER OF THE INDIAN COMPANIES ACT 1882 AND IN THE MATTER OF T. E. BROWN & CO. [I. L. R. 14 Calc. 219

26. ——— Co-sharers—*Separate suits for share of rent.*—Each of two shareholders in a talukh such separately for his share of the rent due from a tenant who held under one kabuliat. *Held* that no more costs were to be awarded to the plaintiffs than if they had sued jointly. PYARI MOHAN SINGH *v.* GAZI. 2 B. L. R. A. C. 337: 11 W. R. 270

27. ——— *Pro formâ defendants—Suit for contribution against co-sharers.*—When co-sharers who have paid their share of revenue assessments are made defendants in a suit for contribution together with other co-sharers whose proportion was paid by the plaintiff the defendants who have paid are entitled to their costs of appearing, etc., notwithstanding that the plaintiff may have made no claim against them but has joined them merely for the sake of conformity. GOLAM AHMED SHAH *v.* BEHARY LALL [Marsh. 239: 1 Hay 500

28. ——— *Pro formâ defendants—Suit for partition.*—Where co-sharers were made consenting defendants only in order to plaintiff's obtaining a complete decree for partition, it was held that plaintiff ought to pay the co-sharers' costs which, however, should be a small sum ... respondents and was unsuccessful. TOOLSEE MONEY DASSEE *v.* SUDEVI DASSEE [I. L. R., 23 Calc., 361: 3 C. W. N., 547

10. ——— Attorney and client—*Attorney's lien for costs—Compromise of suit by parties—Collusion.*—Where the parties to a suit came to a compromise between themselves without the knowledge of the plaintiff's attorney when the suit was at such a stage that it did not appear that the plaintiff was entitled to recover anything and there was no proof that he was to receive anything from the defendant on the compromise or that this ... since the payment ... not a *bonâ fide* one.—*Held* ... the full amount of revenue was an act whereby all the shareholders benefited, inasmuch as the mere payment of their respective shares by the shareholders who did not default would never have protected the estate, the plaintiff was entitled to get the costs of his suit against all the shareholders to be levied from them in the proportion of their respective shares in the estate. RADHA JIBON MUSTOFEE *v.* POHLONG [2 Hay 122

30. ——— Defendants—*Conduct rendering them liable to costs—Costs given to plaintiff though suit be dismissed.*—A defendant who although he has a good defence has by his conduct induced the plaintiff to sue him may be made liable for the plaintiff's costs though the suit be dismissed. LALLAH BHUGWAN DOSS *v.* AKBAR [1 Ind. Jur. N. S. 330

31. ——— *Conduct rendering them liable for costs—Defendant refused costs though claim against him dismissed.*—Where a party's admissions and conduct induced the suit with ... of his liability for a claim, the Court refused him his costs although the suit against him for such claim was dismissed. SHEEFNAUTH ROY *v.* GOLUCK CHUNDER SEIN 15 W. R. 348

32. ——— *Unnecessary and unsuccessful defence in mortgage suit.*—Suit on a mortgage against *A* the executrix under the will of the mortgagor and entitled to a life estate in the property. *B*, *C* and *D* the reversioners under the will were also joined as defendants. They pleaded that they were not necessary parties but joined *A* in disputing the claim in suit. The Court below decreed the claim in full with costs against *A* but dismissed the suit with costs as against *B*, *C* and *D*. *Held* that if the reversioners had confined their defence to merely pleading that they were unnecessary parties the decree of the lower Court could not be questioned but they having disputed the plaintiff's claim in common with *A* and having been unsuccessful therein the proper order for costs would be to award them pleader's fees not upon the full amount of the claim but upon one half of that amount. TARA PROSUNNO MUKHERJEE *v.* SATISH CHANDRA SINGH 4 C. W. N. 90

33. ——— *Unscrupulous conduct of defendant.*—Where the plaintiff brought

COSTS—*continued*

1 SPECIAL CASES—*continued*

a series of charges and claims the bulk of which he abandoned at the hearing and was defeated on others costs were on account of the defendant s unscrupu lous conduct given to the plaintiff though he only recovered judgment to a trifling amount PAM GOPAUL CHATTERJEE v BHOBUNMOHUN BANERJEE [Cor, 128

34 ——————— *Defendant col luding with plaintiff*—A defendant who colludes with the plaintiff and induces him to bring a suit for his benefit may be ordered to pay the costs of his co defendants in the Court below It seems that he may also be ordered to pay the costs of an appeal by the plaintiff BHYROO RAOOT v ANOOROODEE DEO NARAIN SINGH Marsh., 608

35 ——————— *Separate appear ance of—Common defence*—Where the defence is common and not separate one set of costs should be awarded to all the defendants even though they appear by separate vakils DE ASSIS v DE AUGOS [17 W R. 188

36 ——————— *Separate appear ance of—Common defence*—Several defendants were sued in respect of the same matter and their defences were identical but they appeared separate ly *Held* that in dismissing the suit the Judge properly allowed the defendants the costs of a joint defence JOYKISHEN MOOKERJEE v HURRYBUNGSO BURRAL Marsh. 95 1 Hay 162

KASSEE NAUTH ROY CHOWDHRY v HULLODHUR ROY 2 W R 60

37 ——————— *Separate defence where defences are identical*—Where the obligees of a bond brought a suit against their joint obligors the heirs of their surety a purchaser from those heirs of the property mortgaged in the money bond and one *D* in which suit they claimed to recover the money due on the bond by the sale of the property mortgaged therein a 6¼ biswas share in certain property and also by the sale of the property mort gaged in the security bond—*Held* that one set of costs was enough for the heirs of *S* and the purchaser from them of the property mortgaged in the s curity bond as their defences were identical and that *D* s costs should be calculated on the value of the 6¼ biswas the decree of the Court of the first instance being modified to this extent BHUP SINGH v ZAIN UL ABDIN I. L. R. 9 All. 205

38 ——————— *Separate appear ance of—Separate defences*—Under the Code of Civil Procedure it is the duty of the first Court to ascertain the costs of suit i e the costs of all the parties to the suit but when the first Court does not consider that the defendants have properly severed in their defence and properly employed different vakeels the Court ought not to allow more than one set of costs to the defendants and should only specify in its decree the costs so allowed RAM CHUNDER SEN v DOORGA NATH ROY 2 C L. R., 152

39 ——————— *Separate appear ance of*—In a suit against several defendants to recover possession of land one of them stated in defence that he had nothing to do with it and made good his defence The other defendants claimed to be en titled to the land and proved their title. The dis claiming defendant appeared by a separate pleader and incurred a separate set of costs *Held* that the Sudder Ameen rightly awarded a separate set of costs to him and the Judge had not exercised a sound dis cretion in modifying the Sudder Ameen s decree by awarding one set of costs only to all the defendants. RAMCHANDRA GOSWAMI v MATILAL BAGCHI [2 B L R. A. C., 189

S C RAM CHUNDER GOSSAIN v MUTTY LALL BAGCHEE 11 W R. 19

40 ——————— *Separate ap pearance of—Suit to recover endowed property*—Certain landed property alleged to have been sold to an idol and registered in the name of the ven dee's infant son as shebait had after the death of that son been mortgaged twice by the vendee who succeeded to the office of shebait and was mortgaged subsequently on the death of the vendor by his widow to pay off the charge created by her husband. The last mortgage was foreclosed and the mortgagee obtained a decree for possession In a suit for the recovery of the property by a descendant of the vendee claiming as shebait of the idol it was held that the zamindar and the patnidar who were both compelled to appear for the protection of their interests and whose defences were not necessarily identical were entitled to separate costs GOBIND NATH ROY v LUCHMEE KOOMAREE 11 W R. 36

41. ——————— *Separate costs allowed to separate defendants—Receipt for costs*—Where two separate sets of defendants were allowed separate costs—*Held* it was not necessary to keep the whole amount in Court after levying it from the plaintiffs until a joint receipt could be given by the whole of the defendants the proper course was to give notice to the second set of defen dants to come in and show what portion of the costs they were entitled to NUFFER CHUNDER PAUL v NUDUROONISSA BEEBEE 9 W R., 387

42 ——————— *Costs of defen dant with separate interests consenting to decree*—The rules relating to pleaders' fees by the Court on 13th June 1866 do not provide for the case of defendants who have separate interests and who con sent to a decree the amount of costs to be allowed in such a case being in the discretion of the Court PAMPUTTY KOER v KALEE CHURN SINGH [14 W R., 94

43 ——————— *Costs of ijmali holders as defendants*—Ijmali holders defendants should be represented ijmali by one pleader and one set of pleadings and are not entitled to separate costs. BRINDABUN CHUNDER CHOWDHRY v RAM COOMAR CHOWDHRY 1 W R. 139

44 ——————— *Separate defence on charge of misappropriation—Joint charge*—Under a charge against several defendants for having

COSTS—*continued*

I. SPECIAL CASES—*continued*

jointly misappropriated property, one defendant is not bound to entrust his defence to the counsel for the others, but each has a right to defend himself and is entitled to separate costs if successful. NILKANTH SURMA *v.* SOOSELA DEBIA 6 W. R., 324

45. ———— *Imputation of fraud when unsustained.*—The appellant defendant, continuing to impute fraud to the respondent plaintiff which he could not sustain, was deprived of his costs in appeal. LEWIS *v.* MORRISON [3 Agra Pt. II, 151

46. ———— *Rent deposited under s. 61 of Bengal Tenancy Act—Suit found to be unnecessary.*—Where in a suit for rent the defendant pleads that he has deposited it in Court having a *bonâ fide* doubt as to who was entitled to it and the defendant is found to be not to blame for the litigation, he is entitled to his costs. STALKARTT *v.* GURU DAS KUNDU CHOWDHURY [I. L. R., 21 Calc. 680

47. ———— Delay—*Civil Procedure Code, s. 315—Limitation—Sale in execution set aside—Application by purchaser for refund of purchase money—Accrual of right to apply.*—A suit by a judgment-debtor whose *sir* land had been sold in execution of a decree to have the sale declared void and illegal on the ground that the *sir* was incapable of sale was decreed on appeal by the High Court on the 13th June 1884. On the 11th June 1887 the purchaser at the sale applied under s. 315 of the Civil Procedure Code for a refund of the purchase money. *Held* that the right to apply accrued on the passing of the High Court's decree, and the application was therefore not barred by limitation; but that, looking to the great delay there had been on the part of the applicant, he should not be allowed any costs. GIRDHARI *v.* SITAL PRASAD [I. L. R. 11 All. 372

48. ———— Error or mistake—*Proceedings initiated through error of Courts.*—On the 14th February 1884 the High Court dismissed an application of the 22nd March 1883 by a purdanashin lady for leave to appeal in *formâ pauperis* from a decree dated the 16th September 1882, the application, after giving credit for 86 days spent in obtaining the necessary papers, being out of time by 73 days. On the 16th August 1884 an order was passed allowing an application which had been made for review of the previous order to stand over pending the decision of a connected case. On the 24th April 1885 the connected case having then been decided, the application for review was heard and dismissed. Nothing more was done by the appellant until the 18th June 1885, when on her application an order was passed by a single Judge allowing her, under s. 5 of the Limitation Act (XV of 1877), to file an appeal on full stamp paper; and she thereupon, having borrowed money on onerous conditions to defray the necessary institution fees, presented her appeal, which was admitted provisionally by a single Judge. *Held* by MAHMOOD, J., that the *ex parte* order of the 18th June 1885 was one which the Civil Procedure Code nowhere allowed and was *ultra vires*, and that the bench before which the appeal came for hearing was competent to determine whether the order admitting the appeal should stand or be set aside. *Dulez Sahai v. Ganeshi Lal, I. L. R., 1 All. 34*, referred to. *Held* further by MAHMOOD, J., that although but for the erroneous order of the 18th June 1885 the appellant would neither have borrowed the money required to defray the institution fees nor preferred the appeal, and this was a circumstance to be considered in the exercise of the discretionary power conferred by s. 220 of the Code, it could not be said that the error of a Court of justice which leads a party to initiate proceedings against another is sufficient to exonerate the losing party from paying the costs incurred by the opposite party, and that the appeal should therefore be dismissed with costs. HUSAINI BEGAM *v.* COLLECTOR OF MUZAFFARNAGAR I. L. R., 9 All. 11

The Judges having differed on the question as to whether sufficient cause had or had not been shown for the admission of the appeal after time, TYRRELL, J., holding that there was sufficient cause, and MAHMOOD, J., that there was not, an appeal was preferred under the Letters Patent, and the decision of MAHMOOD, J., on that point was affirmed, and the appeal was eventually dismissed with costs. HUSAINI BEGAM *v.* COLLECTOR OF MUZAFFARNAGAR I. L. R. 9 All. 655

49. ———— Fraud—*Putting forward fabricated documents.*—Where an ikrarnamah relied on by the respondents and on which the case depended was found to be fabricated, and the appellant was successful, no order was made as to costs, fabricated documents having also been put forward on behalf of the appellant. COOMARI RODESHWAR *v.* MANROOP KOER L. R. 13 I. A. 20

50. ———— Fresh suit wrongly brought—*Bringing fresh suit where appeal is the proper course.*—Where the Court refused to execute a decree given on terms of a petition embodying a compromise, and the applicant, instead of appealing, which was his proper course, brought a suit on the decree, the Court refused to give him his costs, but gave all costs in favour of the defendant. RUTTESSUR CHATTERJEE *v.* GOOROO CHURN CHATTERJEE 9 W. R. 290

51. ———— Government—*Suit for compensation for lands taken for railway.*—The plaintiff as ijaradar claimed a sum of money as compensation for land taken compulsorily for the purpose of a railway, and which had been awarded and was lying in deposit. A farmer of the lands under him claimed a portion of the same sum as compensation for the residue of his lease. *Held* that the farmer was entitled to such compensation, and that in apportioning the costs of a suit brought to try the question, in which the ijaradar was plaintiff and the Government and the farmer defendants, the farmer was entitled to receive from the ijaradar the costs of his demand to the extent to which it was established, and the plaintiff to receive from the former costs applicable

COSTS—*continued*

1 SPECIAL CASES—*continued*

one set admitted the claim and retired from the contest KOSSELLA KOER *v* BEHARY PATUCK [12 W R. 70

69 ———— *Suit against several defendants dismissed for multifariousness* —In a suit against 34 defendants to recover 3 620 bighas of land 13 came in and defended separately each in respect of his own portion of the land claimed The suit was dismissed for multifariousness Fixing a certain valuation (R5 440) for the suit so far as it was dismissed the Judge allowed each defendant full costs upon that valuation or a vakil s fee of R257 to each defendant being in many instances greater than the value of the property in dispute *Held* that this could not be a just and equitable way of awarding fees that the best plan in the present case was to allow each defendant in respect of a plot exceeding 20 bighas and not exceeding 40 bighas three gold mohur and of a plot less than 20 bighas two gold mohurs ROODUR NARAIN ROY *v* COOMAR NARAIN PATNAIK 13 W R. 320

70 ———— Mortgage—*Costs of enforcing mortgage* —A mortgagee is as a general rule entitled to the costs of enforcing his security but where the Court in consideration of his usurious bargain declines to award them wholly or in part the High Court will not interfere CARVALHO *v* NURBIBI [I L R. 3 Bom 202

71 ———— *Right to personal decree for costs against mortgagor* —Where a mortgage deed provided that the costs of any proceedings necessitated by the default of tenants in payment of rents should be deducted from the revenues and there was no express promise by the mortgagor to personally pay those expenses —*Held* that the mortgagee was not entitled to a decree for such costs against the mortgagor personally GANESH DHARNIDHAR MAHARAJDEV *v* KESHAVRAV GOVIND KULGAVKRA [I L R. 15 Bom. 625

72 ———— *Civil Procedure Code (Act XIV of 1882) s 221—Costs due by mortgagee to mortgagor—Set off against the mortgage debt—Suit for redemption* —The mortgagor is entitled to set off or deduct the amount of costs payable to him under the decree against or from the mortgage debt payable by him If the amount of the costs be larger than the mortgage debt the mortgagor is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagee SIDU *v* BALI I. L R. 17 Bom 32

73 ———— Official Assignee—*Payment of costs personally—Civil Procedure Code XIV of 1882 s 219—Practice* —If the Official Assignee defends a suit he is liable in the event of failure to be ordered to pay the plaintiff s costs in the same way as any other defendant and if the estate be insufficient to pay the costs he will have to bear them personally It is for him to protect himself by getting a guarantee of indemnity from the parties who set him in motion DEVIS *v* TURNER [I.L.R. 7 Bom 484

COSTS—*continued*

1 SPECIAL CASES—*continued*

74 ———— *Appeal against order of adjudication of insolvency* —The Official Assignee is entitled to his costs of appearance in an appeal against an order of adjudication. IN THE MATTER OF HAROON MAHOMED [I L R , 14 Bom , 189

75 ———— Parties—*Parties added at hearing Liability of for costs* —The plaintiffs having filed their plaint against parties *primâ facie* liable to them upon the contract and having opposed a claim made by the original defendants to have the suit dismissed as against them on their paym money into Court and to have third parties added as defendants —*Held* that the plaintiffs having succeeded against the third parties ordered to be added as defendants the added defendants were liable for the whole costs ASSARAM BURTEAH *v* COMMERCIAL TRANSPORT ASSOCIATION 2 Ind. Jur , N S 113

76 ———— *Parties in Court below not made parties to appeal* —In the first Court the Government obtained their costs the opposite party appealed but did not make the Government a respondent On appeal the decree of the first Court was reversed *Held* that the Government not having been made a party to the appeal were entitled to recover their costs in the first Court GOVERNMENT *v* LALJI SAHU 1 B L R., S N 23

BHOYRUB CHUNDER DOSS *v* WAJEDUNNISSA KHATOON 8 C L R. 234

77 ———— *Parties unnecessarily joined—Parties who have no interest in suit* —Where parties who have no interest in a suit are unnecessarily made co defendants the lower Court ought as a general rule to award them costs; but as by s 187 Act VIII of 1859 the awarding of costs is left to the discretion of the Court no appeal lies from its decision COLLECTOR OF DACCA *v* KUMALAKANT MOOKERJEE 2 W R. 33

78 ———— *Part as unnecessarily joined—Disclaimer of interest—Discretion as to costs* —Although the question of costs is within the discretion of a Court yet the Court is bound to give some reasons for the exercise of that discretion. A party disclaiming all interest in a suit and unnecessarily made a party to it is entitled to costs. SHEY LUKSH *v* LALLA NUND RAM 11 W R. 48

79 ———— *Parties unnecessarily joined—Suit for foreclosure—Disclaim of defendants* —Suits for foreclosure may be dismissed with costs against disclaiming defendants. MACKINTOSH *v* NOBINMONEY DOSSEE [3 Ind. Jur., N S., 160

80 ———— *Party unnecessarily joined in suit* —One of several judgment debtors jointly liable under a decree having paid a larger amount than was due as between himself and the defendants brought a suit to recover from them the excess paid by him One of the defendants had paid more than his share the claim against him was

COSTS—*continued*

1 SPECIAL CASES—*continued*

dismissed by the Principal Sudder Ameen who never theless on the ground that it was necessary to make him a party awarded him no costs *Held* that it was not necessary to make this defendant a party and that costs should not have been refused *Held* also that the scale on which costs should be awarded to him depended on what plaintiff claimed against him and that he was entitled to costs on the usual scale on the amount for which the suit was brought KASHEENATH SEN *v* CHUNDERMONEE DEBIA [9 W R. 288

81. ——— *Party unnecessarily joined—Collector* —Where a Collector had been unnecessarily made a party to a suit in which damages might have been awarded against him had he not appeared he was held entitled to his costs In his appeal from the Judge's order passed in favour of the plaintiff and disallowing his own claim for costs a defendant unnecessarily made a co defendant a respondent. As this respondent could not be injured in any way in this appeal it was held by the Chief Justice (MITTER J dissenting) that although the appeal was dismissed the co defendant was not entitled to costs simply because he had been present watching the case COLLECTOR OF THE 24 PERGUNNAHS *v* WILKINSON 12 W R. 444

82. ——— *Party unnecessarily joined—Defendant improperly brought before the Court* —Where a plaintiff improperly brings a defendant before a Court and his suit is dismissed the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff s claim. DEVARAKONDA NARASAMMA *v* DEVARAKONDA KANAYA [I L R., 4 Mad 134

83 ——— *Party disclaiming interest though denying plaintiff s title—Suit for possession of land—Non-occupation of land by defendant—Denial of plaintiff s title—Exemption from costs* —In a suit for recovery of the possession of land in which the plaintiff recovers a decree it is no ground for exempting a defendant from costs that he did not himself occupy any part of the land if he has denied the plaintiff s title in the suit or was instrumental as the agent of others in dispossessing the plaintiff KOOMEROONISSA BEGUM *v* HUNOOMAN DOSS Marsh. 122 1 Hay 266

S C HUNOOMAN DOSS *v* KOMEERUNISSA BEGUM [W R F B 40
1 Ind. Jur O S 42

84 ——— Partition—*Suit for partition by one of several co sharers* —The costs of a suit for partition by one shareholder of a patni talukh against his co sharers as well as of effecting a partition must be borne by each party as such expenses are not caused by any wrongful act of either party but by the nature of their tenancy SAMASUNDARI DEBI *v* JARDINE SKINNER & CO
[3 B L R. Ap, 120 12 W R. 160

85 ——— *Hindu widow* —In a suit by a childless Hindu widow for partition of her late husband s estate from which she alleged that she had been ejected by the defendant the reversionary heir the widow consented to a decree for partition whereby a moiety of the property was allotted to her for the estate of a Hindu widow and the parties were ordered to pay their own costs respectively There was nothing in the decree to show that the defendant had been guilty of any misconduct or that there was any necessity for the suit An application by the widow that her costs of suit might be paid by the sale absolutely of the share allotted to her was refused KISTOKAMINY DOSSEE *v* MIRTOONJOY DUTT 11 B L R Ap 35

86 ——— *Costs on unjustifiable partition suit—Civil Procedure Code 1859 s 187* —The costs in a partition suit where the property is of so small a value that it is likely to be wholly absorbed by the expenses and where the suit by a joint holder is therefore brought unjustifiably and to the detriment of the others ought to be paid by the plaintiff BHOOBUN MOHUN DEY *v* DINONATH DEY 1 Hyde 122

87 ——— *Civil Procedure Code (1882) s 222—Costs of partition charged under that section on shares of parties in partition suit—Mortgage by one sharer of undivided shares—Liability for costs of partition of mortgagee not party to partition suit—Application in suit by person not party to suit—Remedy by supplemental suit—Procedure* —K S and K B were joint owners of certain properties In 1886 K S mortgaged his undivided share to S C in consideration of a loan advanced by S C to him In 1887 K S brought a suit to which S C was not made a party against K B for partition and on 27th April 1888 obtained a decree under which a commission of partition was issued In the course of the suit both K S and K B died—K B on 2nd September 1888 and K S on 30th March 1892—and by orders of Court their sons were put on the record in place of their respective fathers The return to the commission of partition was made on 24th February 1892 and on 20th July 1893 and order was made confirming the return and under s 222 of the Civil Procedure Code charging the costs of suit and of the commission of partition to the shares of the plaintiffs and defendants respectively in the suit Meanwhile in July 1889 S C brought a suit on his mortgage and obtained a decree dated 5th August 1889 for an account and sale and in that suit a final order for sale was made on 5th January 1891 which however was only filed on 19th August 1893 Under that order the property was advertised for sale the return to the commission of partition being set out in the abstract of title as part of the title and the property to be sold being described as a divided moiety In an application made both in the partition and mortgage suits by the defendants in the partition suit for an order for sale of a portion of their share of the property in order to pay the costs of the suit and of the partition and other debts and liabilities for which they were liable —*Held* that the

COSTS—*continued*

1 SPECIAL CASES—*continued*

mortgagee having had the benefit of the partition, and having accepted and approved of it as part of his title as shown by the proceedings for sale was though not a party to the partition suit bound by the equities attaching to the mortgaged property as incidents of the partition He was therefore liable in respect of a proportionate share of the charge for costs of the partition created by the order of Court made in that suit under s 222 of the Civil Procedure Code and such proportionate share of those costs should be de ducted in priority out of the proceeds of the sale of the mortgaged property The defendants in the partition suit however not being parties to the mortgage suit such an order could not be properly made at their instance but they should enforce the charge for costs against the mortgagee by supplemental suit and the Court stayed the sale of the property for a reasonable time to give the parties an opportunity of moving for stay of the sale in any such suit as might be instituted. KHETTERPAL SRITIRUTNO *v* KHELAL KRISTO BHUTTACHARJEE KALLY CHURN BHUTTACHAR JEE *v* DURGA CHURN BHUTTACHARJEE SRISTI DHUR COUCH *v* KALLY CHURN BHUTTACHARJEE

[I L R, 21 Calc, 904

88 ———— Partnership—*Suit relating to partnership*—Under ordinary circumstances the costs of a partnership suit should be paid out of the assets of the partnership or in default of assets by the partners in proportion to their respective shares unless any partner denies the fact of a partnership or opposes obstacles to the taking of the accounts and so renders a suit necessary when he is usually made to pay the costs up to the hearing RAM CHUNDER SHAH *v* MANICK CHUNDER BANIKYA

[I L R, 7 Calc, 428 9 C L R, 157

89 ———————— *Suit on hath chitta—Some partners denying debt others admitting debt*—In a suit brought against several part ners to recover a sum of money on a hath chitta some of the partners denied the debt and the partner ship whilst others admitted both the partnership and the liability the Court found in favour of the plaintiffs and gave them a decree for the amount sued for with costs and ordered the defendants who had disputed the debt and the fact of the partner ship to pay the costs of the other defendants who had admitted their liability JUGGUT CHUNDER ROY *v* ROOP CHAND SHAW

[I. L. R. 6 Calc 811

90 ———— Payment into Court—*Money paid into Court at settlement of issues*—At the settlement of issues defendant paid money into Court which plaintiff took out in part satisfaction of his claim and raised an issue as to damages The plaintiffs subsequently accepted the sum paid in full satisfaction and withdrew the suit *Held* that the plaintiff was entitled to his costs up to and including those of the settlement of issues ARDESIR JIMJI *v* SORABJI PESTANJI 1 Bom., 70

COSTS—*continued*

1 SPECIAL CASES—*continued*

91. ———————— *Deposit of costs—Admission*—A deposit of costs accompanied by a prayer that they should be enquired into upon a particular principle does not imply an admission on the part of the depositor of his obligation to pay costs to the extent of the deposit LEELANUND SINGH *v* COURT OF WARDS 14 W R 367

92. ———————— *Civil Procedure Code (1882) s 379—Suit for injunction or damages—Payment into Court by defendant to satisfy plaintiff's claim—Costs in such case—Costs—Civil Procedure Code (1882) s 220—Discretion of Court*—The plaintiffs sued alleging certain windows in their house to be ancient windows and complaining that a building in course of erection by the defendant would when completed according to the building plan obstruct the light through the said windows In his written statement the defendant denied that the plaintiffs windows were ancient and that the plaintiffs were entitled to the light and air as an easement At the time of filing his written statement the defen dant paid into Court the sum of R200 which in his written statement he stated was more than sufficient to compensate the plaintiffs for any damages they might sustain and which he (defendant) paid in without prejudice to his contentions but for the sake of peace and to avoid litigation At the hearing the plaintiffs abandoned their claim for an injunction but insisted that they were entitled to more than R200 as damages The Court found that the plain tiffs windows were ancient but that the R200 paid into Court were sufficient damages. It therefore ordered that the defendant should pay all the plain tiffs costs up to the date at which the R200 were paid into Court and as to their subsequent costs that the defendant should pay three fourths of the plain tiffs' subsequent costs and the plaintiffs should pay to the defendant one-fourth of the defendant s subse quent costs The Court offered to simplify its order by directing the defendant to pay all the costs of the plaintiffs up to the date of paying the R200 into Court and half the plaintiffs' taxed costs subsequent to that date The defendant appealed contending that under s. 379 of the Civil Procedure Code (Act XIV of 1882) the plaintiffs should have been ordered to pay all the defendant s costs subsequent to the payment into Court. *Held* that the suit was not one to recover a debt or damages and therefore s 379 of the Civil Procedure Code did not apply That being so the Judge had full discretion under s 220 of the Civil Procedure Code to apportion the costs and the Court of Appeal would not interfere with that discretion. *Held* also that in cases not being suits to recover a debt or damages where money is paid into Court the principle underlying s. 379 of the Civil Procedure Code ought to regulate the discretion of the Court in directing the payment of costs. LUXUMON NANA PATIL *v* MOROBA RAMCRISHNA

[I. L. R., 21 Bom., 503

93 ———— Payment out of Court—*Failure to join in application to take money out of Court—Suit for share of money*—A suit by 4 having been decreed and execution proceedings taken

COSTS—*continued*

1 SPECIAL CASES—*continued*

out the judgment debt *vs* paid into Court the amount decreed. Subsequently the decree holder (*A*) and his cousin (*M*) put in a petition intimating that the money belonged to them in equal shares and the Court afterwards held a proceeding in the presence of the vakil that no steps had been taken by his client to take out the money and that the name of *M* had been registered with that of *A* as decree holders and the money was available for payment on their joint application Eventually *M* sued *A* for a moiety of the amount. The Subordinate Judge holding that it was entirely owing to the passive opposition of *A* that the money could not be drawn out from the Court decreed the claim with costs *Held* that the decision of the Subordinate Judge was correct and just AJOODHYA DOSS *v* MUTHOORA DOSS 23 W R 14

94. ———— Plaintiffs—*Separate appearance of plaintiffs*—Plaintiffs in the same interest should be represented by the same pleader or set of pleaders no costs being allowed for others JANKI BAI *v* ATMARAM BABURAV 8 Bom A. C., 241

95 ———————— *Liability of unsuccessful plaintiff for costs unnecessarily incurred by the defendant owing to his vakil s negligence*—The costs which a defeated plaintiff should be required to pay are those necessarily incurred by the successful party in the defence of the suit Costs cannot be deemed necessary if by reasonable diligence on the part of the defendant or his pleader the expenditure of them could have been avoided. SEETA PATTA MAHADEVI *v* SURYUDAMMA [I. L R 18 Mad 128

96 ———— Pleas taken out of time—*Pleas taken after hearing of evidence—Plea of res judicata.*—Costs not allowed where the plea of *res judicata* was not raised until after all the evidence had been taken. PUN BAHADOOR SINGH *v* LUCHO KOOER [I. L. R., 6 Calc 406 7 C L R. 251

97 ———————— *Plea taken on appeal for first time—Appeal succeeding on point taken for first time—Respondent s costs*—Where the appellants succeeded on a point taken by them for the first time in appeal they were ordered to pay the respondent s costs of appeal HARIDAS PURSHOTAM *v* GAMBLE 12 Bom. 23

98 ———— Preliminary issue—*Costs of preliminary issue in partition suit—Stamp in partition suit*—The plaintiff brought a suit to have 99 items of property partitioned. The plaint bore a Court fee stamp of R10 The defendants admitted that three of the properties were ancestral and joint but as to the other items the second defendant stated that they were the self acquired property of her deceased husband and contended that the plaint was insufficiently stamped as the object of the suit was to obtain a declaration of title to and possession of properties in which the plaintiff had no interest. An issue was raised on this point and on this issue the Subordinate Judge allowed the objection and rejected the plaint. On appeal *held* by PETHERAM, C J and NORRIS J that the plaint was sufficiently stamped The only relief prayed for was partition and for the purposes of the stamp the cause of action which is stated in the plaint and that only must be looked at The members of the Appeal Bench however differed in opinion as regards the question of costs PETHERAM C J being of opinion that the costs of the appeal should be treated in the same way as the rest of the costs in the case and be divided between the parties to the partition and NORRIS J holding that the respondent having failed on appeal ought to pay the costs and on this question an appeal was preferred under the Letters Patent cl 15 *Held* by PRINSEP and TREVELYAN JJ—The costs of the appeals were severable from the general costs of the suit and therefore though the suit was one for partition the principle that the unsuccessful party must pay the costs was applicable so far as the appeals were concerned the respondent therefore should pay all the costs in the two appeals *Held* by PIGOT J—The respondent should pay in any event her own costs of the preliminary issue and of the appeal but that as to the plaintiff s costs of that issue and of the appeal they should be in the discretion of the Court as between the parties to this appeal such costs being in no case to form part of the costs of the partition MOHENDRO CHANDRA GANGULI *v* ASHUTOSH GANGULI [I L R 20 Calc 762

99 ———— Printing and translations—*Decree of Privy Council*—When the Privy Council decrees not only a certain specified sum as the costs of the appeal to England but also awards the costs incurred in the Courts in India the decree holder is entitled to the costs of translating the record of the appeal and of transmitting it to England. ASGUR ALI *v* NUGENDRO CHUNDER GHOSE [23 W R. 463

See MADAN THAKUR *v* LOPEZ [9 B L R Ap 23 18 W R. 253

UMATUL FATIMA *v* AZHUR ALI [9 B L R Ap 23 note 15 W R. 356

SARODA PRASAD MULLICK *v* LUCHMIPAT SINGH DUGAR 9 B L R., 23 note 18 W R., 89

and NIL MADHUB DOSS *v* BISSUMBHUR DOSS [21 W R., 411

100 ———————— *Appeal to Privy Council*—Costs of printing and translation certified by the Deputy Registrar of the High Court, are a necessary part of the costs of an appeal to the Privy Council The amount of such costs is left to be ascertained by the High Court and is not assessed by the Privy Council Office. RAM COOMAR GHOSE *v* PROSUNNO COOMAR SANNYAL [I. L. R., 10 Calc., 108

101. ———— Probate—*Costs of obtaining probate—Liability of residuary estate for costs.*—The appellant cited the respondent, who was the executor of one *T* to bring in and prove his testator's will. The Division Court (STARLING J) ordered the respondent to lodge the will in Court and to take out

COSTS—*continued*

1 SPECIAL CASES—*continued*

probate but directed that the appellant should pay half the costs of obtaining probate On appeal—*Held* (varying the order of STARLING J as to costs) that the fund primarily liable to the costs of probate was the residuary estate and part of the residuary estate being as yet undistributed it should in the first instance be applied to this purpose and after that the appellant and respondent should contribute in equal shares DAYABHAI TAPIDAS *v* DAMODAR DAS TAPIDAS I L R 21 Bom, 75

102 ——— *Grant of probate—Subsequent inconsistent will of which probate is also granted—Costs of executor*—The executor of a will had obtained probate thereof when the executor of a subsequent (and inconsistent) will applied for and obtained probate of the second will. *Held* that having regard to the circumstances of the case and to the fact that the litigation was produced by the conduct of the testatrix herself the executors of both wills were entitled to their costs to be paid out of the estate but that in so far as the costs would not be covered by the estate each party must bear his own costs IN THE GOODS OF TARAMONI DASI I L. R, 25 Calc 553

103 ——— *Application for revocation of probate—Probate and Administration Act (V of 1881) ss 65 83—Costs allowed as pleaders fees in such proceeding—General rules and circular orders of High Court p 94 para 8—Civil Procedure Code 1882 s 220—Power of High Court over costs of lower Courts*—S 65 and not s 83 of the Probate and Administration Act applies to a proceeding for revocation of probate Such a proceeding cannot be regarded as a regular civil suit but as a miscellaneous proceeding and pleader's fees in such a proceeding should be fixed on that footing The High Court has full power to make an order for the awarding of costs in the lower Courts Where the lower Court had treated the application for revocation of probate as a suit and had given R1 254 for pleader's fees the High Court held that R80 should be allowed the maximum allowed by the rules of the Court PRATAP CHANDRA SHAHA *v* KALI BHANJAN SHAHA [4 C W N 600

GARABINI DASSI *v* PRATAP CHANDRA SHAHA [4 C W N 602

104. ——— Reference to High Court—*Practice—Costs of reference to High Court—Small Cause Court (Presidency Towns) Act (Act XV of 1882) s 69—Civil Procedure Code (Act XIV of 1882) ss 220 617 620*—Under s 620 of the Civil Procedure Code the costs of a reference to the High Court cannot be dealt with separately but must be dealt with when awarding the costs of the suit They are however in the discretion of the Court and need not necessarily follow the event of the suit NICOL *v* MATHOORA DASS DUMANI [I. L. R 15 Calc. 507

105 ——— Remand—*Stamp on plaint—Pleader's fees*—Where a suit was decided after trial and the decision being reversed by the High Court on appeal the case was remanded with orders allowing the plaintiff to amend his plaint but requiring him to pay all the costs of the first two hearings—*Held* that the stamp for the plaint was properly included in the costs of the second hearing in the Court below and that as the case was sent back for re-trial and not as a mere remand the whole of the pleader's fees should be paid for the second trial MADHUB CHUNDER BERA *v* RAM LOCHUN BERA 14 W R., 143

106 ——— *Order for costs in remand order directing costs to abide result—Execution for such costs by successful party when same not specified in decree of Court below—Remand materials necessary for ascertaining result of for purposes of awarding costs*—Where an Appellate Court after setting aside the decree of the lower Court remanded the case and the order as to costs provided costs will abide the result —*Held* that if the result of the remand was entirely in favour of the successful party he was entitled as a matter of course to the costs in question even if the decree of the lower Court after remand did not contain any such direction That the only materials that should be placed before the Court to determine the result of the remand are the judgment and the decree made in the case FANI BHUSAN ROY CHOWDHRY *v* BAMA SUNDARI DEBI 4 C W N 343

107 ——— Respondent—*Constructive notice to purchaser—Secrecy in transaction*—Where the respondent had been guilty of secrecy in a transaction with constructive notice of which he sought to affect a purchaser as appellant the High Court gave the appellant his costs in both Courts. HORMASJI TEMULJI *v* MANKUVARBAI [12 Bom, 262

108 ——— *Successful preliminary objection to appeal—Practice*—Where a preliminary objection was successfully taken to the hearing of an appeal the High Court refused to follow the practice adopted in bankruptcy appeals in England by depriving the respondent of costs on the dismissal of the appeal on the ground that the appellant had no previous notice of the preliminary objection *Ex parte Brooks* L R., 13 Q B D., 43 and *Ex parte Blease* L R 14 Q B D 123 referred to IMTIAZ BANO *v* LATAFATUN NISSA [I. L. R., 11 All., 328

109 ——— *Assignment of decree pending appeal—Assignee of decree made respondent to appeal—Adding parties on appeal—Liability of assignee for costs of hearing in lower Court*—The Standard Oil Company and one E sued the defendant for damages The lower Court found that there was no privity of contract between the company and the defendant and dismissed the suit of the company (plaintiff No 1) with costs but passed a decree for E (plaintiff No 2) with costs. The defendant appealed in the first instance making E the sole respondent The company however gave the defendant (appellant) notice that the decree obtained by E had been assigned to them Whereupon he (the appellant) obtained leave to make the company party respondents as assignees of the decree from E The

COSTS—*continued*

1 SPECIAL CASES—*continued*

company objected to be made respondents. The Appeal Court reversed the decree of the lower Court and dismissed the suit and the question arose whether the company could be made liable for the general costs of the hearing in the lower Court Held that the company were liable only for the costs of the appeal in which they had taken an active part but not for the general costs of hearing in the lower Court except so far as the suit was their suit. *E* was liable for the costs throughout. The appellant (defendant) was not entitled by bringing the company on the record against their will to obtain an additional security for the costs already incurred in the lower Court The assignee of a decree who is made respondent in an appeal from it and takes no steps actively to support it, ought not to be ordered to pay costs LAMJI MORARJI v ELLIS I. L. R. 20 Bom 187

110 ———————— *Parties plaintiffs under s 30 Civil Procedure Code—Unsuccessful respondents in appeal—Parties having no control of suit* —The plaintiffs respondents on behalf of themselves and 42 others 36 of whom had intimated their willingness that the suit should be carried on by the plaintiffs sued for the dismissal of a mohunt and to set aside an alienation of property by him and obtained a decree. The purchaser of the alienated property appealed to the High Court and the decree was set aside on the ground that the suit was misconceived and was not one under s. 30 of the Civil Procedure Code and the judgment concluded by saying merely that the appeal is allowed with costs without specifying any names of parties by whom the costs were to be paid. The decree when drawn up and signed named the two plaintiffs and the 42 other persons as respondents and directed the costs to be paid by the plaintiffs respondents *Held* in an application for amendment of the decree that since the 42 persons did not themselves join as parties as provided for under s 32 of the Code and were not parties to the suit in the sense that they had any voice or control in the conduct of it they were not party respondents though they might fall under the category of persons interested under s 30 and so might be bound by the decision The decree must therefore be amended by limiting the order as to the payment of costs to the plaintiffs Nos 1 and 2 SAJEDUR RAJ v BAIDYA NATH DEB 1 C W N 65

111 ———— Service of summons by mistake—*Service on wrong person* —In a suit brought by the plaintiffs against *A* the summons was by mistake served upon *B* who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint On the day of the hearing of the case the plaintiffs agent saw *B* for the first time and ascertained that he was not the real defendant in the suit *Held* that *B* having done nothing to mislead the plaintiffs as to his identity was entitled to his costs of suit LONDON BOMBAY AND MEDITERRANEAN BANK v MAHOMED IBRAHIM PARKAR [I. L. R 4 Bom 619

112 ———— Small Cause Court suits—*Act IX of 1850—Suit on a mortgage* —When a suit is brought for the principal sum and interest due on a mortgage the High Court gave costs although the decree was for less than R1 000 as the Small Cause Court had no jurisdiction MRITUNJOY DUTT v KAMEENEE DOSSEE 1 Ind Jur N S 95

113 ———————— *Suit on a contract—Suit which ought to have been brought in Small Cause Court* —Where an action on a contract was brought in the High Court and judgment was given to the plaintiff for R454 13-4 —*Held* that as the amount so found due was less than R500 the plaintiff could not have his costs unless the Judge who tried the cause certified that the action was fit to be brought in the High Court The 37th clause of the Charter of the High Court does not give the Court an uncontrolled discretion as to costs in civil suits SABAPATI MUDALIYAR v NARAYANSAMI MUDALIYAR 1 Mad 115

114 ———————— *Civil Procedure Code 1859 s 187—Portion of costs given to losing party* —Portion of the costs awarded to the defendant in exercise of the discretion given by Act VIII of 1859 s 187 where in a suit for some jewels it appeared on the evidence of the plaintiffs that they were not worth so much as stated in the plaint and the suit might have been brought in the Small Cause Court SOUDAMINEY DOSSEE v JUGGOMOHUN SEN [1 Hyde 172

115 ———————— *Act XXVI of 1864 s 9—Small Cause Court suit brought in High Court* —The fact that a suit was brought in the High Court because it was thought necessary to attach the defendant s property before judgment which could not have been done by the Small Cause Court does not take the case out of the operation of s 9 Act XXVI of 1864 HURRAN CHUNDER GANGOOLY v SHIB CHUNDER MITTER [2 Hyde 237

116 ———————— *Small Cause Court Act (XXVI of 1864) s 9—Mortgage* —In a suit by a mortgagee the prayer of the plaint was for a decree for R300 with interest and for foreclosure or sale in default of payment *Held* that it was an action within s 9 of Act XXVI of 1864 and therefore the plaintiff was not entitled to costs KHETTRAMOHAN CHATTERJEE v KISORIMOHAN BOSE [1 B L R O C 27

117 ———————— *Certificate under Act XXVI of 1864 s 9—Appellate Court Power of* —Where in an action in the High Court founded on contract a verdict was found for the plaintiff for a sum less than R1 000 and the Judge who tried the case awarded costs without certifying under s 9 Act XXVI of 1864 that the action was fit to be brought in the High Court —*Held* that the Court might supply the omission on appeal NOBOCOOMAR DOSS v KEWATA MUG 10 B L R 358

S C KEWATA MUG v NOBOCOOMAR DOSS [19 W R 207

118 ———————— *Suit on decree of Small Cause Court* —In a suit upon a decree of the

COSTS—*continued*

1 SPECIAL CASES—*continued*

probate but directed that the appellant should pay half the costs of obtaining probate On appeal—*Held* (varying the order of STARLING J as to costs) that the fund primarily liable to the costs of probate was the residuary estate and part of the residuary estate being as yet undistributed it should in the first instance be applied to this purpose, and after that the appellant and respondent should contribute in equal shares DAYABHAI TAPIDAS v DAMODAR DAS TAPIDAS I L R 21 Bom. 75

102 ———— *Grant of probate—Subsequent inconsistent will of which probate is also granted—Costs of executor* —The executor of a will had obtained probate thereof, when the executor of a subsequent (and inconsistent) will applied for and obtained probate of the second will *Held* that having regard to the circumstances of the case and to the fact that the litigation was produced by the conduct of the testatrix herself the executors of both wills were entitled to their costs to be paid out of the estate but that in so far as the costs would not be covered by the estate each party must bear his own costs IN THE GOODS OF TARAMONI DASI I. L. R 25 Calc 553

103 ———— *Application for revocation of probate—Probate and Administration Act (V of 1881) ss 55 83 —Costs allowed as pleader's fees in such proceeding—General rules and circular orders of High Court p 94 para 8—Civil Procedure Code 1882 s 220—Power of High Court over costs of lower Courts* —S 55 and not s 83 of the Probate and Administration Act applies to a proceeding for revocation of probate Such a proceeding cannot be regarded as a regular civil suit but as a miscellaneous proceeding and pleader's fees in such a proceeding should be fixed on that footing The High Court has full power to make an order for the awarding of costs in the lower Courts Where the lower Court had treated the application for revocation of probate as a suit and had given R1 254 for pleader's fees the High Court held that R80 should be allowed the maximum allowed by the rules of the Court PRATAP CHANDRA SHAHA v KALI BHANJAN SHAHA [4 C W N 600

GARABINI DASSI v PRATAP CHANDRA SHAHA [4 C W N 602

104. ———— Reference to High Court —*Practice—Costs of reference to High Court—Small Cause Court (Presidency Towns) Act (Act XV of 1882) s 69—Civil Procedure Code (Act XIV of 1882) ss 220 617 620* —Under s 620 of the Civil Procedure Code the costs of a reference to the High Court cannot be dealt with separately but must be dealt with when awarding the costs of the suit They are however in the discretion of the Court and need not necessarily follow the event of the suit NICOL v MATHOORA DASS DUMANI [I. L. R 15 Calc., 507

105 ———— Remand—*Stamp on plaint—Pleader's fee* —Where a suit was decided after trial and the decision being reversed by the High Court on appeal the case was remanded with orders allowing the plaintiff to amend his plaint but requiring him to pay all the costs of the first two hearings —*Held* that the stamp for the plaint was properly included in the costs of the second hearing in the Court below and that as the case was sent back for re trial and not as a mere remand the whole of the pleader's fees should be paid for the second trial MADHUB CHUNDER BERA v RAM LOCHUN BERA 14 W R. 143

106 ———— *Order for costs in remand order directing 'costs to abide result'—Execution for such costs by successful party when same not specified in decree of Court below—Remand materials necessary for ascertaining result of for purposes of awarding costs* —Where an Appellate Court after setting aside the decree of the lower Court remanded the case and the order as to costs provided costs will abide the result —*Held* that if the result of the remand was entirely in favour of the successful party he was entitled as a matter of course to the costs in question even if the decree of the lower Court after remand did not contain any such direction That the only materials that should be placed before the Court to determine the result of the remand are the judgment and the decree made in the case FANI BHUSAN ROY CHOWDHRY v BAMA SUNDARI DEBI 4 C W N 343

107 ———— Respondent—*Constructive notice to purchaser—Secrecy in transaction* —Where the respondent had been guilty of secrecy in a transaction with constructive notice of which he sought to affect a purchaser as appellant the High Court gave the appellant his costs in both Courts. HORMASJI TEMULJI v MANKUVARBAI [12 Bom, 262

108 ———— *Successful preliminary objection to appeal—Practice* —Where a preliminary objection was successfully taken to the hearing of an appeal the High Court refused to follow the practice adopted in bankruptcy appeals in England by depriving the respondent of costs on the dismissal of the appeal on the ground that the appellant had no previous notice of the preliminary objection *Ex parte Brooks L R 13 Q B D 43* and *Ex parte Blease L R 14 Q B D 123* referred to IMTIAZ BANO v LATAFATUN NISSA [I. L. R., 11 All. 328

109 ———— *Assignment of decree pending appeal—Assignee of decree made respondent to appeal—Adding parties on appeal—Liability of assignee for costs of hearing in lower Court* —The Standard Oil Company and one E sued the defendant for damages The lower Court found that there was no privity of contract between the company and the defendant and dismissed the suit of the company (plaintiff No. 1) with costs but passed a decree for E (plaintiff No 2) with costs. The defendant appealed in the first instance making E the sole respondent The company however gave the defendant (appellant) notice that the decree obtained by E had been assigned to them. Whereupon he (the appellant) obtained leave to make the company party respondents as assignees of the decree from E The

COSTS—*continued*

I SPECIAL CASES—*continued*

company objected to be made respondents. The Appeal Court reversed the decree of the lower Court and dismissed the suit and the question arose whether the company could be made liable for the general costs of the hearing in the lower Court *Held* that the company were liable only for the costs of the appeal in which they had taken an active part but not for the general costs of hearing in the lower Court except so far as the suit was their suit. *E* was liable for the costs throughout The appellant (defendant) was not entitled by bringing the company on the record against their will to obtain an additional security for the costs already incurred in the lower Court The assignee of a decree who is made respondent in an appeal from it and takes no steps actively to support it ought not to be ordered to pay costs RAMJI MORARJI *v* ELLIS I. L. R. 20 Bom 167

110 ———————— *Parties plaintiffs under s 30 Civil Procedure Code—Unsuccessful respondents in appeal—Parties having no control of suit*—The plaintiffs respondents on behalf of themselves and 42 others 36 of whom had intimated their willingness that the suit should be carried on by the plaintiffs sued for the dismissal of a mohunt and to set aside an alienation of property by him and obtained a decree. The purchaser of the alienated property appealed to the High Court and the decree was set aside on the ground that the suit was misconceived and was not one under s 30 of the Civil Procedure Code and the judgment concluded by saying merely that the appeal is allowed with costs without specifying any names of parties by whom the costs were to be paid. The decree when drawn up and signed named the two plaintiffs and the 42 other persons as respondents and directed the costs to be paid by the plaintiffs respondents *Held* in an application for amendment of the decree that since the 42 persons did not themselves join as parties as provided for under s 32 of the Code and were not parties to the suit in the sense that they had any voice or control in the conduct of it they were not party respondents though they might fall under the category of persons interested under s 30 and so might be bound by the decision The decree must therefore *be amended by limiting the order as to the payment* of costs to the plaintiffs Nos 1 and 2 SAJEDUR RAJ *v* BAIDYA NATH DEB 1 C W N 65

111. ———— Service of summons by mistake—*Service on wrong person*—In a suit brought by the plaintiffs against *A* the summons was by mistake served upon *B* who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint On the day of the hearing of the case the plaintiffs agent saw *B* for the first time and ascertained that he was not the real defendant in the suit *Held* that *B* having done nothing to mislead the plaintiffs as to his identity was entitled to his costs of suit LONDON BOMBAY AND MEDITERRANEAN BANK *v* MAHOMED IBRAHIM PARKAR [I L R 4 Bom 619

112 ———— Small Cause Court suits—*Act IX of 1850—Suit on a mortgage*—When a suit is brought for the principal sum and interest due on a mortgage the High Court gave costs although the decree was for less than R1 000 as the Small Cause Court had no jurisdiction MIRTUNJOY DUTT *v* KAMEENEE DOSSEE 1 Ind Jur N S 95

113 ———————— *Suit on a contract—Suit which ought to have been brought in Small Cause Court*—Where an action on a contract was brought in the High Court and judgment was given to the plaintiff for R454 13-4—*Held* that as the amount so found due was less than R500 the plaintiff could not have his costs unless the Judge who tried the cause certified that the action was fit to be brought in the High Court The 37th clause of the Charter of the High Court does not give the Court an uncontrolled discretion as to costs in civil suits. SADAPATI MUDALIYAR *v* NARAYANSAMI MUDALIYAR 1 Mad 115

114 ———————— *Civil Procedure Code 1859 s 187—Portion of costs given to losing party*—Portion of the costs awarded to the defendant in exercise of the discretion given by Act VIII of 1859 s 187 where in a suit for some jewels it appeared on the evidence of the plaintiffs that they were not worth so much as stated in the plaint and the suit might have been brought in the Small Cause Court SOUDAMINEY DOSSEE *v* JUGGOMOHUN SEN [1 Hyde 172

115 ———————— *Act XXVI of 1864 s 9—Small Cause Court suit brought in High Court*—The fact that a suit was brought in the High Court because it was thought necessary to attach the defendant s property before judgment which could not have been done by the Small Cause Court does not take the case out of the operation of s 9 Act XXVI of 1864 HURRAN CHUNDER GANGOOLY *v* SHIB CHUNDER MITTER [2 Hyde, 237

116 ———————— *Small Cause Court Act (XXVI of 1864) s 9—Mortgage*—In a suit by a mortgagee the prayer of the plaint was for a decree for R300 with interest and for foreclosure or sale in default of payment *Held* that it was an action within s 9 of Act XXVI of 1864 and therefore the plaintiff was not entitled to costs KHETTRAMOHAN CHATTERJEE *v* KISORIMOHAN BOSE [1 B L R O C 27

117 ———————— *Certificate under Act XXVI of 1864 s 9—Appellate Court Power of*—Where in an action in the High Court founded on contract a verdict was found for the plaintiff for a sum less than R1 000 and the Judge who tried the case awarded costs without certifying under s 9 Act XXVI of 1864 that the action was fit to be brought in the High Court—*Held* that the Court might supply the omission on appeal NOBOCOOMAR DOSS *v* KEWATA MUG 10 B L R 358

S C KEWATA MUG *v* NOBOCOOMAR DOSS [19 W R 207

118 ———————— *Suit on decree of Small Cause Court*—In a suit upon a decree of the

COSTS—*continued*

1 SPECIAL CASES—*continued*

Small Cause Court brought by reason of there being no process of that Court whereby satisfaction of its decree could be obtained —*Held* that the High Court had power to award to the plaintiff his costs of suit Under the circumstances of the case costs were not given. MADAN MOHAN BOSE *v* LAWRENCE

[1 B L R, O C, 66

119 ——— *Act XXVI of 1864 s 9—Set off* —Where the defendant proved a set off against the plaintiff and thus reduced the amount which he (plaintiff) was entitled to recover from the defendant for breach of contract,—*Held* that notwithstanding the provisions of s 9 of Act XXVI of 1864 the plaintiff was entitled to his costs KISHORCHAND *v* MADHOWJI

[I L R 4 Bom, 407

120 ———*Presidency Small Cause Courts Act (XV of 1882) s 22—Presidency Small Cause Courts Act (I of 1895) s 11—Suit brought before but determined after the passing of Act I of 1895—Certificate for costs—General Clauses Consolidation Act (I of 1868) s 6* —The plaintiff before the passing of Act I of 1895 instituted in the High Court a suit to recover from the defendant a sum of over R2 000 which was reduced to a sum of less than R2 000 before the hearing and therefore below the limit for suits cognizable by the Small Cause Court At the time of its institution Act XV of 1882 was applicable by s 22 of which Act a plaintiff was deprived in a suit cognizable by the Small Cause Court of his costs if he obtained a decree for less than R2 000 unless the Judge who tried it certified it was a fit case to be tried in the High Court The suit was not determined until after the passing of Act I of 1895 by s 11 of which the deprivation of costs applied to cases in which the plaintiff obtained a decree for less than R1 000 The Judge made a decree in favour of the plaintiff and without certifying that the case was one fit to be brought in the High Court he allowed the plaintiff the costs of the suit *Held* on appeal that the case was governed by s 6 of the General Clauses Consolidation Act (I of 1868) Act I of 1895 was not applicable and the plaintiff was not entitled to his costs of suit The principle of *Deb Narain Dutt v Narendra Krishna I L R 16 Calc 267* applied ISMAIL ARIFF *v* LESLIE I L R 24 Calc 399

[1 C W N, 18

121. ——— *Right of plaintiff recovering less than R2 000 in High Court—Presidency Small Cause Court Act (XV of 1882) s 22—Presidency Towns Small Cause Court Act Amendment Act (I of 1895)—General Clauses Consolidation Act (I of 1868) s 6* —In this suit the plaintiffs recovered a total sum of R1 907 from the defendant for breach of contract The suit was brought in 1894 It was contended for the defendant that s 22 of the Presidency Small Cause Court Act (XV of 1882) which was in force at the date of the institution of the suit applied to the case and that under that section the plaintiffs although successful were not entitled to their costs *Held* that the plaintiffs were entitled to recover costs. The power to award costs is derived entirely from Acts of the Legislature and in making the award the Court cannot base its decision on provisions which have been repealed and are no longer effective at the time its order is passed *Held* also that s 6 of the General Clauses Act (1 of 1868) did not apply to the case *Ismail Ariff v Leslie I L R 24 Calc 399* not followed. YONOSUKE MITSUE *v* OOKERDA KHETSY

[I L R., 21 Bom 779

122. ——— Special appeal—*Costs of special appeal after remand by High Court* —If a case after being decided in appeal by the Zilla Court is brought before the High Court in special appeal and is remanded the costs of the special appeal can only be recovered if the High Court s order of remand provides that they are to abide the decision on appeal below DIGAMBUR CHATTERJEE *v* RAM ROODRO GUNGOPADHYA 13 W R 39

123 ——— Stay of execution—*Application for stay of execution—Practice* —Where the defendants in an original suit applied to the Appellate Court for stay of execution of the decree pending the appeal —*Held* (BANERJEE J dissenting) that the applicant who asked for the indulgence must pay the costs of the application CHUNI LAL *v* ANANTRAM

[I L R., 25 Calc., 893

124 ——— Suit or appeal only partly decreed—*Discretion of Court in awarding* —It is not correct in law or justice to say that costs must be invariably awarded in proportion to the amount decreed and dismissed. The Court can exercise the largest discretion in the matter; but this discretion is to be exercised with special reference to all the circumstances of the case, including the conduct of the parties SHEO DYAL TEWAREE *v* JUDOONATH TEWAREE SHEO DYAL TEWAREE *v* BISHONATH TEWAREE SHIB DYAL TEWAREE *v* BISHONATH TEWAREE. JUDOONATH TEWAREE *v* BISHONATH TEWAREE

[9 W R., 61

125 ——— *Failure as to portion of special appeal* —Where a special appellant to the High Court failed as to a portion of his appeal the costs of that Court were decreed against him HEERA RAM BHUTTACHARJEE *v* ASHRUF ALI

[9 W R. 103

126 ——— *Proportionate costs on partial decree* —In cases of partial decree costs should be awarded to both parties in proportion to the amount decreed and dismissed. NINDOORA *v* HEERARAM MISSER 1 Hay, 277

127 ——— *Costs to defendants on sum in excess of what plaintiff is entitled to* —When a plaintiff has asked for a sum which is in excess of what the Court holds him entitled to, and to which a lower rate of pleader's fee or of stamp duty applies than to the rest of the claim the defendant who succeeds in that part of the case is entitled to recover the costs applicable to that particular part of

COSTS—*continued*

1 SPECIAL CASES—*continued*

the subject matter (BAYLEY J., dissenting) BAMA SOONDREY DEBIA *v* ROGERS 7 W R. 127
Upheld on review 8 W R. 55

128 ——— *Claim partly decreed and partly dismissed* —If a plaintiff claims in respect of two distinct matters and succeeds as to one and fails as to the other the costs will be apportioned so as to give each party the costs applicable to that matter upon which he has succeeded TARACHAND MOOKERJEE *v* JADOONATH MOOKERJEE [Marsh. 78 1 Hay 141

JADOONATH MOOKERJI *v* TARACHAND MOOKERJI [1 Ind. Jur., O S 103

129 ——— *Order decreeing costs in proportion* —An order decreeing to plaintiff his costs in proportion must be taken to mean as if costs were given in proportion to the amount decreed and dismissed; so that except when there is a distinct order restricting cost to the plaintiff the defendant is entitled to his costs on the portion of the claim dismissed although the order does not in words provide for it BYKUNTNATH CHOWDHRY *v* MOHESSUREE 4 W R. Mis 9

130 ——— *Unsuccessful plaintiff as to whole claim* —Where a plaintiff is entitled to some part of his claim he ought not to be deprived of the benefit of the decree by such an order *as to costs as would make him liable to the defendant* for more than he would himself recover RAM CHUNDER CHOWDHRY *v* MARIOTT 15 W R. 465

131 ——— *Plaintiff only partly successful—Pressure by defendants to sue* —Although the plaintiff was unable to satisfy the Judge below as to each item of property for which she sued and did not obtain a decree for the full amount claimed *yet she was held entitled to recover the whole of* the costs incurred by her in a suit into which she had been forced by the defendants for the recovery of her property SHIB PERSHAD CHUCKERBUTTY *v* GUNGA MONEE DEBEE 16 W R., 291

132 ——— *Costs between party and party—Calculation of costs—Portion of claim allowed and part disallowed* —Where the decree in a suit directed the payment of costs by the plaintiff and defendants respectively in proportion to the amounts decreed and disallowed the Second Subordinate Judge before whom the matter came gave the plaintiff costs at the rate of 5 per cent on the amount decreed up to R5 000 and to the defendants at the rate of 2 per cent on the amount disallowed on the ground that such was in accordance with the practice not only of the Court of the Munsif but of the First Subordinate Judge of the district *Held* that the method adopted was erroneous and that the proper mode of giving effect to such a decree was to calculate the amount of the costs of the suit as laid and then divide the entire sum proportionately between the parties according as they have respectively succeeded or failed. *Bamasoondery Debia* v *Rogers* 7 *W R* 127 followed LECKIE *v* JOY GOBINDO NATH ROY 7 C. L. R. 114

COSTS—*continued*

1 SPECIAL CASES—*continued*

133 ——— *Set off of costs ordered on the disposal of a preliminary point against costs awarded at the final disposal of the suit—Costs of partly successful appeal* —It is not the usual practice when costs of an interlocutory proceeding have been disposed of to consider that an award of the general costs of the suit interferes with the order as to the partial costs A prior decree having given the costs incurred on the disposal of a preliminary point to the party successfully raising it, a later decree without expressly referring to the former gave the costs of the suit generally to the opposite side *Held* that the costs due under the prior decree should be set off against those due under the later Although an appellant only partly succeeded in his appeal the whole of his claim having been opposed in the Courts below on an untenable ground —*Held* that there was no reason for departing from the general rule that the defeated party should pay the costs RADHA PERSHAD SINGH *v* RAM PARMESWAR SINGH
[I L R. 9 Calc 797 13 C L R. 22

134 ——— *Suit for damages —Decree for nominal damages—Costs to defendant on difference* —Where a suit for damages was partially decreed on a finding of nominal damages and costs on the amount undecreed were awarded to the defendant with interest —*Held* that there was no good reason for such a course and no ground of justice for saddling the plaintiff with defendant's costs MOSEEHUN *v* MUNOORUN 24 W R. 69

135 ——— *Consequential costs—Partial relief* —Costs are not consequential upon partial relief being granted in a suit involving a much larger subject matter a portion of which is still *sub judice* and cannot therefore be given by the High Court upon a decree of the Privy Council if not provided for by the decree LEELANUND SINGH *v* COURT OF WARDS 14 W R. 387

136 ——— *Administrator General's Act II of 1874 s 35—Plaintiff succeeding as to part of claim only* —In April 1885 *A* entered into an agreement in writing with *B* whereby he agreed to act as the manager of *B*'s zamindaris and other landed properties for three years on certain terms therein mentioned. The agreement was duly registered On the 15th of June 1882 *B* sued the Administrator General of Bengal as administrator of *A*'s estate to recover certain sums of money set forth in detail in the plaint as having been received by *A* and not accounted for stating that they had been misappropriated by *A* *Held* that, under the special terms of the Administrator General's Act II of 1874 the plaintiff (having succeeded as to part of his claim only) was not entitled to any costs as against *A*'s estate but was liable to pay costs on the portion of his claim which was disallowed. HARENDER KISHORE SINGH *v* ADMINISTRATOR GENERAL OF BENGAL I. L. R., 12 Calc., 357

137 ——— *Suit for injunction or damages—Decree refusing injunction but not giving damages—Substantial success* —In a suit

COSTS—*continued*

1 SPECIAL CASES—*continued*

for an injunction or damages for obstruction by the defendant of the plaintiff's light and air, the defendant paid R200 into Court. The first Court granted an injunction but on appeal the decree was varied and an injunction refused but R500 damages given to the plaintiff. On the question of costs it was argued for the defendant (appellant) that he should be given his costs of appeal as he had ... the pro... in setting aside the injunction ... in s 12 of the Court Court ... to preclude a Judge from exercising his discretion as to costs. MUTHOORANATH MOJOOMDAR *v* MOHOBUTTOONNISSA BIBEE 20 W R. 206

154 ———— Vendor and purchaser—*Suit for damages for breach of contract and refund of earnest money—Omission to tender*—In a suit for damages for breach of a contract to sell immoveable property and for refund of the earnest money paid to the plaintiff by the defendant in which the plaintiff obtained a decree for the earnest money —*Held* that as the defendant had not paid the earnest money into Court nor formally tendered it she must pay the costs of the suit. PITAMBER SUNDARJI *v* CASSIBAI [I L.R. 11 Bom 272

155 ———— Vexatious litigation—*Successful party ordered to pay costs*—The Court departed from the general rule that a successful party is entitled to his costs in a case where the appellant had manifestly acted vexatiously towards the respondent and as a protest against frivolous litigation, ordered the appellant to pay the respondent's costs. GYANEE RAM *v* PALEE RAM 2 N W, 73

156 ———— Will—*Costs of opposing will by heirs of deceased*—The heirs of a deceased person have a right to insist upon an adverse will being proved in solemn form by the attesting witnesses and ought not to be saddled with the adverse party's costs when occasioned by such opposition as they were entitled to offer. MATUNGINEE DOSSEE *v* HUREE PERSHAD MUNDUL 24 W R 25

157 ———— Withdrawal of suit—*Omission to obtain leave to bring another—Civil Procedure Code ss 97 and 157*—The High Court has no power under the Civil Procedure Code to award costs to the defendant when the plaintiff withdraws not having asked leave to do so with liberty to bring another suit for the same matter. BRASS *v* TIRUVEMGADA PILLAI 1 Mad 247

158 ———— *Order for costs made in absence of and without notice to plaintiff*—The plaintiffs on the day fixed for hearing asked for permission to withdraw a suit which was granted *ex parte*. Before the order was drawn up the defendants pleaders hearing that the suit had been withdrawn applied for their costs. The application was allowed and the order was prepared costs being awarded to the defendants. *Held* that as the defendants had been summoned the lower Court should neither have passed an order allowing the suit to be withdrawn without notice to the defendants nor should it without notice to the plaintiffs have passed an order charging

COSTS—*continued*

1 SPECIAL CASES—*continued*

nisi was obtained by them against J C S and another on the ground that he was the real plaintiff and S B D only a nominal one. It appeared that S B D had no means of her own but lived in the ... J C S who could explain nothing ... stances or why she was ... stated that ...

Administration suit—*Next friend—Unnecessary suit—Liability of next friend for costs—Adoption of suit by plaintiff—Costs of solicitor of next friend where suit unnecessary—Solicitor's lien on estate recovered or preserved by suit—Preservation of estate from future risk—Appointment of receiver—Insane executrix—Act II of 1874 s 35*—The plaintiff who was a minor sued by her next friend (her husband) for the administration of her father Purshotam Ramji. The defendants in the suit were the plaintiff's mother Nanbai who was the widow and executrix of Purshotam Ramji and one Burjorji who had been appointed by Nanbai to act for her during her absence on pilgrimage. The plaintiff alleged that Nanbai was insane and unfit to manage the estate and that Burjorji was mismanaging and wasting it. A receiver was appointed shortly after the filing of the suit. At the hearing the suit was dismissed as against Burjorji and the Court ordered that his costs should be paid by the plaintiff's next friend, being of opinion that he was the real actor in the suit and that it would be unfair to make the plaintiff's estate bear the costs of proceedings in which she had no real voice. The Court was further of opinion that at the time the suit was filed Nanbai was not of unsound mind but that she had subsequently become insane. The usual accounts were ordered to be taken as against Nanbai. The result of taking these accounts was that her administration of the estate as executrix was found to be unimpeachable and in December 1883 the Court made an order directing that the next friend should pay the costs of the infant plaintiff. The next friend became insolvent and his solicitors (the respondents) obtained an order from the Judge in chambers that the receiver should pay their costs out of the estate in his hands. The plaintiff appealed. The respondents contended that the plaintiff had adopted the suit and that they had a lien for their costs—at any rate so far as they were incurred for the recovery and preservation of the estate. *Held* that the respondents were not entitled to be paid out of the estate. The plaintiff had done no overt act signifying her adoption of the suit and the fact that she remained passive was consistent with her disapproval of it as the decree did not immediately affect her or require her to take action until the death of her mother Nanbai. *Held* also, that the property in the hands of the receiver could not be held to have been recovered by means of the suit as it appeared that the investments were of a perfectly legitimate nature; that there was no cause for alarm with respect to the safety of the property and that the suit so far as it was based on alleged danger to the estate was quite uncalled for. It was argued for the respondents that the appointment of a receiver preserved the estate from future risk arising from the fact that the executrix Nanbai was of unsound mind. *Held* that the mere fact that the appointment of a receiver

COSTS—*continued*

I SPECIAL CASES—*continued*

a conveyance in the name of one S an indigent member of their family and dependent on them for support and caused the suit to be brought in the name of *S* ... intiff jointly The Judge found that *S* ...ard by *E* and *B* in order to save

160 ——— Administ... the costs of the suits

Act II of 1874, s. 18 and s 35—*Con... ...ag claims to property in possession of Administrator General under order of Court—Costs of Administrator General in a suit to recover such property how paid—Expenses of taking care of such property incurred by Administrator General*—The plaintiff and defendants Nos. 2 3 4 and 5 were the daughters of one *S* who died in Bombay on the 9th November 1885 Shortly after the death of *S* the plaintiff went to Delhi leaving certain ornaments and other valuables belonging to her locked up in a box which also contained certain property which had belonged to her mother *S* The box remained in the house in which the plaintiff had resided with *S* The key of the box was taken by the plaintiff to Delhi. During the plaintiff's absence one of her sisters (defendant No. 3) presented a petition to the High Court alleging that all the property in the said box belonged to her deceased mother *S* and was in danger of being misappropriated by the plaintiff Upon these allegations the Court, on the 16th January 1886 made an order under s 18 of Act II of 1874, directing the Administrator General to take possession of the property of *S* and hold the same subject to the further order of the Court. Pursuant to this order the Administrator General took possession of the box and all its contents. The plaintiff admitting that some of the ornaments in the box had belonged to the estate of *S* sued to recover the remainder of the ornaments therein which she alleged belonged to herself and which she specified in a separate list Defendant No 3 denied her claim and contended that all the property belonged to the estate of *S* The other sisters of the plaintiff (defendants Nos. 2 4 and 5) admitted the plaintiff's claim The Court held that the plaintiff had proved her claim and directed that her property should be delivered over to her by the Administrator General *Held* as to costs that the Administrator General was in the position of an interpleading plaintiff and that he was entitled in the first instance to recover his costs from the losing claimant (defendant No. 3) Failing recovery from defendant No 3 he was entitled to be paid his costs out of the estate of *S* and if and in so far as that estate proved insufficient he was entitled to recover them out of the property which was the subject matter of the suit *Held* also that the costs of the Administrator General included the expenses incurred by him in taking care of the property entrusted to him by the order of the Court such expenses to be apportioned according to the amounts respectively belonging to the estate of *S* and to the plaintiff and to be paid accordingly out of the said estate and out of the property of the plaintiff AMIR JAN *v* RIVETT CARNAC I. L. R. 10 Bom 350

161.——— *Partnership suit —Deceased partner—Costs of his legal representa*

contention that an independent action will under such circumstances lie RAM COOMAR COONDOO *v* CHUNDERKANTO MOOKERJEE

[I. L. R. 2 Calc. 233 L. R. 4 I. A 23

146 ——— *Payment of costs by persons made parties without their consent*—Persons who without their consent are made parties to costs were ... stage cannot be made liable of the partnership assets ... the plaintiff should be insufficient it was ordered that the pla... do recover his costs from the estate of *H* There were no assets of the partnership The plaintiff now took out a summons calling on *R* as son and legal representative of *H* to show cause why he should not pay the said costs or why in default the estate of *H* in his hands should not be attached. *R* objected that he was no party to this suit when the decree was made and neither he nor his father's estate in his hands was bound by it *Held* that the summons must be dismissed. The decree so far as it purported to affect the estate of *H* was not a valid decree inasmuch as the person or persons beneficially interested in that estate were not then before the Court LOUDON *v* KHATAO ROWJI I. L. R. 16 Bom 515

162 ——— **Unsuccessful suit while in possession pending appeal**—*Reversal of decree for possession on appeal*—*A* under a decree against *B* took possession of *B*'s estate and continued a litigation which had been commenced by *B*'s manager and in which he was unsuccessful and charged with the costs of suit *B* meanwhile having appealed to the Privy Council obtained a decree restoring her to possession of the estate *Held* that *A* could not recover the costs he was charged with from the estate HURO MONEE *alias* HURO MONEE DEBIA *v* RAM KISHORE ACHARJEE 6 W R. Mis 124

163 ———**Will Construction of**—*Difficulty of construction caused by testator*—In a suit for the construction of a will—*Held* that the difficulty of construction having been caused by the testator himself and in regard to the circumstances and position of the parties costs should come out of the estate INDAR KUNWAR *v* JAIPAL KUNWAR

[I. L. R. 15 Calc. 725
L R 15 I A. 127

164 ——— *Suit for construction of will—Construction too simple to require assistance of Court*—In a suit for the construction of a will where the construction was not so difficult as to have required the assistance of the Court it was *held* to be not a case where the estate should bear the costs The suit was therefore dismissed with costs. NARAYANI DASI *v* ADMINISTRATOR GENERAL OF BENGAL I. L. R. 21 Calc. 683

165 ——— *Subsequent inconsistent will of which probate is also granted—Costs of executor*—The executor of a will had obtained probate thereof when the executor of a subsequent (and inconsistent) will applied for and obtained probate of the second will *Held* that having regard to the circumstances of the case and to the fact that the litigation was produced by the conduct of the testatrix herself the executors of both wills were entitled to

COSTS—*continued*

2 COSTS OUT OF ESTATE—*concluded*

their costs to be paid out of the estate, but that in so far as the costs would not be covered by the estate each party must bear his own costs. IN THE GOODS OF TARAMONI DASI I L R 25 Calc 553

3 INTEREST ON COSTS

166 ——— Discretion of Court—*Execution of decree*—The Court in executing a decree has no power to allow interests on costs when not mentioned in the decree The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it ULFUTUNNISSA *v* MOHAN LAL SUKUL 6 B L R, Ap 33

167 ——— Costs of translation and printing—*Execution of decree of Privy Council*—When on appeal to the Privy Council it was ordered that the decree of the High Court be reversed with £276 12 2 costs and that the decree of the Zilla Court be affirmed with costs in the Courts below in execution of the decree it was held that the decree holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council and that he was entitled to interest upon those costs but not to interest upon the said £276-12 2 MADAN THAKUR *v* LOPEZ [9 B L R Ap 22

S C MUDDUN THAKOOR *v* MORRISON [18 W R, 253

168 ——— Refund of costs paid under decree subsequently reversed—*Money paid under good decree*—Costs paid in compliance with a decree subsequently reversed may be ordered to be refunded by the Court which made the original decree A party to a suit whose case has been dismissed in both the lower Courts with costs is entitled, when the decrees of the lower Courts are reversed by the Privy Council and the case remanded for re-trial to apply for a refund of the costs already paid under the decrees of the lower Courts but not for interest on such costs Such an application need not be made to the Privy Council but may be made to the Court in which the suit was instituted. DORAB ALLY KHAN *v* ABDOOL AZEEZ [I. L R. 4 Calc 229 3 C L. R, 358

169 ——— Where a decree under which costs were recovered is reversed no express order is needed for refund of the costs the party who recovered having no right to retain the same Interest is awardable on costs to be so refunded KEDAR NATH LAKRASEE *v* DOYA MOYEE DEBIA 20 W R 49

4 SCALE OF COSTS

170 ——— Costs on highest scale—In the Court below a decree was passed in favour of the plaintiff with costs on scale No 3 On appeal the decree as to costs was altered it being ordered that each party should pay his own costs to be taxed on scale No. 2 BULDEO NARAYAN *v* SCRYMGEOUR [6 B L. R. 581

See also MILLER *v* GOURIPORE COMPANY [8 B L. R., 285

COSTS—*continued*

5 TAXATION OF COSTS

171. ——— Appearance before taxing officer—*Attorney—Appearance for several parties—Summons to attend taxation—Practice*—Any work which an attorney does jointly for several parties together he can only make one charge for and where he appears for any number of parties before the taxing officer at the taxation of the costs of a suit he must be taken to represent them jointly The taxing officer should not issue separate summonses to different parties who appear by one attorney KENNY *v* ADMINISTRATOR GENERAL OF BENGAL 7 B L. R., Ap 50

172 ——— Accountants employed not under order of Court—*Useful and necessary expense*—In a suit to set aside a settlement two accountants were employed at the plaintiff's instance and not by order of Court to examine the settlor's books and give evidence—*Held* that the investigation being most useful to the Court, and adapted to the ends of justice the taxing master was right in allowing their expenses MACNAIR *v* HOGG [2 Hyde 89

173 ——— Costs of Government Solicitor where suit against Government has been dismissed with costs—*Power of Taxing Officer*—The Government solicitor who receives a monthly salary as such receives no further payment from Government in respect of any costs of litigation to which Government is a party except out fees or actual payments made by him on behalf of Government and pays no fees when he instructs the Advocate-General but under his arrangement with Government he is entitled to retain the costs decreed to Government if recovered, and he then pays to the Advocate General the fees of counsel allowed by the taxing officer *Held* that when a suit against Government is dismissed with costs the costs should be taxed in the usual way and the taxing officer cannot enquire into the arrangement as to remuneration of its law officers by Government. AZIMULLA SAHEB *v* SECRETARY OF STATE FOR INDIA I. L. R. 15 Mad., 405

174 ——— Suit against Secretary of State—*Dismissal of suit with costs—Remuneration of law officers—Agreement between Government and Government Solicitor—Agreement not illegal nor contrary to public policy*—Assuming that the arrangement between the Government and its solicitor is that the latter should receive a salary and in addition the costs awarded to Government this arrangement cannot affect a third party condemned in costs and the taxing officer has no right to take such an arrangement into consideration; neither is it illegal or contrary to public policy MUHAMMED ALIM OOLLAH SAHIB *v* SECRETARY OF STATE FOR INDIA I. L. R., 17 Mad., 162

Affirming on appeal decision in AZIMULLA SAHEB *v* SECRETARY OF STATE FOR INDIA [I. L. R. 15 Mad., 405

175 ——— Attorney and client—*Trustees—Bills of costs paid by majority of trustees—Right of dissenting trustee to have bills*

COSTS—*concluded*

5 TAXATION OF COSTS—*concluded*

taxed even aft r payment—Jur sd ct on of High C urt —In a suit relating to a charitable trust the decree directed that the costs of all parties thereto when taxed sh uld be paid out of the trust fund. Certain bills f costs were subsequently furnished to the trustees by the attorneys. Two f the trustees th ught the bills reasonable and agreed that they sh uld be paid. The third trustee bjected to the amount of the bills as ex rbitant, and desired that they sh uld be taxed. Notwithstanding his protest however the oth r trustees paid the bills without taxation. He thereupon took out a summ ns calling upon his c trustees and the attorney to sh w cause why the bills sh uld not be taxed and why they should not refund any sum which had been overpaid. *Held* that the dissenting trustee was entitled to have the bills taxed although they had been paid and that the High C urt had juris diction to order taxation to be made JIJIBHOY MUNCHERJI JIJIBHOY v BYRAMJI JIJIBHOY

[I. L R 18 Bom 189

176 ———— Suit relating to charitable institution or endowment—*Defendants costs as between attorney and client ordered out of the charity estate—Charges allowed and d sallowed as aga nst estate—Discretion of taxing master—Trustee* —In a suit brought by the Advocate General at the instance of relators for the purpose of remov ing the defendants from the p sition of directors of a Mahomedan m sque and for administrati n of the pro perty of the mosque etc. the decree ordered that the defendants sh uld have their costs taxed as between attorney and client out of the charity funds The attorneys of the defendants accordingly brought in their bill of costs and in taxation it was contended that they should be allowed out of the charity funds all the sums which the taxing master certified they sh uld pay their attorneys *Held* that where the taxing master decided that certain items allowed against the defendants should not come out of the charity funds his decision could not be disturbed It d es n t follow that because a charge is proper to be all wed between an attorney and client that the client if a trustee should be allowed that charge out of the trust funds ADVOCATE GENERAL OF BOMBAY v ABDUL KADUR

[I L R, 20 Bom 301

177 ———— Costs of two Counsel—*Dis cret on of taxing off cer—Insolvency proceed ngs —Allegat ons of improper conduct—Purchaser—Pract ce* —A rule was obtained in certain insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase sh uld not be set aside and alleging improper conduct on the part of the purchaser who was represented by two counsel at the hearing of the rule On taxati n of costs of the purchaser the other par ties objected to the costs of two counsel on behalf of the purchaser being allowed. *Held* that having regard to the allegations made the taxing officer exercised a right discretion in allowing the costs of two counsel IN THE MATTER OF BEER NURSING DUTT I L R 24 Calc 891

COTTON FRAUDS ACT (BOMBAY ACT IX OF 1863)

See APPEAL IN CRIMINAL CASES—ACTS —BOMBAY COTTON FRAUDS ACT

[3 Bom Cr 12

See MAGISTRATE JURISDICTION OF

[3 Bom Cr 12

1 ———— s 2—*Possession of adulterated cotton* —Possession of adulterated cotton even though accompanied by a knowledge that the cotton is adult rated is n t sufficient to sustain a conviction of fraudulent a lulteration or deterioration of cotton under the Cotton Frauds Act No criminality attaches to such possession till the cotton is actually offered for sale or compression REG v HANMANT GAVDA I L R 1 Bom 228

2 ———— *Mixing cotton* —Ginning together two varieties of cotton which had been mixed before constitutes mixing within the mean ing of s 2 of Bombay Act IX of 1863 REG v CHOUTHMAL LACHHIRAM 11 Bom 144

3 ———— and s 8—*Offering adulter ated cotton for compression—Fraudulent inten t on* —To constitute the offence of offering adulter ated cotton for compression under s 8 of Bombay Act IX of 1863 it is not necessary to prove that the accused had a fraudulent intention or that he had knowledge of the cotton having been adulterated or deteriorated or mixed as described in s 2 of that Act REG v PREMJI BHAGVAN 10 Bom 295

———— ss 6 and 14

See JURISDICTION OF CRIMINAL COURT —OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ADULTERATION

[I L R 3 Bom. 384

COTTON FRAUDS REGULATION (BOMBAY REG III OF 1829)

———— s 1 cl 1—*Charge under* —Cotton having been sold subject to examinati n by an in spect r the mere fact of cotton of two different qua lit es being found in one of the bales was held to be not sufficient to support a charge under s. 1 cl 1 of Regulation III of 1829 (Bombay) REG v RATTANJI BHUKAN 1 Bom., 17

COUNSEL

See ADVOCATE 14 B L R. Ap., 12
[5 B L R. Ap 70

See CASES UNDER BARRISTER

See COMMISSION—CIVIL CASES
[8 B L R Ap 101
Cor 7
12 B L R. Ap 4

See INSOLVENT ACT s 36
[11 B L R Ap., 33
I L R., 3 Bom 270

See PRACTICE—CIVIL CASES—MOTIONS
[B L R. Sup Vol. 609

See RIGHT TO BEGIN 9 B L R., 417

COSTS—*continued*

2 COSTS OUT OF ESTATE—*concluded*

their costs, to be paid out of the estate but that in so far as the costs would not be covered by the estate each party must bear his own costs IN THE GOODS OF TARAMONI DASI I L R, 25 Calc 553

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COSTS—*continued*

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175 ———— Attorney and client—*Trustees—Bills of costs paid by majority of trustees—Right of dissent of trustee to have bills*

COSTS—*concluded*

5. TAXATION OF COSTS—*concluded*

taxed even after payment—Jurisdiction of High Court—In a suit relating to a charitable trust the decree directed that the costs of all parties thereto when taxed should be paid out of the trust fund. Certain bills of costs were subsequently furnished to the trustees by the attorneys. Two of the trustees thought the bills reasonable and agreed that they should be paid. The third trustee objected to the amount of the bills as exorbitant, and desired that they should be taxed. Notwithstanding his protest however the other trustees paid the bills without taxation. He thereupon took out a summons calling upon his co-trustees and the attorney to show cause why the bills should not be taxed and why they should not refund any sum which had been overpaid. *Held* that the dissenting trustee was entitled to have the bills taxed although they had been paid and that the High Court had jurisdiction to order taxation to be made. JIJIBHOY MUNCHERJI JIJIBHOY *v* BYRAMJI JIJIBHOY [I. L. R. 18 Bom 189

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COSTS—*continued*

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COSTS—*concluded*

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taxed even after payment—Jurisdiction of High Court—In a suit relating to a charitable trust the decree directed that the costs of all parties thereto when taxed should be paid out of the trust fund. Certain bills of costs were subsequently furnished to the trustees by the attorneys. Two of the trustees thought the bills reasonable and agreed that they should be paid. The third trustee objected to the amount of the bills as exorbitant and desired that they should be taxed. Notwithstanding his protest however the other trustees paid the bills without taxation. He thereupon took out a summons calling upon his co-trustees and the attorney to show cause why the bills should not be taxed and why they should not refund any sum which had been overpaid. *Held* that the dissenting trustee was entitled to have the bills taxed although they had been paid and that the High Court had jurisdiction to order taxation to be made. JIJIBHOY MUNCHERJI JIJIBHOY *v* BYRAMJI JIJIBHOY [I. L. R 18 Bom 189

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177 ———— Costs of two Counsel—*Discretion of taxing officer—Insolvency proceedings—Allegations of improper conduct—Purchaser—Practice*—A rule was obtained in certain insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase should not be set aside and alleging improper conduct on the part of the purchaser who was represented by two counsel at the hearing of the rule. On taxation of costs of the purchaser the other parties objected to the costs of two counsel on behalf of the purchaser being allowed. *Held* that having regard to the allegations made the taxing officer exercised a right discretion in allowing the costs of two counsel. IN THE MATTER OF BEER NURSING DUTT I. L. R 24 Calc 891

COTTON FRAUDS ACT (BOMBAY ACT IX OF 1863)

See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT [3 Bom Cr 12

See MAGISTRATE JURISDICTION OF [3 Bom Cr 12

1 ———— s 2—*Possession of adulterated cotton*—Possession of adulterated cotton even though accompanied by a knowledge that the cotton is adulterated is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act. No criminality attaches to such possession till the cotton is actually offered for sale or compression. REG *v* HANMANT GAVDA I. L. R 1 Bom 228

2. ———— *Mixing cotton*—Ginning together two varieties of cotton which had been mixed before constitutes "mixing" within the meaning of s 2 of Bombay Act IX of 1863. REG *v* CHOUTHMAL LACHHIRAM 11 Bom 144

3 ———— and s 8—*Offering adulterated cotton for compression—Fraudulent intention*—To constitute the offence of offering adulterated cotton for compression under s. 8 of Bombay Act IX of 1863 it is not necessary to prove that the accused had a fraudulent intention or that he had knowledge of the cotton having been adulterated or deteriorated or mixed as described in s 2 of that Act. REG *v* PREMJI BHAGVAN 10 Bom 295

———— ss 6 and 14

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ADULTERATION [I L R 3 Bom. 384

COTTON FRAUDS REGULATION (BOMBAY REG III OF 1829).

———— s 1 cl 1—*Charge under*—Cotton having been sold subject to examination by an inspector the mere fact of cotton of two different qualities being found in one of the bales was held to be not sufficient to support a charge under s 1 cl 1 of Regulation III of 1829 (Bombay). REG *v* RATTANJI BHUKAN 1 Bom., 17

COUNSEL.

See ADVOCATE 14 B L R. Ap 12
[5 B L R. Ap 70

See CASES UNDER BARRISTER

See COMMISSION—CIVIL CASES [8 B L R Ap 101
Cor., 7
12 B L R. Ap...

See INSOLVENT ACT s 36 ...ic., 133
[11 B ...
I L ...

See PRACTICE—CIV... ...F—
...OMPANIES ACT s 1..0
S... [I. L. R. 17 All. 252

COSTS—*continued*

2 COSTS OUT OF ESTATE—*concluded*

their costs to be paid out of the estate but that in so far as the costs would not be covered by the estate each party must bear his own costs IN THE GOODS OF TARAMONI DASI I L R 25 Calc, 553

3 INTEREST ON COSTS

166 ———— **Discretion of Court**—*Execution of decree* —The Court in executing a decree has no power to allow interests on costs when not mentioned in the decree The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it ULFUTUNNISSA *v* MOHAN LAL SUKUL 6 B L R, Ap 33

167 ———— **Costs of translation and printing**—*Execution of decree of Privy Council* —When on appeal to the Privy Council it was ordered that the decree of the High Court be reversed with £276 12 2 costs and that the decree of the Zilla Court be affirmed with costs in the Courts below in execution of the decree it was held that the decree holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council and that he was entitled to interest upon those costs but not to interest upon the said £276-12 2 MADAN THAKUR *v* LOPEZ [9 B L R. Ap, 22

S C MUDDUN THAKOOR *v* MORRISON [18 W R 253

168 ———— **Refund of costs paid under decree subsequently reversed**—*Money paid under good decree* —Costs paid in compliance with a decree subsequently reversed may be ordered to be refunded by the Court which made the original decree A party to a suit whose case has been dismissed in both the lower Courts with costs is entitled when the decrees of the lower Courts are reversed by the Privy Council and the case remanded for re-trial to apply for a refund of the costs already paid under the decrees of the lower Courts but not for interest on such costs Such an application need not be made the Privy Council but may be made to the Court hich the suit was instituted. DORAB ALLY KHAN OOL AZEEZ

[I L R. 4 Calc 229 3 C L R 358

Where a decree h costs were recovered is reversed no ex is needed f r refund of the costs the vered having no right to retain the is awardable on costs to be so re NATH PAKRASEE *v* DOYA MOYEE 20 W R 49

ALE OF COSTS

Costs on highest scale — decree was passed in favour of s on scale No 3 On appeal s was altered it being ordered d pay his own costs to be taxed RO NARAYAN *v* SCRYMGEOUR [6 B L R. 581

OURIPORE MPANY R., 285

COSTS—*continued*

5 TAXATION OF COSTS

171 ———— **Appearance before taxing officer**—*Attorney—Appearance for several parties—Summons to attend taxation—Practice* —Any work which an attorney does jointly f r several parties together he can only make one charge for and where he appears for any number of parties before the taxing officer at the taxation of the costs of a suit he must be taken to represent them jointly The taxing officer should not issue separate summonses to different parties who appear by one attorney KENNY *v* ADMINISTRATOR GENERAL OF BENGAL 7 B L R. Ap 50

172 ———— **Accountants employed not under order of Court**—*Useful and necessary expense* —In a suit to set aside a settlement two accountants were employed at the plaintiff's instance, and not by order of Court to examin the settlor's books and give evidence —*Held* that the investigation being most useful to the Court and adapted to the ends of justice the taxing master was right in allowing their expenses MACNAIR *v* HOGG [2 Hyde 89

173 ———— **Costs of Government Solicitor where suit against Government has been dismissed with costs**—*Power of Taxing Officer* —The Government solicitor who receives a monthly salary as such receives no further payment from Government in respect of any costs of litigation to which Government is a party except out f es or actual payments made by him on behalf of Government and pays no fees when he instructs the Advocate General but under his arrangement with Government he is entitled to retain the costs decreed to Government if recovered, and he then pays to the Advocate General the fees of counsel allowed by the taxing officer *Held* that when a suit against Government is dismissed with costs the costs should be taxed in the usual way and the taxing officer cannot enquire into the arrangement made by Government as to remuneration of its law officers by Government AZIMULLA SAHEB *v* SECRETARY OF STATE FOR INDIA I. L. R. 15 Mad., 405

174 ———— **Suit against Secretary of State**—*Dismissal of suit with costs—Remuneration of law officers—Agreement between Government and Government Solicitor—Agreement not illegal nor contrary to public policy* —Assuming that the arrangement between the Government and its solicitor is that the latter should receive a salary and in addition the costs awarded to Government the arrangement cannot affect a third party condemned in costs and the taxing officer has no right to take such an arrangement into consideration, neither is it illegal or contrary to public policy MOHAMMED ALIM OOLLAH SAHIB *v* SECRETARY OF STATE FOR INDIA I. L. R. 17 Mad., 162

Affirming on appeal decision in AZIMULLA SAHEB *v* SECRETARY OF STATE FOR INDIA [I. L. R. 15 Mad., 405

175 ———— **Attorney and client**—*Trustees—Bills of costs paid by majority of trustees—Right of dissent of trustee to have bills*

COSTS—*concluded*

5 TAXATION OF COSTS—*concluded*

taxed even after payment—Jurisdiction of High Court—In a suit relating to a charitable trust the decree directed that the costs of all parties thereto when taxed should be paid out of the trust fund Certain bills of costs were subsequently furnished to the trustees by the attorneys Two of the trustees thought the bills reasonable and agreed that they should be paid. The third trustee objected to the amount of the bills as exorbitant, and desired that they should be taxed. Notwithstanding his protest however the other trustees paid the bills without taxation. He thereupon took out a summons calling upon his co trustees and the attorney to show cause why the bills should not be taxed and why they should not refund any sum which had been overpaid. *Held* that the dissenting trustee was entitled to have the bills taxed although they had been paid and that the High Court had jurisdiction to order taxation to be made JIJIBHOY MUNCHERJI JIJIBHOY v BYRAMJI JIJIBHOY

[I. L. R 18 Bom. 189

176 ———— Suit relating to charitable institution or endowment—*Defendants costs as between attorney and client ordered out of the charity estate—Charges allowed and disallowed as against estate—Discretion of taxing master—Trustee*—In a suit brought by the Advocate General at the instance of relators for the purpose of removing the defendants from the position of directors of a Mahomedan mosque and for administration of the property of the mosque etc the decree ordered that the defendants should have their costs taxed as between attorney and client out of the charity funds The attorneys of the defendants accordingly brought in their bill of costs and in taxation it was contended that they should be allowed out of the charity funds all the sums which the taxing master certified they should pay their attorneys *Held* that where the taxing master decided that certain items allowed against the defendants should not come out of the charity funds his decision could not be disturbed It does not follow that because a charge is proper to be allowed between an attorney and client that the client if a trustee should be allowed that charge out of the trust funds. ADVOCATE GENERAL OF BOMBAY v ABDUL KADUR

[I. L. R, 20 Bom 301

177 ———— Costs of two Counsel—*Discretion of taxing officer—Insolvency proceedings—Allegations of improper conduct—Purchaser—Practice*—A rule was obtained in certain insolvency proceedings against the purchaser of property of the insolvent to show cause why such purchase should not be set aside and alleging improper conduct on the part of the purchaser who was represented by two counsel at the hearing of the rule On taxation of costs of the purchaser the other parties objected to the costs of two counsel on behalf of the purchaser being allowed. *Held* that having regard to the allegations made the taxing officer exercised a right discretion in allowing the costs of two counsel IN THE MATTER OF BEER NURSING DUTT I. L. R 24 Calc 891

COTTON FRAUDS ACT (BOMBAY ACT IX OF 1863)

See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT

[3 Bom Cr 12

See MAGISTRATE JURISDICTION OF

[3 Bom Cr 12

1 ———— s 2—*Possession of adulterated cotton*—Possession of adulterated cotton even though accompanied by a knowledge that the cotton is adulterated is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act No criminality attaches to such possession till the cotton is actually offered for sale or compression REG v HANMANT GAVDA I L R 1 Bom 228

2 ———— *Mixing cotton*—Ginning together two varieties of cotton which had been mixed before constitutes mixing within the meaning of s 2 of Bombay Act IX of 1863 REG v CHOUTHMAL LACHHIRAM 11 Bom, 144

3 ———— and s 8—*Offering adulterated cotton for compression—Fraudulent intention*—To constitute the offence of offering adulterated cotton for compression under s 8 of Bombay Act IX of 1863 it is not necessary to prove that the accused had a fraudulent intention or that he had knowledge of the cotton having been adulterated or deteriorated or mixed as described in s 2 of that Act REG v PREMJI BHAGVAN 10 Bom 295

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See ADVOCATE 14 B L R Ap 12
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S [I. L. R. 17 All. 252

COSTS—*continued*

2 COSTS OUT OF ESTATE—*concluded*

their costs to be paid out of the estate but that in so far as the costs would not be covered by the estate each party must bear his own costs IN THE GOODS OF TARAMONI DASI I L R 25 Calc, 553

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167 ———— Costs of translation and printing—*Execution of decree of Privy Council* —When on appeal to the Privy Council ... ordered that the decree of the H ... with £276 12 2 cost... 1879 sch II art 15 Zilla Cou... [I L R, 16 All, 132

bel... Refreshers to—

See PRACTICE—CIVIL CASES—COUNSEL S FEES I. L. R. 12 Calc., 551

1. ———— Practice as to hearing— Where the senior counsel was absent when an appeal was opened the Court allowed him to follow his junior DODS v STEWART 8 B L R, 340 [17 W R 49

2. ———— Hearing of argument on preliminary issue —Two counsel for the same party may be heard on argument of a preliminary issue FATMABAI v AISHABAI [I L R. 12 Bom 454

3 ———— Privilege of speech —Question as to the extent of privilege of speech accorded to counsel and advocates considered I RE v KASHI NATH DINKAR 8 Bom, Cr., 126

4 ———— *Advocate—Privilege* —An advocate in India cannot be proceeded against civilly or criminally for words uttered in his office as advocate. SULLIVAN v NORTON [I L R. 10 Mad, 28

5 ———— Arguments.—*Per* NORMAN J —It is improper in argument to endeavour to influence a Court by reference to a course which another Court might think fit to adopt or to the view which the Appellate Court might take of its proceedings or even to refer to the likelihood of an appeal JUGGERNAUTH SAHOO v MAHOMED HOSSEIN [15 W R. 173

6 ———— Power to bind client— *Appeal to Privy Council—Agreement by counsel not to appeal—Binding agreement on client* — ...ere the counsel for the appellant had agreed, at ...laring of the case on appeal bef re the ... decree aif the High Court would re... ...el party binding on one of several ... No. 2 ... appeal to England —I ... that ... ...also MILLER v GOURIPORE CO... [8 B L...

COSTS—*continued*

5 TAXATION OF COSTS

171. ———— Appearance before taxing officer—*Attorney—Appearance for several parties—Summons to attend taxation—Practice* —Any work which an attorney does jointly for several parties together he can only make one charge for and where he appears for any number of parties before the taxing officer at the taxation of the costs of a suit he must be taken to represent them jointly The taxing officer should not issue separate summonses to different parties who appear by one attorney KENNY v ADMINISTRATOR GENERAL OF BENGAL 7 B L. R., Ap 50

172 ———— Accountants employed not under order of Court—*Useful and necessary expense* —In a suit to set aside a settlement two accountants were employed at the plaintiff's instance, ther or ... of Court to examine the settl... under s. 59 of th... conduct a case as prosecutor he may instruct counsel who shall be entitled to appear under No 7 Ch. XI of the High Court rules and the Public Prosecutor may thereupon avail himself of the counsel's services under s 90 The effect of s. 235 of the Code read with ss 59 and 60 is to make every case tried by the Court of Session a case falling within the provisions of s 60 —that is to say the Public Prosecutor may always avail himself of the services of counsel retained by a private individual and in so doing he does not deprive himself of the management of the case Where the assistance of counsel has once been accepted that assistance is not excluded at the stages of the trial (summing up by the prosecutor and his reply) to which ss 251 and 252 apply IN RE NARAYAN M PENDSHE 11 Bom., 102

10 ———— Right of counsel or attorney to conduct prosecution—*Presidency Magistrates Act s 129—Criminal Procedure Code 1882 s 495* —With the exception of the Advocate General Standing Counsel Government Solicitor or other officer generally or specially empowered by the Local Government in that behalf no person whether counsel or attorney can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate EMPRESS v BUTOKISTO DASS I. L. R. 6 Calc., 59 [6 C L R, 374

11. ———— Statement by counsel to Court—*Practice* —The Court will accept a statement from counsel from his place at the bar without burdening him with an oath—*Per* STANLEY J NISTARINI DASSEE v NUNDO LALL BOSE [3 C W N, 694

In the case on appeal however it was held that though it has been the practice in Courts in England to accept the ... of counsel made from his ... at the ... entertained great doubt ... either if ... jected to by the opposite ... the part ... such statement ... insist upon ... want the sanctity of an ... NUNI ... DASSI ... R., 27 Calc., 426

COSTS—*concluded*

— TAXATION OF COSTS—*concluded*

taxed even after payment—Jurisdiction of High Court—In a suit relating to a charitable trust the decree directed that the costs of all parties thereof when taxed should be paid out of the trust fund. Certain bills of costs were subsequently furnished to the trustees by the attorneys. Two of the trustees thought the bills reasonable and agreed that they should be paid. The third trustee objected to the amount of the bills as exorbitant and desired that they should be taxed. Notwithstanding his protest however the other trustees paid the bills without taxation. He thereupon took out a summons calling upon his co-trustees and the attorney to show cause why the bills should not be taxed and why they should not refund any sum which had been overpaid. *Held* that the dissenting trustee was entitled to have the bills taxed although they had been paid and that the High Court ... *Compromise—... authority—Notice—Evidence—statement of counsel not made on oath if objected to*—Per MACLEAN C.J. and MACPHERSON and HILL, JJ., on appeal from STANLEY J.—Counsel possesses a general authority an apparent authority which must be taken to continue until notice be given to the other side by the client that it has been determined to settle and compromise the suit in which he is actually retained as counsel. Where the compromise however extends to collateral matters to matters quite outside the scope of the particular case in which counsel is engaged in order to bind his client it must be shown that he had given his client special authority to compromise upon the terms upon which the compromise was effected, and the other side cannot avail themselves of the position that they did not know that it had not been given they are not entitled to assume as in the case of an apparent authority that it was given and was existing. Where counsel under a misapprehension of his client's instructions and believing himself to have authority acts in fact without it he cannot bind his client. NUNDO LAL BOSE *v.* NISTARINI DASSI

[I. L. R. 27 Calc. 428
4 C. W. N. 169

COUNTERFEITING COIN

1. ———— Test of whether coin is money—*Penal Code ss. 230, 231*—The test of whether a coin is money or not is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious. *Held* therefore that to counterfeit a coin of the Emperor Akbar's *time was not an offence under ss. 230 and 231 of the* Penal Code. REG *v.* BAPU YADAV 11 Bom. 172

2. ———— Penal Code s. 239, Application of—S. 239 of the Penal Code is directed against a person other than the coiner who procures or obtains, or receives counterfeit coin and not to the offence committed by the coiner. QUEEN *v.* SHEOBUN *alias* SHEOPERSHAD 3 N. W. 150

3. ———— Penal Code s. 241—*Delivery of coin not genuine*—The gist of an offence under

COTTON FRAUDS ACT (BOMBAY ACT IX OF 1863)

See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT
[3 Bom. Cr. 12

See MAGISTRATE, JURISDICTION OF
[3 Bom. Cr. 12

1. ———— s. 2—*Possession of adulterated cotton*—Possession of adulterated cotton even though accompanied by a knowledge that the cotton is adulterated is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act. No criminality attaches to such possession till the cotton is actually offered for sale or compression. REG *v.* HANMANT GAVDA I. L. R. 1 Bom. 228

2. ———— *Mixing cotton*—Ginning ... two varieties of cotton which had been ... *knowledge*—Wh... mixing ... within the meaning Queen's com... direct proof ... of 1863 REG *v.* ... necessary to render the person punishable ... Bom. 144 *sections of the Penal Code with reference to* uttering of false coin. PARUSHULLAH MUNDUL, KHEROO MUNDUL, QUEEN *v.* GURIB SHEK, RAM RUTTON SAHA *v.* BAWOOL MUNDUL

[23 W. R. Cr. 4

6. ———— Uttering coins—*Coins of unusual kind—Penal Code s. 239—Evidence*—Evidence of the possession and attempted disposal of coins of an unusual kind is relevant on a charge of uttering such coins soon afterwards when the *factum* of uttering is denied. QUEEN-EMPRESS *v.* NUR MAHOMED I. L. R., 8 Bom. 223

COUNTERFEITING GOVERNMENT STAMP

———— Penal Code s. 260—The passing off a one anna stamp as a one rupee stamp is not counterfeiting a one rupee stamp. QUEEN *v.* SHUROOP CHUNDER DOSS 2 W. R. Cr. 65

See MAJORITY ACT s. 3
[I. L. R. 17 Calc. 944

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I. L. R. 15 All. 141
I. L. R. 11 Bom. 659
I. L. R. 12 Bom. 36
I. L. R. 17 Calc. 872
I. L. R. 10 Mad. 154
I. L. R. 11 Mad. 3 500
I. L. R. 12 Mad. 201
I. L. R. 15 Mad. 138

See SONTHAL PERGUNNAHS SETTLEMENT
[I. L. R., 18 Calc., 133

"COURT" MEANING OF—

See COMPANIES ACT s. 130
[I. L. R. 17 All. 252

"COURT" MEANING OF—*concluded*

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY
[I. L. R. 4 Calc., 483

See EVIDENCE ACT 1872 s 3
[13 B L R. Ap., 40

See EVIDENCE ACT 1872 s 57
[I. L. R 14 Calc, 176

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622
[I. L. R., 21 Bom. 279

———— **Place of trial of criminal case**—*Open Court—Pronouncing judgment in private house—Criminal Procedure Code 1861 s 279*—Where a Magistrate conducted and closed the trial in the established Court house but could not by reason of illness pronounce judgment which he did at his private house—*Held* that the procedure being exceptional and in no way prejudicial to the prisoner could not be quashed as illegal under s 279 of the Criminal Procedure Code 1861 GOVERNMENT v HOLASEE SINGH 1 Agra, Cr 17

COURT OF WARDS

See LIMITATION ACT 1877 s 10
[I L R. 5 Mad., 91

See LUNATIC 8 B L R. Ap 50
[I L R 1 All 476
I. L. R., 13 Calc 81
L R 13 I. A 44
I L R 14 Mad. 289

See MINOR—REPRESENTATION OF MINOR IN SUITS 21 W R. 312
[I. L. R 13 Mad 197
I. L. R 23 Calc 374 934
I. L. R 24 Calc 853
L. R., 24 I. A 107

———— **Agent of**—

See ACT XX OF 1863 s 5
[I. L. R. 19 Mad. 285

See COLLECTOR I. L. R 3 All 20
[I. L. R 19 Mad. 255

———— **Tenure created under**—

See BENGAL ACT IV OF 1870
[15 B L R 343

1. ———— **Position of Collector as manager of Court of Wards**—In the management of estates under the Court of Wards the Collector acts not in his ordinary capacity as an officer of the executive Government but as a ministerial officer of the Court of Wards and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court SHEORAJ SINGH v COLLECTOR OF MORADABAD 2 N W., 379

2. ———— **Right of suit**—*Property belonging to minor*—The Court of [Wards has] perfect right to maintain a suit for [recovery of] land belonging to a minor which is [held by] a person not having a good title ther[eto] SAHOO v COURT OF WARDS

COURT OF WARDS—*continued*

3 ———— **Right of female to surrender estate**—*Consent of Court of Wards*—A female whose estate is under the management of the Court of Wards cannot without the consent of the Court of Wards give up her rights in favour of the next heir GOVERNMENT v MONOHUR DEO KUSTOORA KOOMAREE v MONOHUR DEO W R., 1864 39

4. ———— **Appeal by ward of Court of Wards**—*Order in execution of decree*—A widow under the Court of Wards cannot in the summary department appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards. KUSTOORA KOOMAREE v BINODE RAM SEIN 4 W R., Mis., 5

5 ———— **Liability of Court of Wards for personal debts of committee**—The obligation of the Collector on behalf of the Court of Wards properly to manage the estate of a lunatic does not include liability for his personal debts REAJOODEEN v COLLECTOR OF CUTTACK 10 W R. 175

6 ———— **Act of Court of Wards in paying Government revenue to save estate**—*Admission*—Where the Court of Wards in order to save a minor's estate from sale pays on his behalf not only his own share of the revenue due to Government but also all that is not paid by the other shareholders such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid. RAM PERSHAD MOOKERJEE v ... JUN CHUCKERBUTTY v BANEE MADHUB MOOKERJEE
[21 W R., 253

7 ———— **Power of Court of Wards**—*Beng Reg X of 1793 s 10—Remuneration to manager Determination of*—The Courts of Wards has authority under s 10 Regulation X of 1793 to determine the proper remuneration to be given to the manager of an estate under their charge and the the Civil Courts have no power to question the arrangements made by the Court of Wards. SHURUT SOONDERY DEBIA v COLLECTOR OF MYMENSINGH
[7 W R., 231

8 ———— **Minor under Court of Wards**—*Beng Reg X of 1793, s 33—Power to adopt—Beng Reg XXVI of 1793 s 2—Semble*—The operation of s. 33 Regulation X of 1793 which, read together with s. 2 Regulation XXVI of 1793 prohibits a landholder under the age of eighteen from making an adoption without the consent of the Court of Wards is confined to persons who are under the guardianship [of the Cou]rt of Wards JUMOONA DASSYA v B[...]ASSYA
[I. L. R., 1 Cal[c]
25 W
L. R., 3

9 ———— [...un]der Court [...]
—*How fa[r ...] contract*
Reg X of [...W]ards Act
IX of 1[...] (IX of 1
On a reas[...] the who[...]
tion X of [...]duly c[...]
such is [...]lace
contractin[...]a ward
taken awa[...]

COURT OF WARDS—*continued*

under the provisions of the law comes under the charge and control of the Court of Wards. The view taken by the Courts of the Regulation and Acts concerned with the Courts of Wards in Bengal is that although the possession of a revenue-paying property is a condition precedent to the jurisdiction of the Court of Wards attaching yet when once that jurisdiction has attached, all the property of the ward comes under the control and management of the Court *Mahomed Zahoor Ali Khan v Rutta Koer 11 Moore's I A 478* considered. DHUNPUT SINGH v SHOOBHUDRA KUMARI

[I. L. R., 8 Calc 620 11 C L R 285

10 ———————— *Disqualification to contract—Beng Reg LII of 1803*—On a consideration of the provisions of Regulation LII of 1803 (the provisions of Regulation X of 1793 are similar) it was held that the mere fact that the Court of Wards has charge of the estates of a female did not necessarily disqualify her from contracting debts. That Regulation must be construed strictly the provisions requiring the Collector to report to the Board a female as disqualified and the subsequent procedure thereon should be strictly carried out as not mere matters of form but necessary preliminaries before the female can be considered disqualified. From the absence of the observance of those provisions in the case of *R A* and the conduct of the Government officials representing the Court of Wards the custody of the Court of Wards of her estates was held to be of such a character as did not render her a disqualified female incapable of contracting debts. The case having been framed incorrectly it was under the circumstances remanded for trial by the High Court under special directions MAHOMED ZAHOOR ALI KHAN v RUTTA KOOER

[9 W R., P C 9 11 Moore's I. A., 478

11 ———————— *Beng Reg LII of 1803—Incompetency of disqualified proprietor to contract.*—Under s 7 of Regulation LII of 1803 lakhiraj lands belonging to a disqualified proprietor may be committed by the Government (on its appearing that this will be for its interests and those of such proprietor) to the charge of the Court of Wards and thereupon the whole estate and effects real and personal of such proprietor become vested in that Court. An estate consisting of lakhiraj lands was duly placed under the management of the Court of Wards the proprietress a Mahomedan being disqualified under the Regulation This ward having then become a party to a mortgage of such lands to secure repayment of money advanced to her it was held that she neither bound herself nor charged the estate This case distinguished from *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moore's I A 478*: where the proprietress no intention to treat her as disqualified having been shown was adjudged capable of contracting though the Court of Wards was in possession of her estate On the facts of this case it was also *held* that although the Court had given to this ward an authority under certain limitations of which the plaintiff had notice to borrow money for a special purpose there had not been such a holding out to the world of her competency as would have induced any reasonable person to suppose that she had power to make the contract on which this suit was brought BALKRISHNA v MASUMA BIBI

[I. L. R. 5 All. 142 L. R. 9 I. A 163 13 C L R 233

12. ———————— *Beng Reg LII of 1803 s 87—Disqualified proprietor—Necessity of following procedure preliminary to taking estate under the Court of Wards*—The procedure prescribed by Regulation No LII of 1803 for disqualifying proprietors and taking their estates under the Court of Wards must be strictly followed in order that the disabilities incident to the status of a disqualified proprietor may ensue *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moore's I A 478* referred to It is incumbent therefore upon one seeking to dispute an adoption on the ground that the person making it was a disqualified proprietor to show that all the procedure necessary to make such person a disqualified proprietor was carried out according to law ISHRI PRASAD SINGH v LALLI JAS KUNWAR

[I L R 22 All. 294

13 ———————— *Person*—The Court of Wards is not a person and letters of administration cannot under the law be granted to it GANJESSAR KOER v COLLECTOR OF PATNA

[I L R 25 Calc 795

14 ———— Certificate of administration—*Act XL of 1858*—The Court of Wards is not prevented by Act XL of 1858 from taking an infant and his estate under its protection by reason of a certificate of administration to the estate having been granted by the Civil Court The Court of Wards has a right to assume charge of the estate although originally it may have refrained from acting MADHUSUDAN SINGH v COLLECTOR OF MIDNAPORE

[B L R. Sup Vol. 199 3 W R 82

15 ———— Act XL of 1858 s 7—*Person*—The Court of Wards is not a person within the meaning of s 7 Act XL of 1858 and is not entitled to administer to an estate by virtue of a will or deed executed by a private person. ROWSHUN JEHUN v COLLECTOR OF PURNEAH

[14 W R. 295

16 ———— Act XL of 1858 s 14—*Guardianship of minor proprietors*—Under s. 14, Act XL of 1858 an estate ceases to be subject to the jurisdiction of the Court of Wards when any of the co proprietors attain majority; but the Judge may on the representation of the Collector direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification or until such time as it is otherwise ordered SUFFEROONISSA BEEBEE v GHOLAM HOSSEIN CHOWDHRY

[W R., 1864 Mis. 2

17 ———— Release of property from superintendence of Collector—*North West Provinces Land Revenue Acts XIX of 1873 ss 194-195 and VIII of 1879 s 20—Disqualified proprietor*—If a female proprietor brought a suit to recover possession of certain lands which were in

COURT — MEANING OF—*concluded*

... CONFESSIONS OF PRI- ... [illegible]

[I. L. R., 4 Calc., 483

[18 B. L. R., Ap. 40

[I. L. R., 14 Calc. 176

... HIGH COURT—

[I. L. R. 21 Bom. 279

... trial of criminal case— ... [illegible] ... the trial in ... reason ... at his ... excep- ... could ... criminal ... RELIANCE

1 Agra, Cr. 17

... [illegible]

[I. L. R. 6 Mad. 91

8 B. L. R. Ap. 60

[I. L. R. 1 All. 470

I. L. R. 19 Calc. 81

I. R. 19 I. A. 44

I. L. R. 14 Mad. 289

21 W. R. 110

[I. L. R. 19 Mad. 10

I. L. R. 23 Calc. 874 ...

I. L. R. 24 Calc. 851

I. R. 24 I. A. 107

[I. L. R. 19 Mad. 335

I. L. R. 9 All. 1..

[I. L. R. 19 Mad. 398

[I. L. R. 948

... [illegible] ... Wards ... officer of ... ministerial officer of ... misfeasance in ... made by the ... ... SINGH v. ...

... N. W., 370

Right of ... — ... to maintain a ... to a minor ... SADOO ... COLLECTOR OF W...

COURT OF WARDS—*continued.*

3. ——— Right of female to ... estate—*Consent of Court of Wards*—... whose estate is under the management of the Court of Wards cannot, without the consent of the Court of Wards give up her rights in favour of her ... GOVERNMENT v. MONOHUR DEO ... W. R., 1864 ... KOOMAREE v. MONOHUR DEO

4. ——— Appeal by ward of Court of Wards—*Order in execution of decree*—... under the Court of Wards cannot ... department appeal from an order passed by a Judge in execution of a decree ... Court of Wards. KRISHNA KOOMAREE v. ... RAM SEIN 4 W. R. ...

5. ——— Liability of Court of Wards for personal debts of committee—... of the Collector on behalf of the Court of Wards properly to manage the estate of a ... does not include liability for his personal debts. ... 10 W. R. 17.. v. COLLECTOR OF CUTTACK

6. ——— Act of Court of Wards to save estate paying Government revenue—*Admission*—Where the Court of Wards ... to save a minor's estate from sale ... only his own share of the revenue ... but also all that is not paid by the ... such payment does not constitute an admission on the part of the Court of Wards of liability for the excess revenue so paid. ... v. ... [21 W. R., 35.

7. ——— Power of Court of Wards—... Reg. V of 1793, s. 13—... Determination of—The Court of Wards ... authority under s. 10 Regulation I of 1793 to ... the proper remuneration to be given ... of an estate under their charge ... have no power to ... made by the Court of Wards ... [7 W. R., 221

8. ——— Minor under Court of Wards—... Reg. ... of 1793 ... Regulation X of 1793, ... XXVI of 1793 ... the age of ... without the consent of the Court of Wards ... persons who are under ... Court of Wards. ... DASSYA

[I. L. R., 1 Calc., 359
3 W. R., 235
L. R., 3 I. A., 72

... under Court of Wards ... contract ... Act ... IX of 1872 ... the whole of ... duly ... On ... such contract ... taken a ...

COURT OF WARDS—*continued*

under the provisions of the law comes under the charge and control of the Court of Wards. The view taken by the Courts of the Regulation and Acts concerned with the Courts of Wards in Bengal is that although the possession of a revenue paying property is a condition precedent to the jurisdiction of the Court of Wards attaching yet when once that jurisdiction has attached, all the property of the ward comes under the control and management of the Court *Mahomed Zahoor Ali Khan v Rutta Koer 11 Moore's I A 478* considered. DHUNPUT SINGH v SHOOBHUDRA KUMARI

[I. L. R., 8 Calc., 620 11 C L R 285

10 ———— *Disqualification to contract—Beng Reg LII of 1803*—On a consideration of the provisions of Regulation LII of 1803 (the provisions of Regulation X of 1793 are similar) it was held that the mere fact that the Court of Wards has charge of the estates of a female did not necessarily disqualify her from contracting debts That Regulation must be construed strictly the provisions requiring the Collector to report to the Board a female as disqualified and the subsequent procedure thereon should be strictly carried out as not mere matters of form but necessary preliminaries before the female can be considered disqualified. From the absence of the observance of those provisions in the case of *R A* and the conduct of the Government officials representing the Court of Wards the custody of the Court of Wards of her estates was held to be of such a character as did not render her a disqualified female incapable of contracting debts. The case having been framed incorrectly it was under the circumstances remanded for trial by the High Court under special directions. MAHOMED ZAHOOR ALI KHAN v RUTTA KOOER

[9 W R. P C., 9 11 Moore s I. A., 478

11. ———— *Beng Reg LII of 1803—Incompetency of disqualified proprietor to contract*—Under s 7 of Regulation LII of 1803 lakhiraj lands belonging to a disqualified proprietor may be committed by the Government (on its appearing that this will be for its interests and those of such proprietor) to the charge of the Court of Wards and thereupon the whole estate and effects real and personal of such proprietor become vested in that Court. An estate consisting of lakhiraj lands was duly placed under the management of the Court of Wards the proprietress a Mahomedan being disqualified under the Regulation This ward having then become a party to a mortgage of such lands to secure repayment of money advanced to her it was held that she neither bound herself nor charged the estate This case distinguished from *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moore's I A 478* where the proprietress no intention to treat her as disqualified having been shown was adjudged capable of contracting though the Court of Wards was in possession of her estate On the facts of this case it was *held* that although the Court had given to this authority under certain limitations of which had notice to borrow money for a special here had not been such a holding out to the as would have induced any reasonable person to suppose that she had power to make the contract on which this suit was brought BALKRISHNA MASUMA BIBI

[I. L. R. 5 All. 142 L. R., 9 I. A 182
13 C L R 233

12. ———— *Beng Reg LII of 1803 s 37—Disqualified proprietor—Necessity of following procedure preliminary to taking estate under the Court of Wards*—The procedure prescribed by Regulation No. LII of 1803 for disqualifying proprietors and taking their estates under the Court of Wards must be strictly followed in order that the disabilities incident to the status of a disqualified proprietor may ensue *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moore s I A 478* referred to It is incumbent therefore upon one seeking to dispute an adoption on the ground that the person making it was a disqualified proprietor to show that all the procedure necessary to make such person a disqualified proprietor was carried out according to law ISHRI PRASAD SINGH v LALLI JAS KUNWAR

[I. L. R., 22 All. 294

13 ———— *Person*—The Court of Wards is not a person and letters of administration cannot under the law be granted to it GANJESSAR KOER v COLLECTOR OF PATNA

[I L R 25 Calc 795

14 ———— Certificate of administration—*Act XL of 1858*—The Court of Wards is not prevented by Act XL of 1858 from taking an infant and his estate under its protection by reason of a certificate of administration to the estate having been granted by the Civil Court The Court of Wards has a right to assume charge of the estate although originally it may have refrained from acting MADHUSUDAN SINGH v COLLECTOR OF MIDNAPORE

[B L R. Sup Vol. 199 3 W R 82

15 ———— Act XL of 1858 s 7—*Person*—The Court of Wards is not a person within the meaning of s 7 Act XL of 1858 and is not entitled to administer to an estate by virtue of a will or deed executed by a private person. ROWSHUN JEHUN v COLLECTOR OF PURNEAH

[14 W R. 295

16 ———— Act XL of 1858 s 14—*Guardianship of minor proprietors*—Under s. 14, Act XL of 1858 an estate ceases to be subject to the jurisdiction of the Court of Wards when any of the co proprietors attain majority; but the Judge may on the representation of the Collector direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification or until such time as it is otherwise ordered SUFFEROONISSA BEEBEE v GHOLAM HOSSEIN CHOWDHRY

[W R., 1864 Mis. 2

17 ———— Release of property from superintendence of Collector—*North West Provinces Land Revenue Acts XIX of 1873 ss 194 195 and VIII of 1879 s 20—Disqualified proprietor*—If a female proprietor brought a suit to recover possession of certain lands which were in

'COURT' MEANING OF—*concluded*

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY
[I L R., 4 Calc 483

See EVIDENCE ACT 1872 s 3
[13 B L R. Ap 40

See EVIDENCE ACT 1872 s 57
[I. L. R. 14 Calc 176

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622
[I. L. R. 21 Bom. 279

———— **Place of trial of criminal case**—*Open Court—Pronouncing judgment in private house—Criminal Procedure Code 1861 s 279*—Where a Magistrate conducted and closed the trial in the established Court house but could not by reason of illness pronounce judgment which he did at his private house—*Held* that the procedure being exceptional and in no way prejudicial to the prisoner could not be quashed as illegal under s 279 of the Criminal Procedure Code 1861 GOVERNMENT v HOLASEE SINGH 1 Agra, Cr 17

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See LIMITATION ACT 1877 s 10
[I L R 5 Mad 91

See LUNATIC 8 B L R. Ap 50
[I. L R 1 All 476
I L R. 13 Calc 81
L R 13 I A 44
I L R 14 Mad. 289

See MINOR—REPRESENTATION OF MINOR IN SUITS 21 W R 312
[I L R. 13 Mad 197
I. L. R 23 Calc. 374 934
I L R 24 Calc 853
L. R., 24 I A 107

———— **Agent of**—

See ACT XX OF 1863 s 5
[I. L R. 19 Mad. 285

See COLLECTOR I. L R., 3 All 20
[I. L R 19 Mad., 255

———— **Tenure created under**—

See BENGAL ACT IV OF 1870
[15 B L R. 343

1. ———— **Position of Collector as manager of Court of Wards**—In the management of estates under the Court of Wards the Collector acts not in his ordinary capacity as an officer of the executive Government but as a *ministerial officer* of the Court of Wards, and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court SHEORAJ SINGH v COLLECTOR OF MORADABAD 2 N W., 379

2. ———— **Right of suit**—*Recovery of land belonging to minor*—The Court of Wards has a perfect right to maintain a suit for the recovery of land belonging to a minor which is in possession of a person not having a good title thereto. BOLAKEE SAHOO v COURT OF WARDS 14 W R. 34

COURT OF WARDS—*continued*

3 ———— **Right of female to surrender estate**—*Consent of Court of Wards*—A female whose estate is under the management of the Court of Wards cannot without the consent of the Court of Wards give up her rights in favour of the next heir GOVERNMENT v MONOHUR DEO KUSTOORA KOOMAREE v MONOHUR DEO W R. 1864 39

4 ———— **Appeal by ward of Court of Wards**—*Order in execution of decree*—A widow under the Court of Wards cannot in the summary department appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards. KUSTOORA KOOMAREE v BINODE RAM SEIN 4 W R., Mis 5

5 ———— **Liability of Court of Wards for personal debts of committee**—*The obligation of the Collector on behalf of the Court of Wards* properly to manage the estate of a lunatic does not include liability for his personal debts REAZOODEEN v COLLECTOR OF CUTTACK 10 W R. 175

6 ———— **Act of Court of Wards in paying Government revenue to save estate**—*Admission*—Where the Court of Wards in order to save a minor's estate from sale pays on his behalf not only his own share of the revenue due to Government but also all that is not paid by the other shareholders such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid. RAM PURJUN CHUCKERBUTTY v RANEE MADHUB MOOKERJEE
[31 W R., 253

7 ———— **Power of Court of Wards**—*Beng Reg X of 1793 s 10—Remuneration to manager Determination of*—The Courts of Wards has authority under s 10 Regulation X of 1793 to determine the proper remuneration to be given to the manager of an estate under their charge and the Civil Courts have no power to question the arrangements made by the Court of Wards. SHEREY SOONDERY DEBIA v COLLECTOR OF MYMENSINGH
[7 W R., 231

8 ———— **Minor under Court of Wards**—*Beng Reg X of 1793, s 33—Power to adopt—Beng Reg XXVI of 1793 s 2—Semble*—The operation of s 33 Regulation X of 1793 which, read together with s. 2 Regulation XXVI of 1793 prohibits a landholder under the age of eighteen from making an adoption without the consent of the Court of Wards is confined to persons who are under the guardianship of the Court of Wards JUMOONA DASSYA v BAMASUNDARI DASSYA
[I. L R., 1 Calc. 289
25 W R., 235
L. R 3 I. A., 72

9 ———— **Ward under Court of Wards**—*Beng Reg—How far incapacitated from contract by—Beng Reg X of 1793—Court of Wards Act (Beng IX of 1879)—Contract Act (IX of 1872) s 11*—On a reasonable construction of the whole of Regulation X of 1793 a ward of Court duly constituted as such is not thereby absolutely incapacitated from contracting but the power of the ward to contract is taken away so far as regards all property which

COURT OF WARDS ACT (BENGAL ACT IX OF 1879)—*concluded*

sanction of the Court of Wards—An order which was passed during his minority is not binding upon a person whose estate is under the management of the Court of Wards if the proceeding in which it was passed was not instituted by the manager with the sanction of the Court of Wards, i e of the Commissioner to whom the Court of Wards delegated its authority to grant such sanction. RAM CHANDRA MUKERJEE v RANJIT SINGH

[I. L. R. 27 Calc., 242
4 C W N., 405

2. ——— *Bengal Act III of 1881 s 7—Suit on behalf of ward by manager without sanction of the Court of Wards Effect of—Sanction after appeal Effect of*—In the absence of some order by the Court of Wards authorizing the bringing of a suit, a suit instituted by a manager on behalf of a ward must be dismissed A suit was instituted in the Court of the First Subordinate Judge of Dacca on behalf of a ward by his manager without the order or sanction of the Court of Wards, and proceeded to judgment without any such order or sanction The suit was partially decreed and the manager appealed to the District Judge for that portion of the claim which had been dismissed by the Court of first instance At the hearing of the appeal an application was filed on behalf of the appellant accompanied by a letter giving sanction to the institution of the suit the appeal and other proceedings connected therewith, with retrospective effect from the date of its institution. The Judge dismissed the suit The plaintiff appealed to the High Court *Held* having regard to s 55 of the Court of Wards Act 1879 as amended by s 7 of Bengal Act III of 1881 the lower Appellate Court was right in dismissing the suit *Held* also that the sanction given after appeal did not have a retrospective effect. DINESH CHUNDER ROY v GOLAM MOSTAPHA. DINESH CHUNDER ROY v FAHAMIDUNNESSA BEGAM. DINESH CHUNDER ROY v NISHI KANT GUNGOPADHAYA . I. L. R., 16 Calc, 89

3 ——— *Suit rejected when filed on behalf of a minor under the Court of Wards without sanction of that authority to proceed with it* Where under s 55 of the Bengal Court of Wards Act (IX of 1879) the manager of an estate authorized the plaintiff in order to save limitation, to institute a suit on behalf of the Court of Wards, which refused afterwards to sanction the proceeding with the suit —*Held* that the Judge rightly ordered that the suit be rejected as incapable under the above section of being prosecuted. BISESWAR ROY v SHOSHI SIKAR ESWAR ROY

[I. L. R. 17 Calc. 688
L R 17 I. A 5

COURT FEES

See CASES UNDER COURT FEES ACTS

See CASES UNDER VALUATION OF SUIT

COURT FEES—*continued*

——— Dismissal of suit for non payment of—

See RES JUDICATA—JUDGMENT ON PRELIMINARY POINTS 4 Bom, A C. 110
[I. L. R. 9 Calc 163
I L. R. 13 All. 44

——— Order for Power to make—

See PAUPER SUIT—SUITS
[I. L. R., 15 Bom. 77

——— Payment of—

See CASES UNDER LIMITATION ACT 1877 s 4 I L R 13 All. 305

See PAUPER SUIT—APPEALS.
[I L. R., 1 Bom. 75
I. L R. 8 Mad. 214
I. L R 11 Calc. 735
I L R 18 Bom. 464

See PAUPER SUIT—SUITS
[I. L. R 1 Bom. 7
I L R. 1 All 230 596
I L. R. 20 Bom. 508
I. L. R. 17 All 526
I L. R. 18 All. 206

——— Question as to sufficiency of—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT
[1 Bom. 62
14 W R. 196
22 W R. 433
I. L. R. 19 All. 165

See DECREE—FORM OF DECREE—GENERAL CASES I. L. R. 18 Mad. 415

——— Recovery of by Government

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES
[I L. R. 20 Calc 111

See PAUPER SUIT—SUITS
[2 B. L. R., Ap 22
I. L. R., 9 All. 64
I. L. R. 18 All. 419
I. L. R. 20 Calc. 111

——— Remission of—

See PRACTICE—CIVIL CASES—COURT FEES
[I. L. R. 26 Calc. 124
3 C W N., 82

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION
[I. L. R., 20 Calc. 879

1 ——— Act XXVI of 1867—*Practice—Filing petitions*—Petitions of appeal might be filed on several stamps sufficient to make up the full amount required by law even though the petition was written on one paper TARINEE CHURN NYABACHUSPUTTY v TARANATH GOOHO 12 W R. 449

DAWD ALI v NADIR HOSEIN 16 W R. 153

2. ——— *Mode of making up stamp duty—Case where one stamp of full value*

COURT OF WARDS—*continued*

the hands of the Collector as manager of the Court of Wards on the allegations that she had placed the property in the hands of the Court some years previously because she was not at that time in a position to manage it herself but that she was now capable of managing it, and desired to get it back The suit was dismissed and the plaintiff appealed on the ground *inter alia* that inasmuch as she was not a disqualified proprietor" within the meaning of Act XIX of 1873 (North West Provinces Land Revenue Act) the Court of Wards had no jurisdiction to take the property and that its possession was merely the result of an arrangement to which she was a consenting party and which she now desired to terminate *Held* that with reference to the provisions of Act XIX of 1873 and Act VIII of 1879 (North West Provinces Land Revenue Acts) the suit as brought was not maintainable inasmuch as there was no evidence that the plaintiff had obtained the previous sanction of the local Government to the release of the property from the superintendence of the Court of Wards as required by s 20 of the latter Act *Held* also that the plaintiff could not be allowed in appeal entirely to change the nature of the grounds upon which she alleged herself to be entitled to claim relief and that hence she could not now raise the plea that the Court of Wards in taking the property under its management had acted without jurisdiction The expression "local Government" in ss. 194 and 195 of Act XIX of 1873 and s. 20 of Act VIII of 1879 means the Lieutenant Governor of the North Western Provinces. MASUMA BIBI *v* COLLECTOR OF BALLIA I. L. R. 7 All. 687

18. ———— Beng Act IV of 1870—*Death of minor—Right of suit*—*Held* with reference as well to s. 79 Bengal Act IV of 1870 as to the justice and equity of the case that the power of the Court of Wards to represent the estate or bring a suit on behalf of a minor does not cease with the death of the minor SOOMUNGUL KOOER *v* COURT OF WARDS 17 W R. 560

19 ———— *Minor—Irregular procedure*—On 27th July 1871 a disqualified proprietor *B* signed a duly attested document declaring he had adopted a boy by name *D* the next heir *R* signing a declaration of his approval of the adoption Before sanction of the Lieutenant Governor could be obtained under Bengal Act IV of 1870 s. 74, *B* died, and the sanction was subsequently refused on the ground of *B*'s death On application made under Act XXVII of 1860 the Judge on 28th March 187 found the adoption good, and appointed one *I* to be guardian of the minor *D* and directed the estate to be placed under the management of the Court of Wards. *M* a judgment-creditor of *I* failing to execute his decree against the [illegible] *H* brought a suit to have it declared that *I* [illegible] had inherited all *B*'s property and that *M* was entitled to have that property attached [illegible] in satisfaction of his decree The only defendant [illegible] *H* manager under the Court of Wards, and *I* The Subordinate Judge gave plaintiff a decree [illegible] that *D* was not the legally adopted son of *B* This was appealed from. *Held* that the

COURT OF WARDS—*concluded.*

Judge had no power to make any such order as that of the 28th March 187 in regard to the Court of Wards What he had power to do under Act XL of 1858 s 12 was to direct the Collector to take charge of the estate, and it would then have become the duty of the Collector to appoint a manager and a guardian in the same manner etc as if the minor's property and person were subject to the Court of Wards *Held* that the minor's interests were not properly represented before the Subordinate Judge whose decree therefore could not stand so as to affect the minor and that the minor must be made a party strictly in the manner prescribed by Bengal Act IV of 1870, s 69 ABDOOL HYE *v* MITTERJEET SINGH 23 W R. 348

20 ———— s 75—*Sale for arrears of rent—Power of Collector—Tenure created under Court of Wards—Previously existing tenure*—The provisions of s. 75 of Bengal Act IV of 1870 apply only to tenures created by the Collector during the time the estate has been in the hands of the Court of Wards, and not to tenures created previously A Collector therefore has no power to sell for arrears of rent a tenure created before he took charge of the estate without previously obtaining a decree for such arrears in the regular way COLLECTOR OF CHITTAGONG *v* KALA BIBI 15 B. L. R. 343 24 W R. 149

Upholding on appeal under Letters Patent the decision of MARKBY J differing from MITTER, J. in KALA BIBEE *v* COLLECTOR OF CHITTAGONG [20 W R. 382

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———— s 20 and ss 51-55—*Suit—Application for execution by Collector on behalf of ward when manager of Ward's estate has been appointed*—The word suit as used in ss 51 to 55 of Bengal Act IX of 1879 is not limited to what is usually called a "regular suit," but covers miscellaneous proceedings in a suit, such as an application for execution of a decree in which the ward for the first time seeks to have the carriage of litigation instituted by his predecessor in title. When it appeared that a manager of a minor's property had been appointed by the Court of Wards under the provisions of s. 20 of Bengal Act IX of 1879 and during the absence of such manager on leave an application was made on behalf of the minor by the Collector of the district for execution of a decree —*Held* that the office of manager did not thereby become vacant because the manager obtained leave and that if it were not vacant, s. 51 of the Act did not enable the Collector to appear on behalf of the minor BHOOPENDRO NARAIN DUTT *v* BARODA PERSAD ROY CHOWDHRY I. L. R. 18 Calc. 500

———— s. 55.

See MAJORITY ACT s. 3. [I. L. R. 17 Bom. 918

1 ———— *Effect of alienation made on behalf of a minor by the manager* [illegible]

COURT OF WARDS ACT (BENGAL ACT IX OF 1879)—*concluded*

sanction of the Court of Wards—An order which was passed during his minority is not binding upon a person whose estate is under the management of the Court of Wards, if the proceeding in which it was passed was not instituted by the manager with the sanction of the Court of Wards, i.e. of the Commissioner to whom the Court of Wards delegated its authority to grant such sanction. JAM CHANDRA MUKERJEE v. LANJIT SINGH [I. L. R., 27 Calc., 242 4 C. W N., 405

2. ———— *Bengal Act III of 1881 s 7—Suit on behalf of ward by manager without sanction of the Court of Wards Effect of—Sanction after appeal Effect of*—In the absence of some order by the Court of Wards authorizing the bringing of a suit, a suit instituted by a manager on behalf of a ward must be dismissed. A suit was instituted in the Court of the First Subordinate Judge of Dacca on behalf of a ward by his manager without the order or sanction of the Court of Wards and proceeded to judgment without any such order or sanction. The suit was partially decreed; and the manager appealed to the District Judge for that portion of the claim which had been dismissed by the Court of first instance. At the hearing of the appeal an application was filed on behalf of the appellant accompanied by a letter giving sanction to the institution of the suit, the appeal and other proceedings connected therewith, with retrospective effect from the date of its institution. The Judge dismissed the suit. The plaintiff appealed to the High Court. *Held* having regard to s. 55 of the Court of Wards Act, 1879 as amended by s. 7 of Bengal Act III of 1881 the lower Appellate Court was right in dismissing the suit. *Held* also that the sanction given after appeal did not have a retrospective effect. DINESH CHUNDER ROY v. GOLAM MOSTAPHA. DINESH CHUNDER ROY v. FAHAMIDUNNESSA BEGAM. DINESH CHUNDER ROY v. NISHI KANT GUNGOPADHAYA I. L. R., 16 Calc., 89

3. ———— *Suit rejected when filed on behalf of a minor under the Court of Wards without sanction of that authority to proceed with it* Where under s. 55 of the Bengal Court of Wards Act (IX of 1879) the manager of an estate authorized the plaintiff in order to save limitation to institute a suit on behalf of the Court of Wards, which refused afterwards to sanction the proceeding with the suit —*Held* that the Judge rightly ordered that the suit be rejected as incapable under the above section of being prosecuted. BISESWAR ROY v. SHOSHI SIKAR ISWAR ROY [I. L. R. 17 Calc 688 L. R. 17 I. A. 5

COURT FEES

See CASES UNDER COURT FEES ACTS
See CASES UNDER VALUATION OF SUIT

COURT FEES—*continued*

———— Dismissal of suit for non payment of—

See RES JUDICATA—JUDGMENT ON PRELIMINARY POINTS 4 Bom., A. C. 110 [I. L. R. 9 Calc. 163 I. L. R. 13 All. 44

———— Order for Power to make—

See PAUPER SUIT—SUITS [I. L. R., 15 Bom. 77

———— Payment of—

See CASES UNDER LIMITATION ACT 1877 s. 4 I. L. R. 13 All. 305

See PAUPER SUIT—APPEALS.
[I. L. R., 1 Bom. 75
I. L. R. 8 Mad. 214
I. L. R. 11 Calc., 735
I. L. R. 18 Bom. 464

See PAUPER SUIT—SUITS
[I. L. R. 1 Bom. 7
I. L. R. 1 All. 230 596
I. L. R. 20 Bom. 508
I. L. R. 17 All. 526
I. L. R. 18 All. 206

———— Question as to sufficiency of—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT
[1 Bom., 62
14 W. R. 198
22 W. R. 433
I. L. R. 19 All. 165

See DECREE—FORM OF DECREE—GENERAL CASES I. L. R. 18 Mad. 415

———— Recovery of by Government

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES. [I. L. R. 20 Calc. 111

See PAUPER SUIT—SUITS
[3 B. L. R., Ap. 22
I. L. R., 9 All. 64
I. L. R. 18 All. 419
I. L. R. 20 Calc. 111

———— Remission of—

See PRACTICE—CIVIL CASES—COURT FEES [I. L. R. 26 Calc. 124 3 C. W. N. 82

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION [I. L. R. 20 Calc. 879

1. ———— Act XXVI of 1867—*Practice—Filing petitions*—Petitions of appeal might be filed on several stamps sufficient to make up the full amount required by law even though the petition was written on one paper. TARINEE CHURN NYABA CHURPUTTY v. TARANATH GOOHO 12 W. R. 449

DAWD ALI v. NADIR HOSSEIN 16 W. R. 153

2. ———— *Mode of making up stamp duty—Case where one stamp of full value*

COURT OF WARDS—*continued*

the hands of the Collector as manager of the Court of Wards on the allegations that she had placed the property in the hands of the Court some years previously, because she was not at that time in a position to manage it herself but that she was now capable of managing it and desired to get it back The suit was dismissed and the plaintiff appealed on the ground *inter alia* that inasmuch as she was not a disqualified proprietor within the meaning of Act XIX of 1873 (North West Provinces Land Revenue Act) the Court of Wards had no jurisdiction to take the property and that its possession was merely the result of an arrangement to which she was a consenting party and which she now desired to terminate *Held* that with reference to the provisions of Act XIX of 1873 and Act VIII of 1879 (North West Provinces Land Revenue Acts) the suit as brought was not maintainable inasmuch as there was no evidence that the plaintiff had obtained the previous sanction of the local Government to the release of the property from the superintendence of the Court of Wards as required by s 20 of the latter Act. *Held* also that the plaintiff could not be allowed in appeal entirely to change the nature of the grounds upon which she alleged herself to be entitled to claim relief and that hence she could not now raise the plea that the Court of Wards in taking the property under its management had acted without jurisdiction The expression local Government' in ss 194 and 195 of Act XIX of 1873 and s. 20 of Act VIII of 18/9 means the Lieutenant-Governor of the North Western Provinces MASUMA BIBI *v* COLLECTOR OF BALLIA I. L. R. 7 All. 687

18. ——— Beng Act IV of 1870—*Death of minor—Right of suit—Held* with reference as well to s. 79 Bengal Act IV of 1870 as to the justice and equity of the case that the power of the Court of Wards to represent the estate or bring a suit on behalf of a minor does not cease with the death of the minor SOOMUNGUL KOOER *v* COURT OF WARDS 17 W R. 580

19 ——— *Minor—Irregular procedure*—On 27th July 1871 a disqualified proprietor *B* signed a duly attested document, declaring he had adopted a boy by name *D* the next heir *J* signing a declaration of his approval of the adoption Before sanction of the Lieutenant Governor could be obtained under Bengal Act IV of 1870 s. 74, *B* died, and the sanction was subsequently refused on the ground of *B's* death On application made under Act XXVII of 1860 the Judge on 28th March 18[illegible] found the adoption good, and appointed one *J* to be guardian of the minor *D* and directed the estate to be placed under the management of the Court of Wards. *M* a judgment-creditor of *J* failing to execute his decree against the estate of *B* brought a suit to have it declared that *B* was [illegible] had inherited all *B's* property and that [illegible] *M* was entitled to have that property attached and sold in satisfaction of his decree The only de[illegible] *H* manager under the Court of Wards, and *J* The Subordinate Judge gave plaintiff a decree [illegible] that *D* was not the legally adopted son of *B* This was appealed from. *Held* that the Judge had no power to make any such order as that of the 28th March 1872 in regard to the Court of Wards What he had power to do under Act XL of 1858 s 12 was to direct the Collector to take charge of the estate and it would then have become the duty of the Collector to appoint a manager and a guardian in the same manner etc as if the minor's property and person were subject to the Court of Wards *Held* that the minor's interests were not properly represented before the Subordinate Judge whose decree therefore could not stand so as to affect the minor and that the minor must be made a party strictly in the manner prescribed by Bengal Act IV of 1870, s 69 ABDOOL HYE *v* MITTERJEET SINGH 23 W R. 346

COURT OF WARDS—*concluded.*

20 ——— s 75—*Sale for arrears of rent—Power of Collector—Tenure created under Court of Wards—Previously existing tenure*—The provisions of s 75 of Bengal Act IV of 18/0 apply only to tenures created by the Collector during the time the estate has been in the hands of the Court of Wards, and not to tenures created previously A Collector therefore has no power to sell for arrears of rent a tenure created before he took charge of the estate without previously obtaining a decree for such arrears in the regular way COLLECTOR OF CHITTAGONG *v* KALA BIBI 15 B. L. R. 343 24 W R. 149

Upholding on appeal under Letters Patent the decision of MARKBY J differing from MITTER, J in KALA BIBEE *v* COLLECTOR OF CHITTAGONG [20 W R. 302

COURT OF WARDS ACT (BENGAL ACT IX OF 1879)

——— s 20 and ss 51-55—*Suit—Application for execution by Collector on behalf of ward when manager of ward's estate has been appointed*—The word "suit" as used in ss 51 to 55 of Bengal Act IX of 1879 is not limited to what is usually called a regular suit but covers miscellaneous proceedings in a suit, such as an application for execution of a decree in which the ward for the first time seeks to have the carriage of litigation instituted by his predecessor in title When it appeared that a manager of a minor's property had been appointed by the Court of Wards under the provisions of s. 20 of Bengal Act IX of 18/9 and during the absence of such manager on leave an application was made on behalf of the minor by the Collector of the district for execution of a decree—*Held* that the office of manager had not become vacant because the manager obtained leave and that if it were not vacant, s. 51 of the Act did not enable the Collector to appear on behalf of the minor BHOOPENDRO NARAIN DUTT *v* BARODA PERSHAD ROY CHOWDHRY I. L. R. 18 Calc. 500

——— s. 55.

See MAJORITY ACT s. 3. [I. L. R. 17 Bom. 914

1 ——— *Effect of compromise made on behalf of a minor by the manager* [illegible]

COURT FEES—*concluded*

Revenue Courts could receive such petitions engrossed on a stamp paper of the value of 8 annas. PYARI MOHAN MOOKERJEE *v* KIVA BEWA [2 B. L. R. A. C., 226

S. C. PEARY MOHUN MOOKERJEE *v* KEWA BEWAH 11 W R. 90

8 ——————— *Document Description of—Civil Procedure Code 1859 s 40—Held* that the description of a document delivered to the Court under s. 40 of the Code of Civil Procedure 1859 was neither a petition nor an application liable to duty within the meaning of the Stamp Act. CHOTALAL AMRITLAL *v* BOMBAY BARODA AND CENTRAL INDIA RAILWAY [5 Bom A C 101

9 ——————— *Complaint preferred by Munsif under s 168 of Criminal Procedure Code 1861*—A complaint preferred by a Munsif under s. 168 of the Criminal Procedure Code 1861 need not though it did not bear the seal of the Munsif's Court, be on stamped paper. REG *v* SAJJAN VALAD VITHU 5 Bom Cr., 104

COURT FEES ACT (VII OF 1870)

See CASES UNDER VALUATION OF SUIT

1. ——————— Copy of decree made under old stamp laws.—Where a decree had been prepared while the old stamp laws were in operation and R6 were awarded in it as the value of the stamps for a copy thereof the Court allowed a copy to be taken for R4 by a party applying after Act VII of 1870 came into operation. IN THE MATTER OF HUREEHUR MAHTOON 14 W R 167

2. ——————— Practice—*Petition of appeal—Making up stamp fee*—There is no illegality in making up the stamp fee chargeable in an appeal by means of any number of stamps of smaller values. DAWD ALI *v* NADIR HOSSEIN 16 W R. 153

TARANEE CHURN NAYABACHUSPUTTY *v* TARA NATH GOOHO 12 W R 449

HURO MONEE *v* KRISTO INDRO SHAHA [17 W R., 220

But when a stamp of the full value is available parties should use as small a number of stamps as possible. KHAJOOROONISSA *v* ROHIMOONISSA [16 W R 152

1. ——————— s 5—*Court fee on memorandum of appeal—Finality of taxing officers' decision—Mistake—Civil Procedure Code Amendment Act (VI of 1892) s 3*—Where an appellant whose memorandum of appeal had been declared by the taxing officer of the Court to be insufficiently stamped applied for relief under s 3 of Act No VI of 1892 and it was found that the report of the taxing officer was erroneous and that the correct stamp had as a matter of fact been put on the memorandum of appeal —*Held* that the appellant was entitled to the relief sought notwithstanding the provisions of s 5 of the Court Fees Act VII of 1870. PADRI PRASAD *v* KUNDAN LAL I L R 15 All 117

COURT FEES ACT (VII OF 1870) —*continued*

2. ——————— *Objection as to amount of Court fee on petition of appeal—Decision of taxing officer—Appellate Court Power of*—An objection taken on behalf of respondents at the hearing of an appeal as to the amount of the Court-fee stamp affixed to the petition of appeal to the High Court cannot be entertained the decision of the officer on that point being final unless referred to the Chief Justice. RANGA RAI *v* BABA [I. L R 20 Mad., 398

3 ——————— and s 7, cl 8—*Value—Suit to set aside attachment on land*—The meaning of cl 8 s 7 of the Court Fees Act VII of 1870 is that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land. Accordingly in a suit for setting aside a summary attachment under Bombay Act I of 186 placed by the Collector on land held on a settlement for a period not exceeding thirty years the value was held to be five times the assessment and the stamp duty calculated upon it irrespective of the actual market value or the amount for which the land was attached. COLLECTOR OF THANA *v* DADABHAI BOMANJI [I L R, 1 Bom 353

4. ——————— Where there has been no decision by the taxing officer under s 5 it is open to the respondent to raise the objection on appeal at the hearing. KASTURI CHETTI *v* DEPUTY COLLECTOR BELLARY I L R., 21 Mad 269

5 ——————— and s 12—*Finality of taxing officer's decision as to Court fee—"Final" Meaning of—Duty of Court Fees Act officer*—The word final in s 5 of the Court Fees Act has the same meaning as in s 12 though it is applied to a different subject. The cases in which it has been held that notwithstanding the use of this word in s 12 an appeal lies from a decision as to the category in which the relief sought by a plaintiff or appellant falls do not mean that decisions which the section declares to be final are nevertheless appealable but that the question of category is not a question relating to valuation and therefore is not declared by the section to be final. In both s 5 and s. 12 final is used in its ordinary legal sense of unappealable. A decision under s 5 of the Act is not open to appeal, revision or review and is final for all purposes and no means have been provided or suggested by the Legislature for questioning it. The officer mentioned in s 5 of the Court Fees Act is not bound to advise parties as to the stamp required under the Act or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation. BALKARAN RAI *v* GOBIND NATH TIWARI I L R 12 All 129

——————— s 6

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL I L R 15 Mad 29

COURT FEES—*continued*

is available—When a stamp of the full value is available parties ought to use as small a number of stamps as they can KHAJOOROONISSA *v* ROHIMOONISSA 16 W R., 152

3 ———— *Plaint—Insufficient stamp*—There is no illegality in the reception of a plaint engrossed on insufficient stamp paper if the full amount of the stamp duty has been paid at the time GOBIND KUMAR CHOWDHRY *v* HARGOPAL NAG 3 B. L. R. Ap 72 11 W R. 537

4. ———— *Appeal presented before Act came into force but returned for irregularity*—Where owing to an irregularity a petition of appeal was returned before the Stamp Act XXVI of 1867 came into force and the appeal was not filed until after that Act came into force—*Held* that the appeal must be filed on a stamp of the amount prescribed by the new law ABADHUN DEY *v* GOLAM HOSSEIN MALOOM 7 W R. 461

See FAGAN *v* CHUNDER KANT BANERJEE [7 W R 452

IN THE MATTER OF THE PETITION OF SREENATH ROY CHOWDHRY 7 W R., 463

5 ———— *Copy of decree and order for execution—Certificate of amount remaining due*—Act XXVI of 1867 required that copies of the decree and of the order for execution should be stamped the certificate as to any sum remaining due under a decree required no stamp VENKATA SUBIA *v* SIVARAMAPPA 4 Mad. 331

6 ———— *Copies of documents for purpose of appeal in criminal case*—The exemption of the Government of India dated the 19th September 18 0 cannot be extended to copies of the statement of evidence and grounds of conviction Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written ANONYMOUS 6 Mad., Ap., 12

———— sch. B cl. 6 art 10—*Applications for copies of decree*—Applications to the High Court for certified copies of the decree and judgment might be engrossed on a stamp of one anna under cl 6 art. 10 sch B of Act XXVI of 1867 IN THE MATTER OF THE PETITION OF TURIF BISWAS [7 W R., 455

1. ———— *Razinama admitting satisfaction of decree—Petition.*—After instituting a suit on a bond for R32 with interest the plaintiff filed a razinama stating satisfaction of his claim and withdrawing the suit *Held* the razinama was rather of the nature of a petition than of an agreement [illegible] SIRCAR *v* [illegible] MUNDUL. MANICK CHUNDER [illegible] *v* LALLMON SHEIKH [8 W R. 314

2. ———— *Petition setting forth terms of parol agreement*—A document in the shape of a petition to a Court setting forth an arrangement come to between the parties in a suit may be received in evidence in support of a fresh suit founded upon the agreement recited in such petition [illegible] only stamped as a petition [illegible] not appearing that the agreement recited was made in writing RAMDYAL *v* DHOOBEY JHAUNNAN LAL [3 N W., 14

———— cl. 11.

See CASES UNDER VALUATION OF SUIT

1. ———— *Petition of special appeal to High Court appellate side.*—Petitions of special appeal to the High Court at Bombay on its appellate side had to be stamped according to the scale contained in cl 11 of sch. B of Act XXVI of 1867 EX PARTE DESAI KALYANRAI HAKUMATRAI [4 Bom., A. C., 145

2. ———— *Notice of cross-appeal*—Though a notice of a cross-appeal may be lodged with the Registrar of the High Court previously the objection itself had under s. 348, Act VIII of 1859 to be taken at the hearing of the appeal and to bear the stamp required by s. 6, Act XXVI of 1867. LUTEET SINGH *v* ALI REZA 8 W R., 323

RASHOMONEE DOSSEE *v* CHOWDHRY JUNMOJOY MULLICK 9 W R., 356

ABDOOL GUNNEE *v* GOUR MONEE DEBIA [9 W R. 375

3 ———— *Notice of objections by respondent*—When the appeal of an appellant was against the whole of the decision of the lower Court and upon the full value of the original suit no additional stamp duty was required in respect of the respondent's objection under s. 348 Act VIII of 1859 ANUND MOHUN CHATTERJEE *v* SUTTO RAM MOZOOMDAR 8 W R., 121

4 ————art. 11 cl. (c)—*Objections by respondent—Pauper respondent*—Note (c) to art 11 sch B. Act XXVI of 1867 contained no reservation as to the stamp duty to be levied on a petition of objection under s. 348 Act VIII of 1859 filed by a pauper respondent. RASHOMONEE DASSEE *v* CHOWDHRY JUNMOJOY MULLICK [9 W R. 356

5 ———— *Plaint*—The object of the note to art. 11 sch. B of Act XXVI of 1867 was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. COLLECTOR OF SYLHET *v* KALI KUMAR DUTT [7 B L. R. F B., 663 16 W R., F B., 10

Contra MADHUSUDAN CHUCKERBUTTY *v* PY MANI DASI [7 B L. R. 664 note 13 W R., 41

6 ———— *Application under Act VIII of 1859 s 230*—A had been dispossessed [illegible] of certain land in execution of a decree which B had obtained in a suit against C under s. 15 Act XIV of 1859 A applied under s. 230 Act VIII of 1859 to recover the land. *Held* no stamp was necessary on A's application BRAHMA MATI DEBI *v* HARKAY SIRDAR 4 B. L. R., F B., 94

7 ———— Act X of 1859 s 25 *Petition under*—An application under s. 25 Act X of 1859 for the assistance of the Collector in the ejecting a ralyat was not a suit, and therefore the

COURT FEES ACT (VII OF 1870)
—*continued*

n ? be transferred by the lower Appellate Court from the plaintiff. OSTOCHE v HARI DAS
[I L. R., 2 All., 869

4. ——————— *Suit to have a lease set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Declaratory decree—Consequential relief*—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted set aside and to have the buildings erected on such land by the lessees demolished on the ground that such lease had been granted without their consent, without which it could not lawfully be granted. They valued the relief sought at R100. The value of the buildings of which they sought demolition was R3 000 *B* sued *A* claiming *inter alia* possession of certain land and to have certain buildings erected thereon by the defendant demolished. *Held* by STRAIGHT BRODHURST and TYRELL JJ with reference to the first suit, that it was one for a declaratory decree in which consequential relief was prayed, and fell under s. 7 art. 4, cl. (c) Court Fees Act 1870 and such relief being valued at R100 had been properly instituted in the Munsif's Court. JOGAL KISHORE v TALE SINGH
[I. L. R., 4 All. 320

BINDESHRI CHAUBEY v NANDU
[I. L. R., 4 All 320

5 ——————— *Suit to set aside mortgage—Specific Relief Act (I of 1877) s 39—Suit for declaratory decree*—*C*'s father mortgaged certain land to *D* *A* purchased the instrument of mortgage and sued *C* whose father had died upon it and obtained a decree enforcing the mortgage *C* then mortgaged a moiety of the land to *B* and subsequently sold the same moiety to *A*. *A* sued *B* for the cancellation of the instrument of mortgage to *B* *Held* that the suit was in the nature of a simple declaratory suit KARAM KHAN v DARYAI SINGH
[I. L R. 5 All. 331

6 ——————— *Suit to set aside a trust deed and to recover trust-money—Appeal by trustee—Duty payable on memorandum of appeal*—*A* brought a suit against *B* a trustee and others to set aside a trust deed and to recover R? 50 000 the amount of the trust-money and valued his suit at R2,?0 000 *A* obtained a decree *B* appealed and sought to affix to his memorandum of appeal a ten rupee stamp under art 17 (cl. 6) of sch. II of Act VII of 1870 *Held* that the duty payable on the memorandum of appeal was the same as that paid on the plaint in the suit MAHOMED NABIK v MALKAI MUKADEAI UZWA BADSHAH MEHAL SAHEBA
[I. L R ,10 Calc 380

7 ——————— *Suit for a declaration and injunction—Stamp—Consequential relief*—The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain devasthan immoveable and moveable property His plaint which bore a ten rupee stamp contained a payer for an injunction. The Subordinate Judge rejected the plaintiff's claim on the ground that he had not paid the proper stamp fees On appeal to the High Court —*Held* that the plaint was insufficiently stamped The injunction prayed for would be consequential relief and cl 4 (*c*) of s 7 of the Court Fees Act VII of 1870 was, therefore applicable The appellant was accordingly required to state in the memorandum of appeal at what amount he valued the relief sought in order that the fee might be computed. RAGHUNATH GANESH v GANGADHAR BHIKAJI I L. R., 10 Bom 60

8 ——————— *Application to wind up a partnership under s 265 Contract Act—Suit for an account*—An application to the Court to wind up a partnership made under s 265 of the Contract Act IX of 1872 is in the nature of a suit for an account and should be stamped accordingly ABAD ALI PRADHAM v JAMIRUDDIN MAHOMED
[13 C L. R. 160

9 ——————— *Appeal—Contract Act s 265*—The stamp duty payable on an appeal from an order made by a District Judge on an application under s. 265 of the Contract Act (IX of 1872) should be an *ad valorem* fee as in a suit for accounts under s. 7 cl 4 (*f*) of the Court Fees Act VII of 1870 *Javali Ramasami* v *Satham Bakam I L R 1 Mad 340* and *Lachman Lall* v *Ram Lall I L R 6 Calc 321* approved LADUBHAI v REVICHAND I L. R 8 Bom 143

10 ——————— *Suit for accounts—Stamp—Plaint—Contract Act (IX of 1872) s 265*—The stamp duty payable on an application to the District Court under s 265 of the Contract Act (IX of 1872) for an account and winding up of partnership should be an *ad valorem* fee under s 7 cl 4 (*f*) of the Court Fees Act (VII of 1870) BHOGILAL POPATBHAI I. L R. 7 Bom 125

1. ——————— s 7 cl. 5—*Subordinate tenure holder—Assessment of Court fee in suit for possession of a fractional part of an estate*—The assessment of the Court fee in a suit by a subordinate tenure holder to recover possession of a definite portion of an entire estate paying a permanently settled annual revenue to Government should be made under the first part of sub division (*a*) cl 5 of s 7 of the Court Fees Act HUBIBUL HOSSEIN v MAHOMED REZA I L. R. 8 Calc 192 10 C L R 385

2 ——————— *Stamp—Construction and applicability of the proviso—Valuation of suits for land in a talukhdari village—Talukhdar's jumma—Remission*—*Per* WEST and NANABHAI JJ—The proviso to art 5 of s 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency not only for the comparatively rare case of land forming part but not a definite share of an estate paying revenue to Government but for all cases of suits for land The theory being that all land is primarily liable to be rated or taxed for the public revenue any sum not levied according to the appraisement made in order to show the proper amount

COURT FEES ACT (VII OF 1870)
—continued

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.
[I. L. R 13 All., 57

See CIVIL PROCEDURE CODE 1882, s. 316.
[I L R , 13 Bom , 670

See LIMITATION ACT s 4
[I. L. R. 20 Mad., 319
I L. R. 23 Mad. 494

See LIMITATION ACT s. 5
[I. L. R. 13 All., 57

1 ———— *Applications not required to be in writing*—Applications to the Court not required by the Civil Procedure Code to be in writing do not fall within the 6th section of the Court Fees Act. The term application in sch II of the Court Fees Act when read with s 6, must be construed to mean an application in writing TETLEY v ADMINISTRATOR GENERAL OF BENGAL
[3 N W 418

2 ———— *Act XL of 1858 s 3—Certificate of guardianship—Period from which authority of guardian dates*—S 6 of the Court Fees Act (VII of 1870) which says that a certificate under Act XL of 1858 (among other documents) shall not be filed exhibited or recorded in any Court of justice or received or furnished by any public officer unless a certain fee be paid means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty SAHAI NAND v MUNGNIRAM MARWARI
[I. L. R. 12 Calc , 543

3 ———— *Court fee on set off*—In a suit to recover a sum of money due as wages the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. *Held* that the Court fee payable on the claim for set off was the same as for a plaint in a suit AMIR ZAMA v NATHU MAL
[I. L. R. 8 All. 396

4. ———— *Written statement—Set off—Civil Procedure Code (Act XIV of 1882) ss 111 and 216*—A written statement containing a claim of set-off is chargeable with the Court fee which would be payable on a plaint of that nature BAI SHRI MAJIRAJBAI v NAROTAM HARGOVAN
[I L R 13 Bom 672

———— s 7

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL 18 W R 21

———— cls 1 and 2 and s 11—*Suit for compensation for use and occupation*—The plaintiff sued by virtue of a deed of conditional sale which had been foreclosed for among other things compensation in the nature of rent for the use and occupation of a house from the date of suit to the date on which possession of the house should be delivered to them the defendants having purchased the house subsequently to the conditional sale but before the foreclosure *Held per* STRAIGHT, J.—That cl. 2 s. 7 of the Court Fees Act did not apply to the claim nor was it one for money within the meaning of cl 1 of that section but one for which s. 11 of that Act provided. *Per* OLDFIELD J.—That Court fees were leviable in respect of the claim with reference to cl 1 s. 7 and s 11 of the Court Fees Act. CHEDI LAL v KIRATH CHAND
[I. L. R., 3 All., 683

1. ———— cl. 4 (c)—*Suit for declaratory decree—Consequential relief*—In a suit for a declaratory decree to set aside a summary order under Act VIII of 1859 s. 246 where the plaintiff asked also for an order "confirming possession after declaration of title it was held that consequential relief was sought and that the stamp fee leviable was the *ad valorem* fee prescribed by the Court Fees Act BOHUBOONISSA BIBEE v KUREEMOONISSA KHATOON 19 W R., 18

2 ———— *Declaratory decree—Consequential relief—Suit to establish right to attached property—Court Fees Act 1870 sch II art 17*—In a suit, under s. 283 of Act X of 1877 for a declaration of her proprietary right to certain immoveable property attached in the execution of a decree the plaintiff asked that the property might be "protected from sale *Held* that consequential relief was claimed in the suit and Court fees were therefore leviable under s. 7 cl (c) and not under sch. II art 17 (iii) of Act VII of 1870 RAM PRASAD v SUKH DAI I. L. R. 2 All. 720

3 ———— *Declaratory decree—Consequential relief—Court fees*—In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought the plaintiff did not, as s 7 of the Court Fees Act directs state in his plaint the amount at which he valued the relief sought nor did the Court of first instance cause him to supply this defect On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit the lower Appellate Court demanded from the plaintiff Court fees in respect of his plaint and memorandum of appeal computed on the market value of such house the plaintiff having only paid in respect of those documents respectively the Court fees payable in a suit for a declaration of right where no consequential relief is prayed *Held* that the market value of the property could not be taken by the lower Appellate Court to be the value of the relief sought as the plaintiff did not seek possession of the property and that as the valuation of the relief sought rested with the plaintiff and not the Court and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought of which the value was merely nominal further Court fees could

COURT FEES ACT (VII OF 1870)
—*continued.*

of the Court Fees Act has the same effect as that provided by s. 56 of the Code in the case of "rejection" of a plaint under s. 54 BALKARAN RAI *v.* GOVIND NATH TEWARI I. L. R. 12 All., 129

3. ——————— *Suit insufficiently valued—Order for payment of additional Court-fees—Power of Court to enlarge time for payment*—*Held* that it is competent to a Court which has made an order under s. 10 cl. ii of Act VII of 1870 for the payment of an additional Court fee to enlarge either before or after its expiration the time limited for the payment of such additional fee. *Badri Narain v. Sheo Koer I. L. R. 17 Calc 512 L. R. 17 I. A. 1* and *Bhagwandas Bagla v. Abu Ahmad I. L. R. 16 Bom., 263* referred to. CHUNNI LAL *v.* AJUDHIA PRASAD I. L. R. 19 All., 240

4. ——————— *Court fee—Procedure—Second appeal—appeal to lower Appellate Court by respondent in High Court insufficiently stamped*—Where it was discovered in second appeal in the High Court that the respondent when appellant in the lower Appellate Court had not paid a sufficient Court fee on his memorandum of appeal in that Court, and up to the date of the hearing of the appeal in the High Court though called upon to do so, had not made good the deficiency it was *held* that the proper procedure was not to dismiss the respondent's appeal to the lower Appellate Court under s. 10 of the Court Fees Act, but to stay the issuing of the decree if any of the High Court in favour of the respondent until such time as the additional Court-fee due by him might be paid. NARAIN SINGH *v.* CHATURBHUJ SINGH . I. L. R., 20 All. 362

5 ——————— *Order requiring additional Court fee on claim passed subsequent to decree—Decree prepared so as to give effect to subsequent order—Civil Procedure Code ss 54 56 584—Court Fees Act ss 12 and 28*—A Judge after disposing of an appeal on the 1st March 1883 again took it up and on the 21st March 1883 directed the appellant to pay additional Court-fees on her memorandum of appeal. On the 2nd May 1883 the appellant paid the additional Court-fees under protest and a decree was then prepared bearing date the 1st March 1883 but it referred to and carried into *effect the subsequent order of the 21st March and the* 2nd May *Per* MAHMOOD *J* that as soon as the Judge had passed the decree of the 1st March 1883 *he ceased to have any power over it* and was *not* competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May whether right or wrong were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent and was therefore liable to correction in second appeal under s 584 of the Civil Procedure Code The powers conferred by ss 54 (*a*) and (*c*) and 55 read with s 582 of the Civil Procedure Code or by s 12 of the Court Fees Act (VII of 1870) read with cl. (ii) of s 10 are intended to be exercised before the disposal of the case and not after it has been decided finally so far as the Court is concerned. The powers conferred by s. 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court fees relates and even assuming that they can be so exercised, such an order though it may be subject to such rules as to appeal or revision as the law may provide cannot be given effect to by making insertions in an antecedent decree *Per* OLDFIELD *J*—That the Court had power to *make the order it did inasmuch as the collection of* Court fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped and seemed on the other hand to contemplate the exercise of that power at any time subsequent to the receipt filing or use of a document and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped MAHADEI *v.* RAM KISHEN DAS I. L. R., 7 All. 528

1. ——————— s. 11—*Interest accruing on decree in suit for money lent*—The Court Fees Act (No. VII of 1870) s 11 is not applicable to interest accruing upon a decree in a suit which is neither for mesne profits, nor for immoveable property nor for an account but simply an action for money lent KRISHNARAV *v.* ANTAJI VIRUPAKSHA [12 Bom. 237

2. ——————— *Execution of part of decree—Payment of full amount of Court fees not necessary for such part execution—Construction of Act—Court Fees Act s 17*—The plaintiff sued the defendant to recover possession of a house and for mesne profits In the same suit he also claimed certain account books and documents from the defendant In paying Court fees he estimated the mesne profits at R151 and paid on that amount He obtained a decree and the amount of mesne profits awarded to him was R3 349 13 3 The decree further directed that possession of the house should be given to him and that the books and documents should be handed over to him He now applied for execution of that part of the decree which directed *the delivery of the house and of the account books* and other documents The defendant contended that under s 11 of the Court Fees Act (VII of 1870) *the plaintiff was not entitled to execution of any* part of the decree until he paid the proper Court fees on the sum awarded as mesne profits *viz* R3 349 13 3 *Held* that the plaintiff might obtain execution of that part of the decree which ordered delivery of the house and books and documents without paying the fees payable on the amount awarded for mesne profits S 11 and s 17 of the Court Fees Act (VII of 1870) ought to be similarly construed and the language of the latter section which deals with multifarious suits shows that for the purposes of the stamp revenue such suits are deemed to be a collection of distinct suits relating to the several causes of action combined them In applying s 11 to such suits in

COURT FEES ACT (VII OF 1870)
—continued

give a harmonious construction to the Act as a whole the term suit in that section should be construed as confined to that part of the suit in question which relates to mesne profits. PRICHAND v. BAI ICHHA
[I. L. R., 19 Bom., 98

3 ———— Suit for possession and mesne profits—Code of Civil Procedure (1882) s 212—Assessment of mesne profits—Dismissal of suit—Application for execution of decree —Where upon the application of the decree-holder the Court executing the decree has assessed the amount of mesne profits but the necessary Court fees have not been deposited within the time fixed by the Court as provided by s. 11 of the Court Fees Act (VII of 1870) the suit that is the claim in respect of those mesne profits must be dismissed; after such dismissal no application for execution of the decree for mesne profits can be entertained as no such decree is in existence. The word suit in the last part of para. 2 of s. 11 of the Court Fees Act does not mean the entire suit; it means the claim in respect of the mesne profits. KEWAL KISHAN SINGH v. SOOKHANI
I. L. R. 31 Calc. 173
[1 C W N, 343

———— s. 12.

See APPEAL—ACTS—COURT FEES ACT 1870
10 W R. 214
[23 W R., 296
I L. R. 2 Bom 145, 219
I. L. R. 6 Calc., 249
I. L. R., 14 Mad. 169

See APPEAL—DECREES
[I. L. R. 11 All., 91

See APPELLATE COURT — OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT
[1 Bom. 62
14 W R. 196
23 W R., 433
I. L R. 19 All. 165

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW — VALUATION OF SUIT ERROR IN

See COSTS—SPECIAL CASES—VALUATION OF SUIT
20 W R. 206

———— and s 28—Finality of decision of Court on question of Court fee —The decision of the Court on a question of the Court fee payable on a plaint or memorandum of appeal which is to be final as between the parties to the suit must be a decision made between the parties on the record and after they had an opportunity of being heard and not a mere decision based upon the report of a Munsarim before the plaint or memorandum of appeal filed and therefore before any parties are before the Court Hence where a Court of first instance held on the report of the Munsarim that a plaint presented to it had been insufficiently stamped but subsequently both parties being before the Court and arguments having been heard decided that

COURT FEES ACT (VII OF 1870)
—continued

Court fee originally paid was sufficient it was held that the latter decision was the decision which was final as between the parties within the meaning of s 12 of the Court Fees Act 1870 AHMAD ALI v. MUHAMMAD ISMAIL
I. L. R., 20 All, 11

———— s 14 and sch. I art 5—Application for review filed after time —An application for a review of judgment having been made on the first day after the vacation after the ninetieth day from the date of the judgment which it was sought to review it appeared that the ninetieth day fell during the vacation when the High Court was closed. Held that the full fee leviable on the memorandum of appeal must be paid in the first instance but that the Court if satisfied that the delay was not caused by the laches of the applicant might direct a refund of one-half of such fee IN THE MATTER OF DOORGA PROSUNNO GHOSE
9 C L R., 479

———— s 16

See PAUPER SUIT—APPEALS.
[I. L. R., 1 Bom., 75

———— Alteration in form of decree on appeal —Where plaintiff prayed for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled and the lower Court decreed to her joint and undivided possession of her half share and she also succeeded in the whole of her claim as before the High Court in special appeal —Held that, as the separate possession by partition is a form of decree at the option of the plaintiff the Court was in justice bound to grant her request that the decree should be re-framed in such a manner as to award possession to her in severalty without regard to any stamp fee S. 16 of the Court Fees Act refers to a case where a party losing substantially a portion of his claim is precluded from re-asserting it before the Appellate Court without paying the proper stamp fee BISSONATH CHATTERJEE v. MADHUMMOYEE DABEE
[15 W R. 511

1 ———— s 17— Distinct subjects —Distinct causes of action.—Held (SPANKIE J dissenting) that the words distinct subjects in s. 17 of Act VII of 1870 mean distinct causes of action or distinct kinds of relief Per SPANKIE J the words mean every separate matter distinct ... a subject of the claim CHAMAILI RANI ... All. 282
[I. L. R., ...

2 ———— Civil Procedure Code 1877 (1859) s 9 (1877 ss 44 45)—Act X of ... rejected in suit— Distinct subjects —Plaint—Memorandum of appeal —Held that the words "distinct ... ges of a in s 17 of the Court Fees Act 18... press the distinct and separate causes of action ... which Edun v Ram Das I L R 1 All 552 ... case The plaintiff sued his brothers and a ... particular his share according to the Hindu law of ... NAIR and under a will of the moveable and im... 308 of his deceased uncle by the ... Civil ... of gift of ... veable property ... Act nephew ... STUART, C ... s. 11

COURT FEES ACT (VII OF 1870)
—*continued*

STRAIGHT J., that, under s. 17 of the Court Fees Act, 1870 the plaint and memorandum of appeal in the suit were chargeable with the aggregate amount of the fees which the plaints or memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under that Act. *Per* OLDFIELD J that Court fees were leviable on the plaint and memorandum of appeal on the total value of the claim the suit not being one of the nature to which s. 17 of the Court Fees Act referred. MUL CHAND *v* SHIB CHARAN LAL I. L. R., 2 All., 676

3 ———————" *Distinct subjects*" — *Plaint and memorandum of appeal* —The plaintiffs sued, in virtue of a conditional sale which had been foreclosed, for (i) possession of a house (ii) compensation in the nature of rent for its use and occupation from the date of foreclosure to the date of suit and (iii) like compensation from the latter date to the date on which possession of the house should be delivered to them the defendants having purchased the house subsequently to the conditional sale but before the same was foreclosed. The plaintiffs stated that their cause of action arose on the date of foreclosure. *Held* (SPANKIE, J., dissenting) that the suit embraced distinct subjects within the meaning of s. 17 of the Court Fees Act 1870 and the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable CHEDI LAL *v* KIRATH CHAND I. L. R 2 All., 682

4. ——————— *Distinct subjects*' —*Suit for specific moveable property or for compensation* —' *Multifarious suit*"—*A* to whom a certificate of administration in respect of the property of a minor had been granted in succession to *B* whose certificate had been revoked sued *B* claiming the delivery of specific moveable property of various kinds belonging to the minor which had been intrusted to *B* and *B* detained or the value of each kind of property as compensation in case of non-delivery *Held* that the suit did not embrace distinct subjects within the meaning of s 17 of the Court Fees Act 1870 and the Court fees payable in respect of it in the suit should be computed under s. 17 of that Act according to the total value of it. AMAR NATH *v* THAKURDAS [I. L. R. 3 All. 131

——————— *Suit on hundis—Distinct causes of action — Distinct subjects* —In a suit on three different hundis executed on the same day by one of the defendants in favour of the other three defendants and by them assigned to the plaintiff and not paid on maturity —*Held* that each hundi afforded a separate cause of action that the suit embraced three separate and distinct subjects and that the memorandum of appeal by the first defendant was chargeable with the aggregate amount of the Court fees to which the memoranda of appeal in suits embracing separately each of such subjects would be liable under the Court Fees Act PARSHOTAM LAL *v* LACHMAN DAS [I. L. R. 9 All., 252

6 ——————— *Suit for possession of immoveable property and for mesne profits or damages— Distinct subjects —Valuation of suit* —A suit upon one and the same cause of action for possession of immoveable property and for mesne profits or damages for the wrongful retention of such property is not a suit embracing two or more distinct subjects within the meaning of s 17 of Act VII of 1870 *Chamaili Rani* v *Ram Dai I L R 1 All 552 Mul Chand* v *Shib Charan Lal I L R 2 All 676 Chedi Lal* v *Kirath Chand I L R 2 All 682* and *Kishori Lal Roy* v *Sharut Chunder Mozumdar I L R 8 Calc 593* discussed REFERENCE UNDER THE COURT FEES ACT 1870 s 5 I. L. R. 16 All. 401

7 ——————— *Multifarious suit — Court fees on plaint and memorandum of appeal—Court Fees Act 1870 sch I art 1* —The rule laid down in s. 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of art 1 sch. I of that Act and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is under that proviso R3 000 RAGHOBIR SINGH *v* DHARAM KUAR I L R 3 All. 108

8. ——————— *Suit for possession and mesne profits—Stamp fee payable on appeal* — For the purposes of determining the stamp fee payable on an appeal to the High Court in a suit for possession and for mesne profits the claim for possession and mesne profits is to be taken as one entire claim. *Chedi Lal* v *Kirath Chand I L R 2 All 682* dissented from KISHORI LAL ROY *v* SHARUT CHUNDER MOZOOMDAR [I. L. R. 8 Calc 593 10 C L R. 359

——————— s 19
See WRITTEN STATEMENT [I. L. R. 5 Bom 400 12 C L R 367

1. ——————— *Stamp on memorandum of appeal by judgment debtor in custody from order refusing application to be declared insolvent* — A judgment debtor whilst in custody applied to the Court under Ch XX of the Civil Procedure Code to be declared an insolvent The application was refused and the judgment debtor appealed against the order rejecting his application No Court fee was affixed to the memorandum of appeal *Held* that no Court fee was leviable under cl 17 of s. 19 of the Court Fees Act KALI PROSAD BANERJI *v* GISBORNE & Co [I. L. R. 10 Calc 61 13 C L R., 150

2 ——————— *Complaints made by municipal officers—Process fees—Court Fees Act s 21* —No process fee is leviable on complaints made by municipal officers and the accused are not liable to refund sums illegally levied from the complainants as process fees QUEEN EMPRESS *v* KHAJABHOY [I. L. R., 10 Mad., 423

COURT FEES ACT (VII OF 1870) —*continued*

———— s 19D—*Act XIII of 1875, s. 6—Exemption from probate duty—Joint family—Conveyance to four members of a joint family governed by the Mitakshara law as tenants in common—Survivorship*—The deceased who was a member of a joint Hindu family governed by Mitakshara law left a will of which he appointed his brothers the executors and trustees. The brothers as executors applied for probate but claimed exemption from the payment of probate duty on the ground that the property was "joint ancestral property which would pass by survivorship. The petition stated that in the lifetime of the testator he and his brothers out of the income of the ancestral estate purchased from the Corporation of Calcutta some plots of land which were conveyed to them as tenants in common; that the effect of this was to vest an undivided one-fourth share in the testator which on his death would pass not to the remaining coparceners under the rule of survivorship but to his legal representatives; and that in order that effect might be given to the rule of survivorship it was necessary to obtain probate *Held* that the property though conveyed to the brothers as tenants in common vested in them as trustees for the benefit of all the coparceners and consequently was not liable to duty IN THE GOODS OF LOKURMULL AUGURWALLAH

[I. L. R., 23 Calc. 980
1 C W N., 31

———— s 20 cl. 1—*Rules under that section framed by the High Court in 1878—Process—Commission issued to ameen to fix mesne profits*—A commission issued to an ameen to hold a local investigation for the purpose of ascertaining the amount of mesne profits is not a process within the meaning of cl 1 of s 20 of the Court Fees Act and art 3 part II of the rules promulgated in 1878 framed under that section is therefore *ultra vires* and cannot be enforced JAGAT KISHORE ACHARJEA CHOWDHRY v DINA NATH CHUCKERBUTTY CHOWDHRY I. L. R., 17 Calc. 281

———— s 22.

See PENAL CODE s 186

[I. L. R. 22 Calc., 596

———— s 25

See LIMITATION ACT 1877 s 4.

[I. L. R 12 All 129

———— s 26—*Certificate of heirship—Succession Certificate Act (VII of 1889) ss 17 and 20—Notification of Governor General No 361 dated 18th April 1883 Irregularity in observing directions of—Effect of on validity of stamp*—A certificate having been granted on an ordinary stamp of requisite value it was contended that it was not properly stamped in accordance with the Court Fees Act (VII of 1870) as required by s. 17 of the Succession Certificate Act (VII of 1889) because it did not bear upon it the words Court fees as directed in the notification of the Governor General No 361 dated 18th April 1883 *Held* that though s. 26 of the Court Fees Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act shall be of such particular kind as the Governor General of India in Council may by notification from time to time direct and that though the Governor-General had issued such notification still the direction in the notification that the stamp should bear the words "Court fees was not a matter on which he had authority to give any direction under the terms of s 26 of the Court Fees Act and therefore could only be regarded as a departmental order the non observance of which could not invalidate the stamp for the purpose of the Act. ANNAPURNA BAI v LAKSHMAN BHIKAJI VAKHARKAR I. L. R., 10 Bom., 145

———— s 28.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL.

[I. L. R. 15 Mad., 29

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS

[I. L. R., 3 All., 682
I. L. R., 13 All., 57

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT PAPER IN

[I. L. R., 7 All., 529

See LIMITATION ACT 1877 s 4.

[I. L. R. 10 Calc. 747
I. L. R 12 All. 129
I. L. R. 15 All. 65
I. L. R 20 Mad 319
I. L. R. 22 Mad. 494

See LIMITATION ACT 1877 s. 5

[I. L. R. 12 All. 57

———— *Civil Procedure Code 1882, ss 54 56—Dismissal of suit—Rejection of plaint—Court Fees Act ss 9 10 11*—When a memorandum of appeal which when tendered was insufficiently stamped has subsequently been sufficiently stamped the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation unless it has been done by order made under the second paragraph of s. 28 of the Court Fees Act In the case of a High Court such an order can be made only by a Judge and by him only in cases of mistake or inadvertence" These words mean mistake or inadvertence on the part of the Court or its officers and not on the part of the appellant or his advisers The expression head of the office in s. 28 does not refer to the head of the office of a Court or at all events to the head of the office of a High Court acting not as such but as a taxing officer but it refers to the head of a public office such as the Board of Revenue Ss. 9 10 and 11 of the Court Fees Act are not in conflict with s. 28 nor are ss. 9 10 11 and 28 read together in conflict with s 54 of the Civil Procedure Code Cases within s 10 or s 11 of the Act would arise only where through mistake or inadvertence of the

COURT FEES ACT (VII OF 1870) —*continued*

Court. a plaint which subsequently was discovered to be insufficiently stamped had been received filed or used in the Court; and cls. (a) and (b) of s. 54 of the Code are similarly related to s. 28 of the Act, and were not intended to cut down or limit its provisions. The "dismissal" of a suit under s. 10 or s. 11 of the Act has the same effect as that provided by s. 56 of the Code in the case of "rejection" of a plaint under s. 54. BALKARAN RAI *v* GOBIND NATH TIWARI I. L. R. 12 All., 129

———— s. 30

See LIMITATION ACT 1877 s 4. [I. L. R. 12 All., 129

———— s 31.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES. [I. L. R., 20 Calc., 687

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE I. L. R., 7 Mad. 345

———— *Order to repay fine under—Retaining fee in deposit* —An order to repay a fee under s 31 of Act VII of 1870 is an integral part of the sentence and the fee should be treated as a fine imposed by the Court and may be retained in deposit pending an appeal where an appeal lies ANONYMOUS 5 Mad. Ap 28

QUEEN EMPRESS *v* TANGAVELU CHETTI [I. L. R., 22 Mad., 153

1 ———— sch. I, art. 1—*Petition to wind up partnership—Contract Act (IX of 1872) s 265—Plaint.*—An application for the winding up by the Court of the business of a firm after the termination of partnership under s. 265 of the Contract Act (IX of 1872) whatever it be called is essentially a plaint and must be paid for in fees at the same rate as any other plaint for an account extending to a like amount of valuation. EBRAHSHAH DHANJISETH *v* ADARJI DORABJI I. L. R 7 Bom 535

See ABAD ALI PRADHAM *v* JAMIRUDDIN MAHOMED 13 C L R 160

2 ———— *Application to file award — Civil Procedure Code 1882 s 525* —The proper Court-fee upon an application to file an award under s 525 is the Court fee prescribed for applications and not the Court fee upon a plaint BIJADHUR BHUGUT *v* MONOHUR BHUGUT [I. L. R 10 Calc 11

S C PALUT BHUGUT *v* MONOHUR BHUGUT [13 C L R. 171

3 ———— *Memorandum of appeal from an order under s 331 of the Civil Procedure Code (Act XIV of 1882)—Practice* —A memorandum of appeal from an order under s. 331 of the Civil Procedure Code (Act XIV of 1882) should be stamped with an *ad valorem* duty as provided by art 1 sch. I of the Court Fees Act VII of 1870 NARAYAN RAGHUNATH *v* BHAGVANT ANANT [I. L R, 10 Bom, 238

COURT FEES ACT (VII OF 1870) —*continued*

4. ———— *Proviso—Appeal under Beng Act XI of 1862 s 9—Appeal not otherwise provided for* —An appeal from an order of a lower Appellate Court on an application under s 9 Bengal Act VI of 1862 not being otherwise provided for by the Court Fees Act may be admitted on a 6-anna stamp TUBLAO BHUGGUT *v* DONZELLE [14 W R. 21

———— sch I, art 3

See REGISTRATION ACT 1871 s 2. [6 Mad. 351

1. ———— sch. I, arts. 4 and 5—*Application for review.*—An application for review of judgment such as is alluded to in arts 4 and 5 sch I of the Court Fees Act (VII of 1870) does not include an application for a new trial in a Small Cause Court in the mofussil GOPEENATH ROY *v* RAM JOY [14 W R., 249

2. ———— *Application for review of judgment in pauper suit—Court fee—Act No VII of 1870 (Court Fees Act) sch I clause—Civil Procedure Code s 410* —*Held* that when an application for review is presented in a suit *in formâ pauperis* that application like the plaint in the suit is not liable to any Court fee UMDA BIBI *v* NAIMA BIBI I L R 20 All 410

3 ———— *Stamp—Petition of review* —When a plaint or memorandum of appeal comprises a number of claims and a portion only of such claims has been allowed by the judgment the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the Court to review its judgment Act VII of 1870 sch I arts 4 and 5 IN RE MANOHAR G TAMBEKAR [I. L R 4 Bom 26

1.———— sch I art 5—*Stamp—Review* —The stamp fee on an application for review must be calculated on the amount that would be obtained if the review were granted and not necessarily on the whole value of the suit ANONYMOUS [7 Mad Ap 1

2 ———— *Review of judgment—Stamp duty—Court Fees Act s 14—Computation of time—Limitation Act 1877 s 5* —In computing the period of eighty nine days from the date of decree within which an application for review of judgment may be presented on payment of half the fee leviable on the plaint or memorandum of appeal (under art 5 of sch I of the Court Fees Act 1870) the time during which the Court is closed for vacation cannot be excluded IN RE KOTA [I. L R. 9 Mad 134

3 ———— *Application for review—Whether Court fee payable is on the value of the relief asked for or upon the valuation of the whole suit—Court Fees Act (VII of 1870) sch I art 5* —A suit being decided in favour of the plaintiff one of the defendants made an application for review of the decision so far as it dealt with the question of

COURT FEES ACT (VII OF 1870)
—continued

———— s 19D—*Act XIII of 1875, s. 6—Exemption from probate duty—Joint family—Conveyance to four members of a joint family governed by the Mitakshara law as tenants in common—Survivorship*—The deceased who was a member of a joint Hindu family governed by Mitakshara law left a will of which he appointed his brothers the executors and trustees The brothers as executors applied for probate but claimed exemption from the payment of probate duty on the ground that the property was joint ancestral property which would pass by survivorship. The petition stated that in the lifetime of the testator he and his brothers out of the income of the ancestral estate purchased from the Corporation of Calcutta some plots of land which were conveyed to them as tenants in common that the effect of this was to vest an undivided one-fourth share in the testator which on his death would pass not to the remaining co parceners under the rule of survivorship but to his legal representatives; and that in order that effect might be given to the rule of survivorship it was necessary to obtain probate *Held* that the property though conveyed to the brothers as tenants in common vested in them as trustees for the benefit of all the co parceners and consequently was not liable to duty IN THE GOODS OF POKURMULL AUGURWALLAH

[I. L. R., 23 Calc. 980
1 C W N, 31

———— s 20 cl. 1—*Rules under that section framed by the High Court in 1878—Process—Commission issued to ameen to fix mesne profits*—A commission issued to an ameen to hold a local investigation for the purpose of ascertaining the amount of mesne profits is not a process within the meaning of cl 1 of s 20 of the Court Fees Act and art 3 part II of the rules promulgated in 1878 framed under that section is therefore *ultra vires* and cannot be enforced JAGAT KISHORE ACHARJEA CHOWDHRY *v* DINA NATH CHUCKERBUTTY CHOWDHRY I. L. R. 17 Calc. 281

———— s 22.

See PENAL CODE s 186 [I. L. R. 22 Calc. 596

———— s 25

See LIMITATION ACT 1877 s 4. [I L R 12 All 129

———— s 26—*Certificate of heirship—Succession Certificate Act (VII of 1889) ss 17 and 20—Notification of Governor General No 361 dated 18th April 1883 Irregularity in observing directions of—Effect of on validity of stamp*—A certificat having been granted on an ordinary stamp of requisite value it was contended that it was not properly stamped in accordance with the Court Fees Act (VII of 1870) as required by s. 17 of the Succession Certificate Act (VII of 1889) because it did not bear upon it the words Court-fees as directed in the notification of the Governor General No. 361 dated 18th April 1883 *Held* that though s. 26 of the Court Fees Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act shall be of such particular kind as the Governor General of India in Council may by notification from time to time direct and that though the Governor General had issued such notification still the direction in the notification that the stamp should bear the words Court-fees" was not a matter on which he had authority to give any direction under the terms of s 26 of the Court Fees Act and therefore could only be regarded as a departmental order the non observance of which could not invalidate the stamp for the purpose of the Act ANNAPURNA BAI *v* LAKSHMAN BHIKAJI VARHARKAR I. L. R. 19 Bom., 145

———— s 28

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL. [I L R. 15 Mad., 29

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS

[I L. R, 2 All. 682
I L R. 12 All. 57

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT ERROR IN [I. L. R., 7 All. 529

See LIMITATION ACT 1877 s 4

[I. L. R. 19 Calc. 747
I. L. R 12 All. 129
I L. R 15 All. 65
I. L. R 20 Mad. 319
I. L. R. 22 Mad., 494

See LIMITATION ACT 1877 s 5. [I L. R., 12 All., 57

———— *Civil Procedure Code 1882 ss 54 56—Dismissal of suit—Rejection of plaint—Court Fees Act ss 9 10 11*—When a memorandum of appeal which when tendered was insufficiently stamped has subsequently been sufficiently stamped the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation unless it has been done by order made under the second paragraph of s. 28 of the Court Fees Act In the case of a High Court, such an order can be made only by a Judge and by him only in cases of mistake or inadvertence. These words mean mistake or inadvertence on the part of the Court or its officers and not on the part of the appellant or his advisers The expression head of the office in s. 28 does not refer to the head of the office of a Court or at all events to the head of the office of a High Court acting not as such but as a taxing officer; but it refers to the head of a public office such as the Board of Revenue. Ss. 9 10 and 11 of the Court Fees Act are not in conflict with s. 28 nor are ss 9 10 11 and 28 read together in conflict with s 54 of the Civil Procedure Code Cases within s. 10 or s 11 of the Act would arise only where through mistake or inadvertence of the

COURT FEES ACT (VII OF 1870) —continued

possessed of or entitled to. IN THE GOODS OF GHOSE

[8 B. L. R., Ap., 138 15 W R., 457 note

6 ———— *Letters of administration —Trust property—Financial Resolution 2004 14th July 1871* —A and B were brothers joint in estate A died unmarried, leaving no relative except B B obtained grant of letters of administration of the estate of A consisting of a half share of certain property the other half share of which was claimed by B to belong to himself By Financial Resolution No. 2004 14th July 1871 the fees chargeable under sch. I art. 11 of the Court Fees Act were remitted in respect of letters of administration relating to property which a deceased person was possessed of as a trustee for any other person. *Held* that B's half share should be treated as trust property and exempted from the 2 per cent *ad valorem* fee. IN THE GOODS OF BRINDABUN GHOSE

[11 B. L. R. Ap., 39 19 W R. 230

7 ———— *Letters of administration—Estate of Hindu in hands of deceased daughter's representatives—Trust property* —On the death of a Hindu lady who had succeeded to her father's property for the estate of a Hindu daughter it appeared that certain Government promissory notes which formed a portion of the father's property were then standing in her own name On an application by the sons for letters of administration to her estate —*Held* that on her death the grandfather's estate became, in the hands of her representatives trust property in respect of which no duty was payable under the Court Fees Act IN THE GOODS OF JOYMONEY DOSSEE 14 B L R. 184

8 ———— *Property on which there is a mortgage or incumbrance—Duty on letters of administration* —When letters of administration are granted in respect of property which is subject to a mortgage the value of the property for the purpose of estimating the *ad valorem* duty payable under the Court Fees Act is the value of the entire property less the amount of the incumbrance A duty paid on former letters of administration which were afterwards cancelled was allowed to be deducted from the amount payable for fresh letters of administration. IN THE GOODS OF INNES

[8 B L R Ap 43 16 W R. 253

9 ———— *Letters of administration Duty payable on* —A suit for a division of a joint estate having terminated in a settlement the terms of which were embodied in a decree the receivers who had been appointed *pendente lite* endorsed and transferred certain securities and shares to one of the parties D pursuant to the decree The Bank of Bengal Account Department and the companies concerned having refused to recognize the transfer D applied for letters of administration in respect of the securities and shares in question claiming exemption from the duty prescribed by the Court Fees Act sch I cl 11 on the ground that she ought not to have been required to obtain such letters her right having been declared by a decree of the High Court *Held* that the prescribed duty must be paid, and that there was no ground of exemption from it IN THE GOODS OF SRINATH DASS 20 W R, 440

10 ———— *Letters of administration Duty payable on—Debts due by deceased—Letters limited to collect rents* —The fee payable for letters of administration under Act VII of 1870 sch. I art 11 is to be calculated on the amount or value of the property in respect of which the letters are sought without deducting therefrom the debts due by the deceased Where letters are granted limited for the purpose of collecting the rent of a house the duty is to be assessed on the value of the house IN THE GOODS OF RAM CHANDRA DAS

[9 B. L. R., 30
18 W R 153

11 ———— *Appointment by will* —Where a person having a life interest in a fund with a general and absolute power of appointment thereover exercises such power by will no *ad valorem* fee is payable in respect of such fund under the Court Fees Act. IN THE GOODS OF ORAM

[12 B. L. R. Ap., 21
21 W R. 245

12. ———— *Letters of administration—Doubtful debt* —The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of letters of administration to such estate. IN THE GOODS OF BEAKE

[13 B L R., Ap. 24
21 W R. 397

13 ———— *Value of annuity—Property subject to a mortgage* —For the purpose of determining the probate fee in respect of an annuity the word value in the Court Fees Act VII of 1870 sch I cl 11, must be taken to mean the market value of the annuity and not ten times the amount of a yearly payment Where the property in respect of which probate is sought is mortgaged the amount of the mortgage incumbrance must be deducted from the market value of the property and the probate fee charged on the balance. IN RE WILL OF RAMCHANDRA LAKSHMANJI

[I L R. 1 Bom 118

14 ———— *Executors obtaining second grant of probate—Grant of probate before Court Fees Act came into force* —Executors obtaining a second grant of probate subsequent to the enactment of the Court Fees Act of 1870 (the first grant having been taken out previously to that enactment) are not exempted from the payment of the *ad valorem* duty chargeable under that Act although the full fee then chargeable by law had already been paid at the time when the first probate was taken out IN THE GOODS OF GASPER I L R. 3 Calc. 733

[2 C L R. 430

15 ———— *Probate duty — Annuity charged on property of testator* —Where it appeared that property disposed of by a will was bequeathed to the testatrix subject to the payment thereout of an annuity for life to a person who survived her —*Held* that the *ad valorem* fee prescribed by sch. I, cl 11

COURT FEES ACT (VII OF 1870) —*continued*

costs The petitioner paid stamp duty on the relief asked for *i e* for the entire amount of costs The lower Court ordered that the petitioner to pay stamp duty on the entire value of the suit and the petitioner not complying with this order his application was rejected *Held* that, having regard to the language of art 5 sch I of the Court Fees Act the Munsif did not come to an erroneous conclusion *In re Manohar G Tambekar, I L R. 4 Bom 26* distinguished. NOBIN CHANDRA CHUCKERBUTTY *v* MOHAMED UZIR ALI SARKAR 3 C W N 292

4 ———— *Fee payable on application to review appellate decree under Letters Patent s 10* —For the purpose of ascertaining the Court fee to be paid under sch I art. 5 of the Court Fees Act (VII of 1870) upon an application to review an appellate decree the fee to be considered is the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed and not the fee which was leviable on the plaint nor—where the decree sought to be reviewed was passed on appeal under s 10 of the Letters Patent from an appellate judgment of a Division Bench—the fee which was leviable on the memorandum of the appeal before such bench HUSAINI BEGAM *v* COLLECTOR OF MUZAFFARNAGAR [I L R, 11 All 176

———— sch I, art 7—*Notes of judgment furnished to parties—Copies of decrees* —Notes of judgment furnished to parties under the Rules of Practice for the guidance of Small Cause Courts are copies of decrees which require a stamp under art 7 sch. I of Act VII of 1870. ANONYMOUS [6 Mad. Ap 24

See ANONYMOUS CASE 6 Mad. Ap 12

———— sch I art 8—*Stamp Act 1879 sch I art 1—Copies of originals returned to the party—Liability of such copies to stamp duty.*— In the course of a suit the plaintiff put in evidence certain entries from his day books and ledger The books had been produced in Court and had been returned to the plaintiff as usual on his furnishing copies of the said entries. The Subordinate Judge feeling doubt as to whether such copies should be furnished on stamped paper referred the question to the High Court. *Held* that the original entries not having been in the handwriting of the debtor were not liable to stamp duty under sch I art 1 of the Stamp Act, I of 1879 and that therefore the copies of them were not chargeable with any Court fees under sch. I art 8 of the Court Fees Act (VII of 1870) HARICHAND *v* JIVNA SUBHANA [I. L R., 11 Bom., 526

1 ———— sch I art. 11—*Ad valorem fee —Property subject to a mortgage—Stamp duty found insufficient on taking account* —By cl 11 sch I Act VII of 1870 The Court Fees Act 18 ... an *ad valorem* duty of two per cent on the amount or value of the estate is chargeable for probate of a will, where the amount or value of the property in respect of which probate is granted exceeds R1 000 The term 'value' in the Act apparently means market value and the market value of mortgaged property is the equity of redemption. An executor having applied for probate in respect of property which was alleged to be charged and mortgaged in excess of its value no fee was charged for the probate of the will In such a case however if it be found when the accounts are filed, that sufficient stamp duty has not been paid, payment of any deficiency can be enforced. IN THE GOODS OF MACLEAN 6 N W., 214

2 ———— *Probate granted to second executor when leave has been reserved to him to take out probate* —No stamp duty is payable under the Court Fees Act 1870 on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted. IN THE GOODS OF AMEERUN 15 W R., 499

3 ———— *Letters of administration* —Before the passing of the Court Fees Act, the Administrator General obtained letters of administration to a certain estate limited until the will should be proved; and the fixed duty prescribed by the Succession Act was paid in respect of such letters of administration The will was proved, and a petition presented for general letters of administration with the will annexed, after the passing of the Court Fees Act *Held* that the fee therein prescribed must be paid on the amount of the property irrespective of the duty paid on the grant of the former letters of administration IN THE GOODS OF CHALMERS [6 B L R. Ap, 137 21 W R., 246 note

4. ———— *Letters of administration with will annexed* —The Administrator General obtained letters of administration with a copy of exemplification of probate of the will annexed and the full *ad valorem* duty prescribed by sch. I cl 11 of the Court Fees Act was paid on the amount of the property Subsequently the Administrator General produced a document referred to in the will of the testator and obtained an order for letters of administration with a copy of the exemplification of probate of the will annexed and of the document produced as part of the will, in lieu of the former letters of administration *Held* that he was not liable to pay a second *ad valorem* duty IN THE GOODS OF MOSSON 6 B.L.R., Ap 139

5 ———— *Property subject to a trust* —Where property was conveyed by *T* to *L* on trust to pay the income to *T* for her life and after her death to hold the property for her children in such manner or form as she should by will appoint and *T* afterwards intermarried with *G* and shortly afterwards made a will of which she appointed her husband and the trustee of the settlement executors — *Held* that the *ad valorem* duty prescribed by sch I cl. 11 of the Court Fees Act was not payable in respect of such trust property The words of that clause mean property which the deceased was

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England on the testator's share in them and (*b*) that there was no amount or value in respect of which probate was to be granted in India *Held* on a case referred by the taxing officer that *O* was not entitled in obtaining probate to exemption from the probate duty payable under sch. I cl. 1° of the Court Fees Act in respect of the properties IN THE GOODS OF GLADSTONE I. L. R., 1 Calc 168

2. ———— *Application for certificate of heirship*—In cases in which the value of property in respect of which a certificate of heirship is sought exceeds R1,000 the stamp duty should be calculated on the whole amount and not on the excess over R1 000 under Act VII of 1870 sch I art. 12, but the exceeding R1,000 is the condition of liability ANONYMOUS 5 Mad., Ap. 45

3 ———— *Certificates of administration to estate of deceased*—The Court fee stamp to be imposed on a certificate of administration ought not to be assessed on a valuation including property absolutely denied by the applicants to belong to the intestate's estate until the contrary be proved. NITYO KALI DABEA *v* KADER NATH CHATTERJEE 5 C L R. 368

———— sch. II art. 1.

See CLAIM TO ATTACHED PROPERTY

I. L. R., 16 Bom 700

1. ———— *Civil Procedure Code 1859 s 281—Act XXIII of 1861 s 8—Examination of defendant*—When the plaintiff in order to make the proof referred to in s. 281 Act VIII of 1859 chooses to examine the defendant he must pay for the oath and the cost of reducing the deposition of the witness to writing It would be otherwise under s 8 Act XXIII of 1861 in which case the fee is demandable from the applicant EDMOND *v* NIZEBES 8 B L. R. Ap 42 16 W R. 84

2. ———— *Fees for translations*—When portions of khatta books are translated each portion translated is treated as a separate document and any portion less than a folio is charged for under the Court Fees Act as a whole folio The portions containing less than a folio are not to be taken together and charged according to the whole number of folios they contain. BRAJANATH DHAR *v* BHABO MOHAN DHAR 6 B. L. R Ap 137

3 ———— *Petition for new trial in Small Cause Court—Court Fees Act 1870 sch I art 5*—A petition for a new trial in a Small Cause Court is under the Court Fees Act (VII of 1870) properly stamped with a one anna stamp as it falls within sch II art 1 of that Act and not under sch. I art. 5 CHOTA LAL JAMNADAS *v* BULAKIDAS JETHA 7 Bom A C 109

4. ———— *Stamp for application for probate or administration*—The stamp requisite for an application for a probate of a will or letters of administration is not required to be proportionate to the value of the property involved as such applications come under the provisions made in art 1 sch II Act VII of 1870 for common applications and petitions. IN THE MATTER OF JUDOONATH SADHOOKHAN 15 W R 40

5 ———— *Application by witness for return of document*—Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons ANONYMOUS CASE 15 W R. 237

6 ———— *Petition to withdraw suit—Agreement—Bond*—A petition stamped as an agreement having been presented to a District Court by the parties to a suit informing the Court that they had entered into an agreement whereby *inter alia* the defendant was bound to deliver to the plaintiff certain wood and requesting that the suit might be removed from the file the District Judge impounded it levied a sum for insufficient stamp duty and a penalty on the ground that it was a bond and forwarded it to the Collector Upon a reference made by the Board of Revenue at the instance of the Collector—*Held* that the duty leviable was a Court fee stamp under art 1 (*b*) of sch II of the Court Fees Act 1870 REFERENCE UNDER STAMP ACT 1879 I L R 8 Mad 15

7 ———— *Complaint of illegal seizure and detention of cattle—Act III of 1857, s 14—Order to repay stamp to complainant—Court Fees Act s 31*—The illegal seizure and detention of cattle to which s 14 of Act III of 1857 refers is not an offence within the meaning of s 31 and sch II art. 1 cl (*f*) of the Court Fees Act VII of 1870 Complaints of such illegal seizure and detention do not require a stamp If such complaints be stamped it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant REG *v* AVJI BIN NARU 8 Bom Cr 22

———— sch II art. 6—*Security bond for costs of appeal—Act I of 1879 sch I No 13*—*Held* by the Full Bench that where a bond is given under the orders of a Court as security by one party for the costs of another it is subject to two duties—(*a*) an *ad valorem* stamp under the Stamp Act art 13 sch I (*b*) a Court fee of eight annas under the Court Fees Act art 6 sch II KULWANTA *v* MAHABIR PRASAD I L R. 10 All. 16

———— sch II art 10 (a)—*Stamp Act sch I art 50 (b)—Power to vakil to obtain copies from Collector's office—Stamp*—A document authorizing a vakil to apply for copies of records from the Collector's office is properly stamped with a Court fee stamp under art 10(*a*) of sch II of the Court Fees Act 1870 and does not require to be stamped as a power of attorney under art 50 (*b*) of sch I of the Stamp Act 1879 REFERENCE UNDER STAMP ACT 1879 s 46 I L R 9 Mad 146

1 ———— sch. II, art 11—*Application to set aside order directing award to be filed*—An application to the High Court to set aside an order of a District Court reversing an order of a Court of first instance directing an award made without the

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of the Court Fees Act ought to be levied upon the value of the property less the capitalised value of the annuity IN THE GOODS OF RUSHTON [I. L. R., 3 Calc, 736

16 ———— *Letters of administration—Liability of property on which duty has been paid in England—Fees* —A testator died in England and his executrix proved his will there and then in this Court paying duty in each country on the assets there On the death of the executrix the Administrator General obtained letters of administration *de bonis non* of the testator's unadministered property valued at a greater sum than the sum on which duty was originally paid in this country by *the executrix but which sum was made up of assets* from England upon which duty had already been paid there *Held* that as the assets were within the jurisdiction of this Court at the time of the grant of administration and the Administrator General could not have obtained possession of them otherwise than by virtue of the grant they were liable to the *ad valorem* fee prescribed by cl 11 sch I of the Court Fees Act. IN THE GOODS OF MURCH [I. L. R. 4 Calc 725

17 ———— *Ad valorem duty on probate—Parties married and holding property under the Code Napoleon—Law of France—Trust property* —The deceased F was a European subject of the German Empire He married a lady of Solingen in Rhenish Prussia where the Code Napoleon is in force There in contemplation of the marriage the parties entered into a contract whereby it was provided that there should be and rule universal community of his and her present and future moveable and immoveable property which contract placed the parties under the law of France respecting community of property *between husband and wife* Under that law a husband and wife have an equal interest in the property comprised in the community *on the death of either the property is divided* into two parts of which one part goes to the survivor and the other to the heirs or to donees under a testamentary disposition *Held* that on the death of F only one half of the property was chargeable with the *ad valorem* duty payable under art. 11 of sch. I of the Court Fees Act the other half being trust property which should under the provisions of s. 19 D of that Act be exempted from payment of such duty IN THE GOODS OF FROESCHMAN [I. L. R. 20 Calc 575

18 ———— *Duty payable on taking out probate or administration—Value of property not reduced to possession and as to which suit is brought* —Under art. 11 of sch I of the Court Fees Act duty is payable by a person taking out probate on the amount or value of the property in respect of which probate or letters of administration shall be granted if the amount or value of such property exceed R1 000 In a case where property has not been reduced into possession at the time of taking out probate and the right to it is the subject of a suit it is permissible to declare the value of the property as not exceeding R1 000 IN THE GOODS OF ABDOOL AZIZ I. L. R., 23 Calc 577

19 ———— *Probate duty—Asset in British India at date of death* —Probate duty is payable only on assets which at the date of the testator's death are in British India IN RE ABRAHAM I. L. R., 21 Bom. 139

20 ———— *Probate fee—Doubtful debt* —The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of probate as a will IN THE GOODS OF RAM CHUNDER GHOSE [I L. R., 24 Calc 567

21 ———— *Locality of assets—Partner of firm with head office in London and branches in Calcutta and Bombay* —S died in England in October 1896 and probate of his will was obtained in England on 1st December 1896 He left a large amount of property and credits in Bombay and he was a partner in the firm of David Sassoon & Co., which had its head office in London and had branches in Bombay and Calcutta *Held* that no probate duty was payable on the value of the share of the deceased as a partner in the firm of David Sassoon & Co or the properties of the firm situated in British India at his death. IN THE GOODS OF SASSOON [I. L. R., 21 Bom 673

22 ———— and art 12—*Trust property* —The term property in cls 11 and 12 of sch I of the Court Fees Act includes not only property to which the deceased was beneficially entitled during his lifetime but also all property which stood in his name as trustee or of which he was possessed benami for others IN THE GOODS OF BERESFORD [7 B L. R. 57 15 W R., 456

———— sch. I, cl. 12.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE 6 Mad. 131

1. ———— *Probate duty Exemption from—Interest in partnership property* —The testator a member of the firms of *G A & Co.* of Calcutta and *O G & Co* of Liverpool died in England leaving a will of which he appointed G in England and O in Calcutta his executors. As a partner in the Calcutta firm the testator was entitled to a share in an indigo concern and in certain immoveable property in Calcutta and his share in these properties was on his death estimated, and the money value thereof paid to his estate by the firm in Liverpool and probate duty had been paid thereon by G in obtaining probate of the will in England *Shortly after the testator's death* the indigo concern was contracted to be sold and the testator's name appearing on the title-deeds as one of the owners O applied for probate of the will to enable him to join in the conveyance and in any future sale of the other immoveable property An unlimited grant of probate was made to O who claimed exemption from probate duty in respect of the properties on the grounds (a) that duty had already been paid in

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which did not state any amount as the value of the claim bore a R10 stamp The suit was dismissed on the ground that the plaint ought to have been stamped according to the value of the plaintiff's claim. *Held* by the High Court on appeal that the plaint was properly stamped under sch II art. 17 cl 1 of Act VII of 1870 as the suit was a suit to set aside a summary decision of a Civil Court not established by Letters Patent. SADASHIV YESHWANT *v* ATMARAM SAKHARAM I. L. R. 4 Bom 535

6 ——————— *Suit for a declaration of right—Suit to set aside an order under s 246 of Act VIII of 1859 disallowing a claim to property under attachment—Consequential relief—Held* that a suit for a declaration of the plaintiff's proprietary right to certain moveable property attached in the execution of a decree while in the possession of the plaintiff and for the cancelment of the order of the Court executing the decree made under s 246 of Act VIII of 1859 disallowing his claim to the property could be brought on a stamp of R20 and need not be valued according to the value of the property under attachment. *Chunia v Ram Dial I L R. 1 All. 360* followed. *Jalal ud-din Mahomed v Shohorulla 15 B L R Ap 1* dissented from. *Motichand Jaichand v Dadabhai Pestanji 11 Bom. 186* and *Chakalingapeshana Naiker v Achiyar I L R. 1 Mad. 40* distinguished. GULZARI LAL *v* JADAUN RAI [I. L. R 2 All. 63

7 ——————— *Suit to set aside summary decision—Suit to establish right.*—The plaintiffs alleged in their plaint as follows: Certain property having been attached in execution of a decree their mother the wife of the judgment-debtor objected to the attachment on the ground that the property had previously come into her possession under a transfer by sale in lieu of her dower-debt The plaintiff's mother died pending the determination of the objection having *devised her property to the plaintiffs.* They succeeded to the same and certain other property which also had been transferred to their mother in lieu of her dower-debt having been also attached in execution of the same decree the plaintiffs objected to the attachment The Court executing the decree passed orders disallowing both objections Upon these allegations the plaintiffs claimed to set aside both orders They paid with reference to cl 1 art 17 sch II of the Court Fees Act 1870 a Court-fee of R20 on their plaint but the Court of first instance held that this was not sufficient and that the Court fee should be calculated on the amount of the decree in execution of which the property had been attached *Held* that looking at the nature of the reliefs sought cl 1 art 17 sch II of the Court Fees Act 1870 was applicable and that a R10 stamp in respect of each order sought to be set aside was payable *Daya hand Nemchand v Hem hand Dharamchand I L R 4 Bom 515* and *Gulzari Mal v Jadaun Rai I L R 2 All 63* followed FATIMA BEGAM *v* SUKH RAM [I. L. R. 6 All., 341

8 ——————— and s 7 (viii)—*Suit to obtain a declaratory decree—Suit to set aside a summary order—Attachment of property—Suit to establish right*—Certain immoveable property having been attached in execution of two Rent Court decrees the wife of the judgment-debtor under s. 178 of the North Western Provinces Rent Act (XII of 1881) objected to the attachment on the ground that the property had previously been conveyed to her by her husband under a deed of gift The objection was disallowed and she thereupon brought a suit with reference to the provisions of s 181 (*b*) of the Rent Act (1) to establish her right to the property (2) to set aside the order passed on her objection *Held* that looking at the nature of the reliefs sought cls (1) and (3) art 17 sch II of the Court Fees Act 1870 were applicable and that the plaintiff should pay a ten rupee stamp on each of her claims *Fatima Begam v Sukh Ram I L R 6 All 341* followed MANRAJ KUARI *v* RADHA PRASAD SINGH I. L R., 6 All 466.

——————— sch. II art 17 cl 2.

See DECLARATORY DECREE SUIT FOR— ADOPTIONS I. L R., 1 Bom. 248.

1. ——————— cl 3—*Suit for declaration of right to have doors closed.*—A right or interest in the subject-matter of a suit for the purpose of closing a new door alleged to have been opened with a design to assert (injuriously) rights over adjacent lands may be shown without paying the stamp necessary in a suit directly for the land itself CHUNDUN *v* TALIB ALI 2 N W 41.

2. ——————— *Suit for declaratory decree*—In a suit for possession and wasilat plaintiff obtained a decree declaring his right to possession upon the death of his father Defendant appealed *Held* that as the decree had given consequential relief *i e* relief from the operation of conveyances and mortgages which on the face of them affected plaintiff's interest an appeal from the decree should bear an *ad valorem* stamp duty MILLER *v* AKHOREE RAM 15 W R. 412.

3 ——————— *Suit for declaratory decree—Stamp—Valuation of suit*—The plaintiff claiming under a will of the deceased applied for a certificate under Act XXVII of 1860 but the High Court on appeal refused the same He now brought a suit alleging that he was in possession of the property of deceased and asked for confirmation of right and possession by enforcement of the will in reversal of the summary order of the High Court *Held* that cl 3 art 17 sch II of Act VII of 1870 did not apply This was not a suit to obtain a declaratory decree where no consequential relief was prayed. DINABANDHU CHOWDHRY *v* PAJMOHINI CHOWDRAIN 8 B L. R., Ap 32

S C DINOBUNDHOO CHOWDHRY *v* PAJMOHINI CHOWDHRAIN 16 W R. 213

4 ——————— *Valuation of suit for declaratory decree—Consequential relief—Court*

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—continued

intervention of a Court to be filed should be treated as an application for a miscellaneous special appeal Such an application may be made on a stamp of the value of two rupees under sch II art 11 of the Court Fees Act (VII of 1870) LAKSHMAN SHIVAJI v RAMA ESU 8 Bom, A C 17

2 ——— *Appeal from order under s 331 of the Civil Procedure Code (Act X of 1877) as amended by s 52 of Act XII of 1879* —Appeals from orders under s 331 of Act X of 1877 as amended by s 52 of Act XII of 1879 are chargeable with the same Court fee as is required in the case of appeals from decrees MAHBUBAN v UMRAO BEGUM SHAYAMA SUNDURI DASI v WATSON & CO [I. L. R 8 Calc 720 11 C L R 98

3 ——— *Memorandum of appeal from order under Companies Act (VI of 1882) s 214—Decree—Valuation of appeal* —An order under s 214 of Act VI of 1882 (Indian Companies Act) is not a decree or an order having the force of a decree and consequently an appeal from such an order to a High Court is properly stamped with reference to the Court Fees Act (VII of 1870) sch II art 11 (*b*) with a Court fee stamp of R2 REFERENCE UNDER COURT FEES ACT [I L R., 17 All, 238

4 ——— *Appeal under cl 10 Letters Patent High Court N W P from an order of remand under s 562 of the Code of Civil Procedure —Court fee* —*Held* that in an appeal under s 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under s 562 of the Code of Civil Procedure the proper Court fee is R2 BALLI RAI v MAHABIR RAI [I L R 21 All. 178

1.——— sch. II art 17 cl. 1—*Suit to contest award of Settlement Officer—Mad Act XXVIII of 1860 s 25* —A suit under (Madras) Act XXVIII of 1860 s. 25 to contest the award of a settlement officer falls within the terms of art 17 (1) of sch II of the Court Fees Act ANNAMALAI CHETTI v CLOETE I. L. R. 4 Mad., 204

2 ——— *Suit to set aside order under Act VIII of 1859 s 246—Stamp* —A suit brought under the provisions of s 246 of Act VIII of 1859 to set aside an order allowing a claim to attached property and releasing the property from attachment is a suit to try the title and establish the right of the person who brings the suit: and such a suit must be valued according to the value of the property and cannot be brought upon a stamp of R10 under art 17 of sch. II of the Court Fees Act MUFTI JALALUDDEEN MAHOMED v SHOHORULLAH [15 B L. R., Ap., 1 22 W R., 422

3 ——— *Suit after rejection of claim to attached property—Ad valorem stamp.*— In execution of a decree by the defendant certain property was attached as being that of the judgment debtor Th plaintiff preferred a claim, but his claim was disallowed and the property ordered to be sold. In a suit to have it declared that the property belonged to the plaintiff —*Held* it was a suit in which consequential relief was asked for and that the *ad valorem* duty prescribed by sch. I of the Court Fees Act was payable on the plaint and not that provided by sch II art 17 *Jalaluddin Mahomed v Shohorullah 15 B L R., Ap 1 : 22 W R 422* followed AHMED MIRZA SAHEB v THOMAS [I. L. R. 13 Calc 162

4. ——— *Suits brought to set aside or restore attachment—Civil Procedure Code 1859 s 246—Summary decision—Limitation Act 1871 art 15 (1877 art 13)—Interpretation of Acts—Valuation of suits* —Suits brought to set aside or to restore an attachment upon a house in pursuance of the permission given in s 246 of the Civil Procedure Code may be regarded either as suits to obtain a declaratory decree or order where consequential relief is prayed so as to fall within s. 1 cl 4 art. (*c*) of the Court Fees Act (VII of 1870), or as suits to obtain or set aside a summary decision or order in which case the stamp duty payable would be that prescribed by art 17 cl. 1 sch. II of the Court Fees Act The Court Fees Act being a fiscal enactment it is the duty of the Courts to treat such suits as belonging to the latter class (it being the more favourable for the suitor) and to impose fees accordingly Decisions under s. 246 of Act VIII of 1859 as to the removal or retention of attachments are summary decisions or orders within the meaning of art 17 cl 1 sch II of the Court Fees Act (VII of 1870) The words summary decision or order in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal The construction which has been given to these words or nearly similar words in the Limitation Acts (*e.g* Act IX of 1871 sch II art 15 and Act XV of 1877 sch. II art 13) affords no guide to their construction in the Court Fees Act. When Acts are in *pari materia* they may be read together; treated as forming a Code and may be read together; but when this is not so the construction which has been put upon one cannot be relied upon as a guide to the construction of another The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts which are fiscal enactments are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. *Motichand Jaichand v Dadabhai Pestonjee, 11 Bom 156* explained. *Parlaji Tamoji v Dholapa Raghu I L R 4 Bom 123* dissented from by WESTROPP C.J DAYACHAND NEMCHAND v HEMCHAND DHU RAMCHAND I. L. R. 4 Bom., 515

5 ——— *Stamp—Valuation of suit —Summary decision.*—The plaintiff had attached certain immoveable property in execution of a decree against a third party The attachment was removed on application by the defendant under s. 246 of Act VIII of 1859 whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor and was liable to be attached and sold under his decree The plaint



COURT FEES ACT (VII OF 1870)
—continued

Fees Act, 1870 s 7 cl 4 and s 17—A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him and to permit him to inspect their books is simply a suit for a declaratory decree without consequential relief and falls within art 17 cl 3 of sch II of Act VII of 1870 A suit praying for such a declaration as the above and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands or a suit praying for such declaration as the above and also for a positive decree for an account to be taken by the Court and for the production of the books and property would range under s 7 cl 4 art (c) of Act VII of 1870 as being a suit to obtain a declaratory decree or order where consequential relief is prayed and also within art (d) of the same section as being a suit to obtain an injunction and a suit of the third species described above would fall under art (f) of the same clause as being a suit for accounts *Quære*—Whether in the case of a suit for a declaration of the right of the plaintiff to an account and to inspection of the defendants books and for a mandatory injunction for the production of those books or of a suit for such declaration and for a positive decree for the taking of an account by the Court and the production of the defendants books the plaint would by virtue of s 17 of Act VII of 1870 require separate stamps under arts (d) and (f) of cl 4 s 7 or be sufficiently covered by the stamp under art. (c) of the same clause and whether assuming the declaration and the account each to require a stamp the prayer for an injunction or order for the production of books is not merely ancillary to and not a distinct subject from the taking of an account *Quære*—Whether the provision in s 7 cl 4 of Act VII of 1870 that the amount of the fee payable in suits falling within that clause shall be computed according to the amount at which the relief sought is valued in the plaint is so inconsistent with that portion of s 31 of Act VIII of 1859 which permits the Court receiving the plaint to revise the valuation of the claim as to render that portion of s. 31 of Act VIII of 1859 inoperative in suits within s 7 cl 4 of Act VII of 1870 notwithstanding the concluding passage in that claus *Quære*—Whether the concluding passage in cl 4 s 7 of Act VII of 1870 is too express to admit of a limitation of the power of the Judge and leaves him the right to revise the valuation placed on suits under cl 4 by the plaintiff But assuming this to be so it would, generally not be advisable that the Judge should enhance the valuation on the reception of the plaint The fee payable under s 7 cl 4 of Act VII of 1870 *is* according to the amount at which the relief sought is valued in the plaint and not the value of the subject matter of the plaint MANOHAR GANESH *v* BAWA RAM CHARAN DAS I. L. R. 2 Bom., 219

5 ———— *Stamp—Declaratory decree—Substantial relief*—Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance and asked to have her removed from the mutwalliship and themselves appointed in her place whereby they would have been entitled to a share in the profits of the waqf—*Held* that the fixed stamp fee of R10 required by cl 3 art 17 sch II of Act VII of 1870 was not sufficient; but the plaint should bear a stamp of a value proportionate to the subject matter of the suit. DELROOS BANOO BEGUM *v* ASHGUR ALLY KHAN [15 B L R, 167 23 W R 453

6 ———— *Valuation of suit—Mahomedan law—Waqf—Endowment—Removal of trustee—Court Fees Act Act VII of 1870 s 7 cl (3) and sub cl (f)*—In a suit for the removal of the defendant from the management of certain trust funds on the ground of misconduct the plaintiff stamped his plaint with a Court fee stamp of R10 and valued the suit at R7 000 for the purpose of jurisdiction' *Held* that the R7 000 must be taken under the circumstances to be the plaintiff's interest in the subject matter of the suit and that the Court fee must be estimated upon that sum. *Delroos Banoo Begum v Asgur Ali Khan 15 B L R 167* followed. OMRAO MIRZA *v* JONES [I. L R., 10 Calc., 599

7 ———— *Stamp—Suit to set aside a deed or will—Declaratory decree—Consequential relief*—In a suit for confirmation of possession by declaration of proprietary right and also to set aside a forged and invalid will —*Held* that the plaintiff sought consequential relief over and above the declaratory decree prayed for and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject matter of the suit JOY NARAIN GIREE *v* GREESH CHUNDER MYTEE [15 B L R. 172 22 W R, 438

See THAKOOR DEEN TEWAREE *v* ALI HOSSEIN KHAN 13 B L R 427 21 W R. 34 L. R. 1 I. A., 193

8 ———— *Declaratory suit*—Where a suit was brought against the holder of an impartible pala yapat and others to whom portions of the estate had been alienated by the son of the palaiyakar entitled to succeed to the estate on his father's demise for a decree declaring that the alienations made by his father did not affect his rights —*Held* that the Court fee leviable on the plaint was R10 under art. 17 (3) of sch II of the Court Fees Act 1870 and not an *ad valorem* fee calculated upon the amount for which the alienations had been made SANKARA NARAINA *v* VIJAYA RAGHUVADHA MATTAYAN KANNIKONDAR I. L. R., 7 Mad. 134

9 ———— *Suit for declaratory decree—Consequential relief*—A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will and in which he claims damages to the extent of R3,000 in default of his obtaining the accounts should be filed on the stamp required for a suit for the recovery of R3 000 and not on a stamp of R10 which under cl 3 s. 17 sch II of the Court Fees Act 1870, is the stamp laid down for a declaratory suit in which no consequential

COURT FEES ACT (VII OF 1870)—*concluded*

relief is sought and which cannot be valued. RAM DOOLAL SINGH v. GOPAL KRISTO SINGH [16 W. R. 156

10. ——— *Suit for declaratory decree—Consequential relief*—Where plaintiff sued to establish her right as the heir of her deceased son and to set aside a certificate under Act XXVII of 1860 granted jointly to her as well as to the defendant with a view to being permitted to draw interest on Government promissory notes belonging to the estate of the deceased,—*Held* that, as consequential relief was to follow the declaratory decree sought, the stamp fee of R10 prescribed by art. 3, s. 17, sch. II, Court Fees Act, was not sufficient for the plaint. MOKHODA DASSEE v. NOBIN CHUNDER MITTER [16 W. R. 259

11. ——— *Suit for declaratory decree*.—The plaintiff recognized the validity of a mortgage for a term of twenty years of her deceased father's estate made in 1854 by her two brothers, nor did she dispute the sale in 1863 after the death of the brothers of the estate to the mortgagees by M, her mother, describing herself as sole owner as a transferee of M's rights. She claimed to be declared to have a right to redeem from the mortgage of 1854 in due course of time the share in the estate which devolved upon her by inheritance from her father and brothers, the sale deed of 1863 notwithstanding. The Court was of opinion that the suit was one for declaration of right only, and that the fee of R10, which was paid by her in respect of the memorandum of special appeal, was the fee properly payable. JHAMAN v. LALTA BAKSH 7 N. W. 343

——— sch. II, art. 17, cl. 6—*Stamp duty on appeals arising out of suits under s. 77 of the Registration Act (III of 1877)*.—The Court fees payable on all appeals to the High Court arising out of suits brought under s. 77 of the Registration Act of 1877 is a fee of ten rupees irrespective of the value of the suit. JANTOO v. RADHA CANTO DOSS [I. L. R. 8 Calc. 515

COURT FEES ACT AMENDMENT ACT (XI OF 1899)

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION [I. L. R. 26 Calc. 404, 407

COURTS (COLONIAL) JURISDICTION ACT, 1874 (37 & 38 Vic., c. 27)

See OFFENCE COMMITTED ON THE HIGH SEAS I. L. R., 21 Calc. 782

COUSINS

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSINS

COVENANT

See BUILDING LEASE [I. L. R., 6 Bom. 528

See CONTRACT—CONDITIONS PRECEDENT [3 Mad. 125

COVENANT—*concluded*

See REGISTRAR OF HIGH COURT [I. L. R., 16 Calc. 330

——— Breach of—

See CASES UNDER LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

See REGISTRATION ACT, 1877, s. 49 [I. L. R. 2 Bom. 273

See CASES UNDER VENDOR AND PURCHASER—BREACH OF COVENANT

——— in restraint of trade

See CASES UNDER CONTRACT ACT, S. 27

——— not to alienate

See CASES UNDER MORTGAGE—FORM OF MORTGAGE

COVENANT RUNNING WITH LAND

1. ——— Transfer of the land.—S by an instrument in writing duly registered agreed for valuable consideration for himself, his heirs and successors, to pay his wife A a certain sum monthly out of the income of certain land, and not to alienate such land without stipulating for the payment of such allowance out of its income. He subsequently gave L a usufructuary mortgage of the land subject to the payment of the allowance. L gave R a sub-mortgage of the land, agreeing orally with R to continue the payment of the allowance himself. *Held*, in a suit by A against L and R for the arrears of the allowance, that A was not affected by an agreement between L and R as to the payment of the allowance, and R being in possession of the land was bound to pay the allowance. ABADI BEGAM v. ASA RAM I. L. R. 2 All. 162

2. ——— Malikana—*Heritable charge—Suit for arrears of malikana allowance—Bonâ fide transferee without notice—Transfer of Property Act (IV of 1882), s. 3*.—S sold a share in immoveable property to M by a registered deed of sale which contained the following provisions:— "The said vendee is at liberty either to retain possession himself or to sell it to some one else, and he is to pay R25 of the Queen's coin to me annually (as malikana)," which he has agreed to pay. M mortgaged the property to B, who obtained possession, and after the mortgage the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued M and B to recover arrears of malikana. *Held*, without expressing any opinion as to whether registration of the deed of sale operated as notice to all the world, or whether notice of the terms of the deed was necessary to bind B, and assuming B to have had no such notice in fact, that if he had searched the register he would have ascertained these terms, and if he did not search the register he must have wilfully abstained from so doing, or was guilty of gross negligence in not so doing; that in either case he could not be treated as a *bonâ fide* mortgagee without notice, and that being in receipt of the profits of the property he was liable for the annual

COURT FEES ACT (VII OF 1870) *—continued*

Fees Act 1870 s 7, cl 4 and s 17—A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him and to permit him to inspect their books is simply a suit for a declaratory decree without consequential relief and falls within art 17 cl 3 of sch II of Act VII of 1870. A suit praying for such a declaration as the above and also for a positive ord r in the nature of a mandatory injunction for the production of the defendants' books and property in their hands or a suit praying for such declaration as the above and also for a positive decree for an account to be taken by the Court and for the production of the books and property would range under s 7 cl 4 art (c) of Act VII of 1870 as being a suit to obtain a declaratory decree or order where consequential relief is prayed and also within art (*d*) of the same section as being a suit to obtain an injunction and a suit of the third species described above would fall under art (*f*) of the same clause as being a suit for accounts *Quære*—Whether in the case of a suit for a declaration of the right of the plaintiff to an account and to inspection of the defendants books and for a mandatory injunction for the production of those books or of a suit for such declaration and for a positive decree for the taking of an account by the Court and the production of the defendants books the plaint would by virtue of s 17 of Act VII of 1870 require separate stamps under arts (*d*) and (*f*) of cl 4 s 7 or be sufficiently covered by the stamp under art (*c*) of the same clause and whether assuming the declaration and the account each to require a stamp the prayer for an injunction or order for the production of books is not merely ancillary to and not a distinct subject from the taking of an account *Quære*—Whether the provision in s 7 cl 4 of Act VII of 1870 that the amount of the fee payable in suits falling within that clause shall be computed according to the amount at which the relief sought is valued in the plaint is so inconsistent with that portion of s 31 of Act VIII of 1859 which permits the Court receiving the plaint to revise the valuation of the claim as to render that portion of s. 31 of Act VIII of 1859 inoperative in suits within s 7 cl 4 of Act VII of 1870 notwithstanding the concluding passage in that clause *Quære*—Whether the concluding passage in cl 4 s 7 of Act VII of 1870 is too express to admit of a limitation of the power of the Judge and leaves him the right to revise the valuation placed on suits under cl 4 by the plaintiff. But assuming this to be so it would generally not be advisable that the Judge should enhance the valuation on the reception of the plaint. The fee payable under s 7 cl 4 of Act VII of 1870 is according to the amount at which the relief sought is valued in the plaint and not the value of the subject matter of the plaint MANOHAR GANESH *v* BAWA RAM CHARAN DAS I. L. R. 2 Bom. 219

5 ——————— *Stamp—Declaratory decree—Substantial relief*—Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance and asked to have her removed from the mutwalliship and themselves appointed in her place whereby they would have been entitled to a share in the profits of the *wuqf*—*Held* that the fixed stamp fee of R10 required by cl 3 art 17 sch II of Act VII of 1870 was not sufficient but the plaint should bear a stamp of a value proportionate to the subject matter of the suit DELROOS BANOO BEGUM *v* ASHGUR ALLY KHAN [15 B L R. 167 23 W R. 453

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7 ——————— *Stamp—Suit to set aside a deed or will—Declaratory decree—Consequential relief*—In a suit for confirmation of possession by declaration of proprietary right and also to set aside a forged and invalid will—*Held* that the plaintiff sought consequential relief over and above the declaratory decree prayed for and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject matter of the suit JOY NARAIN GIREE *v* GREESH CHUNDER MYTEE [15 B L R. 173 23 W R 438

See THAKOOR DEEN TEWARRY *v* ALI HOSSEIN KHAN 13 B. L. R. 427 21 W R. 34 L. R. 1 I. A. 192

8 ——————— *Declaratory suit*—Where a suit was brought against the holder of an impartible *palaiyapat* and others to whom portions of the estate had been alienated by the son of the palaiyakar entitled to succeed to the estate on his father's demise for a decree declaring that the alienations made by his father did not affect his rights—*Held* that the Court fee leviable on the plaint was R10 under art. 17 (3) of sch II of the Court Fees Act 1870 and not an *ad valorem* fee calculated upon the amount for which the alienations had been made SANKARA NARAINA *v* VIJAYA RAGHUNADHA MATTAYAN PANNIKONDAR I. L. R. 7 Mad. 131

9 ——————— *Suit for declaratory decree—Consequential relief*—A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will and in which he claims damages to the extent of R35 000 in default of his obtaining the accounts should be filed on the stamp required for a suit for the recovery of R35 000 and not on a stamp of R10 which under cl 3 s 17 sch II of the Court Fees Act 1870, is the stamp laid down for a declaratory suit in which no consequential

CRIMINAL BREACH OF CONTRACT
—concluded

1. ——— Penal Code s 490—*Contract of service to convey and go to the vats*—An agreement for personal service in conveying indigo from the field to the vats is not a contract the breach of which is punishable by s 490 of the Penal Code. RE NOWA TEWAREE 6 W R., Cr 80

2 ——— *Offences against travellers*—*Quære*—Whether the words "during a voyage or journey" in s 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section however does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. SAGE v NIBUNJUN CHATTERJEE [9 W R. Cr., 12

CRIMINAL BREACH OF TRUST

See ABETMENT 4 C W N, 309

See BANKERS I L R 16 All. 88

See CHARGE—FORM OF CHARGE—CRIMINAL BREACH OF TRUST
[8 Bom Cr 115
I L R 17 All., 153
I L R 18 All. 116
I L R 24 Calc., 193

See COMPOUNDING OFFENCE
[I. L. R. 1 Mad. 191
6 C L R. 392

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
[I. L. R., 1 Mad. 55

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I L R 13 Bom 147
[I L R 19 All. 111

See PARTNERSHIP PROPERTY
[6 B L R. Ap 133
13 B L R. 310 note 15 W R Cr 51
13 B L R 307 21 W R Cr., 58
13 B L R. 308 note 21 W R. Cr 10

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
[I. L. R 19 Bom 749

1. ——— Act XIII of 1859—*Furnishing false accounts*—Where there is no provision in the Penal Code and any other law (such as the Breach of Trust Law Act XIII of 1859) provides punishment for an offence any person committing such offence may be tried under that law WATSON & Co v BYKANTNATH DASS 14 W R Cr 80

2 ——— Requisites for offence—To constitute the offence of criminal breach of trust there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. ISSUR CHUNDER GHOSE v PEARI MOHUN PALIT 16 W R Cr, 39

3 ——— Immoveable property—*Penal Code (Act XLV of 1860) ss 403 and 405*—The property referred to in s 403 of the Penal Code is, as in s. 403 moveable property and criminal breach of trust cannot be committed in respect of immoveable property *Reg* v *Girdhar Dharamdas 6 Bom H C., Cr 33* followed JUGDOWN SINHA v QUEEN EMPRESS I L R. 23 Calc 372

4 ——— Pledging of articles already in possession of pledgee by way of pledge.—A person who pledges what is pledged to him may be guilty of criminal breach of trust There are two elements—(1) the disposal in violation of any direction of law or contract express or implied prescribing the mode in which the trust ought to be discharged; (2) such disposing dishonestly ANONYMOUS 6 Mad Ap 28

5 ——— Pledgee of turban using it—*Dishonesty*—The pledgee of a turban cannot be convicted of criminal breach of trust for wearing it there being no dishonesty in the Act Meaning of the word dishonesty in the Penal Code ANONYMOUS 3 Mad Ap 6

6 ——— Misappropriation of pay of thanna police—*Penal Code ss 405 409*—A constable who dishonestly misappropriates to his own use the pay of his thanna police entrusted to him is guilty of criminal breach of trust QUEEN v SUBDAR MEEAH 8 W R Cr 44

7 ——— Refusal to give up land mortgaged—*Denial of mortgage*—*Penal Code s 305*—A refusal to give up land alleged to have been mortgaged the mortgage being denied cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under s 405 of the Penal Code REG v JAFFER NAIK 2 Bom 133 2nd Ed. 127

8 ——— Fraud by mortgagor in respect of mortgaged property—If a mortgagor in possession who is entrusted with the dominion over the mortgaged property by the mortgagee (the mortgage being in the English form) wilfully defaults and causes the property to be sold for arrears of Government revenue for the purpose of defrauding the mortgagee and purchases it benami he is liable to be punished for criminal misappropriation under s 403 of the Penal Code RAM MANICK SHAH v BRINDABUN CHUNDER POTDAR 5 W R 230

9 ——— Cheating—*Penal Code ss 405 417*—Where silver was entrusted to the prisoner for the purpose of making ornaments and he introduced copper into the ornaments—*Held* the offence committed was not cheating, but criminal breach of trust REG v BABAJI BIN BHAU 4 Bom. Cr 16

10 ——— Intention to cause wrongful gain or loss—*Penal Code ss 405 406*—*Cattle Trespass Act (I of 1871) s 19*—The accused was sub inspector of police at the thana of Dunyar A pony was brought to the pound at the police station

CRIMINAL BREACH OF TRUST —*continued*

and confined there under Act I of 1871 The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath After some time the pony had eventually been purchased by the accused from a vendor from Gopinath The Magistrate found on the evidence that there had been no sale under Act I of 1871 and convicted the accused of criminal breach of trust and sentenced him under s 406 of the Penal Code *Held* the conviction was illegal There must be an entrusting of the accused with the property and that he dishonestly misappropriated it; there must be an intention on the part of the accused to cause wrongful gain or wrongful loss QUEEN *v* RAJ KRISHNA BISWAS 8 B L R Ap, 1

S C IN MATTER OF RAM KISTO BISWAS [16 W R Cr, 52

11 ———— Failure to account—*Penal Code ss 406 407 408*—The prisoner a gomastah took from his employers between 15th April and 30th June sums amounting to R600 for the purchase of wood. During that period he supplied wood to the value of R234 but the prosecutor alleged that most of that was to be set off against balance to the debit of the prisoner for the year before and that the value of the firewood was as a fact only R34 The prisoner was charged with criminal breach of trust as a servant The defence was that he had purchased wood and made advances on that account but this defence was proved to be false The Magistrate convicted him but the Judge held it was merely a failure to account and acquitted the prisoner *Held* the prisoner was guilty of criminal breach of trust WATSON *v* GOLAB KHAN

[1 B. L. R., S N, 21 10 W R Cr 28

12 ———— Penal Code s 405—Where a complaint only amounted to a statement that the accused had in consequence of certain arrangements made with the complainant's father received certain moneys and had refused to render accounts but contained no allegation that he had in fact realized and dishonestly misappropriated any particular sum and obviously was made for the purpose of forcing him to render accounts—*Held* that the Magistrate was right in dismissing it since the facts alleged did not constitute criminal breach of trust QUEEN EMPRESS *v* MURPHY I L R, 9 All., 666

13 ———— Partner—*Master and servant*—The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor *Held* by JACKSON J that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner but a servant that such finding could not be interfered with by the High Court as a Court of revision unless there was a [illegible] in law; that the finding was correct in law that the defence of the prisoner could not be taken to [illegible] to say that he was a partner but merely that he claimed a small share in the profits and that such claim did not make him a partner an agent's remuneration being a share in the profits not constituting the agent a partner *Held* by KEMP and MITTER JJ (releasing the prisoner) that though the allowance of a portion of the profits or goods does not destroy the relation of master and servant the accused in this case distinctly pleaded he was a partner and not only that he was entitled to a share in the profits that the lower Courts did not specifically decide that the accused was a servant and that the prosecutor's remedy was a civil suit for an account IN THE MATTER OF LALL CHAND ROY [9 W R, Cr, 37

14 ———— Public servant—*Penal Code s 409*—A village shroff whose duty it was to assist in collecting the public revenue received grain from raiyats and gave receipts as if for money received by virtue of a private arrangement. *Held* that he could not be convicted of criminal breach of trust by a public servant under s 409 of the Penal Code as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue ANONYMOUS 4 Mad., Ap, 32

15 ———— *Penal Code ss 408 409—Sentence Mitigation of*—Where a Court inspector improperly delegated to a constable the custody etc. of Government moneys (taking from him private security to save himself from loss in case of defalcation) and the constable dishonestly converted the money to his own use although he afterwards restored it the case was held to fall under s 408 and not s 409 of the Penal Code, and the sentence reduced from ten years' transportation and a fine of R500 to one year's rigorous imprisonment without fine QUEEN *v* BANEE MADHUB GHOSE [8 W R, Cr., 1

16 ———— *Penal Code s 409*—To constitute an offence under s. 409 it is not necessary that the property should be that of Government but that it should have been entrusted to a public servant in that capacity IN THE MATTER OF RAM SOONDER PODDAR 2 C L R., 515

17 ———— *Penal Code s 409—Naib Nazir*—The Naib Nazir is a public servant within the meaning of s 409 of the Penal Code and not the mere private servant of the Nazir QUEEN *v* MAHMOOD HOSSEIN 2 N W., 298

18 ———— *Penal Code s 409—Absence of dishonest intention*—Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple allowances and did not at once pay over the same to the persons entitled to receive them as he was bound to do, but it appeared that such persons were willing to trust him and had actually passed receipts which the accused forwarded to the revenue authorities—*Held* that the accused fulfilled the trust reposed in him by Government and that his mere retention of the money

CRIMINAL BREACH OF TRUST —*continued*

for a time in the absence of any evidence of dishonesty did not amount to criminal breach of trust within the meaning of s 409 of the Penal Code (XLV of 1860) QUEEN EMPRESS *v* GANPAT TAPIDAS [I. L. R. 10 Bom. 256

19 ———— Master and servant—*Servant entrusted with moneys for payment to tradesman of account settled with master for a specific sum—Gratuity of tradesman to servant—Right of master to benefit of gratuity—Act XLV of 1860 ss 405 409*—When a master entrusts his servant with money for the payment of an open account *i e* an account of which the items have never been checked or settled and the tradesman makes the servant a present and the transaction amounts to a taxation of the bill and a reduction of the price by the servant the latter obtains the reduction for his master's benefit the money in his hands always remains the master's property and if he appropriates it he commits criminal breach of trust. But where the master himself has settled the account with the tradesman for a specific sum and sends the servant with money and the servant after making the payment accepts a present from the tradesman in that case the servant does not commit criminal breach of trust inasmuch as the money is given to him by a person whom he believes to have a right to give it though it may be that according to the strict equitable doctrines of the Court of Chancery he is bound to account to the master for the money *Hay's case In re Canadian Oil Works Corporation L R 10 Ch App 593* referred to QUEEN EMPRESS *v* IMDAD KHAN I L R 8 All 120

20 ———— *Penal Code s 408—Criminal breach of trust by a servant—Criminal misappropriation*—An accused person who was in the service of zamindars and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates immediately before the due date of a list received from them a certain sum of money with no specific instruction as to its application On receipt of that money he paid a portion only of it into the Collectorate on account of the revenue and having done so he then altered the challan given back to him showing the amount actually paid and made it appear that a much larger amount had been paid in than was the fact This challan he sent to his employer for the purpose of showing the application of the money He was charged (amongst other offences) with criminal breach of trust as a servant (s 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered challan The accused was convicted on all the charges It was contended that the charge under s 408 was not sustainable inasmuch as the money was not alleged to have been sent to the accused for the specific purpose of paying the Government revenue and that the accounts between him and his employers had not been adjusted and that it was not shown whether at the date of the alleged breach of trust the accused was indebted to his employer or the reverse *Held* that as the money was sent to the accused

CRIMINAL BREACH OF TRUST —*concluded*

immediately before the last day and the challan was sent to the employers showing in its altered state the amount really payable as revenue which nearly covered the whole amount remitted it was reasonable to infer that the accused was aware of the implied purpose for which the money was remitted and as he deposited a very much smaller amount than that remitted and tried to pass off the altered challan as genuine there was a dishonest misappropriation of the difference sufficient to constitute the offence under s 408 LOLIT MOHAN SARKAR *v* QUEEN EMPRESS [I L R 22 Calc 313

21 ———— *Penal Code s 409—Rice condemned and ordered to be destroyed—Property according to the Penal Code—Sale of the same by municipal inspector*—A certain consignment of rice lay unclaimed at the Kidderpore Docks and was advertised for sale by auction by the Port Commissioners Before it was put up to auction the rice was found to be in a rotten condition It was condemned and with the consent of the Port Commissioners seized by the officers of the Health Department of the Corporation of Calcutta and ordered to be destroyed *Held* that assuming that the rice was entrusted by the Superintendent of the Health Department to the accused (who were inspectors employed in that department) for the purpose of destruction and that the accused instead of destroying the rice sold the same to a third party and retained the proceeds of such sale they did not commit the offence of criminal breach of trust as public servants *Semble*—The accused committed no offence punishable under the Penal Code though they may have been guilty of infringing a departmental rule. EMPRESS *v* WILKINSON 2 C W N 216

CRIMINAL CASE

See ACT XIII OF 1859
[I L R. 27 Calc 131
4 C W N 201

See INSOLVENT ACT s 50
[I. L. R 19 Calc. 605

See LETTERS PATENT HIGH COURT CL. 15
[I L R. 17 Mad. 105

CRIMINAL COURT

———— Disposal of property by—

See CRIMINAL PROCEDURE CODES ss 517 523

See CASES UNDER STOLEN PROPERTY—DISPOSAL OF BY THE COURT

———— Proceedings in—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT PROCEEDINGS IV

See CASES UNDER RES JUDICATA—COMPETENT COURT—CRIMINAL COURTS

CRIMINAL MISAPPROPRIATION —*concluded*

13 ———— Trust arising from duty of public servant—*Penal Code s 409*—S 409 of the Penal Code does not limit the mode in which a trust arises whether by specific order or by reason of its being part of the proper duty of a public functionary. Where therefore it was proved that the head clerk of an office entrusted the management of stamps with the knowledge and sanction of his superiors to one of his assistants the latter was held to be guilty of criminal misappropriation by a public servant within the meaning of s 409 when he made away with the stamps QUEEN *v* RAM DHUN DEY 13 W R Cr 77

14 ———— Separate items of money—*Charge Form of*—The misappropriation of each separate item of money with which a person is entrusted is a separate offence and the facts connected with it should form the subject of a separate enquiry The duty of a committing officer in such a case is to select certain distinct items to frame his charges upon them and to adduce evidence specially upon those items CHETTER *v* QUEEN 15 W R Cr 5

15 ———— Refusal to pay for goods purchased—*Penal Code s 403*—The prisoner who took certain hides from the prosecutrix but refused to pay for them was held not on that account guilty of dishonest misappropriation under s 403 of the Penal Code QUEEN *v* BOYSTUM MOOCHEE [17 W R Cr 11

16 ———— Removal of property claimed by accused—*Penal Code s 403*—A person having made a hole in the wall of his own house broke open a box and removed the contents to which he believed himself entitled but as to which there was a dispute making the removal appear to have been the act of thieves from the outside and entrusting the property to another person —*Held* not guilty of criminal misappropriation THEWA RAM *v* EMPRESS 10 C L R 187

17 ———— Harvesting crops under attachment—*Penal Code (Act XLV of 1860) ss 206 403 424*—A judgment debtor whose standing crops were attached harvested them while the attachment was in force and was convicted of theft. *Held* that the accused was not guilty of theft but of the offence of dishonestly removing the property under Penal Code s 424 *Per* BENSON J —The offence was also criminal misappropriation within the meaning of Indian Penal Code s 403 QUEEN EMPRESS *v* OBAYYA [I L R 22 Mad 151

CRIMINAL PROCEDURE CODE 1882

See CRIMINAL PROCEDURE CODES.

CRIMINAL PROCEDURE CODE 1882 AMENDMENT ACT (III OF 1884) s 8 cl 6

See MAGISTRATE JUR... OF— POWERS OF MAGISTRA... [I L ... 0

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT ACT (III OF 1884), s 8 cl 6—*concluded*

———— s 12

See CRIMINAL PROCEDURE CODES s 5... [I L R 15 Calc 456

CRIMINAL PROCEDURE CODE 1882 AMENDMENT ACT (IV OF 1891) s 2.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I L R, 20 Calc 431

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)

———— s 1

See BOMBAY VILLAGE POLICE ACT [I L R 19 Bom 313

See CRIMINAL PROCEEDINGS [I L R 13 Mad., 353

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I L R., 10 Bom 181 I L R, 1 Mad. 55

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT [I L R 23 Calc 300

See MUNSIF JURISDICTION OF [I L R, 15 Mad. 131

See OFFENCE COMMITTED ON HIGH SEAS [I L R, 21 Calc 783

———— s 2

See HIGH COURT JURISDICTION OF—MADRAS—CRIMINAL. [I L R, 14 Mad. 121

———— s 3

See REFORMATORY SCHOOLS ACT s ... [I L R 2 Calc. 333 2 W N, 11

———— s 4

See CATTLE TRESPASS ACT [I L R 23 Calc. 346

See COMPLAINT—INSTITUTIO... OF COMPLAINT AND NECESSARY I... ...MENTABILITY [I L R 11 Mad., 443 I L R, 1... 0 All 39

See FALSE EVIDENCE—FA... BRICATING FALSE E... ...ENCE. I L R., 27 ... 144

See ... OF CRIMINAL COURT—... ...SH SUBJECTS ... L R 13 Bo... ., 561

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I. L. R. 17 Mad 260
[I. L. R. 20 Mad 470

See REFORMATORY SCHOOLS ACT s 8
[I. L. R., 14 Bom., 381

———— s 7

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER
[I. L. R. 10 Bom 258 263

———— s 11.

See SENTENCE—GENERAL CASES
[I. L. R. 20 Mad 444

———— s 12

See MAGISTRATE JURISDICTION OF—TRANSFER OF MAGISTRATES
[I. L. R. 19 All, 114

———— ss. 15 16

See BENCH OF MAGISTRATES
[I. L. R. 16 Mad 410
I. L. R. 20 Calc 870
I. L. R. 18 Mad 394
I. L. R., 23 Calc 194
I. L. R. 21 Mad. 246

———— s 17

See MAGISTRATE JURISDICTION OF—WITHDRAWAL OF CASES
[I. L. R. 14 Mad. 399

———— s 28

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT
[I. L. R. 23 Calc., 442

See SESSIONS JUDGE JURISDICTION OF
[I. L. R. 8 All 665

———— s 29 (1872 s 8 para 1)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865
[I. L. R. 2 Mad. 161

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—OPIUM ACT
[I. L. R. 19 All 465

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACTS
[I. L. R. 7 Mad. 347

———— s 30 (1872, s. 36)

See DEPUTY COMMISSIONER
[5 N W 219

———— s 32

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT
[I. L. R. 20 Calc 676

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— ss 32 33 (1872 s 309 1861-69 s 45) s 34 (1872 s 39) s 35 (1872 s 314 1861 69 s 46)

See CASES UNDER SENTENCE

———— s 35

See WHIPPING
[B L R Sup Vol 951 9 W R. Cr, 41
7 B L. R. 165 15 W R Cr 89

———— s 40 (1872 s 56)

See MAGISTRATE JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL I. L. R., 2 Calc 117
[I L R 15 Mad 132

———— s 45 (1872 s 90)

See INFORMATION OF COMMISSION OF OFFENCE

1 ———— *Omission to give information of offence—Village accountant—Village Munsif's peon—Disobedience by public servant of direction of law* —Where a village accountant and a village munsif s peon had been convicted under s 217 of the Penal Code of having disobeyed the direction of law contained in s 90 of the Criminal Procedure Code —*Held* that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section IN THE MATTER OF RAMANIK NAYAR
[I L. R 1 Mad 266

2 ———— *Duty to report sudden death—Owner of house distinguished from owner of land* —Under s 45 of the Code of Criminal Procedure every owner or occupier of land is bound to report the occurrence thereon of any sudden death The head of a Nayar family was convicted and fined under s 176 of the Penal Code for not reporting a sudden death in the family house *Held* following former decisions of the Court that the conviction was illegal because s 45 of the Code of Criminal Procedure does not apply to th owner of a house QUEEN EMPRESS *v* ACHUTHA I. L. R., 12 Mad. 92

3 ———— *Omission to give information of offence—Agent—Khazanchi—Dewan—Agent of owner of land* —*Per* MARKBY J —A khazanchi is not an agent wi hin the meaning of s. 90 of the Criminal Procedure Code A dewan may be an agent if his master is absent but the provisions of s 90 do not apply to a dewan who is acting only under the orders of his resident master *Per* PRINSEP J —*Quære*—Whether according to s. 90 an agent is only responsible for giving information of the occurrence of any sudden or unnatural death EMPRESS *v* ACHIRAJ LALL
[I. L. R 4 Calc., 603 3 C. L. R., 87

4 ———— *Omission to give information of offence* —The provisions of s 90 of the Criminal Procedure Code should not be put in force

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS [I. L. R., 19 All., 390

See POLICE INQUIRY 3 N W., 275

See WRONGFUL DETENTION [19 W R., Cr., 38

——— ss 168 170 (1872 s 123).

See ACCUSED PERSON RIGHT OF [I. L. R., 20 Mad., 189

See EVIDENCE ACT s 74 [I. L. R., 20 Mad., 189

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [10 Bom., 70

——— ss 169 173 para 2 (1872 s 126 1861-69 s 154)

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE DIARIES PAPERS ETC [8 W R., Cr 87
13 W R., Cr., 23

——— s 172

See ACCUSED PERSON RIGHT OF [I L. R., 19 All. 390
I. L R. 19 Mad 14

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS [I L R., 16 Calc 610 612 note
I L. R 20 Calc 642
I. L. R., 19 All. 390

——— s 173

See ACCUSED PERSON RIGHT OF [I. L. R. 20 Mad., 189

See EVIDENCE ACT s 74 [I. L. R , 20 Mad., 189

——— s 176 (1872 s 135)—*Enquiry into cause of death—Report by Magistrate—Judicial proceeding—Power of High Court under s 296 Criminal Procedure Code—Coroner's inquest*—Where the Magistrate of a division held an enquiry under s 135 of the Criminal Procedure Code into the cause of the death of a person found dead under suspicious circumstances and without making a [illegible] against any person drew up a report [illegible] the result of his enquiry and sent the [illegible] to the Magistrate of the district and subsequently [illegible] were taken against one of the witnesses which ultimately resulted in an acquittal—*Held* by the High Court that there [illegible] in the language of s 135 [illegible] the [illegible] holding such an enquiry either to make [illegible] come to a finding the report actually [illegible] be considered as part of a judicial pr[illegible] that therefore the High Court had no [illegible] [illegible] of the Criminal Pr[illegible] [illegible] Coroner's [illegible] enquiry into the cause of death and r[illegible]

Procedure Code. IN THE MATTER OF TROYLOKHONATH BISWAS I. L. R., 3 Calc., 743

——— s 177 (1872, s. 63).

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO [I. L. R., 24 Calc., 633
1 C W N., 577

——— s 178 (1872, s 63).

See CRIMINAL PROCEEDINGS [I. L. R., 3 All., 258

See TRANSFER OF CRIMINAL CASE—GENERAL CASES [I. L. R., 10 Calc., 643

——— s 179

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I. L. R., 19 All., 111

——— s 180 (1872 s. 66 1861-69 ss. 31, 31A)

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY [I. L. R., 9 All., 523

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING [I. L. R., 18 All., 350

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY 4 Bom Cr., 33

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT [I. L. R. 6 Calc., 307

——— s 182 (1872 s 67)

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R. 16 Calc., 667
I L. R 25 Calc., 858
2 C W N

See O[illegible] OF CRIMINAL C[illegible] ED DURING J[illegible] [13 B. L. R., 25 W R.

See O[illegible] CRIMINAL [illegible] ONLY P[illegible] R., 1

See [illegible]

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

1. ———— *Local area meaning of —Criminal Procedure Code 1882 s 531*—The words "local area" used in s. 18 only apply to a "local area" over which the Criminal Procedure Code applies, and not to a local area in a foreign country or in other portions of the British Empire to which the Code has no application and similarly s. 531 only refers to districts, divisions sub divisions and local areas governed by the Code of Criminal Procedure IN THE MATTER OF BICHITRANUND DASS v PHUGGUT PERAL. IN THE MATTER OF BICHITRANUND DASS v DUKHIA JANA

[I. L. R 16 Calc. 667

2. ———— *Local area meaning of* —The expression "local area" includes and was intended to include a district LUNARDEO NARAIN SINGH v RAM SARUP ROY

[I. L. R. 25 Calc. 858
2 C W N 577

3 ———— *Offence punishable by law —Jurisdiction of Magistrate—Criminal Procedure Code s 145*—S 182 relates only to cases of offences which are punishable by law A case under s 145 of the Code is not a case relating to an offence HURBULLUBH NARAIN SINGH v BAJRANG DASS

[3 C W N 148

———— s 185 (1872 s 69)

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I. L. R 19 All. 111

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER

[22 W R Cr 6

———— s 186 (1872 s 167)

See WARRANT OF ARREST—CRIMINAL CASES I. L. R. 1 Bom. 340

———— s 188

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION

[I L R 13 Mad 423

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS

[I L R 16 Bom. 178

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT

[I L R 19 Bom 105
I L R 24 Bom., 287

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I. L. R. 13 Bom., 147

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING

[I L. R 10 All. 109

———— s 190

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

[I L R 21 All 109
I. L R 22 Mad. 148
I L R 26 Calc 786
3 C W N 65 491
4 C W N 367, 560

———— s 191.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

[I. L R. 13 Calc. 334
I L R. 14 Calc 707
I L R. 18 All 465
I L R 21 All. 109
I L R 22 Mad. 148
I. L. R 26 Calc 786 3 C W N 65 491

See FALSE CHARGE

[I. L R 14 Calc 707
I. L R. 19 Bom 51

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES

[I. L R 13 All 345
I L R. 22 Mad. 148
I. L R., 26 Calc 788 3 C W N 491
I L R. 21 All. 109
I L R. 22 Mad., 148

———— ss 191, 198 (1872 s 142 1861 69 s 68)

See COMPLAINANT

[I. L R 10 Bom 340
I. L. R. 26 Calc 336
I L R. 14 Mad. 379

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES 8 W R., Cr 9

[11 W R. Cr 1
19 W R Cr 4
1 C L I 523
5 B L R 274 13 W R Cr., 27
4 B L R Ap 1 13 W R., Cr 1
I. L R 14 Mad 379
I. L. R., 18 All., 465
I. L. R. 26 Calc. 336

See JUDICIAL OFFICERS LIABILITY OF

[3 Bom A. C., 36

See SANCTION FOR PROSECUTION—NON COMPLIANCE WITH SANCTION

[I L. R 4 Calc., 712

See WARRANT OF ARREST—CRIMINAL CASES 16 W R., Cr., 50

[8 Bom., Cr., 113
4 B L. R Ap 1

CRIMINAL PROCEDURE CODES (ACT V OF 1898, ACT X OF 1882, ACT X OF 1872, ACTS XXV OF 1861 AND VIII OF 1869)—continued.

——— s. 192 (1872, s. 44; 1861-69 s. 273).

See CRIMINAL PROCEEDINGS.
[I. L. R., 14 All., 348

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[2 N. W., 21, 401
6 Mad., Ap., 41
7 Mad., Ap., 2
1 N. W., Ed. 1873, 303
4 Mad., Ap., 40
3 N. W., 128
5 Bom., Cr., 69
4 C. W. N., 821
I. L. R., 27 Calc., 798

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.
[I. L. R., 4 All., 366

See MAGISTRATE, JURISDICTION OF—SPECIAL ACT—CATTLE TRESPASS ACT.
[I. L. R., 23 Calc., 300, 442

See POWER OR ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.
[I. L. R., 22 Calc., 888

See TRANSFER OF CRIMINAL CASE—GENERAL CASES. I. L. R., 19 All., 249

——— s. 193 (1872, s. 231; 1861-69 s. 359).

See SESSIONS JUDGE, JURISDICTION OF.
[W. R., 1864, Cr., 3
13 W. R., Cr., 17
19 W. R., Cr., 43
I. L. R., 3 Mad., 351
I. L. R., 4 Calc., 570
I. L. R., 9 Bom., 352
I. L. R., 15 Mad., 352
I. L. R., 22 Calc., 50

——— s. 195 (1872, ss. 467, 468, 469, 470; 1861-69 ss. 168, 169, 170; Presidency Magistrates Act, 1877, s. 41).

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATES ACT.
[I. L. R., 2 Calc., 468

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES. 6 N. W., 124
[I. L. R., 15 All., 61
I. L. R., 23 Bom., 50

See CRIMINAL PROCEEDINGS.
[13 C. L. R., 117

See FALSE EVIDENCE—GENERALLY.
[W. R., 1864, Cr., 15
I. L. R., 23 Mad., 223

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R., 17 Mad., 105

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 10 All., 550

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 15 Mad., 131

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.
[I. L. R., 16 Mad., 461

See MALICIOUS PROSECUTION.
[I. L. R., 9 All., 50

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.
[I. L. R., 16 Calc., 780
I. L. R., 20 Calc., 349
I. L. R., 18 All., 80
I. L. R., 21 Mad., 124

See CASES UNDER SANCTION FOR PROSECUTION.

See SESSIONS JUDGE, JURISDICTION OF.
[I. L. R., 16 Calc., 768
I. L. R., 23 Bom., 50
I. L. R., 23 Mad., 205

——— s. 197 (1872, s. 466; 1861-69 s. 167; Presidency Magistrates Act, 1877, s. 39).

See FALSE CHARGE.
[I. L. R., 19 Bom., 51

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.
[I. L. R., 9 Bom., 288

See REFERENCE TO HIGH COURT—CRIMINAL CASES.
[I. L. R., 15 Mad., 38

See CASES UNDER SANCTION FOR PROSECUTION.

——— (1872, s. 466)—*Acts done by public servant—Sanction to prosecution—Mahalkari.*—S. 466 of the Code of Criminal Procedure extends to all acts ostensibly done by a public servant, *i.e.*, to acts which would have no special signification except as acts done by a public servant; therefore, a mahalkari charged with fabricating the proceedings of a case decided before himself could not be tried on that charge except with the sanction specified in that section. Para. 1 of s. 466, which mentions a sanction by Government or its deputy, is intended to apply at least chiefly to the cases of persons specially responsible to Government, such as accountants who have failed in their duty; and para. 2, which speaks of sanction by Government alone, to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject, on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind. A mahalkari falls within the class of public servants contemplated in para. 1

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

of s 466 a sanction for his prosecution by the District Magistrate is therefore sufficient EMPRESS *v* LUKSHMAN SAKHARAM
[I. L. R. 2 Bom. 481

——— s 198

See COMPLAINT INSTITUTION OF COMPLAINT ETC I L R. 10 All. 39
[I. L. R., 14 Mad. 379
I L R. 26 Calc. 336

——— s 199 (1872, s 478).

See ADULTERY 24 W R. Cr 18
[I. L. R. 5 All. 233

——— s. 200 (1872 ss 44 144 1861 69 s. 273)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.
[2 B. L. R. S N 6 10 W R. Cr 49
7 Mad Ap 31
I. L. R. 14 Calc 141

See COMPLAINT INSTITUTION OF COMPLAINT ETC. I L R., 10 All 39
[I. L R. 18 All 221
3 C W N 17

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS
[3 B. L R. A Cr 67
8 B L. R 19
9 B L R F B 146

See CRIMINAL PROCEEDINGS
[7 Mad. Ap 25

——— s 202 (1872 s 148 1861 69 s. 180)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.
[I. L. R. 14 Calc 141

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[21 W R. Cr 44
I. L R 13 Calc 334
1 C W N 17

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS
[I. L. R., 9 Mad. 282
I. L. R. 12 Bom 161
I L. R. 20 Mad 387
4 C W N 305

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I. L R 24 Calc 167
4 C W N., 604

See PLEADER—APPOINTMENT AND APPEARANCE 8 Bom A C 202

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See POLICE INQUIRY
[2 B. L R. S. N 6 10 W R. Cr., 49
I. L R 12 Bom. 161

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES
[I. L. R. 24 Calc 167

——— s 203

See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[I. L. R 13 Calc 334
I. L R 13 Bom. 600
3 C W N 17

See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT

See DEFAMATION
[I L. R., 12 Bom 167

——— ss 203 204 (1872 s 147)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[24 W R. Cr 75

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL 4 C L. R 534
[2 B L R S N 6 10 W R Cr 49
10 B. L. R. Ap 28

See COMPLAINT—REVIVAL OF COMPLAINT
[I L. R. 5 Bom., 405
7 Mad. Ap 18

——— s 204 (1872 s 148)

See POLICE ACT 1861 s 29
[25 W R. Cr., 20

——— ss 204 205

See PARDANASHIN WOMEN
[I. L. R. 21 Calc 688

——— s 206 (1872 s 143)

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R 4 Bom 240

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R. 6 All. 477

——— s 208 (1872 ss 190 357 332 1861-69 ss. 193 207)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.
[16 W R. Cr., 48

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R. 20 All. 264

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 192 (1872 s 44, 1861-69 s 273)

See CRIMINAL PROCEEDINGS
[I. L R 14 All 346

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[2 N W 21, 401
6 Mad Ap 41
7 Mad. Ap 2
1 N W Ed 1873 306
4 Mad Ap 40
3 N W 126
5 Bom Cr 69
4 C W N 821
I L R. 27 Calc 793

See MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES
[I L. R 4 All 366

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT
[I L R, 23 Calc., 300, 442

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
[I L R 22 Calc., 898

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I. L. R. 19 All 249

——— s 193 (1872 s 231 1861 69 s 359)

See SESSIONS JUDGE JURISDICTION OF
[W R 1864 Cr 3
13 W R. Cr 17
19 W R. Cr, 43
I. L R 3 Mad 351
I L. R. 4 Calc 570
I. L. R 9 Bom 352
I. L. R. 15 Mad. 352
I. L. R., 22 Calc. 60

——— s 195 (1872 ss 467 468 469 470 1861 69 ss 168 169 170 Presidency Magistrate s Act 1877 s 41)

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATES ACT
[I. L. R. 2 Calc 466

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES 6 N W 124
[I L R. 15 All 61
I. L R. 23 Bom. 50

See CRIMINAL PROCEEDINGS
[13 C L R, 117

See FALSE EVIDENCE—GENERALLY
[W R 1864 Cr., 15
I. L. R., 23 Mad. 223

See LETTERS PATENT HIGH COURT CL. 15
[I L R. 17 Mad., 105

See LIMITATION ACT 1877 ART 159
[I. L R., 10 All. 350

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L R., 15 Mad., 131

See MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES
[I L R., 16 Mad. 461

See MALICIOUS PROSECUTION
[I. L R. 9 All. 59

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 16 Calc 730
I. L. R 20 Calc. 349
I L. R 16 All. 80
I. L R, 21 Mad 124

See CASES UNDER SANCTION FOR PROSECUTION

See SESSIONS JUDGE JURISDICTION OF
[I L R 16 Calc. 766
I. L R., 23 Bom., 50
I. L R. 23 Mad., 205

——— s 197 (1872 s 466 1861-69, s 167 Presidency Magistrate s Act 1877, s 39)

See FALSE CHARGE.
[I. L R. 19 Bom., 51

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL.
[I. L. R. 9 Bom., 288

See REFERENCE TO HIGH COURT—CRIMINAL CASES
[I. L. R 15 Mad, 36

See CASES UNDER SANCTION FOR PROSECUTION

——— (1872 s 466)—*Acts done by public servant—Sanction to prosecution—Mahalkari*—S 466 of the Code of Criminal Procedure extends to all acts ostensibly done by a public servant *i e* to acts which would have no special signification except as acts done by a public servant therefore a mahalkari charged with fabricating the proceedings of a case decided before himself could not be tried on that charge except with the *sanction* specified in that section Para. 1 of s. 466 which mentions a sanction by Government or its deputy is intended to apply at least chiefly to the cases of persons specially responsible to Government such as accountants who have failed in their duty; and para. 2 which speaks of sanction by Government alone to persons professing to exercise certain authority and with that pretext doing an act which is impeached by a subject *on the ground of its* being wholly unwarranted, or of an excess or impropriety of some kind. A mahalkari falls within the class of public servants contemplated in para. 1

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

of s. 466; a sanction for his prosecution by the District Magistrate is therefore sufficient. EMPRESS v LUKSHMAN SAKHARAM
[I. L. R. 2 Bom 481

——— s 198.

See COMPLAINT INSTITUTION OF COMPLAINT ETC I. L. R. 10 All. 39
[I. L. R., 14 Mad., 379
I. L. R. 26 Calc. 336

——— s. 199 (1872, s 478).

See ADULTERY 24 W R., Cr 18
[I. L. R., 5 All. 233

——— s. 200 (1872 ss 44 144 1861 69 s. 273)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL
[2 B. L. R. S N 6 10 W R. Cr., 49
7 Mad Ap 31
I. L. R. 14 Calc. 141

See COMPLAINT INSTITUTION OF COMPLAINT ETC. I. L. R., 10 All. 39
[I. L. R. 18 All 221
3 C W N 17

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS
[3 B. L. R. A. Cr 67
8 B. L. R. 19
9 B. L. R., F B 146

See CRIMINAL PROCEEDINGS
[7 Mad. Ap 25

——— s 202 (1872 s 146, 1861 69 s. 180)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL
[I. L. R., 14 Calc, 141

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[21 W R. Cr 44
I. L. R. 13 Calc 334
1 C W N 17

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS
[I. L. R. 9 Mad., 282
I. L. R. 12 Bom 161
I. L. R. 20 Mad. 387
4 C W N 305

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I. L. R. 24 Calc 167
4 C W N., 604

See PLEADER—APPOINTMENT AND APPEARANCE 8 Bom., A C 202

See POLICE INQUIRY
[2 B. L. R. S. N 6 10 W R. Cr 49
I. L. R. 12 Bom 161

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES
[I. L. R. 24 Calc., 167

——— s 203

See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[I. L. R. 13 Calc 334
I. L. R. 13 Bom 600
3 C W N, 17

See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT

See DEFAMATION
[I. L. R. 12 Bom 167

——— ss 203 204 (1872 s 147)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[24 W R. Cr 75

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL 4 C L. R. 534
[2 B L R S N 6 10 W R Cr 49
10 B L R. Ap 28

See COMPLAINT—REVIVAL OF COMPLAINT
[I L R 5 Bom. 405
7 Mad. Ap 16

——— s 204 (1872 s 148)

See POLICE ACT 1861 s 20
[25 W R. Cr., 20

——— ss 204 205

See PARDANASHIN WOMEN
[I. L. R., 21 Calc 588

——— s 206 (1872 s 143)

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R 4 Bom., 240

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R. 6 All. 477

——— s 208 (1872 ss 190 357 332 1861-69 ss 193 207)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL
[16 W R. Cr 48

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R. 20 All. 264

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION 19 W R. Cr 53

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [4 B L R, Ap, 1
23 W R Cr 9
I. L. R. 3 All, 392
I L R 4 Mad, 329

——— s 209 (1872 s 195 Presidency Magistrates Act 1877 s 87)

See DISCHARGE OF ACCUSED [I. L R. 5 All 161

See EXAMINATION OF ACCUSED PERSON [I. L. R., 23 Mad. 636

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT [I L R. 5 All 161
I. L. R. 11 Bom 372

See MALICIOUS PROSECUTION [I L R., 6 Bom 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY [I. L. R. 5 Calc 121 4 C L. R 305

——— s 210

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT [I. L R 11 Bom 372

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I. L R. 21 Calc 642

——— ss 210 211 (1872 ss 199 200, 1861 69 s 227)

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [4 B L R Ap 1
I. L. R. 19 All. 502

——— ss 210 212

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY [I L. R., 18 All., 390

——— ss 214 215 (1872 s. 197)

See CASES UNDER COMMITMENT

——— s 216 (1872 s 350 1861-69 s 229).

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—WITNESS 6 Mad. Ap 9
See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [4 B L R. Ap 1
I. L R 3 Calc 573
I L. R., 4 All. 53
I. L. R. 8 All. 668

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 221 (1872 s 439) ss 222 223 224 225 226 (1872 s 446) s 227 (1872 s 245), s 228 (1872 s 447) ss 229 230 (1872, s 450) ss 231 and 232.

See CASES UNDER CHARGE

——— s 221

See PRISONER I L R., 11 Calc., 106

——— ss 221 and 222

See CRIMINAL TRESPASS [I L R, 23 Calc, 391

——— s 222A

See OFFENCE RELATING TO DOCUMENTS [I. L R. 26 Calc 580
3 C W N, 412

——— s 225

See UNLAWFUL ASSEMBLY [I L R., 22 Calc., 276

——— s 233 (1872 s 452)

See CRIMINAL PROCEEDINGS [I. L R. 12 Mad 273
I. L. R. 14 Calc 128
I. L R, 20 Calc., 637
1 C W N 35
4 C W N 656

——— ss 233 234 (1872 s 453) and s 235 (1872 s 454)

See CASES UNDER JOINDER OF CHARGES

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES

——— s 236 (1872 s 455)

See AUTREFOIS ACQUIT [I. L R 22 Calc., 377

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING [I. L R 21 Calc 955

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS [13 B. L. R. 324 325 note

——— *Alternative charges —S 4.. of* Act X of 1872 applies to cases in which not the facts are doubtful but the application of the law to the facts is doubtful QUEEN v JAMUNA [7 N W 137

——— ss 236 237 (1872, s. 456) and 238 (1872 s 457).

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE [I. L. R., 8 All., 665
I L. R. 8 Bom., 200
I. L. R., 17 Bom., 369
I. L. R. 23 Calc., 365 3 C. W N., 053

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s. 238 (1872 s 457)

See CONVICTION 11 Bom., 240
[13 Bom. 1

See VERDICT OF JURY—GENERAL CASES
[I. L. R., 5 Calc., 871
I. L. R 20 Bom. 215

1. ——— *"Minor offence" Conviction of without formal charge—Penal Code (Act XLV of 1860) ss 365 376 and 376—Criminal Procedure Code (1882) s 307*—An offence under s. 365 of the Penal Code is within the meaning of s 238 of the Criminal Procedure Code a minor offence as compared with offences under ss 366 and 376 of the Penal Code and the High Court in dealing with a case under s. 307 of the Criminal Procedure Code can convict an accused of the former offence without a formal charge having been framed *Per* BANERJEE J—The words minor offence have not been defined by law; they are to be taken not in any technical sense but in their ordinary sense QUEEN EMPRESS v SITANATH MANDAL
[I. L. R., 22 Calc 1008

2. ——— *Penal Code (Act XLV of 1860) ss 366 498—Cognizance of offence by Court—Criminal Procedure Code (1882) s 199—Enticing away married woman—Conviction for minor offence where evidence is insufficient for grave offence*—The complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife The Deputy Magistrate convicted the accused of an offence under s 498 of the Penal Code and sentenced him to one month s rigorous imprisonment The Sessions Judge being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498 there being no complaint by the husband under s 199 of the Criminal Procedure Code and that the offence did not fall under s. 238 of the Criminal Procedure Code referred the case to the High Court. *Held* that such a case is within the intention of s 238 The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage unless the husband or other person authorized moves them to do so But when the husband is complainant and brings his complaint under s. 366 a conviction under s 498 may properly be had if the evidence be such as to justify a conviction for the minor offence and yet is sufficient for a conviction for the graver one. JATRA SHEKH v REAZAT SHEKH I. L. R. 20 Calc. 483

——— s 239

See BANKERS I. L. R 16 All. 88

See CRIMINAL PROCEEDINGS
[I. L. R. 9 All., 452
I. L. R., 20 Calc 537

See JOINDER OF CHARGES
[I L R 15 Bom. 491
1 C W N 35

——— s 243 (1872 s 208)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[23 W R. Cr 63

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL
[22 W R. Cr 40

——— s 244 (1872 ss 207 361 1861 69 ss 262 266)

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL
[I. L R. 5 Mad 160

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[4 Mad Ap, 29
4 B L R Ap 77
7 B L R. 568 note
13 W R Cr 63

——— s 245 (1872 s 221)

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT 22 W R Cr 12
[I L R 6 Calc 581
I L R., 10 Bom 199

——— s 247 (1872 ss 205, 212 1861 69 s 259)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[19 W R. Cr 52
23 W R. Cr 63
24 W R. Cr 64
25 W R Cr 83
4 C W N 346

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND OF DISMISSAL
[4 Mad. Ap 41
I L R 5 Mad. 160
13 C L R. 303
I L R. 7 Mad. 356
4 C W N 26

——— ss 247 253

See JOINDER OF CHARGES
[I. L R, 11 Calc 91

——— s 248 (1872 s 210)

See COMPLAINANT
[I. L. R. 2 Bom 653

See COMPLAINT—REVIVAL OF COMPLAINT
[I. L. R. 22 Bom 711

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT
[4 B L. R., F B 41
I. L. R., 5 Mad. 378
I. L. R. 13 Bom 600

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION 19 W R, Cr 53

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L R Ap, 1
23 W R Cr 9
I. L. R. 3 All. 392
I L R, 4 Mad 329

——— s 209 (1872 s 195 Presidency Magistrates Act 1877 s 87)

See DISCHARGE OF ACCUSED
[I. L R 5 All, 161

See EXAMINATION OF ACCUSED PERSON
[I L. R., 23 Mad. 638

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L R 5 All. 161
I. L. R., 11 Bom, 372

See MALICIOUS PROSECUTION
[I. L R. 6 Bom 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I. L R. 5 Calc 121 4 C L R 305

——— s 210

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I L R 11 Bom 372

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I. L R. 21 Calc 642

——— ss 210 211 (1872 ss 199 200, 1861 69 s 227)

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L R Ap 1
I. L R. 19 All 502

——— ss 210 212

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I L R. 18 All. 330

——— ss 214 215 (1872 s 197)

See CASES UNDER COMMITMENT

——— s. 216 (1872 s 350 1861-69 s 228)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—WITNESS 6 Mad. Ap 9

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L.R. Ap 1
I. L R 3 Calc 673
I L. R. 4 All. 53
I. L. R. 6 All. 668

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 221 (1872 s 439) ss 223 223 224 225 226 (1872 s 446) s 227 (1872 s 245) s 228 (1872 s 447) ss 229 230 (1872, s 450) ss 231 and 232.

See CASES UNDER CHARGE

——— s 221

See PRISONER I L. R., 11 Calc, 106

——— ss 221 and 222

See CRIMINAL TRESPASS
[I L R, 23 Calc 391

——— s 222A

See OFFENCE RELATING TO DOCUMENTS
[I. L R. 26 Calc 560
3 C W N, 412

——— s 225

See UNLAWFUL ASSEMBLY
[I L R., 23 Calc., 376

——— s 233 (1872 s 452)

See CRIMINAL PROCEEDINGS
[I. L R. 12 Mad, 273
I. L. R. 14 Calc 128
I. L R 20 Calc 537
1 C W N 35
4 C W N, 656

——— ss 233 234 (1872 s 453) and s 235 (1872 s 454)

See CASES UNDER JOINDER OF CHARGES

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES

——— s 236 (1872 s 455)

See AUTREFOIS ACQUIT
[I. L. R 22 Calc 377

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING
[I. L R 21 Calc 955

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS
[13 B. L. R. 324 325 note

——— *Alternative charges* —S 455 of Act X of 1872 applies to cases in which not the facts are doubtful but the application of the law to the facts is doubtful QUEEN *v* JAMURHA
[7 N W 137

——— ss 236 237 (1872 s 456) and 238 (1872 s 457)

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE
[I. L. R., 6 All., 665
I L. R. 8 Bom., 200
I. L. R. 17 Bom. 369
I. L. R. 23 Calc. 803 3 C. W N., 653

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s. 238 (1872 s. 457)

See CONVICTION 11 Bom. 240
[12 Bom. 1

See VERDICT OF JURY—GENERAL CASES
[I. L. R., 5 Calc. 871
I. L. R. 20 Bom. 215

1. ——— "*Minor offence* *Conviction of without formal charge—Penal Code (Act XLV of 1860) ss 365 366 and 376—Criminal Procedure Code (1882) s 307*—An offence under s. 365 of the Penal Code is within the meaning of s 238 of the Criminal Procedure Code a minor offence as compared with offences under ss 366 and 376 of the Penal Code and the High Court in dealing with a case under s 307 of the Criminal Procedure Code can convict an accused of the former offence without a formal charge having been framed *Per* BANERJEE J—The words minor offence have not been defined by law they are to be taken not in any technical sense but in their ordinary sense QUEEN EMPRESS v SITANATH MANDAL
[I. L. R., 22 Calc 1006

2. ——— *Penal Code (Act XLV of 1860) ss 366 498—Cognizance of offence by Court—Criminal Procedure Code (1882) s 199—Enticing away married woman—Conviction for minor offence where evidence is insufficient for grave offence*—The complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife The Deputy Magistrate convicted the accused of an offence under s 498 of the Penal Code and sentenced him to one month s rigorous imprisonment The Sessions Judge being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498 there being no complaint by the husband under s 199 of the Criminal Procedure Code and that the offence did not fall under s. 238 of the Criminal Procedure Code, referred the case to the High Court. *Held* that such a case is within the intention of s 238 The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage unless the husband or other person authorized moves them to do so But when the husband is complainant and brings his complaint under s. 366 a conviction under s 498 may properly be had if the evidence be such as to justify a conviction for the minor offence and yet insufficient for a conviction for the graver one JATRA SHEKH v REAZAT SHEKH I. L. R. 20 Calc. 483

——— s 239

See BANKERS I. L. R. 16 All. 88

See CRIMINAL PROCEEDINGS
[I L R 9 All. 452
I. L. R. 20 Calc 537

See JOINDER OF CHARGES
[I L R 15 Bom. 491
1 C W N 35

——— s 243 (1872 s 208)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[23 W R Cr 63

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL
[22 W R Cr 40

——— s 244 (1872 ss 207 361 1861 69 ss 262 268)

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL
[I. L. R. 5 Mad 160

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[4 Mad Ap 29
4 B L R. Ap., 77
7 B L R. 568 note
13 W R Cr 63

——— s 245 (1872 s 221)

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT 23 W R. Cr 12
[I L R 6 Calc 581
I L R 10 Bom 199

——— s 247 (1872 ss 205 212 1861 69 s 259)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[19 W R. Cr 52
23 W R. Cr 63
24 W R Cr 64
25 W R Cr 63
4 C W N 348

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND OF DISMISSAL
[4 Mad. Ap 41
I L R 5 Mad. 160
13 C L R. 303
I L R. 7 Mad 358
4 C W N 26

——— ss 247 253

See JOINDER OF CHARGES
[I. L. R. 11 Calc 91

——— s 248 (1872 s 210)

See COMPLAINANT
[I. L. R. 2 Bom 653

See COMPLAINT—REVIVAL OF COMPLAINT
[I L. R. 23 Bom 711

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT
[4 B L R., F B 41
I. L. R., 5 Mad. 378
I. L R. 13 Bom 600

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION 19 W R. Cr 53

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L R Ap, 1
23 W R Cr 9
I L R. 3 All. 392
I L R 4 Mad 329

——— s 209 (1872 s 195 Presidency Magistrates Act 1877 s 87)

See DISCHARGE OF ACCUSED
[I L R. 5 All 161

See EXAMINATION OF ACCUSED PERSON
[I L R 23 Mad. 638

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I L R. 5 All. 161
I. L. R. 11 Bom 372

See MALICIOUS PROSECUTION
[I. L R. 6 Bom 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I. L. R., 5 Calc 121 4 C L R, 305

——— s 210

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L R 11 Bom 372

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I. L. R. 21 Calc, 642

——— ss 210 211 (1872 ss 199 200 1861 69 s 227)

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L R Ap 1
I. L. R. 19 All 502

——— ss 210 212

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I L. R 18 All. 380

——— ss 214 215 (1872 s 197).

See CASES UNDER COMMITMENT

——— s 216 (1872 s 350 1861 60 s 228)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—WITNESS 6 Mad. Ap 9

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L.R. Ap 1
I. L R 3 Calc 673
I L. R., 4 All. 63
I. L. R 8 All. 668

——— s 221 (1872 s 439) ss 222 223 224 225 226 (1872 s 446) s 227 (1872 s 245) s 228 (1872 s 447) ss 229 230 (1872 s 450) ss 231 and 232.

See CASES UNDER CHARGE

——— s 221

See PRISONER I L R., 11 Calc., 106

——— ss 221 and 222

See CRIMINAL TRESPASS
[I L R 22 Calc 391

——— s 223A

See OFFENCE RELATING TO DOCUMENTS
[I. L R. 26 Calc 580
3 C W N., 412

——— s 225

See UNLAWFUL ASSEMBLY
[I L R., 22 Calc., 276

——— s 233 (1872 s 452)

See CRIMINAL PROCEEDINGS
[I. L R. 12 Mad 273
I. L. R. 14 Calc 128
I. L R 20 Calc 537
1 C W N 35
4 C W N., 656

——— ss 233 234 (1872 s 453) and s 235 (1872 s 454)

See CASES UNDER JOINDER OF CHARGES

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES

——— s 236 (1872 s 455)

See AUTREFOIS ACQUIT
[I. L. R., 22 Calc. 377

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING
[I. L R 21 Calc 955

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS
[13 B. L. R., 324 325 note

——— *Alternative charges*—*S* 455 *of* Act X of 1872 applies to cases in which *not the facts* are doubtful but the application *of the law* to the facts is doubtful. QUEEN *v* JAMURHA
[7 N W 137

——— ss 236 237 (1872, s. 456) and 238 (1872 s 457)

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE
[I. L. R., 8 All., 665
I L. R 8 Bom., 200
I. L. R., 17 Bom., 369
I. L. R. 23 Calc. 893 3 C. W N., 653

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s. 238 (1872 s 457)

See CONVICTION 11 Bom 240
[12 Bom. 1

See VERDICT OF JURY—GENERAL CASES
[I. L. R. 5 Calc., 871
I. L. R. 20 Bom. 315

1. ———— "*Minor offence Conviction of without formal charge—Penal Code (Act XLV of 1860) ss 365 366 and 376—Criminal Procedure Code (1882) s 307* —An offence under s. 365 of the Penal Code is within the meaning of s. 238 of the Criminal Procedure Code a minor offence as compared with offences under ss 366 and 376 of the Penal Code and the High Court in dealing with a case under s 307 of the Criminal Procedure Code can convict an accused of the former offence without a formal charge having been framed *Per* BANERJEE *J*—The words minor offence have not been defined by law; they are to be taken not in any technical sense but in their ordinary sense QUEEN EMPRESS *v* SITANATH MANDAL
[I. L R. 22 Calc 1008

2. ———— *Penal Code (Act XLV of 1860) ss 366 498—Cognizance of offence by Court—Criminal Procedure Code (1882) s 199—Enticing away married woman—Conviction for minor offence where evidence is insufficient for grave offence* —The complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife The Deputy Magistrate convicted the accused of an offence under s 498 of the Penal Code and sentenced him to one month s rigorous imprisonment The Sessions Judge being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498 there being no complaint by the husband under s 199 of the Criminal Procedure Code and that the offence did not fall under s 238 of the Criminal Procedure Code referred the case to the High Court. *Held* that such a case is within the intention of s 238 The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage unless the husband or other person authorized moves them to do so But when the husband is complainant and brings his complaint under s. 366 a conviction under s 498 may properly be had if the evidence be such as to justify a conviction for the minor offence and yet insufficient for a conviction for the graver one JATRA SHEKH *v* REAZAT SHEKH I. L. R., 20 Calc 483

———— s 239

See BANKERS I. L. R 16 All. 88

See CRIMINAL PROCEEDINGS
[I L R 9 All. 452
I. L. R. 20 Calc. 537

See JOINDER OF CHARGES
[I L R 15 Bom., 491
1 C W N 35

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s 243 (1872 s 208)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[23 W R. Cr 63

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL
[23 W R Cr 40

———— s 244 (1872 ss 207 361 1861 69 ss 262 266)

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL
[I L R 5 Mad 160

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[4 Mad Ap 29
4 B L R Ap 77
7 B L R. 568 note
13 W R Cr 63

———— s 245 (1872 s 221)

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT 22 W R Cr 12
[I L R 6 Calc 581
I L R. 10 Bom 199

———— s 247 (1872 ss 205 212 1861 69 s 259)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
[19 W R. Cr 52
23 W R Cr 63
24 W R. Cr 64
25 W R Cr 63
4 C W N 346

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND OF DISMISSAL
[4 Mad. Ap 41
I L R 5 Mad 160
13 C L R. 303
I L R. 7 Mad 356
4 C W N 26

————ss 247 253

See JOINDER OF CHARGES
[I. L R 11 Calc 91

———— s 248 (1872 s 210)

See COMPLAINANT
[I. L. R., 2 Bom 653

See COMPLAINT—REVIVAL OF COMPLAINT
[I. L R. 22 Bom 711

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT
[4 B L. R., F B 41
I. L. R. 5 Mad 378
I. L R. 13 Bom 600

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See COMPOUNDING OFFENCE
[I L R., 10 Calc., 551

——— s 250 (1872 s 209, 1861 69, s 270)

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.
[2 B L R S N, 15

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT
[4 B L R, F B 41

——— ss 253 259 (1872, s 215, 1861 69, s 250)

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL 8 Mad Ap 5
[I. L. R. 3 Calc. 389
I L R. 2 All, 447
I. L R. 4 Mad. 329
23 W R. Cr 9

See COMPLAINT—REVIVAL OF COMPLAINT I. L R 1 Bom. 64

See CASES UNDER DISCHARGE OF ACCUSED

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R. 21 All, 365

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I L. R. 10 Calc 87

——— s 254 (1872 s 216, 1861 69 s 250)

See CASES UNDER DISCHARGE OF ACCUSED

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R. 24 Calc 429
1 C W N., 414

——— s 255 (1872 s 217) s 256 (1872 s 218) and s 257 (1872 s 363)

See CASES UNDER WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES

See CASES UNDER WITNESS—CRIMINAL CASES—SUMMONING WITNESSES

——— s 258 (1872 s 220 1861 69 s. 255)

See COMPLAINT—DISMISSAL OF COMPLAINT EFFECT OF DISMISSAL.
[5 C L. R 35

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— (1872 s 220)—*Conviction or acquittal—Magistrate Powers of*—Although the explanation to s 220 provides that if a charge is drawn up the prisoner must be either convicted or acquitted it does not require that the conviction or acquittal should be by the Magistrate who drew the charge EMPRESS *v* KUDRUTOOLLAH
[I. L R. 3 Calc, 495 2 C L. R., 2

——— s 259 (1872 s 215 expl. 1)

See COMPOUNDING OFFENCE
[I. L. R., 10 Calc., 551

——— s 260 (1872 s 222)

See BENCH OF MAGISTRATES
[21 W R., Cr., 12

See CATTLE TRESPASS ACT s 20
[I L R., 23 Calc., 248

See CRIMINAL PROCEEDINGS
[I L R. 19 Mad., 269
I. L. R. 22 Mad. 459

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I. L. R. 15 Mad., 83

See MAGISTRATE JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL I. L. R., 2 Calc, 117

See CASES UNDER SUMMARY TRIALS

——— s 261

See BENCH OF MAGISTRATES
[I L. R. 13 Mad., 142

——— s 262 (1872 s 236)

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[I. L. R., 6 All., 61

See SENTENCE—SOLITARY CONFINEMENT
[I. L. R., 6 All. 83

1 ——— s 263 (1872 s 227) cl. (h)—*Recording reasons for conviction—Practice of High Court on revision*—Under cl (h) of s. 2?7 of the Criminal Procedure Code, although a Magistrate is not required to record any evidence he should in recording his reasons for the conviction state them so that the High Court on revision may judge whether there were sufficient materials before him to support the conviction Where they were not so stated, the High Court on motion set the conviction aside IN THE MATTER OF THE PETITION OF PANJAB SINGH. EMPRESS *v* PANJAB SINGH
[I. L. R. 6 Calc. 579

2. ——— *Summary trial Nature of—Magistrate's statement of the reason for a conviction*—Under s. 263 (h) of the Code of Criminal Procedure (Act X of 188) a Magistrate in recording his reasons for a conviction must state them so that the High Court on revision may judge whether there were sufficient materials before him to suppor

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869) *continued.*

the conviction. *Empress* v *Panjab Singh I L R.*, 6 *Calc.*, 579 followed. QUEEN EMPRESS v SHIDGAUDA I. L. R. 18 Bom., 97
LALIT MOHAN SAHA v CHUNDER MOHAN ROY [3 C W N., 281

3. ——— *Reasons for finding of Magistrate in case of conviction to be recorded—Criminal Procedure Code (Act X of 1872) s 227 cl (h)—A* Magistrate in cases where no appeal lies is bound to record a brief statement of his reasons for convicting an accused. IN THE MATTER OF THE PETITION OF BADOINATH SHAHA. EMPRESS v BADOINATH SHAHA I. L. R., 9 Calc., 195

4. ——— *Summary trial*—A summary trial under s. 227 Criminal Procedure Code being intended to apply only to short and simple cases, where little evidence is needed,—*Held* that the proceedings of a Magistrate thereunder covering more than 130 pages and occupying seven days were an abuse of the law *Held* also that a *bond fide* claim of title deprives a Magistrate of jurisdiction to deal with a criminal charge in a summary way ISSUR CHUNDER MUNDLE v ROHIM SHEIKH [25 W R. Cr., 65

5 ——— *Case in which appeal lies*—Where a Magistrate of the first class passes a sentence of imprisonment and fine his order is appealable He cannot therefore in such a case make up his record in the manner described by s. 227 of the Code of Criminal Procedure IN THE MATTER OF SHER MAHOMED 2 C. L. R. 511

6 ——— *Record of reasons for conviction*—Although generally it is not necessary in cases in which no appeal lies for a Magistrate to record the reasons for passing his judgment, yet under cl (h) of s 227 of the Code of Criminal Procedure in case of conviction he ought to enter in the register to be kept under that section a brief statement of the reasons for such conviction but an omission to do so may under some circumstances be remedied at a subsequent time IN THE MATTER OF DOWLAT SINGH 6 C L R 273

——— s 264 (1872 s 228)

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN
[I L. R. 1 All. 680

——— *Record of evidence in appealable cases.*—Under Act X of 1872 s 228 Magistrates are not bound to record the substance of every separate deposition but to state generally what is the substance of the witnesses evidence KRISTODHONE DUTT v CHAIRMAN OF MUNICIPAL COMMISSIONERS OF SUBURBS OF CALCUTTA
[25 W R Cr 6

——— s 267 (Act X of 1875, s. 32)

See JURY—JURY UNDER HIGH COURT s CRIMINAL PROCEDURE
[I L. R. 1 Bom. 232

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 268 (1872 s 232).

See ASSESSORS
[I. L. R. 15 Bom. 514
I. L. R. 13 All. 337

See CRIMINAL PROCEEDINGS
[I. L. R., 15 All., 138

See INSANITY 10 B L R., Ap 10

——— s. 269 (1872 s 233).

See JURY—JURY IN SESSIONS CASES
[24 W R. Cr 18
4 C L. R. 405
I L. R. 23 Mad. 632

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.
[I. L. R 9 Mad 42

——— s 270 (1872 s. 235, 1861 69 s 360)

See COMPLAINANT 5 Bom, Cr 85

See COUNSEL 11 Bom., 102

——— s 272 prov (1872 s 265)

See ASSESSORS 22 W R. Cr 34
[I. L. R., 15 Bom. 514

——— s 273

See PENAL CODE s 372
[I. L. R. 21 Calc., 97

——— (Act X of 1875 s. 14)
—*Ordinary original criminal jurisdiction*—Applications under s 14 of Act X of 1875 Criminal Procedure Code 1882 s 273 should be disposed of by the High Court in the exercise of its ordinary original criminal jurisdiction IN THE MATTER OF THE PETITION OF CHAROO CHUNDER MULLICK CHAROO CHUNDER MULLICK v EMPRESS
[I. L. R., 9 Calc 397

——— ss 274, 276 (Act X of 1875 s 33)

See JURY—JURY UNDER HIGH COURT s CRIMINAL PROCEDURE
[I L. R. 1 Bom., 482

——— s 278 (1872 s 244 1861 69 s 344)

See JURY—JURY IN SESSIONS CASES
[16 W R. Cr 66

——— ss 284 285

See ASSESSORS

[I. L. R 15 Bom, 514
I L R 13 All. 337
I. L. R., 21 All. 106

——— s 287 (1872 s 248 1861 69 s 366)

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED
[14 W R. Cr., 10
15 W R. Cr., 83
I L. R. 15 Mad., 352

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES
[3 B L R, A Cr 59

——— s 288 (1872, s 249)

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED
[I L R, 12 Mad 123
I L R, 27 Calc 295 4 C W N 129

See EVIDENCE CRIMINAL CASES—DEPOSITIONS I L R., 12 Mad. 123
[I L R 23 Calc, 361

See SESSIONS JUDGE JURISDICTION OF
[I L R 15 Mad 352

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I.L. R, 7 All, 862

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I L R., 21 Calc, 642

1 ——— *Deposition taken before Magistrate—Evidence before Sessions Judge—Discretion of Sessions Judge* —The purp se of s 249 of the Code of Criminal Procedure as amended by s 20 of Act XI of 1874 is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Sessi n only when the Sessions Judge determines in the exercise of his discretion that they are to be used in this way But the exercise of this discretion considering it as a matter of fact or law, is open to review by the Appellate Court REG v ARJUN MEGHA
[11 Bom 281

2 ——— *Former deposition of witness—Evidence Act s 80* —The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s 249 Criminal Procedure Code 1872 —that is it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *primâ facie evidence* under s. 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement ought to give the facts necessary to render the deposition admissible under s. 249 QUEEN v NUSSURUDDIN
[21 W R. Cr, 5

3 ——— *Depositions taken before Magistrate* —A Court of Session is not at liberty under Act X of 1872 s. 249 to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh QUEEN v MAJOHUR ROY 24 W R. Cr 11

4 ——— *Witnesses before committing Magistrate* —On the trial of a prisoner for the murder of his wife and child the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate and the Sessions Judge purporting to act under s 249 Act X of 1872 discarded the evidence taken before himself and grounded his judgment on the evidence given before the Magistrate and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner —*Held* that s 249 did not warrant such a course of proceeding That section merely authorizes the Court to take a particular statement made by a witness before the Magistrate as the true statement notwithstanding that it is denied or a statement inconsistent with it was made by the witness before the Judge only if the Judge should see that the original statement was worthy of belief and doesn't mean that the Court should discard wholly th t stimony of witnesses before it and have recourse to the testimony of the same persons given before another officer QUEEN v AMANULLA
[12 B L R., Ap 15 21 W R. Cr, 49

See QUEEN EMPRESS v JADUB DASS
[I. L. R. 27 Calc 295

5 ——— *Use in Sessions Court of evidence taken before the committing Magistrate* —Although under certain circumstances a Court of Session may use evidence given before the c mmitt ng Magistrate as if it had been given bef re itself it is no proper for a Court of Session to base a conviction solely upon such evidence there being no other evidence on the record to corroborate it *Queen* v *Amanulla* 12 *B L R Ap* 15 *Queen Empress* v *Bhara mappa I L R* 12 *Mad* 123 and *Queen Empress* v *Dhan Sahai I L R 7 All* 862 referred to QUEEN EMPRESS v JEOCHI I. L. R. 21 All 111

6 ——— *Duty of Sessions Judge as to evidence taken before the Magistrate* —Sessions Judges should act with great caution in exercising the discretion given to them by s 288 Code of Criminal Procedure in admitting evidence given by a witness before the committing Magistrate Where at a Sessions trial the Sessions Judge admitted, under s 288 Code of Criminal Procedure such evidence without any inquiry as to the allegation made by the witness that her statement before the Magistrate was made under pressure and threat by the police —*Held* that the District Judge should not have placed reliance on the evidence as given before the Magistrate and that he would have shown a better discretion if he had first made some inquiry by examining the police officer as to the restraint and pressure under which the statement was alleged to have been made A witness was not examined in the Sessions Court with regard to the particular statements made by him before the committing Magistrate and he did not repeat those statements before the Sessions Court *Held* that the Sessions Judge could not properly admit such statements in evidence under s 288 Criminal Procedure Code Where a witness was examined in the Sessions Court and had shown no disposition in any way to resile from any statement he had made before the committing Magistrate

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

the admission of that deposition by a Sessions Judge under s. 288 Code of Criminal Procedure was improper *Queen v Amanulla 12 B L R Ap 15 21 W R Cr 49* and *Queen Empress v Dan Sahai I L R 7 All 862* followed. Where a medical officer gave evidence before the committing Magistrate and it was not certified that the evidence was given in presence of the accused —*Held* that the *admission of such evidence by the Sessions Judge under* s. 288 Code of Criminal Procedure was also improper Where the police had kept a witness under surveillance for four days and the Sessions Judge considered that they were justified under the circumstances of the case —*Held* that there is no warrant in law for the police to keep the witness under such restraint and that statements so obtained can hardly be regarded as voluntary BAJRANGI LAL v EMPRESS

[4 C W N, 49

7 ——————— *Previous statement to committing Magistrate retracted in Sessions Court —Use of such statement by Sessions Court as substantive evidence.*—Where a witness who has made a statement before the committing Magistrate subsequently resiles from that statement in the Court of Session the statement made before the committing Magistrate can be used under s 288 of the Code of Criminal Procedure to contradict the witness but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril and could never have been the intention of the Legislature QUEEN EMPRESS v NIRMAL DAS I L R 22 All 445

8 ——————— *Admissibility of evidence —Statement of approver made before committing Magistrate and afterwards retracted in the Court of Session* —Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity The pardon was accepted, and the person to whom it was tendered made a statement as a witness before the Magistrate The case having been committed to the Court of Session the approver in that Court totally *repudiated his statement made* before the Magistrate *Held* that this repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of s 288 of the Code of Criminal Procedure QUEEN EMPRESS v SONEJU

[I. L. R, 21 All. 175

9 ——————— *Deposit ons in former case —Refusal to allow cross examination of witnesses —A B* and *C* having been charged with murder before a Magistrate two vakils presented their vakalutnamahs and applied to be allowed to conduct the defence of the accused The Magistrate refused permission and after recording the depositions of the witnesses committed the accused to take their trial before the Sessions Court In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses who on *being examined in the Sessions Court* denied all knowledge of the facts to which they had deposed before the Magistrate Two of them denied having made the statements recorded, while the third admitted the statements attributed to him but asserted they were false and made under pressure The Sessions Judge disbelieving the statements made in his Court thereupon under s. 219 of the Code of Criminal Procedure 1872 (as amended by s 20 of the *Amending Act*) used the previous depositions as evidence in the case and mainly upon these convicted the accused of murder and sentenced them to transportation for life Against this conviction and sentence the prisoners appealed to the High Court on the ground that the previous depositions ought not to have been used as evidence in the case as the Magistrate had refused to allow their pleaders to appear and cross-examine the witnesses who made the depositions. The High Court affirmed the convictions and sentence IN THE MATTER OF DHAM MUNDUL

[6 C L. R. 53

——————— s 289

See CASES UNDER RIGHT OF REPLY

——————— *Meaning of words no evidence in section* —The words no evidence in the second and third clauses of s 289 of the Code of Criminal Procedure (Act X of 1882) must not be *read* as meaning no satisfactory trustworthy or conclusive evidence If there is evidence the trial must go on to its close; when in trials by jury the jury and in other trials the Judge after considering the opinions of the assessors have to find on the facts It is only in the absence of any evidence as to the commission of the offence by the accused that the Court can record an acquittal without allowing the trial to go on or obtaining the opinion of the assessors or that the Court can direct the jury without going into the defence to return a verdict of not guilty *Queen Empress v Munna Lal I L R 10 All 414* approved. QUEEN EMPRESS v VAJIRAM

[I L R 16 Bom, 414

——————— ss 289 290 (1872, s 251)

See COUNSEL 11 Bom, 102

See CRIMINAL PROCEEDINGS

[I L R. 10 All., 414
I L R 23 Calc, 252

See SESSIONS JUDGE POWER OF

[I. L R. 10 All., 414

——————— *Procedure—Absence of witnesses for defence* —If an accused has not his witnesses present the Judge should under s 291 Criminal Procedure Code if he sees grounds for proceeding first call upon him for his defence and then postpone the case QUEEN v JUMIRUDDIN

[23 W R. Cr 58

——————— s 290

See CASES UNDER RIGHT OF REPLY

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

—— s 291 (1872, s 363, 1861 69 s 375)

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [23 W R., Cr 56 I. L R., 8 All, 668

—— s. 292 (1872 s 252)

See COUNSEL 11 Bom, 102

See RIGHT OF REPLY

—— s 297

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS [I. L R 23 Calc 252

—— s 297 (1872 s 255 para. 1 1861-69 s 379) and s 298

See CASES UNDER CHARGE TO JURY

—— ss 298 302

See VERDICT OF JURY—GENERAL CASES [I. L R., 19 Bom., 735

—— ss 300-303 306 307 (1872 s 263)

See RIGHT TO BEGIN [20 W R Cr 33

—— s 303

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—RIOTING [I. L R. 21 Calc 955

See VERDICT OF JURY—GENERAL CASES [I L R. 10 Calc 140

—— s 307

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I L R 9 All 420

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES

See REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION [I. L R. 15 Calc 269

See VERDICT OF JURY—GENERAL CASES [I L R. 10 Calc 140

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS

—— s. 309 (1872 s 255 para. 1 and s 261 1861-69 s 324)

See CASES UNDER ASSESSORS

—— s 310

See CRIMINAL PROCEEDINGS [13 C L. R., 110

—— *Trials before jury or assessors—Record—Previous convictions*—In trials before a jury or assessors the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence KRISTO BEHARY DASS *v* EMPRESS 12 C L. R., 555

See BEPIN BEHARY SHAW *v* EMPRESS [13 C L R., 110

—— s 333 (1872 s 414, 1861-69 s 354)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [8 W R., Cr., 83

—— s. 337 (1872, s. 347, 1861-69, s 209).

See APPROVERS I. L R. 11 All. 79 [I. L. R., 23 Bom, 493

See CHARGE TO JURY—MISDIRECTION [I. L R., 17 Calc. 642

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 22 Calc, 50

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED [I. L. R., 1 Bom., 610 I. L R. 2 All., 260 I. L. R. 10 Bom., 190 I. L. R., 23 Bom., 213

See CASES UNDER PARDON

—— s 338 (1872 s 348).

See APPROVERS I. L. R. 7 All, 160 [I. L. R., 14 All., 502

See PARDON 7 W R. Cr., 114 [I. L. R., 10 Calc. 936

—— s 339 (1872 s 349).

See CASES UNDER APPROVERS

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 22 Calc, 50

See PARDON I L. R 11 All., 79 [I. L. R., 24 Calc. 492 I. L. R. 20 All., 529

—— ss 340 341 (1872 s 188).

See ADVOCATE 7 Mad., Ap., 41

See ATTORNEY 7 Mad., Ap 41

See INSANITY I. L. R., 5 Bom., 252

See PLEADER—APPOINTMENT AND APPEARANCE 7 Mad., Ap., 37 41 [I. L. R., 23 Calc., 493 I. L. R., 16 Bom., 661 I. L. R. 21 All., 103

1. —— *Deaf and dumb person—Procedure*—G was convicted by the Joint Magistrate of house-breaking by night with intent to commit theft and the case referred under the provisions of s 186 of Act X of 18 2 to the High Court

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

for orders. It appeared that G whose understanding was of the most limited character was caught at night in a house with some anklets in his possession He was a lad of 15 or 16 years of age and had been deaf and dumb from his birth. He sometimes lived with his father and sometimes by begging and there was little doubt that hunger had driven him to break into the house. He had never been in arrest before The Court recommended that he should be made over to his father QUEEN *v* GANGA 7 N W., 131

2. ——————— *Deaf and dumb person—Ability to understand charge* —In the case of an accused person who was deaf and dumb the Deputy Magistrate who tried and convicted him considered that he did not understand the proceedings and accordingly referred the case to the Magistrate under s 186 of the Code of Criminal Procedure. The Magistrate considered that the accused did understand what he was charged with. *Held* that the finding of the Magistrate must prevail and s 186 did not apply DOOBEE HULWAI *v* ANONYMOUS

[19 W R Cr., 37

3. ——————— *Deaf and dumb person Trial of*—The High Court under the circumstances of this case which came before it under the last clause of s 186 of the Criminal Procedure Code 1872 set aside the conviction of the prisoner who was deaf and dumb and directed that he be admonished and discharged. DWARKANATH HALDAR *v* NOBEE CHAND KAMTE 23 W R. Cr., 35

4. ——————— *Deaf and dumb person Trial of*—The High Court may under s 186 Criminal Procedure Code in the trial of a person who is deaf and dumb and who cannot understand the proceedings against him or plead to the charge treat the proceedings as amounting to a sufficient trial and pass sentence upon the prisoner according to the facts which seem to be established in the course and as the result of those proceedings In this case the Court had no doubt that the prisoner was guilty but before passing final orders it gave the prisoner a further opportunity of being heard, and accordingly directed the Magistrate to give him notice QUEEN *v* BOWKA HARI 22 W R., Cr., 35

He was subsequently convicted by the Magistrate and this conviction was confirmed by the High Court QUEEN *v* BOWKA 22 W R Cr., 72

5 ——————— *Accused Meaning of—Criminal Procedure Code (Act V of 1898) s 123—Person liable to imprisonment in default of giving security* —The term accused in s 340 of the Code of Criminal Procedure applies to a person who is liable under s 123 of that Code to imprisonment in default of giving security NANHI LAL JHA *v* QUEEN EMPRESS I L R 27 Calc 656

6 ——————— *Deaf and dumb—Accused person unable to understand proceedings in Court Commitment of—Report by Magistrate of such proceedings to High Court—Power of High Court to pass final orders on such report—Discretion of High Court to order Sessions trial to be held—Code of Criminal Procedure (Act V of 1898) ss 341 and 471—Penal Code (XLV of 1860) s 302* —An accused person who had been for some time confined in a lunatic asylum was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder The accused was deaf and dumb and could not be made to understand the proceedings which had been taken On the proceedings being forwarded to the High Court under s. 341 of the Code of Criminal Procedure it was held that the law does not contemplate that the Sessions trial should necessarily take place That it is discretional with the High Court on a commitment made to order the Sessions trial to be held and the High Court must consider whether any benefit would be likely to result especially to the accused by such trial. The High Court in this case having come to the conclusion that no benefit would be likely to result to the accused by his being tried by the Court of Sessions found that the accused was guilty of the alleged murder but that he was by reason of unsoundness of mind not responsible for his action and directed him to be kept in the district jail to await the orders of Government. QUEEN EMPRESS *v* SOMIR BOWRA

[I L. R. 27 Calc. 368
4 C W N., 421

——————— s 342 (1872 ss 193 and 250, 1861 69 s 202)

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 5 All. 253

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED

[I. L. R., 10 Mad. 295

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED I. L. R 10 Mad 295
[I. L. R., 26 Calc 49
I. L. R., 27 Calc., 295

See EXAMINATION OF ACCUSED PERSON
[18 W R. Cr 21
1 C L. R., 436
I L R. 6 Calc. 96 6 C L R, 521

See FALSE EVIDENCE—GENERALLY
[I L. R. 19 All., 200

See PENAL CODE s 182
[I L. R 12 Mad., 451

See WITNESS—CRIMINAL CASES—PERSON COMPETENT OR NOT TO BE WITNESS
[I. L. R. 16 Bom. 661
I L. R 20 All., 426

1. ——————— *Examination of prisoner by Judge—Nature of examination* —It is improper on the part of a Judge when examining a prisoner under s 342 of the Criminal Procedure Code to cross examine him The only questions which are

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

permissible are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. HURRY CHURN CHUCKERBUTTY *v* EMPRESS I L R 10 Calc 140

2 ———— *Meaning of 'accused'* — By the word accused in s 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction QUEEN EMPRESS *v* MONA PUNA I. L. R. 16 Bom, 661

JHOJA SINGH *v* QUEEN EMPRESS [I. L. R 23 Calc, 493

QUEEN EMPRESS *v* MUTASADDI LAL [I. L R, 21 All, 107

3 ———— *Examination of accused person—Power of Magistrate to question the accused* —Where a Magistrate before evidence taken for the prosecution put questions to the accused of the nature of a *cross* examination such procedure was illegal as it could not be said that the questions were put for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence within the *meaning of s 342 of the* Code of Criminal Procedure QUEEN EMPRESS *v* HAWTHORNE I L R 13 All 345

4 ———— *Sessions trial—Accused persons Examination of* —Questions put by the Court to an accused person under the provisions of s. 342 of the Code of Criminal Procedure 1882 must be strictly limited to the purpose described in that section *i e* of enabling the accused to explain any circumstances appearing in the evidence against him The evidence referred to in that section is the evidence already given at the trial at the time when the Court puts questions to the accused. QUEEN EMPRESS *v* HARGOBIND SINGH I L R., 14 All. 242

5 ———— *Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial for same offence—Evidence Act (I of 1872) s 132* —The accused *D* a European British subject was charged together with others who were natives of India under ss 384 385 and 389 of the Penal Code (Act XLV of 1860) with conspiring to commit extortion. *D* claimed to be tried by a mixed jury under s. 450 of the Criminal Procedure Code (Act X of 1898) The other accused who were natives of India then claimed to be tried separately under s 452 The trial of *D* then proceeded and at the close of the case for the prosecution he proposed to call as his witnesses the persons who had been charged with him and who were awaiting their trial They objected to be called. *Held* that he was entitled to call them as witnesses and to examine them as such The words the accused in cl 4 of s 342 of the Criminal Procedure Code (Act X of 1898) mean the accused then under trial and under examination by the Court QUEEN EMPRESS *v* DURANT I. L. R., 23 Bom 213

6 ———— *Statement of accused under that section—Misdirection* —A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under s 342 of the Criminal Procedure Code It is a misdirection to ask the jury to consider a document, purporting to be proved by such a statement as evidence against the accused. BASANTA KUMAR GHATTAK *v* QUEEN EMPRESS I. L. R., 26 Calc 49

———— s 343 (1872 s 344)

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R 2 All. 260

———— s 344 para 1 (1872 s 219, 1861 69 s 253)

See CRIMINAL PROCEEDINGS [I L R 19 Mad., 375

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [4 B L R Ap 78
7 B L R 564
2 N W., 148 393

———— (1872 s 164, 1861-69 s 224)

See BAIL I. L. R 6 Mad, 63 69
[I L R 15 Calc., 455

See WARRANT OF ARREST—CRIMINAL CASES 5 Bom Cr., 31

———— (Presidency Magistrates Act 1877 s 124)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [I. L. R. 6 Calc 623

———— s 345 (1872 s 188)

See CASES UNDER COMPOUNDING OFFENCE

———— s 347 (1872 s 221 1861-69 s 256)

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE [1 N W Ed. 1873 307

———— *Stay of proceedings after charge is drawn up—Committal for trial—Magistrate Powers of* —S 221 of the Criminal Procedure Code authorizes a Magistrate after a charge has been drawn up to stop further proceedings and commit for trial EMPRESS *v* KUDERTOOLLA [I. L. R 3 Calc. 405 2 C L. R. 2

———— ss 347 349 (1872 s 40 paras 1 2 and 3 1861 69 s 277)

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R., 13 Calc 305
I. L. R. 9 Mad 377
I. L. R. 10 Bom 100

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See CASES UNDER MAGISTRATE JURISDICTION OF—INTERFERENCE BY OTHER MAGISTRATES

——— s 349

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L. R 14 Calc 355
I. L. R 4 Bom 240

See PRISONER 7 Bom, Cr 31
[7 W R Cr 38

——— s 350 (1872 s 328)

See BENCH OF MAGISTRATES
[I. L. R 20 Calc 870
I L R. 18 Mad 394
I L R 23 Calc 194
I L R 21 Mad. 246

See SESSIONS JUDGE JURISDICTION OF
[23 W R. Cr 59
I L R 3 Mad. 112

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[I. L. R, 25 Calc 863

1. ——— *Magistrate deciding case on evidence taken by his predecessor—Case under s 530 Criminal Procedure Code 1872*—In a case under s 530 Code of Criminal Procedure, the High Court set aside the proceedings of a Deputy Magistrate who on succeeding his predecessor who had gone into the case instead of recalling the witnesses *de novo* and examining them himself decided the question of possession on the evidence which had been taken by his predecessor GURU CHURN SEN *v* KALI NATH DAS BISWAS 23 W R Cr 62

2 ——— *Evidence heard by one Magistrate and case decided by another—Irregularity not prejudicing accused*—In two cases in one of which the evidence was taken entirely by one Deputy Magistrate whilst the decision was passed by another and in the other of which although the Deputy Magistrate who decided the case heard part of the evidence he decided it on the same grounds as the first case the High Court declined to interfere because the accused was not said to have been prejudiced by the decision in either case THAKUR DAS MANJHI *v* NAMDAR MUNDUL UJAL MUNDUL *v* NAMDAR MUNDUL
[24 W R. Cr 12

3 ——— *Transfer of case by subordinate Magistrate to District Magistrate—District Magistrate deciding on evidence taken by subordinate—Magistrate Jurisdiction of—Criminal Procedure Code ss 182 349*—S 350 of the Criminal Procedure Code was intended to provide for a case where an inquiry or trial has been commenced before one incumbent of a particular magisterial post and that officer ceases to have jurisdiction in that post and is succeeded by another officer A subordinate Magistrate having taken all the evidence for the prosecution and for the defence sent the case to the Magistrate of the District not on the grounds mentioned in s 349 of the Criminal Procedure Code and the District Magistrate observing that none of the accused asked to have the witnesses re heard gave judgment upon the evidence taken by the subordinate Magistrate The Sessions Judge refused to interfere in revision with the District Magistrate s proceedings on the ground that they were covered by s 350 of the Code *Held* that this view was erroneous that neither under s 192 nor under s 349 was there any transfer to the District Magistrate by his subordinate that s 350 was inapplicable and that the order passed by the District Magistrate must be quashed QUEEN EMPRESS *v* PADHE I L R 12 All. 66

See QUEEN EMPRESS *v* BASHIR KHAN
[I. L R. 14 All. 346

4 ——— *Evidence recorded partly by one Magistrate and partly by another—Proceedings for recognizance to keep the peace—Criminal Procedure Code 1872 491.*—Notwithstanding the introduction into the section of the words the accused person and conviction the provisions of s 328 of the Criminal Procedure Code apply to an inquiry instituted under s 491 with a view to enforcing the giving of security against a breach of the peace and in such a case where the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while such inquiry is pending the person called upon to show cause why he should not give security may insist before the latter upon the recall and re-examination of the witnesses whose evidence has been already taken by the former Magistrate BARODA KANT ROY *v* KARIMUDDI MOONSHEE 4 C L R. 452

1. ——— s 351 (1872 s 104 1861 69 s 206)—*Preliminary investigation*—A Magistrate is not justified by s 206 of the Code of Criminal Procedure in taking a person without any previous notice or summons from among the audience or attendant witnesses in open Court and placing him in the dock to be immediately tried upon a charge which has already been commenced to be entertained against other prisoners and on which evidence has already been given That section applies to investigations preliminary to commitment for a subsequent trial and not to cases where the trial is actually being proceeded with QUEEN *v* SUTHERLAND QUEEN *v* NARAIN SINGH 14 W R Cr 20

2 ——— *Offence disclosed by evidence of witness in course of case—Powers of Magistrate—Criminal Procedure Code s 191 cl (c)*—A Magistrate taking cognizance of an offence against a witness in a case which is pending before him upon the facts disclosed by the evidence of another witness does so under s 191 cl. (c) of the Criminal

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Procedure Code and not under s 351 KHUDIRAM MOOKERJEE v EMPRESS 1 C W N 105

———— s. 352 (1872 s. 187, 1861 69 s. 279).

See COURT 1 Agra, Cr, 17

———— s 355

See CRIMINAL PROCEEDINGS [I. L. R. 19 Mad., 269

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS W R., 1864 Cr., 18

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I. L. R 20 Calc, 361

———— s 356 (1872 s 334).

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES [20 W R. Cr., 14

———— ss 357 and 362, para. 1 (1872 s 335 1861 69, s 196)

See PRACTICE—CRIMINAL CASES—EVIDENCE MODE OF RECORDING [5 Mad. Ap, 9

———— ss 359 and 362, para. 2 and s. 361 (1872 ss 338-340 1861 69 s 198)

See INTERPRETER 16 W R Cr, 71

———— s 360 (1872 s 339, 1861 69 s. 199)

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS I. L. R. 13 Calc. 121

See WITNESS—CRIMINAL CASES—SWEARING OR AFFIRMATION OF WITNESSES 13 W R Cr 17

———— *Witnesses not understanding depositions when read over—Ground for setting aside conviction*—S 339 of Act X of 1872 being for the protection of witnesses only the fact that witnesses did not understand their depositions when read over although they may not have required them at the time to be interpreted affords no ground for an application by the accused to set aside a conviction. IN THE MATTER OF OKHOY KUMAR [7 C L. R., 393

———— s. 364 (1872, s. 346 1861-69 s. 205).

See CHARGE TO JURY—MISDIRECTION [I. L. R., 17 Calc., 642

See CASES UNDER CONFESSION—CONFESSIONS TO MAGISTRATE

See CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See EXAMINATION OF ACCUSED PERSON [8 W R Cr, 55
I B L. R. S N, 16
7 B L. R, Ap, 62

———— ss 366 367

See JUDGMENT—CRIMINAL CASES [I. L. R., 21 Calc., 121
I L R., 23 Calc 502

See SENTENCE—GENERAL CASES [I L. R., 14 All., 242

———— s 367 (1872, s 287, para 2, and s 464, para 4)

See CASES UNDER JUDGMENT—CRIMINAL CASES

———— ss 367 369 (1872 s 464, para. 1) —*Omission to order re-trial when annulling conviction—Subsequent addition to judgment*—When a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction and omits to order a re trial at the time under s 284 of the Criminal Procedure Code he is not precluded by virtue of s 464 from passing such an order subsequently IN THE MATTER OF THE PETITION OF RAMI REDDI [I. L. R. 3 Mad, 48

———— *Alteration of illegal sentence*—A Sessions Judge has no power under s. 464 Code of Criminal Procedure to alter or set aside a conviction and sentence once made and signed by him The sentence in this case was altered on reference to the High Court QUEEN v PORAN MAL 23 W R., Cr., 49

———— s 369

See REVIEW—CRIMINAL CASES [I. L. R. 7 All. 672
I L. R. 10 Bom, 176
I. L. R., 14 Calc. 42

———— s 370

See JUDGMENT—CRIMINAL CASES [I. L. R. 14 Calc., 174

See PRESIDENCY MAGISTRATE [I L. R., 13 Calc. 272
4 C W N., 201
I. L R. 27 Calc, 131 461

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN [I. L. R., 13 Calc. 273

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L. R., 27 Calc 131
[4 C W N., 201

———— s 374 (1872 s 287 para. 1)

See CONFESSION—CONFESSION TO MAGISTRATE I. L. R 22 Calc., 50

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— *Reference to High Court* —The High Court as a Court of reference can under s 287 Criminal Procedure Code 1872 only deal with cases in which a sentence of death has been passed. QUEEN v OMAN 5 N W 130

1. ———— s 376 (1872 s 288)—*Culpable homicide not amounting to murder—Reference to High Court for confirmation of sentence of death—New trial Order for—Murder Conviction on charge of*—Under s 288 of the Code of Criminal Procedure the High Court to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder cannot in the absence of an appeal alter the conviction to one of culpable homicide not amounting to murder if it be of opinion that the evidence does not establish the former but the latter offence It must order a new trial for that purpose Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder and the opinion of the assessors was taken on both charges but the Sessions Judge being of opinion that the evidence established the former charge recorded a conviction and sentence for murder only the High Court being of opinion on a reference under s 287 of Act X of 1872 that the offence proved was culpable homicide not amounting to murder did not order a new trial *ab initio* but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder LEGAL v BALAPA BIN DANDAPA [I. L. R , 1 Bom , 639

2. ———— (1872 s 288 and s 287) —*Conviction by verdict of jury—Facts of case*—Where a case is referred to the High Court under s 287 Act X of 1872 the Court is bound under s 288 of the same Act to go into the facts of the case although the conviction was by the verdict of a jury QUEEN v JAFFIR ALI 19 W R , Cr 57

3 ———— *Power of High Court to go into facts—Criminal Procedure Code s 375—Reference under s 374—Appeal in jury trial.*—Although the trial of an accused is by a jury ss 375 and 376, Criminal Procedure Code show that in a case submitted for confirmation of sentence of death under s. 374 the High Court must deal with the case upon the facts as well as with reference to any questions of law arising in it and that its powers are not limited in the way they are in an appeal from a conviction in a trial by jury But in an appeal against a conviction in a trial by a jury it is not open to the High Court to go into the facts and the appeal must only be limited as laid down in ss 418 and 423 cl (*d*) Criminal Procedure Code to points of law notwithstanding the appeal is heard along with a reference made under s 374 Criminal Procedure Code in the case of a co-accused *Queen v Jaffir Ali 19 W R 57* approved of. QUEEN EMPRESS v CHATRA DHARI GOALA 2 C W N, 49

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s 380 (1872 s 18)—*Enhancement of sentence* —When an Assistant Sessions Judge passes a sentence of more than three years imprisonment, the Sessions Judge cannot enhance it EMPRESS v RAMA PREMA I. L. R. 4 Bom 239

———— s 384 (1872 s 303)

See WARRANT OF COMMITMENT [I. L. R. 6 Mad. 396

———— s 386

See COMPENSATION—CRIMINAL CASES—COMPENSATION FOR LOSS OF INJURY CAUSED BY OFFENCE [I L. R., 2? Calc 139 I. L R 19 Mad 238

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I. L R. 21 Calc 979

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R. 22 Calc. 935

———— ss 386 387 389 (1872, s 307)

See ACT XXI OF 1856 [8 B L R Ap 47 17 W R. Cr 7

See FINE 5 Bom. Cr 63 [9 W R. Cr., 50 I L R. 20 Calc 478

———— s 391 para 1 (1872 s 310)

See WHIPPING 7 Mad. Ap 30 [20 W R , Cr., 72

———— s 395

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [I. L. R. 11 All. 308

See SENTENCE—WHIPPING [I L. R. 11 All. 308 I L. R. 21 All 25

———— ss 396 397 (1872 ss 316 317 1861 69 ss 47 48).

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [3 B. L R. A. Cr 50 12 W R. Cr 47 I. L R. 20 All. 1

———— s 399

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R. 12 Mad. 94

See REFORMATORY SCHOOLS ACT s 8 [I L R 25 Calc 333 3 C W N 11

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Procedure Code and not under s 351 KHUDIRAM MOOKERJEE v EMPRESS 1 C W N., 105

——— s 352 (1872 s. 187 1861-69 s. 279)

See COURT 1 Agra, Cr, 17

——— s 355

See CRIMINAL PROCEEDINGS [I. L R., 19 Mad., 269

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS W R. 1864 Cr, 18

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I L R, 20 Calc 361

——— s 356 (1872 s 334)

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES [20 W R. Cr., 14

——— ss. 357 and 362 para 1 (1872, s 335 1861 69, s 196)

See PRACTICE—CRIMINAL CASES—EVIDENCE MODE OF RECORDING [5 Mad. Ap 9

——— ss 359 and 362 para. 2 and s. 361 (1872 ss 338-340 1861-69 s 198)

See INTERPRETER 16 W R. Cr 71

——— s 360 (1872 s 339, 1861-69 s 199)

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS I. L R. 13 Calc., 121

See WITNESS—CRIMINAL CASES—SWEARING OR AFFIRMATION OF WITNESSES 13 W R 17

——— *Witnesses not u[...] depositions when read over—Grou[...] aside conviction.*—S 339 of Act X [...] for the protection of witnesses only [...] th[...] witnesses did not understand their de[...] ns when read over although they may not have required them at the time to be interpreted affords no ground for an application by the accused to set aside a conviction. IN THE MATTER OF OKHOY KUMAR [7 C L R., 393

——— s. 364 (1872 s. 346, 1861-69 s. 205).

See CHARGE TO JURY—MISDIRECTION [I. L. R. 17 Calc., 642

See CASES UNDER CONFESSION—CONFESSIONS TO MAGISTRATE

See CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See EXAMINATION OF ACCUSED PERSON [8 W R. Cr 55
I B L R. S.N., 16
7 B L R., Ap, 63

——— ss 366 367

See JUDGMENT—CRIMINAL CASES [I. L. R., 21 Calc., 121
I L R., 23 Calc., 502

See SENTENCE—GENERAL CASES [I. L. R., 14 All., 242

——— s 367 (1872, s 287, para 2, and s 464 para 4)

See CASES UNDER JUDGMENT—CRIMINAL CASES

——— ss 367 369 (1872 s 464, para. 1)—*Omission to order re-trial when annulling conviction—Subsequent addition to judgment*—When a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction and omits to order a re-trial at the time under s 284 of the Criminal Procedure Code he is not precluded by virtue of s. 464 from passing such an order subsequently IN THE MATTER OF THE PETITION OF RAMI REDDI [I. L. R 3 Mad., 48

——— *Alteration of illegal sentence*—A Sessions Judge has no power under s. 464 Code of Criminal Procedure to alter or set aside a conviction and sentence once made and signed by him. The sentence in this case was altered on reference to the High Court QUEEN v PORAN MAL 23 W R., Cr 49

——— s 369

See REVIEW—CRIMINAL CASES [I. L. R. 7 All. 672
I L R. 10 Bom 176
I. L R., 14 Calc., 42

[...]MENT—CRIMINAL CASES [I. L R., 14 Calc., 174

[...]SIDENCY MAGISTRATE [I L. R 13 Calc. 272
4 C W N., 201
I L R., 27 Calc 131 461

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN [I. L. R., 13 Calc 273

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L. R., 27 Calc 131
[4 C W N., 201

——— s 374 (1872 s 287 para. 1)

See CONFESSION—CONFESSION TO MAGISTRATE I. L. R., 22 Calc., 60

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———————— *Reference to High Court* —The High Court as a Court of reference can under s 287 Criminal Procedure Code 1872 only deal with cases in which a sentence of death has been passed. QUEEN v OMAN 5 N W 130

1. ———— s 376 (1872 s 288)—*Culpable homicide not amounting to murder—Reference to High Court for confirmation of sentence of death—New trial Order for—Murder Conviction on charge of*—Under s 288 of the Code of Criminal Procedure the High Court to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder cannot in the absence of an appeal alter the conviction to one of culpable homicide not amounting to murder if it be of opinion that the evidence does not establish the former but the latter offence It must order a new trial for that purpose Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder and the opinion of the assessors was taken on both charges but the Sessions Judge being of opinion that the evidence established the former charge recorded a conviction and sentence for murder only the High Court being of opinion on a reference under s 287 of Act X of 1872 that the offence proved was culpable homicide not amounting to murder did not order a new trial *ab initio* but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder REG v BALAPA BIN DANDAPA
[I L R 1 Bom 639

2. ———————— (1872 s 289 and s 287) —*Conviction by verdict of jury—Facts of case* — Where a case is referred to the High Court under s 287 Act X of 1872 the Court is bound under s. 288 of the same Act to go into the facts of the case although the conviction was by the verdict of a jury QUEEN v JAFFIR ALI 19 W R Cr 57

3 ———————— *Power of High Court to go into facts—Criminal Procedure Code s 375—Reference under s 374—Appeal in jury trial* — Although the trial of an accused is by a jury ss 375 and 376 Criminal Procedure Code show that in a case submitted for confirmation of sentence of death under s 374 the High Court must deal with the case upon the facts as well as with reference to any questions of law arising in it and that its powers are not limited in the way they are in an appeal from a conviction in a trial by jury But in an appeal against a conviction in a trial by a jury it is not open to the High Court to go into the facts and the appeal must only be limited as laid down in ss 418 and 423 cl. (d) Criminal Procedure Code to points of law notwithstanding the appeal is heard along with a reference made under s 374 Criminal Procedure Code in the case of a co-accused *Queen v Jaffir Ali 19 W R 57* approved of. QUEEN EMPRESS v CHATRA DHARI GOALA 2 C W N., 49

———— s 380 (1872 s 18)—*Enhancement of sentence* —When an Assistant Sessions Judge passes a sentence of more than three years imprisonment, the Sessions Judge cannot enhance it EMPRESS v RAMA PREMA I. L. R. 4 Bom. 239

———— s 384 (1872 s 303).

See WARRANT OF COMMITMENT
[I. L. R. 6 Mad. 396

———— s 386

See COMPENSATION—CRIMINAL CASES—COMPENSATION FOR LOSS OR INJURY CAUSED BY OFFENCE
[I. L R., 23 Calc 139
I L R 19 Mad 238

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I. L. R. 21 Calc 979

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R., 22 Calc. 935

———— ss 386 387 389 (1872, s 307)

See ACT XXI OF 1855
[8 B L R Ap 47
17 W R. Cr 7

See FINE 5 Bom. Cr 63
[9 W R. Cr 50
I. L. R. 23 Calc 478

———— s 391 para 1 (1872 s 310)

See WHIPPING 7 Mad. Ap, 30
[20 W R, Cr, 72

———— s 395

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
[I L. R. 11 All., 308

See SENTENCE—WHIPPING
[I L. R 11 All. 308
I L R 21 All 25

———— ss 396 397 (1872 ss 316 317, 1861 69 ss 47 48).

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
[3 B. L R., A Cr 50
12 W R. Cr 47
I. L. R. 20 All. 1

———— s 399

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R. 12 Mad., 94

See REFORMATORY SCHOOLS ACT s 2
[I. L. R 25 Calc 333
2 C W N 11

5 R

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 403 (1872 s 460)

See AUTREFOIS ACQUIT PLEA OF
[7 N W 371
2 Ind. Jur N S, 67
13 W R Cr, 42
I L R., 10 Bom. 181
I L R, 22 Calc 377

1. ——— *Acquittal—Re trial—Interference of the High Court—Criminal Procedure Code s 530* —Where an offence is tried by a Court without jurisdiction the proceedings are void under s 530 of the Code of Criminal Procedure Act X of 1882 and the offender if acquitted is liable to be re tried under s 403 It is therefore not necessary for the High Court to upset the acquittal before the re trial can be had. QUEEN EMPRESS *v* HUSEIN GAIBU I L R 9 Bom 307

2 ——— *Previous acquittal* —Upon a charge of dacoity the Magistrate having split up the charge convicted the accused of rioting using criminal force and misappropriating the property of a deceased person On appeal the Sessions Court reversed the conviction holding that the offence if any was dacoity but that *the facts alleged being* incredible there was no need to order a committal The complainant thereupon lodged a fresh complaint of dacoity based on the same facts before another Magistrate *Held* that the judgment of the Sessions Court was no bar to further proceedings. VIRANATTI *v* CHIYAMU I L R. 7 Mad 557

3 ——— and s 437—*Different charges arising out of same transaction—Acquittal—Further inquiry—Re trial* —*E* being charged with theft and mischief in respect of certain branches cut from a tree claimed by the complainant, was tried by a Subordinate Magistrate on the charge of mischief and acquitted on the ground that as against the complainant *E* had title to the tree On the application of the complainant the District Magistrate directed further inquiry into the case under s 437 of the Code of Criminal Procedure and on a reference to the Court of Session the Sessions Judge held that as no inquiry on the charge of theft had been held the order was legal *Held* that the District Magistrate had no power to pass such an order under s 437 and that a trial on the charge of theft was barred by force of s 403 of the Code of Criminal Procedure QUEEN EMPRESS *v* FERAMBEDDI
[I. L. R. 8 Mad 298

4. ——— *Previous conviction or acquittal—Second trial upon the same facts for a different offence—Penal Code ss 456 and 457—Bengal Excise Act (Bengal Act VII of 1878) s 61—Merchandise Marks Act (XI of 1889) ss 6 and 7—Criminal Procedure Code s 235* —The accused had been prosecuted and convicted under s 61 of the Bengal Excise Act (Bengal Act VII of 1878) and then proceedings were instituted against him under ss 456 and 497 of the Penal Code and ss 6 and 7 of the Merchandise Marks Act (XI of [illegible]

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

1889) On an application to quash the proceedings on the ground that the accused had been at the first trial put in peril of a conviction for *the latter offences* and therefore the first trial operated as a bar to the institution of the present proceedings —*Held* the provisions of s 403 of the Criminal Procedure Code did not operate as a bar to the institution of the present proceedings *Under* the second part of that section the fact of the accused having been charged at the first trial with one offence only did *not* prevent the institution of a separate proceeding in respect of some other offence which was disclosed during the course of the first trial QUEEN EMPRESS *v* CROFT
[I. L. R. 23 Calc 174

——— s 404 (1872 s 283 and s 286 illus (d) 1861 69 s 422) s 406 (1872, s 267) ss 407 408 410-418 (1872, s 271 1861 69 s 409) ss 411, 412, and 413 (1872 s 273, 1861 69 s 411).

See CASES UNDER APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES

——— s 404.

See REMAND—CRIMINAL CASES
[3 B L R. A Cr., 62
6 B L R 693
9 B L R. Ap 31

——— s 407 (1872, s 269 1861-69, s 412)

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE 3 Bom. Cr 18

See DEPUTY COMMISSIONER
[16 W R., Cr., 1

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION
[I. L. R. 16 Mad., 487

——— s 408 (1872 s 270 1869 s 446).

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I. L R., 9 Calc., 513

——— ss 411 412 (Presidency Magistrate s Act 1877 s 167)

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATE S ACT
[I. L. R., 5 Bom., 85

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[I. L R., 2 Mad 30

——— s 417 (1872, s 272)

See CASES UNDER APPEAL IN CRIMINAL CASES—ACQUITTALS APPEALS FROM

——— (Presidency Magistrate s Act, 1877 s 168)

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CRIMINAL CASES
[I. L. R 7 Cal., 447

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 418

See APPEAL IN CRIMINAL CASES—ACQUITTALS APPEALS FROM
[I L R, 10 Calc 1029

See REFERENCE TO HIGH COURT—CRIMINAL CASES I. L. R. 9 All 420

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
[I. L R 9 All. 420
I L R 14 Mad., 36

——— ss. 418 419 420 421 (1872 s. 278) s 422 (1872 s 279) and s 423 (1872 ss 280 284 1861 69 ss 419 427)

See CASES UNDER APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

——— s 421

See JUDGMENT—CRIMINAL CASES
[I. L R, 21 Calc 92
I. L R 17 All. 241
I. L R. 20 Bom. 540

See REVIEW—CRIMINAL CASES
[I. L R 19 Bom 732

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN
[I L R. 8 All., 514

——— s 423 (1872 ss 280 284, 1861 69 ss 419 427).

See APPEAL IN CRIMINAL CASES—ACQUITTALS APPEAL FROM
[I L R 10 Calc 1029

See AUTREFOIS ACQUIT PLEA OF
[I. L. R. 22 Calc 377

See COMMITMENT I L R 8 All 14
[I L R 15 All 205
I L R 23 Calc 350 975
I L R 27 Calc 172
4 C W N 186

See COMPLAINT—REVIVAL OF COMPLAINT
[I L R 24 Calc 528

See MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES
[12 Bom 234

See REFERENCE TO HIGH COURT—CRIMINAL CASES I L R 9 All 420

See REVISION—CRIMINAL CASES—COMMITMENTS I L R., 16 Bom 580

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I L R. 16 Calc 730
I. L R., 26 Calc., 6 746
3 C W N 598 601

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[I. L R. 23 Bom 439
I L R 17 All 67
I. L R 27 Calc 175

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT

See SESSIONS JUDGE JURISDICTION OF
[I L R 20 Calc 633
I. L R 18 Bom 751
I L R. 18 All 301

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICT
[I L R 9 All. 420
I L R 23 Calc 252
I L R 25 Calc 711

1. ——— (1872 s 284) —*Annulling conviction—Omission to make order for re trial—Criminal Procedure Code 1872 s 464*—When a Sessions Judge in appeal annuls the conviction by a Magistrate for want of jurisdiction and omits to order a re trial at the time under s 284 of the Criminal Procedure Code he is not precluded by s 464 from passing such an order subsequently The order annulling the conviction in such a case does not amount to an order of acquittal IN THE MATTER OF THE PETITION OF RAMI REDDI
[I L. R. 3 Mad 48

2 ——— s 423 (a) and ss 247 404 417—*Acquittal—Appeal Powers of District Magistrate*—S 423 (a) of the Code of Criminal Procedure applies only to a High Court A second class Magistrate having held that a *prima facie* case had been established against the accused in a case of mischief adjourned the trial to enable the accused to adduce evidence On the day to which the trial was adjourned the complainant not being present the Magistrate acquitted the accused under s 247 of the Code of Criminal Procedure The District Magistrate entertained an appeal from this order under s 423 (a) of the Code of Criminal Procedure reversed it and directed a re hearing on the ground that the complainant and his vakil had appeared before the Court shortly after the case had been dismissed by the second class Magistrate *Held* that the order of the District Magistrate was illegal RANGASAMI AIYANGAR v NARASIMHULU NAYAK
[I L R 7 Mad., 213

——— s 424

See JUDGMENT—CRIMINAL CASES.
[I L R. 11 Calc 449
I L R. 13 Calc 110
I L R., 15 Bom 11
I L R. 22 Calc 241
I L R 23 Calc 420
I L R., 19 All 506
1 C W N 169

CRIMINAL PROCEDURE CODES (ACT V OF 1898, ACT X OF 1882, ACT X OF 1872, ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s. 426 (1872, s. 281, 1861-69, s. 421)

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [3 B L R A Cr., 50

——— s. 427 (Presidency Magistrate's Act 1877, s. 188)

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM [I. L. R., 9 All., 528

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT 24 & 25 VIC., c. 104, s. 15—CRIMINAL CASES [I. L. R. 7 Calc 447

——— s. 428 (1872, s. 282, 1861-69, s. 422)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [6 Bom Cr. 64; 6 B. L. R., 463; I. L. R. 27 Calc. 372; 4 C W N 497

See CRIMINAL PROCEEDINGS [I L R., 15 All., 136

See PENAL CODE, s. 182 [I L. R. 12 Mad 451

See CASES UNDER REMAND—CRIMINAL CASES

1. ——— (1872, s. 282)—Observations as to the exercise by an Appellate Court of the powers conferred on it by s. 282 of Act X of 1872 (Criminal Procedure Code). EMPRESS *v.* FATEH [I. L. R., 5 All., 217

2. ——— *Enquiry as to place where assault was committed—Power of Appellate Court.*—A case of assault tried by the Assistant Magistrate of Purneah was appealed to the Sessions Judge of that district, who ordered an inquiry and found that the assault had been committed in Maldah, and thereupon released the accused, as the Magistrate of Purneah had no jurisdiction. *Held* that the Judge had no jurisdiction under s. 70, Criminal Procedure Code, to make such an order, the accused not having been prejudiced in his defence, and further that he ought not to have ordered the inquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused—s. 282, Criminal Procedure Code. MOHAMED GOLAB *v.* MOHABEER SINGH [23 W. R., Cr., 34

——— s. 429

See LETTERS PATENT, HIGH COURT, CL. 31 [I. L. R. 15 Bom., 453

VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS [I L. R. 15 Bom., 453

——— s. 430 (1872, s. 285, 1861-69, s. 428)

See REVIEW—CRIMINAL CASES [I. L. R. 19 Bom., 732

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION [B L R. Sup. Vol. 494; 8 W R., Cr., 6

——— s. 431

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE [I L. R. 19 Bom., 71

——— s. 432

See RIGHT TO BEGIN [I. L. R. 10 Calc., 38

——— s. 434 (Act X of 1875, s. 101)

See CONFESSION—CONFESSIONS TO POLICE OFFICERS I L R 3 Bom., [illegible]

See REFERENCE TO HIGH COURT—CRIMINAL CASES I. L. R. 8 Bom. 2[illegible]

See REVIEW—CRIMINAL CASES [I. L. R. 7 All., [illegible]

See RIGHT TO BEGIN [I. L. R. 8 Bom., [illegible]

——— s. 435, para. 1 (1872, ss. 294, 296, para. 1, 1861-69, s. 405)

See DEKHAN AGRICULTURISTS' RELIEF ACT, s. 53 I. L. R., 15 Bom., 1[illegible]

See REFORMATORY SCHOOLS ACT, s. 8. [I. L. R. 14 Bom., 3[illegible]

See CASES UNDER REVISION—CRIMINAL CASES

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION [B L. R. Sup. Vol., 4[illegible]; 8 W R., Cr. [illegible]

See SESSIONS JUDGE, JURISDICTION OF [I. L. R. 20 Calc. 6[illegible]

1. ——— *Inferior Criminal Court*—The words "inferior Criminal Court" in s. 435 of the Criminal Procedure Code mean inferior so far as regards the particular matter in respect of which the superior Court is asked to exercise revisional jurisdiction. IN THE MATTER OF PETITION OF NOBIN KRISTO MOOKERJEE. NOBIN KRISTO MOOKERJEE *v.* RUSSICK LALL LAHA [I. L. R. 10 Calc., [illegible]

2. ——— and s. 437—*District Magistrate—Power to revise proceedings of Divisional Magistrate of the first class—"Inferior Subordinate" Magistrates—Reason of distinction*—Under s. 435 of the Code of Criminal Procedure a District Magistrate has power to call for and examine the record of a proceeding before a Sub-Divisional Magistrate of the first class. Such a

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Kristo Mookerjee v *Russick Lall Laha I L R., 1 Calc., 268* dissented from IN RE PADMANABHA [I. L. R., 8 Mad. 18

3 ———— *Further inquiry—Inferior Criminal Court—Magistrate of the district Powers of*—A Magistrate of a district is competent, under s. 435 of the Criminal Procedure Code t call for and deal with the record of any proceedi- before any Magistrate of whatever class in his own district OPENDRO NATH GHOSE v DUKHINI B..WA [I. L. R., 12 Calc., 473

4. ———— (1872 s 295)—*Record of inferior Court—Explanation of order passed*—Where a Sessions Judge has under s. ... of A- X of 1872 called for the record of an inferior Court, he is before referring the case to the High Court ... orders bound to call upon the inferior Court for an explanation of the order passed and shall ... such explanation, together with the rest of the record, to the High Court. MAHAMDI FAKIR v ... PRAMANIK I. L. R., 8 C..., 64..

5 ———— *Power of Joint Sessions Judge*—A Joint Sessions Jud.e has no power ... in cases of an order of a Magistrate as ... of land made without judicial inquiry under s. ... which applies only to the Sessions Judge of the division. SHONIDOO NOSHYO v ... [25 W R., Cr., ...

6 ———— (Act V of 189... *of local Legislature—Power of ... Court—Order concerning a ferry ... made under s 14...*—The L.cal L... to overrule a statutory power ... Court but this was not the ... le islation expressed in s. 4... cedure Code of 1898 *Empress* v *I...* *Calc 172 L R., 5 I A.,* ... terms of s 435 mean that ... sections mentioned in cl. (2) ... with juris diction If such orders ... made without jurisdiction, ... purporting to be passed ... would not bring them ... debar the exercise of powers ... s 15 of the Charter ... *Sidheswari Debi I L R.,* ... *Chandra Bhuttacha...* ... *Calc 127 Roop Lal Lau...* ... 572, and *Queen Empress* ... I L R., 25 *Calc.*, ... NARAIN SINGH v ...

... ss 437 ...

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... R. 7 All 853

r —Subordinate ... *trate of District*— first class is inferior ... District Magistrate— ... Code (Act X of 1882) ... Magistrates of whatever ... District Magistrate ... inferior in respect of ... functions to all other ... inferior' as used in the ... petent to hold or exercise ... ith it the idea of subor ... ans inferior in rank v *Russick Lall Laha* ... *Queen Empress* v *Nawab* ... 5..1 dissented from GOPAL
[I L R. 9 Bom 100

Different charges arising —Acquittal—Further in ... ing charged with theft ... certain branch s cut from ... complainant was tried by s ... the charge of mischief and ... that as against the com ... tr..e On the application ... rict Magistrate directed ... case under s. 437 of ... Code and on a reference ... ns Judge held that ... f theft had been held ... at the District Ma..is ... an order und r s 43 ... DI
L R 8 Mad. 296

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CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

to subsequently direct their committal under s 296 ANONYMOUS 7 Mad. Ap 28

3 ———————— *Criminal Procedure Code s 4—Sessions case Definition of—Charges under Penal Code ss 380 457* —The appellant after his discharge by the Assistant Magistrate upon a charge under s 457 of the Penal Code was committed to the Sessions Court by order of the Sessions Judge under the Criminal Procedure Code 1872 s 296 upon charges under ss 380 and 457 of the Penal Code *Held* by the Full Bench (SPANKIE J and OLDFIELD J dissenting) that the commitment was illegal and that Sessions case within the meaning of s. 296 of the Code of Criminal Procedure is a case exclusively triable by the Court of Session EMPRESS OF INDIA v KANCHAN SINGH I. L. R. 1 All. 413

EMPRESS v TARA CHAND BAGDI [7 C. L. R., 168

4 ———————— *Jurisdiction of Magistrate —Commitment to Sessions—Criminal Procedure Code (Act XXV of 1861) ss 427 435* —The Sessions Judge has no power to commit to the Sessions a case in which persons were convicted by the Deputy Magistrate of an offence under s 457 of the Penal Code such a case being one triable by the Deputy Magistrate ss 427 and 435 of Act XXV of 1861 do not apply QUEEN v HAKIM SIRDAR [2 B. L. R. S N 2 10 W R, Cr 35

5 ———————— *Revival of proceedings after d scharge—Jur sd ct on of Magistrate— Sessions case—Fresh evidence* —A Deputy Magistrate having dismissed a case instituted under s 380 of the Penal Code without taking certain evidence which in his opinion would have been of little value the Magistrate of the district on the application of the complainant took such evidence and committed the accused for trial before the Sessions Court *Held* on reference t the High Court that as the words Sessions cas in s 296 of the Criminal Procedure Code had reference only to a case triable exclusively by a Court of Session the Magistrate s action could not be supported under that section but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in *Empress v D nnelly I L R 2 Calc 405* EMPRESS v HARY DOYAL KARMOKAR I. L. R 4 Calc 10

S C ISSEY CHUNDER KURMOKAR v HURRY DOYAL KURMOKAR 3 C L. R 203

6 ———————— *Rev val of proceedings aft r d scharge—Jurisdict on of Mag strate—Fresh e d nce—Procedure* —A Magistrate has no power to remand a criminal case to a Subordinate Magistrate for r trial after the case has once been dismissed; the courses open to him are (1) to accept a fresh complaint supported by fresh evidence which was not before the Court when the case was dismissed or (2) if there be no additional evidence to be procured to report the case for the orders of the High Court under s. 296 of Act X of 1872 IN THE MATTER OF THE PETITION OF DIJAHUR DUTT [I L R 4 Calc 647

7 ———————— *Discharge of accused persons under s 215—Revival of proceedings at the instance of the Court of Session—Commitment of accused persons* —Certain persons were charged under s 417 of the Penal Code and were discharged by the Magistrate inquiring into the offence under s 215 of Act X of 187 The Court of Session considering that the accused persons had been improperly discharged forwarded the record to the Magistrate of the district suggesting to him to make the case over to a Subordinate Magistrate with directions to enquire into any offence other than the offence in respect of which the accused persons had been discharged which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry and committed the accused persons for trial before the Court of Session on charges under ss 363 and 420 of the Penal Code It was contended that the Court of Session was not competent to direct the accused persons to be committed' under s 296 of Act X of 1872 the case not being a Sessions case within the meaning of that section and that the commitment was consequently illegal *Held* that there was no direction to commit within the meaning of that section that is to say to send the accused persons at once to the Sessions Court without further inquiry and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial and that the inquiry upon the charges under ss 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate and the commitment could not be impeached. EMPRESS OF INDIA v BHUP SINGH I. L. R. 2 All. 670

8 ———————— *Discharge by Magistrate—Order of commitment by Sessions Judge—Omission to call on accused to show cause against such commitment—Criminal Procedure Code (Act X of 1872) ss 296 253* —A Sessions Court has no power under s 296 of the Criminal Procedure Code to direct the commitment of a person discharged by a Deputy Magistrate without first giving such person an opportunity of showing cause against such commitment But under s. 296, as amended by Act XI of 1874 the Court has power to direct the subordinate Court to enquire into any offences for which it considers a commitment should be ordered. When however a trial under such a commitment made by order of a Sessions Judge has been duly held and no actual failure of justice has been caused by the error of the Sessions Judge s 283 of the Criminal Procedure Code would be a bar to the reversal of his judgment EMPRESS v KHAMIR [I. L. R. 7 Calc., 662 10 C. L. R., 8

9 ———————— *Commitment by Sessions Judge Offence of cheat ng—Criminal Procedure Code 1882 s 4* —An order of commitment by a Sessions Judge under s. 29 of the Criminal

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Procedure Code is bad in form if it does not specify the offence for which the parties are to be committed for trial at the Sessions A trial for the offence of cheating is not a Sessions case within the meaning of s 296 having regard to the first portion of the definition of Sessions case in s 4 of the Code which must be read as if the word only followed the words triable by a Court of Session JOY KISEN SINGH v MAN PATUCK 21 W R Cr 41

10 ——— *Summoning or giving notice to accused person* —The Sessions Judge under s. 296 Criminal Procedure Code 1872 made an order upon the Deputy Magistrate for the commitment of the accused who had previously been discharged by the Deputy Magistrate but it was alleged that such order of the Sessions Judge was made without calling upon the petitioners to show cause in the matter *Held* that although there is nothing in s. 296 with regard to summoning or giving notice to the accused person no person should be affected in his personal liberty without having opportunity given him to answer the charge for which he is arrested and put into prison The Court accordingly was of opinion that if the accused had no opportunity given them of meeting the charge the commitment was not a good commitment IN THE MATTER OF THE PETITION OF BUNDHOO [22 W R Cr 67

NOWAB SINGH v KOKIL SINGH [24 W R. Cr 70

IN THE MATTER OF DWARKANATH BHATTACHARJEE 1 C L R 93

11 ——— *Order of committal—Illegal commitment—Irregular procedure* —Where an accused person had been discharged by a Sub-Magistrate and the District Magistrate directed the committal of the accused to the Court of Session under s 436 of the Code of Criminal Procedure 1882 without calling upon him to show cause why he should not be committed —*Held* that the order of committal and the commitment made thereunder were illegal QUEEN v KANJAMALAI PADAYACHI [I L R. 6 Mad. 372

12 ——— *Order by the District Magistrate under s 436 for committal of a person discharged by first class Magistrate under s 209 —Validity of such commitment—Ultra vires* —Where a Magistrate of the first class discharged under s 209 of the Criminal Procedure Code (Act X of 1882) a person charged with an offence exclusively triable by the Court of Session and the District Magistrate directed him under s 436 to commit the accused to the Court of Session and a commitment was made but the Sessions Judge referred the case under s 215 for the order of the High Court —*Held* that the order of the District Magistrate under s 436 was not *ultra vires* and that the commitment thereunder to the Court of Sessions was good and could not be quashed under s 215 QUEEN EMPRESS v PRITA GOPAL [I L R 9 Bom 100

——— s 437

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I L R 18 Calc 75

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I L R 24 Calc 395
[1 C W N 217
I L R 25 Calc 425
3 C W N 113

1 ——— *Inferior — Subordinate —First class Magistrate—Magistrate of District* —A Magistrate of the first class is within the meaning of s 437 of the Criminal Procedure Code subordinate to the Magistrate of the District who is therefore competent to call for the record of the former and to deal with it under s 437 QUEEN EMPRESS v LASKARI I L R 7 All 853

2 ——— *Inferior —Subordinate Magistrate of first class—Magistrate of District* —The Court of a Magistrate of the first class is inferior and subordinate to that of the District Magistrate —s 17 of the Criminal Procedure Code (Act X of 1882) expressly providing that all Magistrates of whatever class shall be subordinate to the District Magistrate The District Magistrate is superior in respect of executive as well as judicial functions to all other Magistrates The term inferior as used in the Code means statutably incompetent to hold or exercise equal powers and carries with it the idea of subordination which latter means inferior in rank *Nobin Kristo Mookerjee* v *Russ ck Lall Laha I L R 10 Calc 268 Queen Empress* v *Nawab Jan I L R 10 Calc 551* dissented from QUEEN EMPRESS v PIRTA GOPAL [I L R 9 Bom 100

3 ——— *Different charges arising out of same transaction—Acquittal—Further inquiry—Re trial*—*E* being charged with theft and mischief in respect of certain branches cut from a tree claimed by the complainant was tried by a subordinate Magistrate on the charge of mischief and acquitted on the ground that as against the complainant *E* had title to the tree On the application of the complainant the District Magistrate directed further inquiry into the case under s. 437 of the Code of Criminal Procedure and on a reference to the Court of Session the Sessions Judge held that as no inquiry into the charge of theft had been held the order was legal *Held* that the District Magistrate had no power to pass such an order under s 437 QUEEN EMPRESS v ERAMBEIDI [I L R 8 Mad. 296

4 ——— *Penal Code ss 497 4 8 —Marriage insufficiently proved—Discharge of accused—Re trial ordered—Wife ordered to be examined on re trial* —In an inquiry into a case of

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alleged adultery and enticing away a married woman for illicit purposes the complainant refused to examine his wife as to the marriage the Deputy Magistrate declined to frame a charge and discharged the accused The Sessions Judge directed a re trial to be held by another Deputy Magistrate and ordered that the evidence of the wife should be taken as to the marriage *Held* that the Sessions Judge in ordering a re trial had not exercised a proper discretion he having admitted that the prosecution had failed to prove the marriage and it not being alleged that any evidence was tendered by the prosecution and not taken by the Deputy Magistrate CHUNDER NATH GHOSE *v* NUNDOLOLL CHATTERJEE

I. L. R., 11 Calc 81

5 ———— *Further inquiry—Proceedings against accused—Notice*—No order affecting an accused in a criminal matter should be made without giving him notice so as to enable him to appear and show cause against it A Sessions Judge has no power under s 437 of the Criminal Procedure Code to direct a particular Magistrate by name to make the further inquiry contemplated by that section The further inquiry contemplated by s 437 of the Criminal Procedure Code is an inquiry upon further materials not a re hearing of the matter upon the same evidence which was before the Magistrate who held the first inquiry IN THE MATTER OF THE PETITION OF CHUNDI CHURN BHUTTACHARJEA CHUNDI CHURN BHUTTACHARJEA *v* HEM CHUNDER BANERJEA

I. L. R 10 Calc 207

6 ———— *Further inquiry—Power of District Magistrate to direct— Inferior Criminal Court —Notice to accused*—The words In ferior Criminal Court in s 435 of the Criminal Procedure Code mean inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction A criminal charge instituted before a Magistrate of the first class was finally disposed of by him by an order discharging the accused. Subsequently the Magistrate of the district proceeding under s 437 of the Code of Criminal Procedure directed a further inquiry to be made by a subordinate Magistrate This order was made without notice to the accused. *Held* that the Magistrate of the district had no jurisdiction to direct a further inquiry *Semble*—That as a matter of strict law the accused was not entitled to be heard by the District Magistrate before granting the order directing the inquiry IN THE MATTER OF THE PETITION OF NOBIN KRISTO MOOKERJEE NOBIN KRISTO MOOKERJEE *v* RUSSICK LALL LAHA

I. L. R. 10 Calc. 268

7 ———— *Further inquiry*—A Deputy Magistrate having discharged a person accused of an offence on the ground that the evidence was insufficient [illegible] the Magistrate of the district [illegible] that in his opinion the accused had been improperly discharged, and directed,

under s 437 Criminal Procedure Code that further inquiry should be made and the accused called on to enter upon his defence The accused was not called upon to show cause why a further inquiry should not be made but a summons in the terms of s 68 of the Criminal Procedure Code was issued to him On his appearance he was tried by the Magistrate of the district convicted and sentenced The witnesses for the prosecution were not recalled but the Magistrate relied upon their evidence as recorded in the first trial and also upon the statement of a witness for the defence which was not receivable in evidence *Held* that the proceedings of the Magistrate of the district were irregular *first* because notice to show cause why action should not be taken against him in the terms of s. 437 of the Code of Criminal Procedure was not served upon the accused person before proceedings ostensibly under that section were commenced and *secondly* because the subsequent proceedings of the Magistrate were not such as are contemplated by the provisions of s 437 inasmuch as the conviction was practically based upon evidence which was not recorded in the course of a further inquiry before the Magistrate of the district but upon evidence which was recorded by the Deputy Magistrate and had been adjudicated upon by that officer and such irregularities were fatal to the conviction QUEEN EMPRESS *v* HASNU

I. L. R 8 All. 387

8 ———— *Discharge—Order for further inquiry—Trial for minor offence—Criminal Procedure Code s 253*—A Magistrate having under s 253 of the Code of Criminal Procedure discharged a person accused of rioting an order for further inquiry was made by the Court of Session under s. 437 *Held* that the offence of rioting not being proved the Magistrate was competent to try the accused for the offence of assault QUEEN EMPRESS *v* I APADU

I. L. R. 7 Mad., 454

9 ———— *Further inquiry—Power of District Magistrate to direct—"Subordinate Magistrate"—Compoundable offence*—A criminal charge under s 418 of the Penal Code having been instituted the accused was sent up by the police before a Deputy Magistrate of the first class. Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled and that he did not wish to proceed further in the matter upon which the Magistrate recorded an order Compromise ; defendant acquitted. Subsequently the Magistrate of the district relying upon ss. 219 and 259 and professing to act under s. 437 of the Criminal Procedure Code directed the Deputy Magistrate to send up the parties and proceed regularly with the case *Held* further that in addition to the Magistrate's order not being warranted by the fact it was *ultra vires* inasmuch as the Deputy Magistrate was a Magistrate of the first class and not inferior to the District Magistrate and to give the District Magistrate jurisdiction to call for a record under s 435 from another

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Magistrate and to act under s. 437, the latter must be inferior. *Nobin Kristo Mookerjee* v. *Russick Lall Laha, I. L. R. 10 Calc. 268*, followed. QUEEN EMPRESS *v.* NAWAB JAN

[I. L. R. 10 Calc. 551

10. ——————— *Discharge of accused—Further inquiry—Power to direct.*—An accused having been discharged after a full inquiry before a competent Court is entitled to the benefit of such discharge, unless some further evidence is disclosed. Consequently an order made by a District Judge directing a further inquiry to be held under s. 437 of the Criminal Procedure Code in a case where a Magistrate had discharged the accused under s. 253 was not warranted by law when there had been a full inquiry by a competent Court and when no further evidence was disclosed, such order being based merely upon the ground that in the opinion of the District Judge the evidence recorded was sufficient for the conviction of the accused. JEEBUN KRISTO ROY *v.* SHIB CHUNDER DASS

[I. L. R. 10 Calc. 1027

11. ——————— *Power of District Magistrate to direct further inquiry by Magistrate of the first class—Inferior Magistrate.*—Where a District Magistrate called for the record of a case in which a Magistrate of the first class had discharged certain accused persons and directed another Magistrate of the first class to make further inquiry into the case:—*Held*, following *Nobin Kristo Mookerjee v. Russick Lal Laha, I. L. R. 10 Calc. 268*, and *Queen Empress v. Nawab Jan, I. L. R. 10 Calc. 551*, that the District Magistrate's order was *ultra vires* and illegal. JHINGURI *v.* BACHU

[I. L. R. 7 All. 134

12. ——————— *Further inquiry—Re-trial—District Magistrate, Powers of.*—Where an accused person has been discharged by a Magistrate, further inquiry cannot be directed under s. 437 of the Code of Criminal Procedure on the ground that the Magistrate has not rightly appreciated the credit due to the witnesses. Further inquiry should only be directed when other witnesses might have been examined, or when the witnesses have not been properly examined; and inasmuch as s. 437 does not direct that the evidence already taken should be taken again, the further inquiry should ordinarily be made by the Magistrate who made the original inquiry. Where a District Magistrate, being of opinion that a subordinate Magistrate had without just cause refused credit to the witnesses in a certain case and had improperly discharged an accused person, directed a further inquiry by another Magistrate, and the accused was on the same evidence re-tried and convicted:—*Held*, that the conviction must be quashed. QUEEN EMPRESS *v.* AMIR KHAN

[I. L. R. 8 Mad. 336

13. ——————— *Further inquiry—Power of District Magistrate to suggest a committal.*—A District Magistrate who refers a case to a Subordinate Magistrate for further inquiry has no authority to fetter him in the exercise of his judicial discretion as to the question whether the case should or should not be committed to the Court of Session. QUEEN EMPRESS *v.* MUNISAMI

I. L. R. 15 Mad. 39

14. ——————— *Complaint.—District Magistrate, Power of, to order further inquiry—Dispute concerning land—Criminal Procedure Code, s. 145.*—S. 437 of the Code of Criminal Procedure does not give power to order a further inquiry in a case under s. 145 of that Code. CHATHU RAI *v.* NIRANJAN RAI

I. L. R. 20 Calc. 729

15. ——————— *Further inquiry, Order of, without notice to the accused—Magistrate, Power of, to order further inquiry which had been refused by his predecessor.*—One *M* was tried and discharged by the Sub-Divisional Magistrate, and the complainant moved the District Magistrate for a further inquiry not only against *M* but also against other persons who were charged with being connected with the same offence; and the District Magistrate expressly directed a further inquiry only as against *M*, who was tried and convicted by the Sessions Judge. The complainant then moved the District Magistrate for further inquiry against the other persons, and the District Magistrate, a different officer, without giving them notice, ordered a further inquiry to be made. *Held*, that the District Magistrate was not competent in the face of his predecessor's order to direct a further inquiry which had already been practically refused. That in the circumstances of the case the Sessions Judge was the proper officer to direct a further inquiry. RATTO SINGH *v.* HARI SINGH

[4 C. W. N. 100

16. ——————— *Jurisdiction of District Magistrate to order further inquiry in a proceeding under s. 133 of the Code of Criminal Procedure.*—A District Magistrate has strictly speaking no power under s. 437 of the Criminal Procedure Code (Act X of 1882) to order a further inquiry into a proceeding under s. 133 of the Code which has been practically dropped by a Subordinate Magistrate; the proper course being to refer the matter to the High Court. INDRA NATH BANERJEE *v.* QUEEN EMPRESS

[I. L. R. 25 Calc. 425
2 C. W. N. 113

17. ——————— *Further inquiry—Sessions Judge, Jurisdiction of.*—It is competent to a Sessions Judge acting under the Criminal Procedure Code, s. 437, to direct further inquiry to be held where additional evidence is not forthcoming. *QUEEN EMPRESS v. BALASINNAYAMMI*

[I. L. R. 14 Mad. 334

18. ——————— *Power of Sessions Judge to order further inquiry.*—A Sessions Judge is not competent under s. 437, Criminal Procedure Code, to direct the re-opening of the proceedings merely because in his opinion the Subordinate Magistrate has not rightly appreciated the credit due to the witnesses. Further inquiry under that section

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means the taking of additional evidence not the re hearing of the same evidence DARSUN LALL v JUMUK LALL I L R 12 Calc 522

19 ——————— *Inquiry—Further inquiry —Fresh inquiry—Jurisdiction—Notice—District Magistrate—Subordinate Magistrate* —When a complaint has been dismissed under s 203 of the Criminal Procedure Code (Act X of 1882) or an accused person discharged by a Subordinate Magistrate the District Magistrate has power under s 437 of the Code to direct any Magistrate subordinate to him to make further inquiry into the complaint dismissed or into the case of the accused person discharged even though there be no additional evidence disclosed or allegation that such exists The term further inquiry in s 437 is not restricted to inquiry upon further materials or further or additional evidence " Before directing further inquiry under s 437 it is not obligatory on the District Magistrate to give notice to the person discharged or against whom the complaint was dismissed When an order directing such inquiry is made the Subordinate Magistrate to whom it is directed has jurisdiction and is bound to carry it out Such order remains in force until it is duly set aside or withdrawn Difference between the powers of the District Magistrate under the former Criminal Procedure Code (Act X 1872) and the present one (Act X 1882) pointed out *Empress v Gowdapa I L R 2 Bom 535* explained. *Chundi Churn Bhuttacharjee v Hem Chunder Banerjee I L R 10 Calc 207* commented on and *Jeebunkristo Roy v Shib Chunder Das I L R 10 Calc 1027 Queen Empress v Hosein I L R 6 All 367* and *Queen Empress v Amir Khan I L R 8 Mad 336* commented on and doubted. QUEEN EMPRESS v DORABJI HORMASJI I L R 10 Bom, 131

20 ——————— *Further inquiry — Practice—Notice to show cause* —*Held* by the Full Bench that when a Magistrate has discharged an accused person under s 253 of the Criminal Procedure Code the High Court or Court of Session under s 437 has jurisdiction to direct further inquiry on the same materials and a District Magistrate may under like circumstances himself hold further inquiry or direct further inquiry by a Subordinate Magistrate *Queen Empress v Dorabji Hormasji I L R 10 Bom 131* referred to *Empress v Bhole Singh W N All 1883 p 150 Queen Empress v Hasan I L R 6 All 367 Chundi Churn Bhuttacharjia v Hem Chunder Banerjee I L R 10 Calc., 207 Jeebun Kristo Roy v Shib Chunder Dass I L R 10 Calc 1027 Darsun Lall v Jamuk Lall I L R 12 Calc 522* and *Queen Empress v Amir Khan I L R 8 Mad., 33* dissented from In exercising the powers conferred by s. 437 Sessions Judges and Magistrates should in the first place always allow the person who has been discharged an opportunity of showing cause why there should not be further inquiry before an order to that effect is made and unless they should

use them sparingly and with great caution and circumspection especially in cases where the questions involved are mere matters of fact As to the mode in which their discretion should be regulated under such circumstances the remarks of STRAIGHT and TYRRELL JJ in *Queen Empress v Gaurdia I L R 4 All 148* in reference to appeals from acquittals are applicable QUEEN EMPRESS v CHOTU I. L R. 9 All 52

21. ——————— *Orders for further inquiry—Order to the prejudice of an accused person —Notice to show cause* —Before any order is made to the prejudice of an accused person under s 437 of the Criminal Procedure Code notice should be given to that person to appear and show cause why the order should not be passed *Queen Empress v Chotu I L R 9 All 52* referred to QUEEN EMPRESS v AJUDHIA I. L R. 20 All. 339

22 ——————— *Power to order further inquiry— Accused person —Criminal Procedure Code s 437* —*Held* that a person against whom proceedings under Ch. VIII (relating to security for good behaviour) of the Code of Criminal Procedure are being taken is an accused person within the meaning of s 437 of the Code *Queen Empress v Mona Puna I L R 16 Bom 661* and *Jhoja Singh v Queen Empress I L R 23 Calc 493* followed. QUEEN EMPRESS v MUTASADDI LAL [I L R 21 All. 107

23 ——————— *Complaint Dismissal of —Revival of proceedings—Criminal Procedure Code s 437* —A complaint was made before a Magistrate of the first class of an offence punishable under s 323 of the Penal Code The Magistrate recorded a brief statement by the complainant but did not ask him if he had any witnesses to call An order was passed directing that a copy of the petition of complaint should be sent to the police station calling for a report on the matter and on receipt of the report the Magistrate dismissed the complaint under s. 203 of the Criminal Procedure Code There was nothing in the Magistrate's original order to show that he saw reason to distrust the truth of the complaint nor did he direct any local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint. Subsequently to the dismissal of the complaint the same complainant brought a fresh complaint upon the same facts against the same person charge upon the same facts against the same persons and upon this charge the accused in the same Court and upon this charge the accused were tried convicted and sentenced. *Held* that the Magistrate in ordering a further inquiry on receipt of the complainant's second petition did not act contrary to any provision of the law and that considering the circumstances under which the first complaint had been dismissed a further inquiry was necessary QUEEN EMPRESS v LOCHAN [I. L. R. 9 All 85

24 ——————— *Notice to accused—Discharge by Magistrate—Criminal Procedure Code*

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(*Act X of 1882*) s 437—Notice to an accused person is not necessary in point of law before an order under s. 437 can be passed but as a matter of discretion it is proper that such notice should be given. *Held* by the majority of the Full Bench (PRINSEP WILSON TOTTENHAM NORRIS PIGOT and O'KINEALY JJ)—After an inquiry by a subordinate Magistrate and the discharge of an accused person a Sessions Judge or Magistrate has jurisdiction under s. 437 of the Criminal Procedure Code to order a further inquiry or a re-hearing upon the same materials which were before the subordinate Magistrate as when no further evidence is forthcoming But (PRINSEP J dissenting) the words "further inquiry" in that section mean the inquiry preliminary to trial which regularly results in a charge or discharge and do not include the trial And if on the evidence taken the accused ought to be committed then in a case triable only at the Sessions the proper course is to commit under s. 437; in other cases to refer to the High Court *Per* PRINSEP J—The word "inquiry" includes a trial and the "further inquiry" would therefore allow of the framing of a charge and the cross examination of witnesses for the prosecution *Per* PETHERAM C.J and GHOSE J—The power given by s 437 of the Criminal Procedure Code to order a further inquiry is confined to cases in which the revising officer is satisfied for one of the reasons mentioned in s 435 that the subordinate officer has proceeded on insufficient materials and that with a more exhaustive inquiry further material would be forthcoming It was not intended that such an enquiry should be granted simply for the reconsideration of evidence IN THE MATTER OF HARI DASS SANYAL *v* SARITULLA I. L. R. 15 Calc 608

25 ——— *Further inquiry—Notice to the accused—Practice* —Before making an order for further inquiry under s 437 Criminal Procedure Code a notice should be given to the accused person to give him an opportunity of being heard upon the question whether any further inquiry should be made *Hari Das Sanyal v Saritulla I L R 15 Calc 608* followed. JAIJAI RAM *v* SUPHAL SINGH [2 C W N 196

26 ——— *Discretion of Court—Further inquiry—Notice* —Although there is nothing in s 437 rendering it incumbent to give notice before directing a further inquiry yet a Court would not be exercising a proper discretion if before ordering a further inquiry it did not give notice to the accused to show cause against such order Where therefore a further inquiry was directed without such previous notice to the accused the High Court set aside the order *Hari Dass Sanyal v Saritulla I L R 15 Calc 608* followed IN THE MATTER OF AMIN KARIADAR 3 C W N 249
RATTI SINGH *v* KARI SINGH 4 C W N 100

27 ——— *Further inquiry—Wrongful confinement—Wrongful restraint—Malice—Penal Code ss 340 342* —The accused as abkari inspector visited a toddy shop where the complainant and one *D* were employed as agents for the sale of toddy Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed the accused made an inquiry in the course of which the complainant made certain statements implicating his fellow servant The accused thereupon resolved to prosecute *D* and make the complainant a witness in the case In order to prevent him being tutored, the accused ordered his sepoy to bring the complainant to his camp and there detained him during the night and on the following morning sent him in charge of a sepoy to a Magistrate's Court where the complainant repeated the statements made by him before the accused He was then allowed to go away The accused prosecuted *D* and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp and had detained him there during the night After the termination of *D*'s trial the complainant charged the accused with wrongful confinement under s. 342 of the Penal Code The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing and that he had of his own accord stopped in his camp during the night The trying Magistrate held this plea proved and discharged the accused under s 253 of the Code of Criminal Procedure (Act X of 1882) The Sessions Judge held that though the accused had detained the complainant in his camp during the night still he was not guilty of any offence under the Penal Code as he had acted without malice and to the best of his judgment He therefore declined to interfere or order any further inquiry *Held* by the High Court on revision that the trying Magistrate had wrongly omitted to take into consideration the admissions made by the accused in his deposition in *D*'s case Those admissions had an important bearing on the present case They were admissible in evidence against the accused and as they were left out of consideration the inquiry was necessarily incomplete and imperfect Further inquiry was therefore ordered DHANIA *v* CLIFFORD [I. L. R. 13 Bom. 376

28 ——— *Order of Sessions Judge rejecting application under s 437—Subsequent order of District Magistrate granting similar application—Practice* —Where a Sessions Judge has passed orders under s 437 of the Criminal Procedure Code a District Magistrate acting under the same section should not pass orders of a contrary kind but if he thinks that the Judge's orders were wrong he should submit them to the High Court through the medium of the Public Prosecutor *Queen Empress v Shere Singh I L R 9 All 362* referred to Where a Sessions Judge had under s 437 of the Criminal Procedure Code refused to order further inquiry into the case of an accused person who had been discharged the High Court set aside a subsequent order of the Magistrate of the

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district passed under the same section and ordering further inquiry into the same case QUEEN EMPRESS *v* PIRTHI I L R, 12 All 434

29 ———— *Jurisdiction of Sessions Judge and Magistrate to grant further inquiry—Power of the Sessions Judge to interfere with orders passed by the District Magistrate* —Both the Sessions Judge and the District Magistrate are competent under s 437 of the Criminal Procedure Code to order a further inquiry but the Sessions Judge has no jurisdiction to review an order made by the District Magistrate under that section refusing a further inquiry It is open to the Sessions Judge to refer the matter to the High Court under s 438 DARBARI MANDAR *v* JAGOO LAL [I L R 23 Calc 573

30 ———— *Further inquiry of offence not charged against other persons not before Magistrate—Code of Criminal Procedure (Act V of 1898) ss 203 204 and 437—Penal Code ss 144 and 426* —On a complaint made to the Deputy Magistrate he convicted one of the accused *H* of mischief On application made to the Sessions Judge he directed a further inquiry to be made by the Magistrate into another offence under s 144 of the Penal Code in respect of *H* no charge of any such offence having been made at any time against him The Sessions Judge also directed a further inquiry against other persons who apparently were mentioned in the complaint but who had not been summoned to appear before the Magistrate *Held* that the order of the Sessions Judge was without jurisdiction not being within the powers described by s 437 of the Code of Criminal Procedure HAR KISHORE DASS *v* JUGUL CHUNDER KABYARATNA BHUTTACHARJEE [I. L R., 27 Calc 658

31. ———— *Power of superior Magistrates to direct a Subordinate Magistrate to issue warrants previously issued and cancelled by such subordinate Magistrate* —Where a Sub-Divisional Magistrate issued warrants for the apprehension of some accused persons for trial and afterwards cancelled the warrants and a District Magistrate purporting to act under s 437 Criminal Procedure Code directed the said Sub Divisional Magistrate to re issue the warrants —*Held* that the Magistrate's order directing the Sub-Divisional Officer to re-issue the warrants against the accused was *ultra vires* *Held* also, that s. 437 Criminal Procedure Code does not contemplate a case of a Magistrate directing a Subordinate Magistrate to issue warrants for the apprehension of a person *Held* further that the order complained against was not authorized by s. 437 Criminal Procedure Code and it will therefore be set aside IN THE MATTER OF THE PETITION OF GIRISH CHARAN SINGH 1 C W N 650

[illegible] SINGH *v* THAKUR SINGH [2 C W N., 290

32 ———— *Order directing accused against whom a warrant of arrest had issued not to be tried—Issue of warrants when no further proceedings taken Effect of* —Where after the issue of warrant of arrest against certain persons the Magistrate does not think it proper to proceed further —*Held* that the termination of proceedings against them is in effect an order of discharge and is, therefore subject to revision under s 437 Criminal Procedure Code MOTI SINGH *v* MOHABIR SINGH [4 C W N, 243

33 ———— *Order for further inquiry in case of discharge of person called upon to give security for good behavior—Further inquiry Power to order in such proceedings—Code of Criminal Procedure (Act V of 1898) ss 110 and 437* —A further inquiry cannot be made into the case of a person against whom proceedings under s 110 of the Code of Criminal Procedure have been taken and who has been discharged If it be considered by the Magistrate that it is necessary to institute further proceedings he is competent to do so under the law on fresh information received. The further inquiry which can be ordered under s 437 of the Code of Criminal Procedure is into a complaint which has been dismissed or into the case of any accused person who has been discharged Proceedings under s. 110 of the Code of Criminal Procedure cannot be regarded as on a complaint nor can they be regarded as a case in which any accused person has been discharged for the terms "accused person and discharge" in s. 437 of the Code of Criminal Procedure clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch XIX of the Code QUEEN EMPRESS *v* IMAN MONDAL I L R. 27 Calc., 662

———— s 438

See REFERENCE TO HIGH COURT—CRIMINAL CASES I L R. 9 All., 364
[I. L R. 10 All 146
I. L R. 23 Calc., 249 250

———— s 439 (1872 s 297, 1861-69 s 426)

See COMMITMENT I L R. 8 All. 14
[I. L. R., 15 All. 205

See COMPLAINT—REVIVAL OF COMPLAINT
[I. L. R. 24 Calc 523
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See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I. L. R 19 Calc., 127
[2 C W N., 573

See POSSESSION ORDER OF CRIMINAL COURT AS TO—COSTS
[I. L. R., 23 Calc 937

See PRACTICE—CRIMINAL CASES—REVISION I. L. R., 21 Calc. 837

See REVIEW—CRIMINAL CASES
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See Cases under Petition—Criminal Cases

See Cases under Sentence—Power of High Court as to Sentences

See Sessions Judge, Jurisdiction of
[I. L. R. 20 Calc., 633

——— s. 440

See Petition—Criminal Cases—Acquittals I. L. R., 14 Mad., 363

——— ss 443-463 (1872 ss 71-88)

See Jurisdiction of Criminal Court—European British Subjects
[14 B L R. 106
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——— ss 443 444 (1872, s. 72)

See Magistrate Jurisdiction of—Special Acts—Merchant Seamen's Act 1859 4 Mad., Ap., 23
[7 Mad. Ap. 33

——— s 451—"*European*" *Meaning of*—The word "European" in s. 451 of the Code of Criminal Procedure means persons born in Europe Queen Empress v Moss I. L R. 16 All., 88

——— s. 452 (Act X of 1875 s 37)

See Appeal in Criminal Cases—Criminal Procedure Code
[I. L. R., 14 Bom. 160

See Jury—Jury under High Court's Criminal Procedure
[I L. R 1 Bom, 232

——— ss 453 454.

See Jurisdiction of Criminal Court—European British Subjects
[I. L. R 12 Bom., 561

——— s 454 (1872 s 84)

See Magistrate Jurisdiction of—Powers of Magistrates
[I L R 16 Mad 308

——— *Privilege of European British subject—Waiver of privilege*—The provisions of s. 72 of the Code of Criminal Procedure relating to the kind of Court which shall have jurisdiction and shall not have jurisdiction to inquire into a complaint or try a charge against a European British subject constitute a privilege that is to say they are not so much words taking away jurisdiction entirely as words which confer on the British subject a right to be tried by a certain class of Magistrates and by no others which right the Code enables him to give up S 81 of the Criminal Procedure Code must be construed strictly with s. 72 and before a European British subject can be considered to have waived the privilege conferred upon him by s 72 it must appear that his rights under that section have been distinctly made known to him and that he must have been enabled to exercise his choice and judgment whether he would or would not claim these rights The waiver of privilege spoken of in s. 81 must be an absolute giving up of all the rights with reference to Ch VII of the Code of Criminal Procedure which a European British subject has; and the words "dealt with as such before the Magistrate" mean everything contained in the chapter—that is to say the tribunal having cognizance of the case the procedure and also the punishment to which the accused would be liable In the matter of the petition of Quiros Empress v Allen
[I. L. R., 6 Calc 83 6 C L. R. 463

——— s 464 (1872 s 423) s 465 (1872, s 45) s 468 (1872 s 428) ss 467 468 469 470 471 (1872 s 430) and s 473 (1872, s 432)

See Cases under Insanity

——— s. 465

See Charge to Jury—Summing up Special Cases—Unsoundness
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See Declaratory Decree
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——— s 476 (1872 s. 471 s 171).

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I. L. R. 23

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

1. ——————— *Act XXIII of 1861 s 16 — Sending case for investigation by Magistrate* —A Subordinate Judge, finding that a person had made a false verification of a plaint sent his case for investigation to a Magistrate of the district who refused to investigate it on the ground that the alleged offence was one triable exclusively by the Court of Session to which the Subordinate Judge himself should under s 173 of the Code of Criminal Procedure have committed it *Held* that the Magistrate of the district was bound to proceed with the investigation of the case according to s 16 of Act XXIII of 1861 REG *v* AMRUTA NATH

[7 Bom., Cr 29

2 ——————— *Preliminary enquiry—Procedure* —Under s 471 Criminal Procedure Code the Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused and after being so satisfied it must either commit the case or send the case to the Magistrate for enquiry whether a committal should be made or not IN THE MATTER OF THE PETITION OF KALI PROSUNNO BAGCHEE

[23 W R., Cr 39

3 ——————— *Power of High Court as Civil Court to interfere with order under s 471* —Where a Civil Court directs an inquiry to be made by the Magistrate of the district under s 471 of the Criminal Procedure Code in respect to the evidence given by the witnesses in a case before it the High Court cannot as a Civil Court on appeal interfere See *Queen v Baijoo Lall I L R 1 Calc 450* UMBICA SUNDURI CHOWDHRAIN *v* AJITULLA MONDUL 8 C L R, 148

4 ——————— *Act XXIII of 1861 s 16 —Order sending case to Magistrate for enquiring into offence of giving false evidence—Preliminary enquiry—Vagueness of charge* —Although s 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s 471 of the Criminal Procedure Code the whole law as to the procedure in cases within these sections is now embodied in s 471 of the Criminal Procedure Code In a suit brought to recover possession of certain property the Judge decided one of the issues raised in the plaintiff's favour but on the important issue as to whether the plaintiff ever had possession he found for the defendant The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case gave judgment for the defendant without requiring him to give evidence on that issue In the concluding paragraph of his judgment the Judge directed the depositions of the two witnesses above referred to, together with the [illegible] memoranda of their evidence to be sent to the Magistrate with a view to his enquiring whether or not they had voluntarily given false evidence in a judicial proceeding, and he further directed the Magistrate to enquire whether or not the plaintiff had abetted the offence of giving false evidence on the ground that as the witnesses were the plaintiff's servants he must personally have influenced them and also to enquire whether the plaint which the plaintiff had attested contained averments which he knew to be false On a motion to quash this order —*Held* that under s. 471 of the Criminal Procedure Code the Judge had no power to send a case to a Magistrate except when after having made such preliminary enquiry as may be necessary he is of opinion that there is sufficient ground (*i e* ground of a nature higher than mere *surmise or suspicion*) for directing judicial enquiry into the matter of a specific charge and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire and that the order was bad because the Judge had made no preliminary enquiry and because it was too vague and general in its character QUEEN *v* BAIJOO LALL. IN THE MATTER OF THE PETITION OF BAIJOO LALL

[I. L. R., 1 Calc. 450

5 ——————— *Power of and procedure of Court in making order under section—Order directing prosecution* —Before a Court is justified in making an order under s 476, directing the prosecution of any person it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge either in the course of the preliminary enquiry referred to in that section or in the earlier proceedings out of which the enquiry arises. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person had been guilty of an offence; but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted. *Queen v Baijoo Lall I L R 1 Calc 450* and *In the matter of the petition of Kali Prosunno Bagchee 23 W R., Cr. 39* followed IN THE MATTER OF THE PETITION OF KHETRO NATH SIKDAR *v* GIRISH CHUNDER MOOKERJI

[I. L. R. 18 Calc., 730

6 ——————— *Offence against public justice—Contempt of Court—Prosecution procedure* —That Court civil or criminal which is of opinion that there is sufficient ground for enquiring into a charge mentioned in ss. 467 468 473 Act X of 1872 may not except as is provided in s 473 try the accused person itself for the offence charged. QUEEN *v* JELTARAM SINGH I. L. R. 1 All. 129

ANONYMOUS 7 Mad., Ap. 23

Nor can he try a person for the abetment of such an offence ANONYMOUS 7 Mad. Ap 23

7 ———————The Court civil or criminal which is of opinion that there is sufficient ground for enquiring into a charge mentioned in ss. 467 468 473 of Act X of 1872 is not precluded by the provisions of s. 471 from trying the accused person itself for the offence charged. QUEEN *v* JADAB MAL

[I. L. R., 1 All. 100

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

8. ———— — s 471 Act X of 1872, does not deprive the Court, which possesses the power of trying an offence mentioned in ss. 467 468, and 469 of the power of trying it when committed before it itself QUEEN v OUR BAKSH I. L. R. 1 All. 193

9 ———— *Institution of criminal proceedings on appeal in Civil Court*—If in the course of a proceeding either civil or criminal a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice he is justified in directing criminal proceedings against such person under s. 471 of the Criminal Procedure Code without any further enquiry than that which he has already held in his own Court. As a matter of discretion and propriety it is right for a Court before committing a person on a charge of perjury upon his own uncontradicted statement, to await the hearing of the appeal where an appeal is pending in the case in which he is charged with such perjury IN THE MATTER OF MUTTY LALL GHOSE I. L. R., 6 Calc, 303

10 ———— *Power to commit for offences*—S 471 deals with a more extended class of cases, viz all those mentioned in ss 467 468 and 469 in which not merely a Civil Court but any Court Civil or Criminal and whether possessing or not possessing the power to commit to the Court of Session is of opinion that there is sufficient ground for holding an enquiry; and it enacts the procedure to be followed by the Court which may elect to adopt one of two courses that is to say it may either commit a case to the Court of Session if and where it has the power to do so, or, if it has not that power or is not disposed to exercise it it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged. EMPRESS v LOPAT NATHU I. L. R 4 Bom 287

11. ———— *Offence under*—Where a Court thinks that there is sufficient ground for enquiring into a charge mentioned in s 467 468 or 469 of Act X of 1872 it should proceed under s 471 of that Act Attention of the Court of Session in this case directed to *Queen v Baijoo Lall I L R 1 Calc 450* EMPRESS OF INDIA v GOBARDHAN DAS [I. L. R, 3 All. 62

12. ———— *Preliminary enquiry*—An order made under s 471 of Act X of 1872 sending a case for enquiry to a Magistrate is not necessarily bad because the Court did not make a preliminary enquiry before making such order The law requires only such preliminary enquiry as may be necessary *Held* therefore where a Munsif being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points sent the case for enquiry to the Magistrate under s 471 of Act X of 1872 with a proceeding embodying the facts of the case and charging the parties respectively with giving false evidence on such points and there was nothing to show that any enquiry that the Munsif could have made was necessary or would have put the Magistrate into a better position for dealing with the case than he was in that the Munsif's proceedings were not bad because he did not hold a preliminary enquiry EMPRESS v JUALA PROSAD I. L. R., 5 All 62

———— s 477 (1872 s 473 1861-69 s 172)

See CONTEMPT OF COURT—PENAL CODE s 175 I. L. R. 12 Mad 24 [I. L. R. 13 Bom 63

See DISTRICT JUDGE JURISDICTION OF [I. L. R. 6 All 103

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS 4 B L. R., A. Cr 9

See SESSIONS JUDGE JURISDICTION OF [3 B L R A Cr 35
I L R. 2 All. 398
I. L. R. 4 Calc 570

———— *Power of commitment by Sessions Judge—False evidence*—Under s 472 Criminal Procedure Code 1872 before a Sessions Judge can commit a person to the Court of Session it is necessary that the offence should have been committed before the Sessions Court and that it be one within the cognizance of and triable exclusively by that Court The offence of intentionally giving false evidence (s 193 Penal Code) not being triable exclusively by the Sessions Court is not one in which the Sessions Judge can convict QUEEN v BUNDHOO BANERJEE [21 W R. Cr 37

———— s 478 (1872 s 474)

See CRIMINAL PROCEEDINGS [I. L R 18 Bom 581

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION [I L R 15 Mad 224

1 ———— *Power of Civil Court to commit to Court of Session*—The power of a Civil Court to commit a case to the Court of Session after completing the preliminary enquiry is given by s 474 of the Code of Criminal Procedure and is restricted to the class of cases provided for in that section viz where offences exclusively triable by a Court of Session are committed before the Civil Court EMPRESS v LOPAT NATHU I L R 4 Bom 287

2 ———— *Power of Civil Court to order commitment*—A Civil Court has no power to order the commitment of persons for offences under ss 471 465 and 193 of the Penal Code without holding the preliminary enquiry required by s 474 of the Criminal Procedure Code QUEEN v PUNGATOONEE [22 W R, Cr 52

3 ———— *Sanction to prosecution Effect of—Criminal Procedure Code (Act X of 1882) s 195—Civil Court's power to proceed under s 478 after sanction given to a private person—Dismissal of a complaint by a private person,*

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Effect of—The granting of a sanction to a private person under cl (c) of s 195 of the Code of Criminal Procedure (Act X of 1882) does not debar a Civil Court from proceeding under s 478 nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar till set aside to a proceeding under that section QUEEN EMPRESS v SHANKAR I. L. R., 13 Bom 384

4 ——— *Forged documents filed in Court—Order of commitment for trial— Any such offence in s 478 Meaning of—Criminal Procedure Code s 195*—Certain documents were filed annexed to a petition in a suit pending before a Munsif but were not given in evidence. The Munsif on suspicion that they had been tampered with held an enquiry and committed the petitioners for trial by the Court of Session. *Held* that it was a proper commitment under s 478 of the Criminal Procedure Code The words any such offence' in that section mean an offence referred to in s 195 of the Code and not an offence referred to in that section qualified by the circumstances under which it is committed AKHIL CHANDRA DE v QUEEN EMPRESS [I. L. R, 22 Calc. 1004

——— s 480

See CONTEMPT OF COURT—PENAL CODE s 175 I L R 13 Mad. 24 [I. L. R., 12 Bom, 63

See CONTEMPT OF COURT—PROCEDURE [I. L. R., 11 All 361

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES I. L R. 12 Bom 63

——— ss 480 481 (1872 s 435 Act XXIII of 1861 s 21)

See CONTEMPT OF COURT—PENAL CODE s 2.3 10 Bom 69

See CONTEMPT OF COURT—PROCEDURE [1 N W 162 Ed 1873 241 I L R. 11 All 361

——— ss 480 481 482 (1872 ss 435 436 1861 69 s 183)

See CONTEMPT OF COURT—CONTEMPTS GENERALLY 6 Mad Ap 14

See MUNSIF JURISDICTION OF [I L R 15 Mad., 131

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE [6 Mad. Ap 16

——— *Sub Registrar—Offence during judicial proceeding—Penal Code s 228*—A was charged before an Assistant Magistrate by a Sub-Registrar with having committed an offence under s. 228 of the Penal Code and fined. *Held* that the Sub Registrar should have tried the matter himself under ss. 435 and 436 of the Criminal Procedure Code and as the Magistrate acted without jurisdiction the order must be quashed. IN THE MATTER OF THE PETITION OF SARDHARI LAL [13 B L R. Ap, 40 22 W R., Cr 10

——— s 485

See COMPLAINANT [I L. R. 13 Bom 600

See CONTEMPT OF COURT PENAL CODE s 175 I L R. 13 Mad. 24 [I L R. 12 Bom., 63

See PENAL CODE s 179 [I L. R., 13 Bom 600

——— s 487 para 1 (1872 s 473)

See CONTEMPT OF COURT—PENAL CODE s 175 I. L R. 13 Mad. 24 [I. L. R 12 Bom., 63

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L R. 18 Bom. 390

See SESSIONS JUDGE JURISDICTION OF [I L R. 16 Calc. 766

1 ——— *Giving false evidence in judicial proceeding—Power of Magistrate—Offence in contempt of Court—Criminal Procedure Code s 435*—The offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given this offence being an attempt to pervert the proceedings of the Court to an improper end is a contempt of its authority (ss 435 436, 471 472 and 473 of the Code of Criminal Procedure) REG v NARANBEG DULABAG 10 Bom., 73

Contra QUEEN v RAMLOCHUN SINGH [18 W R., Cr., 15

2 ——— *Judicial proceedings—Sanction to prosecute—Criminal appeal Hearing of by District Judge who has granted sanction to prosecute—Penal Code s 210*—A complainant applied to a Munsif for sanction to prosecute a decree holder for an offence under s 210 of the Penal Code and upon the Munsif's refusing such application preferred an appeal to the District Judge who granted the sanction asked for The decree holder having been prosecuted and convicted before a Deputy Magistrate preferred an appeal which came on for hearing before and was disposed of by the same District Judge who had granted the sanction. *Held* that the words shall try any person as used in s 487 of the Code of Criminal Procedure include the hearing of an appeal and that the hearing of the appeal from the order of the Munsif refusing sanction was a judicial proceeding within the meaning of the Code and consequently that under the provisions of s. 487 the District Judge had no jurisdiction to entertain the appeal against the judgment and sentence passed by the Deputy Magistrate IN THE

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

MATTER OF MADHUB CHUNDER MOZUMDAR *v* NOBODEEP CHUNDER PUNDIT I. L. R., 16 Calc 121

Overruled by QUEEN EMPRESS *v* SARAT CHANDRA RAKHIT I. L. R. 16 Calc., 766

3 ———— *Penal Code (Act XLV of 1860) s 193—False evidence Sanction for prosecution for—Jurisdiction of Sessions Judge—Criminal Procedure Code s 195*—A Sessions Judge who has directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding of a criminal nature before him cannot try the case himself *Empress* v *Ganga Din All W N, 1884 p 327* distinguished. QUEEN EMPRESS *v* MAKHDUM I. L. R., 14 All., 354

4. ———— *Judicial proceedings—Magistrate Jurisdiction of—Criminal Procedure Code ss 4 and 195*—A Magistrate who has refused to set aside an order sanctioning a prosecution on the charge of perjury has no jurisdiction under Criminal Procedure Code s. 487 to try the case himself QUEEN EMPRESS *v* SESHADRI AYYANGAR [I. L. R 20 Mad. 383

5 ———— *Disobedience of order under s. 518 Criminal Procedure Code—Penal Code s 188*—A second class Magistrate who issues an order under s. 518 of the Criminal Procedure Code has no jurisdiction to punish for its disobedience by reason of s. 473 of the Criminal Procedure Code REG *v* RANCHHOD DYAL 10 Bom 424

6 ———— *Offence committed in contempt of Court—Sessions case—Criminal Procedure Code, 1872 s 4—Sessions Judge and Assistant Sessions Judge*—To make a case a Sessions case within the meaning of s. 4 of the Code of Criminal Procedure it is not necessary that it should be triable exclusively by the Court of Session For the purposes of s 473 of the Code an Assistant Sessions Judge is a different Court from the Sessions Judge Accordingly an offence which is committed in contempt of the Sessions Judge's authority is cognizable by an Assistant Sessions Judge REG *v* GULABDAS KUBERDAS 11 Bom. 98

REG *v* RAMAJIRAV JIVBAJIRAV 12 Bom 1

7 ———— *Information by accused of offence—Report by a police of falsity of information—Sanction by District Magistrate on police report—Jurisdiction of Magistrate to try the case—Penal Code (Act XLV of 1860) s 182*—The accused gave certain information to the police who after investigating the matter reported that the information given was false and constituted an offence under s 182 of the Penal Code The District Magistrate on this sanctioned the prosecution of the accused who was convicted and sentenced under that section. The accused appealed against the conviction and sentence His appeal was heard and dismissed by the District Magistrate who had previously sanctioned his prosecution. On revision the accused contended that the District Magistrate having sanctioned his prosecution on the police report was not competent to hear the appeal *Held* that s 487 of the Code of Criminal Procedure did not apply as the offence was not committed before the District Magistrate nor was it in contempt of his authority nor brought to his notice in the course of a judicial proceeding RAMASORY LALL *v* QUEEN EMPRESS [I L R 27 Calc 452 4 C W N 594

8. ———— and s 471—*Jurisdiction of Magistrate—Giving false evidence*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and convicted of that charge by that Magistrate and the conviction was confirmed on appeal by the Sessions Judge *Held* that the jurisdiction of the Magistrate was not barred by the operation of s 473 Act X of 1872 the giving of false evidence in the presence of a Court not being an offence committed in contempt of the authority of the Court within the meaning of that section The Magistrate's jurisdiction in such a case was however held barred by s 471 of the Code the Magistrate being bound under that section either to commit or send the case for enquiry to another Magistrate IN THE MATTER OF THE PETITION OF SUFATULLAH 22 W R Cr 49

9. ———— *Court —Construction*—The prohibition in s 473 of the Criminal Procedure Code (Act X of 1872) is a personal prohibition ANONYMOUS CASE I. L. R. 1 Mad. 305

10 ———— *Offence against public justice—Contempt of Court*—An offence against public justice is not an offence in contempt of Court within the meaning of s 473 Act X of 1872 QUEEN *v* KALTARAN SINGH I L R 1 All 129

QUEEN *v* JAGATMAL I. L. R 1 All 162

11. ———— *Offence under Penal Code s 185—Illegal bid for property offered for sale by public servant*—The public servant concerned in an offence described in s. 185 of the Penal Code is not competent himself to try the person committing such offence QUEEN *v* JAGANATH [7 N W., 133

12 ———— *Giving false evidence*—Giving false evidence is an offence committed in contempt of the authority of a Court within the meaning of s 473 of Act X of 1872 *Reg* v *Navranbeg Dulabeg 10 Bom* 73 and *Anonymous case 7 Mad Ap 1* followed. *Queen* v *Kaltaran Singh I L R 1 All* 129 and *Queen* v *Jagatmal I L R 1 All 162* dissented from. Where the accused was by a Magistrate first class committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge there being no Assistant Sessions Judge or Joint Sessions Judge—*Held* that the commitment could not be quashed there being no error in law and the case must therefore be transferred for trial to another Court of Session. In such

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

a case as the above the better course would be for the Magistrate to try the case himself and if he is incompetent to pass a sufficient sentence for the Sessions Judge to refer the case to the High Court for enhancement of sentence PEG *v* GAJI KOM RANU I L R 1 Bom, 311

13 ——— *Nuisance Injunction to discontinue* —S 473 of the Code of Criminal Procedure which except as therein provided forbids a Court to try any person for an offence committed in contempt of its own authority is not limited to offences falling under Ch X of the Penal Code but extends to all contempts of Court REG *v* PARSAPA MAHADEVAPA I L R 1 Bom 339

14 ——— *Offence against public justice—Contempt of Court—Criminal Procedure Code s 471—Penal Code s 193—Held* (STUART C J dissenting) that an offence under s 193 of the Penal Code being an offence in contempt of Court within the meaning of s 473 of Act X of 1872 cannot under that section be tried by the Magistrate before whom such offence is committed. *Queen* v *Kaltaran Singh I I P 1 All 129* and *Queen* v *Jagatmal I L R 1 All 162* overruled. *Per* STUART C J —A Magistrate before whom such an offence is committed if competent to try it himself is not precluded from so doing by the provisions of s 471 of Act X of 1872 EMPRESS OF INDIA *v* KASHMIRI LAL I L R., 1 All, 625

15 ——— *Penal Code s 174—Contempt of Court* —Where a settlement officer who was also a Magistrate summoned as a settlement officer a person to attend his Court and such person neglected to attend and such officer as a Magistrate charged him with an offence under s 174 of the Penal Code and tried and convicted him on his own charge —*Held* that such conviction was with reference to ss 471 and 473 of Act X of 1872 illegal EMPRESS OF INDIA *v* SUKHARI [I L R 2 All 405

16 ——— *False charge—Contempt —Prosecution—Charge—Act X of 1872 (Criminal Procedure Code) ss 468 473* —*B* charged certain persons before a police officer with theft Such charge was brought by the police to the notice of the Magistrate having jurisdiction who directed the police to investigate into the truth of such charge Having ascertained that such charge was false such Magistrate took proceedings against *B* on a charge of making a false charge of an offence an offence punishable under s. 211 of the Penal Code and convicted him of that offence *Held* that as such false charge was not preferred by *B* before such Magistrate the offence of making it was not a contempt of such Magistrate's authority and the provisions of ss. 468 and 473 of Act X of 1872 were inapplicable and such Magistrate was not precluded from trying *B* himself nor was his sanction or that of some superior Court necessary for *B*'s trial by another officer *Empress* v *Kashmiri Lal I L R 1 All 625* distinguished EMPRESS *v* BALDEO [I L R, 3 All 322

17 ——— *Sanction to prosecute granted by District Judge—Power of same person as Sessions Judge to try the offence* —A District Judge who has, on hearing a civil appeal sanctioned the prosecution of a party for forgery is not debarred by s 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Sessions Judge EMPRESS *v* D SILVA [I L R., 6 Bom 479

18 ——— *Perjury—Contradictory statements—Power of trial by Sessions Court before which one of such statements was made* —A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Session respectively was convicted by the same Court of Session on a charge in the alternative of giving false evidence either before a Magistrate or before the Court of Session. *Held* that the Court was precluded by s 473 of the Criminal Procedure Code from trying the charge SUNDRIAH *v* QUEEN [I L R., 3 Mad 254

——— s 488 (1872 s 536 1861 69 s 316) s 489 (1872 s 537 1861 69 s 317), and s 490 (1872 s 538)

See CASES UNDER MAINTENANCE ORDER OF CRIMINAL COURT AS TO

——— s 488 (1872 s 536 1861 69 s 316)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [7 W R. Cr 10 2 Ind. Jur N S 88

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION [I L R 9 Bom 40

See MAHOMEDAN LAW—MAINTENANCE [I. L R 6 Calc 738

See SENTENCE —IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE [I. L. R., 8 Mad 70

See WITNESS — CIVIL CASES — PERSON COMPETENT TO BE WITNESS [I. L R 16 Calc 781
I L R. 18 All. 107

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES I. L R 18 All. 107
[I. L R., 16 Calc 781

——— *Cruelty* —The word cruelty in s 488 of the Criminal Procedure Code is not necessarily limited to personal violence *Kelly* v *Kelly L R 2 P D 59* and *Tomkins* v *Tomkins 1 S & T 168* referred to LUKMIN *v* FRANK LAL [I L R. 11 All. 460

CRIMINAL PROCEDURE CODES (ACT V OF 1898; ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—continued

——— s 491.

See Custody of Children [I. L. R. 16 Bom 307 I. L. R. 23 Calc. 290

See Foreigners [I. L. R. 16 Bom. 633

See Letters Patent High Court cl 15 I. L. R 14 Bom 555

See Warrant of Arrest — Criminal Cases I. L. R., 19 Bom 636

——— s 493 (1872 s 60)

See Counsel 11 Bom , 102

——— s 494.

See Discharge of Accused [I L R. 12 Mad. 35

See Public Prosecutor. [I. L. R 8 All. 291

——— s 495 (1872 s 59)

See Bombay District Police Act 1867 s 23 I. L. R., 8 Bom 534

See Counsel 11 Bom 102 [I. L. R 6 Calc 59 6 C L R 374

——— s 496 (1872 ss 194 204 para 1 1861-69 s 224)

See Bail I. L. R 6 Mad., 63 69

See Recognizance to appear [6 N W 366

See Warrant of Arrest—Criminal Cases 5 Bom Cr 31

——— s 497 (1872 s 389 1861 69 s 212)

See Bail. [1 B L R S N 26 10 W R. Cr 34

See Judicial Officers Liability of [3 Bom A C 36

See Magistrate Jurisdiction of—Powers of Magistrates [I L R 22 Bom 549

——— s 498 (1872 s 390 1861 69 s 436)

See Bail 1 B L R A Cr 7 [23 W R Cr 40 24 W R Cr 8 3 C L R 404 405 note I L R 1 All. 151

——— s 503 (1872 s 330)

See Cases Under Commission—Criminal Cases

——— ss 503 504 505 506 507 (Act X of 1875 s 76)

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—continued

——— s 509 (1872 s 323)

See Evidence—Criminal Cases—Depositions I L R 9 All 720 [I. L R 10 All 174 I L R 18 Calc 129

See Evidence—Criminal Cases—Medical Evidence I L R 8 Calc 739

See Witness—Criminal Cases — Examination of Witnesses—Generally [I L R 9 Calc 455

——— s 510 (1872 s 325 1861 69 s 370)

See Evidence—Criminal Cases—Chemical Examiner [6 B L R Ap 122 I L R., 10 Calc 1026

See Evidence—Criminal Cases—Medical Evidence 12 W R Cr 25

——— s 512 (1872 s 327)

See Evidence Criminal Cases—Depositions I L R 10 Calc 1097 [I. L R 8 All. 672

See Witness — Criminal Cases — Examination of Witnesses - Generally [21 W R Cr 12, 61 22 W R., Cr 33 12 C L R 120

——— s 514 paras 1 2 3 4 (1872 ——— ss 396 397 1861 69 s 219)

See Contempt of Court —Penal Code s 1 4 1 B L.R. A Cr 1

See Recognizance to appear [22 W R Cr., 74 I L R 11 Calc 77 4 Mad. Ap 44 2 C W N 519

See Security for Good Behaviour [I L R. 21 All. 69

——— ss 514 515 516 (1872 s 398 1861 69 s 221)

See Magistrate Jurisdiction of — Special Acts—Madras Abkari Act [I L R. 18 Mad. 48

See Witness—Criminal Cases—Summoning Witnesses 2 N W 113

——— s 514 (1872 s 502)

See Appeal in Criminal Cases—Criminal Procedure Codes [I. L. R 2 Mad 169

See Recognizance to keep Peace—Forfeiture of Recognizances [11 Bom. 170 10 C L R. 571 I. L. R. 4 Calc 865

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 517 (1872 s 418 Act X of 1875 s 115) ss 518 519 520 (1872, s 419) ss 521, 523 (1872 ss 415 416 1861 69 s 131) s 524 (1872, s 417 1861-69, s 132) and s 525

See CASES UNDER STOLEN PROPERTY—DISPOSAL OF BY THE COURTS

——— s 517

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

[I L R 9 Mad., 448

See OBSCENE PUBLICATION

[I. L R, 3 All. 837

1 ——— *Order as to disposal of property as to which no offence has been committed—Property found by police in possession of accused—Magistrate Power of*—The accused was convicted of criminal breach of trust in respect of certain money belonging to the complainant and on his conviction the Magistrate made an order under s 517 of the Code of Criminal Procedure directing that an amount equal to the moneys embezzled should be repaid to the complainant out of certain sums of money found by the police on the person of the accused *Held* that the Magistrate had no power to make the order under s. 517 of the Criminal Procedure Code there being nothing to show that any offence had been committed with regard to the property or that it had been used for the commission of any offence QUEEN EMPRESS v FATTAH CHAND

[I. L R, 24 Calc 499

FATEH CHAND v DURGA PROSAD

[I C W N 435

2 ——— *Proper order to make in respect of property in regard to which no offence is proved—Criminal Procedure Code s 523*—Where at the trial of a case the accused is acquitted and some property the subject matter of the charge was found by the police during investigation to be in the possession of persons accused of the offence and was brought before the Court—*Held* the proper order to make in this case is an order under s 517 Criminal Procedure Code *Held* also that the money in this case having come from the possession of the petitioners and no offence having been found at the trial to have been committed in respect of it it should be returned to the party or parties from whose possession it came IN THE MATTER OF THE PETITION OF MATI GHOSE 1 C W N 561

——— s 520 (1872 s 419)—*Government currency note Theft of—Court of appeal*—A Government currency note was stolen from *A* and cashed by *B* in good faith for *C* On the conviction of *C* for theft the Magistrate ordered the note to be given to *B* *A* appealed to the Sessions Judge who was of opinion that he was not competent to interfere as a Court of appeal under s 419 of the Criminal Procedure Code but submitted the case for the orders of the High Court *Held* that the case could be disposed of by the Judge under s. 419 of the Criminal Procedure Code and that the words Court of appeal in that section are not necessarily limited to a Court before which an appeal is pending EMPRESS v JOGGESSUR MOCHI

[I. L. R. 3 Calc., 379

S C IN THE MATTER OF MICHELL

[I C L. R. 339

——— s 522 (1872 s 534)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE

[I L. R. 25 Calc 830
2 C W N 225

See CASES UNDER POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE

——— s 523 (1872 ss 415 416)

See TREASURE TROVE

[I. L. R. 19 Bom 668

1. ——— *Property seized by police—Seizure of property on suspicion—Magistrate Duty of—Procedure*—By the provisions of s 523 of the Code of Criminal Procedure it is not intended that any final steps should be taken by the Magistrate nor is he bound to take any final steps to ascertain whether the property seized on suspicion belongs to the person in whose possession it was found until after the expiry of the six months mentioned in the section but when the proclamation has been issued and the six months have expired then under the provisions of s 524 the person in whose possession the property was found can come forward and show that it is his own QUEEN EMPRESS v MAHALABUDDIN

[I. L R, 22 Calc, 761

2 ——— *Property seized by the police pending an inquiry or trial under a search warrant issued by the Court—Magistrate's power to deal with such property where no offence is committed—Criminal Procedure Code s 517*—S 523 of the Code of Criminal Procedure (Act X of 1882) does not apply to property which is produced before a Court in the course of an inquiry or trial under a search warrant issued by itself under s 96 of the Code To such property s. 517 alone would apply; and if no offence is found in respect thereof the Court can make no order The property must be given back into the possession from which it came The scope of s. 523 must be confined to property seized by the police of their own motion in the exercise of the powers conferred on them by law for instance under s. 51 54 164 or 165 of the Code of Criminal Procedure *Per* TELANG J—Under s. 523 of the Code of Criminal Procedure a Magistrate is bound to institute an inquiry before making any order touching the right not of property but of possession to the property seized by the police IN RE RATANLAL RANGILDAS I. L. R. 17 Bom. 748

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued.*

——— ss. 523 524.

See FORFEITURE OF PROPERTY [9 W R. Cr, 13

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 18 W R. Cr 5

——— s. 524.

See RIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT [I. L. R., 19 Bom 668

See TREASURE TROVE. [I. L. R., 19 Bom., 668

——— s. 526 (Act X of 1875 s. 147 Act X of 1872 s. 64 Presidency Magistrate s Act, 1877 s. 181) ss 527 and 528 (1872 ss. 47, 48)

See CASES UNDER TRANSFER OF CRIMINAL CASE.

——— s 526

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT [I. L. R., 4 Calc. 667

See CRIMINAL PROCEEDINGS [I. L. R. 19 Mad., 375

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 9 Bom., 333

See HIGH COURT JURISDICTION OF—MADRAS—CRIMINAL [I. L. R., 12 Mad. 39

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION [I. L. R 23 Calc 44
4 C W N 604

See SECURITY FOR GOOD BEHAVIOUR [I. L. R. 16 All 9
I. L. R. 19 All 291

——— s. 526A.

See CRIMINAL PROCEEDINGS [I. L R., 19 Mad. 375

——— *Application for postponement of case in order to apply for transfer of case—Discretion of Magistrate in granting adjournment—Criminal Procedure Code Amendment Act (III of 1884) s 12*—M the complainant on the 19th November 1887 made an application to the Deputy Magistrate under s 526A of the Criminal Procedure Code for the postponement of his case against G to enable him to apply to the High Court under s. 526 for a transfer of the case from the file of the Deputy Magistrate to that of another officer On the same date the Deputy Magistrate refused the application and proceeded with the case acquitting G *Held* having regard to the words the Court shall exercise etc in s. 526A the order of the Deputy Magistrate of the 19th November refusing to grant the application was illegal QUEEN EMPRESS *v* GAYITRI PROSUNNO GHOSAL I. L. R. 15 Calc., 455

——— s 528

See MAGISTRATE JURISDICTION OF—WITHDRAWAL OF CASES [I. L. R. 3 All. 749
I. L. R. 8 Calc 851
I. L. R. 14 Mad. 399
I L R 15 Mad. 94
I. L R. 22 Bom. 549

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS [I. L. R. 22 Calc., 898

——— s 529

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [4 C W N 821

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT [I. L R. 23 Calc 300 442

See PARDON I. L. R. 20 All., 40

——— s 530 (1872 s 34).

See CRIMINAL PROCEEDINGS [22 W R. Cr 49
23 W R. Cr., 33
1 C L. R. 434
I. L. R. 8 Bom. 307
I. L. R. 11 Mad 443
I L R 13 Bom 502

——— s. 531

See CRIMINAL PROCEEDINGS [I. L. R. 8 Bom., 312
I. L. R 16 Bom., 200
I. L R 17 All 36

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R. 16 Calc. 667

——— s 532 (1872 s 33)

See CRIMINAL PROCEEDINGS [I L. R. 3 All., 258
I. L R. 16 Bom. 200
I. L R. 17 Mad. 402

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL [I L. R. 9 Bom 288

See SANCTION FOR PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION [I. L. R. 22 Bom 112

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 533

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R, 9 Mad. 224
[I. L. R. 14 Calc. 539
I L R 15 Calc 595
I. L. R 17 Calc 862
I L R 18 Calc 549
I L R 21 Bom 495
I L R 23 Bom 221
2 C W N 702
3 C W N, 387

See CRIMINAL PROCEEDINGS
[I L R 22 Mad., 15

——— s 537 (1872 ss 283 300, 1861-69 ss 426, 439).

See ABSCONDING OFFENDER
[I. L R. 19 Mad 3

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
[I L R. 21 Calc 955

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[I L R 23 Calc 983

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[5 B L R, 660

See COMPLAINT—POWER TO REFER TO SUBORDINATE MAGISTRATE
[3 B L R. A Cr 67
5 B L R. 160
7 B L R. 513
9 B L R. 146 147 note

See CASES UNDER CRIMINAL PROCEEDINGS

See CRIMINAL TRESPASS
[I. L. R. 22 Calc., 391

See JOINDER OF CHARGES
[I L R., 12 Mad. 273
I. L. R 14 All., 502
I. L R 14 Calc 395
I. L R. 20 Calc., 413
4 C W N 656

See JUDGMENT—CRIMINAL CASES
[I L. R., 20 Calc 353
I L R. 21 Calc. 121
I. L R 23 Calc 502

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I L R. 23 Calc 328

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT
[I. L R 23 Calc 442

See POSSESSION ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE I. L. R., 20 Calc 520

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See POSSESSION ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS
[I L R. 21 Calc., 404

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN
[I L R. 1 All., 680
I. L R., 13 Calc. 272

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION I L R, 22 Calc. 176

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—REVERSAL.
[B L R. Sup Vol 459
5 B L R., 39

See SESSIONS JUDGE JURISDICTION OF
[19 W R, Cr 43

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[I L. R. 25 Calc 863
2 C W N 465

——— *Court of competent jurisdiction*—Meaning of the expression a Court of competent jurisdiction in s 537 of the Criminal Procedure Code considered. QUEEN EMPRESS v KRISHNABHAT I L R 10 Bom. 319

——— s 540 (1872 s 192)

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I. L R. 24 Calc 167
4 C W N 604

See PENAL CODE s 182
[I L. R. 12 Mad. 451

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I. L. R. 14 Calc., 245
[I. L. R. 24 Calc 288

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I L. R 24 Calc., 167

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 21 W R Cr., 61
[I L. R. 8 All 668

——— *Order of examination of witnesses*—It is not intended by s. 540 of the Code of Criminal Procedure 1882 that a Judge shall reverse the order of a Sessions trial and call the witnesses summoned for the defence before the case for the prosecution is closed QUEEN EMPRESS v HARGOBIND SINGH I. L R 14 All 242

——— ss 545 546 (1872 s. 308 1861-69 s 44)

See CASES UNDER COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See FLETCHER 3 C. L. R. 404 405 note
[I. L. R., 12 Mad., 302
I. L. R., 19 All. 112

——— s. 548 (Presidency Magistrates Act, 1877 s. 170)—*Prosecutor Rights of—Person affected by an order —Application for copy of order and depositions Refusal of—Specific Relief Act (1 of 1877) ss 45*—All prosecutors whose charges are dismissed by the Presidency Magistrate are affected by the order of discharge and are therefore entitled, under s. 170 of the Presidency Magistrate's Act to obtain copies of the order made by and of the depositions taken before the Magistrate. IN THE MATTER OF THE EMPRESS *v* DINONATH ROY

[I. L. R. 8 Calc 166 10 C L. R. 190

——— s. 551—*Unlawful detention for an unlawful purpose—Infant Custody of*—A Hindu girl under the age of 14 years went of her own accord to a Mission house where she was received and allowed to remain. The mother and husband of the girl thereupon applied to the Magistrate who took proceedings under s. 551 of the Criminal Procedure Code The lady superintendent of the Mission house denied that the girl was legally married and alleged that she was practically being brought up with the connivance of the mother to a life of prostitution The Magistrate after recording evidence found that the girl was legally married that the other allegation was not established; and that although she went to and remained in the Mission house of her own free will there was under the circumstances an unlawful detention for an unlawful purpose He further found that there were no facts established which would disentitle the husband or the mother to the custody of the girl and passed an order under the section directing the girl to be restored to her mother *Held* upon the facts as found by the Magistrate as it was immaterial whether the girl did or did not consent to remain at the Mission house there was an unlawful detention within the meaning of these words as used in the section as the girl was kept against the will of those who were lawfully entitled to have charge of her *Held* also that s 551 applying only as it does to women and female children must not be construed so as to make it include purposes which, although not unlawful in themselves might only become so when entertained towards a child in opposition to the wishes of its guardian but that the purpose whether entertained towards a woman or a female child must be in itself unlawful *Held* consequently that in the circumstances of the case there was no detention for an unlawful purpose and that the Magistrate had no power to make the order *Held* further that although the Magistrate had no power under the section to make the order he did it did not follow that the Court should direct the girl to be restored to the custody of the lady superintendent even if it had the power to do so and that having regard to the circumstances of the case there was nothing to justify such an order being passed ABRAHAM *v* MAHTABO I. L. R. 16 Calc 487

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*concluded*

——— s 556 (Act X of 1882 s 555)

See BENCH OF MAGISTRATES
[I. L. R. 10 Calc. 194

See CASES UNDER MAGISTRATE JURISDICTION OF GENERAL JURISDICTION

——— s 557

See PRESIDENCY MAGISTRATE
[I L R 23 Bom 490

——— s 558 (1872 s 539, 1861 69 s 444)

See ARMS ACT 1878 s 19
[I L R 8 Calc 473

See BENGAL ACT VI OF 1865
[3 B L R A Cr., 39

See GENERAL CLAUSES CONSOLIDATION ACT 1868 s 6 I L R. 6 Mad 336

——— s 560

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT

CRIMINAL PROCEEDINGS

——— Effect of striking off—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS I. L. R. 20 Calc 867

——— Institution of—

See CASES UNDER COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

See CASES UNDER FALSE CHARGE

——— Revival of—

See COMPLAINT—REVIVAL OF COMPLAINT

See CRIMINAL PROCEDURE CODE 1898 ss 436 438 (1872 s 296)
[I L R. 4 Calc 16 647
I L R. 2 All 570

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE TRIAL

——— Withdrawal of—

See MAGISTRATE JURISDICTION OF—WITHDRAWAL OF CASES

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
[I L R. 22 Calc., 898

1 ——— Dispute as to right to give girl in marriage.—The practice of instituting criminal proceedings with a view to determining disputes arising in cases as to the right to give a girl

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s 533

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R 9 Mad. 224
I L R. 14 Calc. 539
I L R 15 Calc 595
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I L R 18 Calc 549
I L R 21 Bom 495
I L R 23 Bom 221
2 C W N 702
3 C W N 387

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I. L R. 19 Mad 3

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
I L R., 21 Calc, 955

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5 B L R 660

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I. L R., 12 Mad. 273
I. L R 14 All. 502
I. L R 14 Calc 395
I L R. 20 Calc., 413
4 C W N 656

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I L R 20 Calc 353
I L R. 21 Calc. 121
I. L R 23 Calc 502

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
I L R. 23 Calc 328

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I. L. R. 23 Calc., 442

See POSSESSION ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE I. L. R., 20 Calc 520

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See POSSESSION ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS
I L R. 21 Calc., 404

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I L R. 1 All., 680
I. L R., 13 Calc 272

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION I. L R 22 Calc 176

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—REVERSAL.
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5 B L R., 39

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———— *Court of competent jurisdiction*—Meaning of the expression 'a Court of competent jurisdiction in s 537 of the Criminal Procedure Code considered. QUEEN EMPRESS *v* KRISHNABHAT I. L R 10 Bom. 319

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I L R 24 Calc., 167

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I. L R., 8 All 668

———— *Order of examination of witnesses*—It is not intended by s 540 of the Code of Criminal Procedure 1882 that a Judge shall reverse the order of a Sessions trial and call the witnesses summoned for the defence before the case for the prosecution is closed QUEEN EMPRESS *v* HAR GOBIND SINGH I. L R., 14 All 213

———— ss 545 546 (1872 s 308 1861-69 s 44)

See CASES UNDER COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See FINE 3 C. L. R. 404 405 note
[I. L. R., 12 Mad., 353
I. L. R. 19 All. 113

——— s 548 (Presidency Magistrates Act, 1877 s. 170)—*Prosecutor Rights of— Person affected by an order"—Application for copy of order and deposition Refusal of—Specific Rel of Act (I of 1877) ss 7 45*—All prosecutors whose charges are dismissed by the Presidency Magistrate are affected by the order of discharge and are therefore entitled, under s 170 of the Presidency Magistrate's Act, to obtain copies of the order made by and of the deposition taken before the Magistrate. IN THE MATTER OF THE PETITION OF DINONATH ROY

[I. L. R. 8 Calc 166 10 C L. R. 190

——— s. 551—*Unlawful detention for an unlawful purpose—Infant Custody of*—A Hindu girl under the age of 14 years went of her own accord to a Mission house where she was received and allowed to remain. The mother and husband of the girl thereupon applied to the Magistrate who took proceedings under s. 551 of the Criminal Procedure Code The lady superintendent of the Mission house denied that the girl was legally married and alleged that she was practically being brought up with the connivance of the mother to a life of prostitution The Magistrate after recording evidence found that the girl was legally married that the other allegation was not established; and that although she went to and remained in the Mission house of her own free will there was under the circumstances an unlawful detention for an unlawful purpose He further found that there were no facts established which would disentitle the husband or the mother to the custody of the girl and passed an order under the section directing the girl to be restored to her mother *Held* upon the facts as found by the Magistrate as it was immaterial whether the girl did or did not consent to remain at the Mission house there was an unlawful detention within the meaning of those words as used in the section as the girl was kept against the will of those who were lawfully entitled to have charge of her *Held* also that s 551 applying only as it does to women and female children must not be construed so as to make it include purposes which, although not unlawful in themselves might only become so when entertained towards a child in opposition to the wishes of its guardian but that the purpose whether entertained towards a woman or a female child must be in itself unlawful *Held* consequently that in the circumstances of the case there was no detention for an unlawful purpose and that the Magistrate had no power to make the order *Held* further that although the Magistrate had no power under the section to make the order he did it did not follow that the Court should direct the girl to be restored to the custody of the lady superintendent even if it had the power to do so and that having regard to the circumstances of the case there was nothing to justify such an order being passed ABRAHAM *v* MAHTABO I. L. R 16 Calc 487

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[I L R 23 Bom 490

——— s 558 (1872 s 530 1861 69 s 444)

See ARMS ACT 1878 s 19
[I L R 8 Calc 473

See BENGAL ACT VI OF 1865
[3 B L R A Cr., 39

See GENERAL CLAUSES CONSOLIDATION ACT 1868 s 6 I. L. R. 6 Mad 336

——— s 560

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT

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See CRIMINAL PROCEDURE CODE 1898 ss 436 439 (1872 s 296)
[I L R. 4 Calc 16 647
I L R. 2 All 570

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE TRIAL

——— Withdrawal of—

See MAGISTRATE JURISDICTION OF—WITHDRAWAL OF CASES

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
[I L R. 22 Calc., 899

1 ——— Dispute as to right to give girl in marriage —The practice of instituting criminal proceedings with a view to determining disputes arising in cases as to the right to give a girl

CRIMINAL PROCEEDINGS—*continued*

in marriage condemned. IN THE MATTER OF EMPRESS v. ABDOOL KUREEM

[I. L. R. 4 Calc, 10 3 C L. R. 81

2. ———— Irregularity—*Waiver or consent by prisoner—Recording statements of witnesses* —The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government the matter was enquired into by the District Magistrate and the jailor was by the Magistrate's order placed on trial before a Bench of Magistrates consisting of the District Magistrate himself *L* the Officiating Superintendent of the jail and three other Honorary Magistrates The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned that they had no objection to the composition of the Bench but after the charges had been framed the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute and both the District Magistrate and *L* gave evidence for the prosecution After the case for the prosecution was closed two formal charges were drawn up namely that the prisoner had debited Government with the price of more oil seed than he actually purchased and that he had received payment for certain oil at a higher rate than he credited to Government The moneys the receipt of which were the subject of the first charge were obtained by the prisoner on the strength of certain vouchers which he had induced *L* to sign as correct and *L* had sanctioned the sale at the rates credited to Government Upon the prisoner's giving the names of the witnesses he intended to call in his defence *L* was deputed by his brother Magistrates to examine some of them who were connected with the jail in order to guard against deviation and the depositions so taken were placed on the record to be used by either party though not themselves as evidence The prisoner was convicted On a motion to quash the conviction —*Held* that the recording the statements of the prisoner's witnesses was irregular Criminal proceedings are bad unless they are conducted in the manner prescribed by law and if they are substantially bad the defect will not be cured by any waiver or consent of the prisoner QUEEN v BHOLA NATH SEN

[I. L. R. 2 Calc. 23 25 W R. Cr 57

3 ———— *Waiver—Want of jurisdiction.*—No person can by waiver or consent enable a Magistrate or a Judge to try a case which he is disqualified to try by some circumstance not personal to the accused. IN THE MATTER OF THE PETITION OF QUIROS EMPRESS v ALLEY

[I. L. R. 8 Calc 83 8 C. L. R. 463

4. ———— *Bias of Judge—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case* —The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction though it is expedient that such a complaint should be referred to another Magistrate. IN RE THE PETITION OF BASAPA

[I. L. R. 9 Bom., 172

5. ———— *Summary jurisdiction wrongly exercised—Unlawful assembly armed with deadly weapons—Splitting offence—Right of appeal Deprivation of* —No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction If a charge of an offence not triable summarily is laid and sworn to the Magistrate must proceed with the case accordingly unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed Therefore a Magistrate when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon and so to give himself jurisdiction to try the case summarily and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal EMPRESS v ABDOOL KARIM. EMPRESS v GOLAM MAHOMED I. L. R. 4 Calc., 18 3 C L. R., 44

6 ———— *Exercise of summary jurisdiction after inquiry into charge which cannot be tried summarily—Criminal Procedure Code (Act V of 1898) s. 260—Summary procedure under Penal Code s 323 after enquiring into charges under ss 147 and 324.*—A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss 147 and 324 of the Indian Penal Code but after hearing evidence and being of opinion that only an offence under s 323 of the Indian Penal Code had been made out he proceeded to deal with the case summarily *Held* that, inasmuch as the evidence adduced was not sufficient to justify a committal but clearly disclosed an offence over which he had summary jurisdiction the Magistrate was right in acting as he did Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily The High Court will not interfere where a Magistrate has *bonâ fide* acted in the interests of justice *Empress v Abdool Karim I L R 4 Calc 18* distinguished. QUEEN EMPRESS v PANGAMANI

[I. L. R., 22 Mad., 459

7 ———— *Accused affirmed and examined—Appointment of Magistrate who convicted accused to be Crown Prosecutor—Right of prisoners to converse privately with pleader—Magistrates sitting on bench in Judge's Court during trial* —Upon an inquiry which the High Court directed the Sessions Judge to make into an allegation that a confession was made under such circumstances as to be inadmissible in evidence the prisoners were ordered to be and were solemnly affirmed and the prosecution neither objected to the form of the order nor to the affirmation of the prisoners and, moreover cross-examined them but objected to their evidence being used upon the return of the inquiry It was held that the objection though possibly good

CRIMINAL PROCEEDINGS—*continued*

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9 ——— *Trial by Magistrate instituted by him as Collector* —The District Magistrate should not himself try a case in which he instituted the prosecution as Collector QUEEN *v* NADI CHAND PODDAR 24 W R., Cr 1

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13 ——— *Omission to comply with formalities before service of summons* —The omission to comply with prescribed formalities before issuing the summons will not vitiate the proceedings after summons so as to enable a complainant to re-open the case EASTERN BENGAL RAILWAY COMPANY *v* KALIDAS DUTT 23 W R Cr 63

14. ——— *Contempt of Court—Postponement of final order—Irregular procedure* —Where a Magistrate in whose presence contempt was committed took cognizance of the offence immediately but in order to give the accused an opportunity of showing cause postponed his final order for some days —*Held* that such action though it might be irregular was not illegal and as the accused had not been in any way prejudiced, was covered by s 537 of the Criminal Procedure Code QUEEN EMPRESS *v* PAIAMBAR BAKHSH [I. L. R. 11 All. 361

15 ——— *Irregular commitment—Want of jurisdiction—Criminal Procedure Code 1872 ss 33 63* —S 33 of Act X of 1872 contemplates the contingency of a case which has been enquired into at the proper place as indicated by s. 63 of that Act being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment and not of a case which has been enquired into in a district in which it was not committed being committed to the proper Court of Session as indicated by that section by a particular Magistrate duly empowered by law to make such a commitment Consequently where a Magistrate enquires into and commits for trial an offence which has not been committed in his district and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby and tries him for such offence the proceedings in such case are illegal *ab initio* EMPRESS OF INDIA *v* JAGAN NATH [I L. R. 3 All. 258

16 ——— *Irregularity in holding trial without jurisdiction—Criminal Procedure Code (1882) s 531—Sessions Judge Jurisdiction of—Appeal presented within but heard outside the local limits of the jurisdiction of a Sessions Court* —A criminal appeal was presented to the Sessions Judge of the Bijnor Budaun Division at Bijnor within the said Sessions division but was heard by the said Judge at Moradabad, at which

CRIMINAL PROCEEDINGS—*continued*

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[I. L. R. 4 Calc, 10 3 C L R., 81

2. ——— Irregularity—*Waiver or consent by prisoner—Recording statements of witnesses*—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government the matter was enquired into by the District Magistrate and the jailor was by the Magistrate's order placed on trial before a Bench of Magistrates consisting of the District Magistrate himself *L* the Officiating Superintendent of the jail and three other Honorary Magistrates The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned that they had no objection to the composition of the Bench but after the charges had been framed the prisoner's counsel objected to the Bench as formed The District Magistrate directed the Government pleader to prosecute and both the District Magistrate and *L* gave evidence for the prosecution After the case for the prosecution was closed two formal charges were drawn up namely that the prisoner had debited Government with the price of more oil seed than he actually purchased and that he had received payment for certain oil at a higher rate than he credited to Government The moneys the receipt of which were the subject of the first charge were obtained by the prisoner on the strength of certain vouchers which he had induced *L* to sign as correct and *L* had sanctioned the sale at the rates credited to Government Upon the prisoner's giving the names of the witnesses he intended to call in his defence *L* was deputed by his brother Magistrates to examine some of them who were connected with the jail in order to guard against deviation and the depositions so taken were placed on the record to be used by either party though not themselves as evidence The prisoner was convicted On a motion to quash the conviction —*Held* that the recording the statements of the prisoner's witnesses was irregular Criminal proceedings are bad unless they are conducted in the manner prescribed by law and if they are substantially bad the defect will not be cured by any waiver or consent of the prisoner QUEEN v BHOLANATH SEN

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3 ——— *Waiver—Want of jurisdiction.*—No person can by waiver or consent enable a Magistrate or a Judge to try a case which he is disqualified to try by some circumstance not personal to the accused. IN THE MATTER OF THE PETITION OF QUIROS EMPRESS v ALLEY

[I. L. R. 8 Calc 83 8 C L R. 463

4. ——— *Bias of Judge—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case*—The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction though it is expedient that such a complaint should be referred to another Magistrate IN RE THE PETITION OF BASAPA

[I. L. R. 9 Bom., 172

5. ——— *Summary jurisdiction wrongly exercised—Unlawful assembly armed with deadly weapons—Splitting offence—Right of appeal Deprivation of*—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to the Magistrate *must proceed* with the case accordingly unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore a Magistrate when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful *assembly* is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon and so to give himself jurisdiction to try the case summarily and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal EMPRESS v ABDOOL KARIM. EMPRESS v GOLAM MAHOMED I. L. R. 4 Calc., 18 3 C L R., 44

6 ——— *Exercise of summary jurisdiction after inquiry into charge which cannot be tried summarily—Criminal Procedure Code (Act V of 1898) s. 260—Summary procedure under Penal Code s. 323 after enquiring into charges under ss 147 and 324.*—A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss 147 and 324 of the Indian Penal Code but after hearing evidence and being of opinion that only an offence under s 323 of the Indian Penal Code had been made *out* he proceeded to deal with the case summarily *Held* that, inasmuch as the evidence adduced was not sufficient to justify a committal but clearly disclosed an offence over which he had summary jurisdiction the Magistrate was right in acting as he did Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily The High Court will not interfere where a Magistrate has *bonâ fide* acted in the interests of justice *Empress v Abdool Karim I L R 4 Calc 18* distinguished. QUEEN EMPRESS v RANGAMANI

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11 ——— *Criminal Procedure Code, 1861, s. 439.*—Where a Deputy Magistrate did not draw up a charge in accordance with s. 230 of the Code of Criminal Procedure, but gave the accused clearly to understand the nature of the charges made against them, the irregularity was held to fall within s. 439 of that Code. BHUGWAN v. DOYAL GOPE 10 W. R. Cr., 7

12 ——— *Preliminary inquiry—Perjury.*—It is necessary to a proper preliminary enquiry that the accused (or under certain circumstances his agent) should be present; that the witnesses whose evidence is to be the foundation of the commitment should be examined before him; and that he should have the opportunity of cross-examining them. It is essential too in a case of perjury that he should know at what period he ceased to be a witness and his position was changed to that of the accused. QUEEN v. KALICHURN LAHOOREE [9 W. R. Cr., 54

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15 ——— *Irregular commitment—Want of jurisdiction—Criminal Procedure Code, 1872, ss. 33, 63.*—S. 33 of Act X of 1872 contemplates the contingency of a case which has been enquired into at the proper place as indicated by s. 63 of that Act being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment, and not of a case which has been enquired into in a district in which it was not committed being committed to the proper Court of Session as indicated by that section by a particular Magistrate duly empowered by law to make such a commitment. Consequently where a Magistrate enquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings in such case are illegal *ab initio*. EMPRESS OF INDIA v. JAGAN NATH [I. L. R., 3 All. 258

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11 ———— *Criminal Procedure Code 1861 s 439*—Where a Deputy Magistrate did not draw up a charge in accordance with s 250 of the Code of Criminal Procedure but led the accused clearly to understand the nature of the charges made against them the irregularity was not held to fall within s. 439 of that Code. BHUGWAN v DOYAL GOPE 10 W R Cr 7

12 ———— *Preliminary inquiry—Perjury*—It is necessary to a proper preliminary enquiry that the accused (or under certain circumstances his agent) should be present; that the witnesses whose evidence is to be the foundation of the commitment should be examined before him and that he should have the opportunity of cross-examining them. It is essential too in a case of perjury that he should know at what period he ceased to be a witness and his position was changed to that of the accused. QUEEN v KALICHURN LAHOOREE [9 W R. Cr 54

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15 ———— *Irregular commitment—Want of jurisdiction—Criminal Procedure Code 1872 ss 33 63*—S 33 of Act X of ... offence of rioting on the 6th ... contingency of a case which those persons and one *F* were charged ... place as individuals committed the offence of criminal trespass committed to the December. These two cases were taken Magistrate tried together in one trial and were decided by ... judgment. *Held* that the trial was illegal and the defect was not cured by s 537 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF CHANDI SINGH. QUEEN EMPRESS v CHANDI SINGH I L. R 14 Calc 395

See BISHNU BANWAR v EMPRESS [1 C W N 35

28 ———— *Code of Criminal Procedure ss 233 and 537—Obtaining a minor for prostitution—Penal Code ss 372 373—Misjoinder of charges—Immaterial irregularity*—A woman being a member of the dancing girl caste obtained possession of a minor girl and employed her for the purpose of prostitution; she subsequently obtained in adoption another minor girl from her parents who belonged to the same caste. She and the parents of the second girl were charged together under ss 372 373 of the Penal Code. The charges related to both girls. *Held* (1) that the two charges should not have been tried together but irregularity committed in so trying them had caused no failure of justice; (2) that ss 372 373 of the Penal Code may

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be applicable in a case where the minor concerned is a member of the dancing girl caste *Per* MUTTUSAMI AYYAR *J*—It would be no offence if the intention was that the girl should be brought up as a daughter and that when she attains her age she should be allowed to select either to marry or follow the profession of her prostitute mother QUEEN EMPRESS *v* RAMANNA I L R, 12 Mad. 273

29 ——— *Irregularity prejudicing the accused—Rioting Counter charges of—Cross cases tried together—Evidence in one case considered in the other—Criminal Procedure Code (Act X of 1882), ss 233 239 537—Illegality—Fight between two parties not 'transaction'—Joinder of charges* —Where two cross cases of rioting and grievous hurt were committed separately for trial before a Sessions Judge who having heard the evidence in the first case heard the evidence in the second case examined some of the accused in the one case as witnesses for the prosecution in the other and *vice versâ* and subsequently heard the arguments in both the cases together and the opinions of the assessors (who were the same in both the cases) were taken at one time and both the cases were dealt with in one judgment —*Held* that this mode of trial, although irregular did not prejudice the accused in their defence and that under such circumstances a re trial was not made necessary by reason of such irregularity *Queen* v *Basu B L R Sup Vol 750 8 W R Cr 47*, and *Queen* v *Surroop Chunder Paul 12 W R Cr 75* approved. Nor did the examination of the accused who were on their trial in one case as witnesses for the prosecution in the other affect the validity of their conviction Observations in *Bachu Mullah* v *S a Ram Singh I L R 14 Calc 358* dissented from *Hussein Buksh* v *Empress I L R 6 Calc 96* considered and distinguished. *Semble*—A fight between two parties cannot be treated as a transaction within the meaning of s 239 of the Code of Criminal Procedure On the law as contained in that section the two parties cannot regularly be charged in the same trial QUEEN EMPRESS *v* CHANDRA BHUIYA I. L. R. 20 Calc., 537

30 ——— *Aggregate sentence instead of separate sentences—Material error or defect* —Two prisoners having been convicted by an Assistant Judge of forgery and other offences were sentenced each to an aggregate amount of punishment which the Court was competent to inflict but without specifying the several penalties awarded for each offence On reference by the Sessions Judge under s. 434 of the Criminal Procedure Code —*Held* that it was an irregularity on the part of the Assistant Sessions Judge not to pass a separate sentence under each independent head of the charge but that it was not an error or defect in consequence of which the High Court could reverse or alter the sentence on revision. REG *v* VINAYAK TRIMBAK [2 Bom., 414 2nd Ed., 391

31. ——— *Case not finally disposed of—Criminal Procedure Code 1882 s 537*—S 537 does not apply to a pending case, but only to a case which has been finally disposed of NILRATAN SEN *v* JOGESH CHANDRA BUTTACHARJEE [I. L. R. 23 Calc., 983 1 C W N., 56

32 ——— *Criminal Procedure Code 1872 s 537 (1872 s 283 1861-69 ss 426 439)—Irregularity prejudicing prisoner in his defence* —An omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Penal Code of attempting to murder was on appeal by the prisoner to the High Court held to be an irregularity which prejudiced the prisoner in her defence and the proceedings were ordered to be quashed, and a new trial held QUEEN *v* ITWARYA [14 B L R, 54 22 W R., Cr., 14

33 ——— *Irregular appointment of jurors* —Where the Magistrate had appointed as jurors persons who had been appointed by the opposite party it was held to be an error affecting the merits of the case SHATYANUNDO GHOSAL *v* CAMPERDOWN PRESSING CO 21 W R. Cr 43

34. ——— *Irregular selection of jurors—Criminal Procedure Code 1872 s 240—Per* FIELD *J*—Irregularities under s 240 of the Criminal Procedure Code in the selection of the jurors and in the admission of the deposition of a medical witness treated it not being shown that the prisoners had been thereby prejudiced, as being objections which ought not to be entertained for the purpose of interfering with the verdict regard being had to the provisions of s. 283 of the Criminal Procedure Code and s 167 of the Evidence Act IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON EMPRESS *v* JHUBBOO MAHTON [I. L R. 8 Calc 739 12 C L. R., 233

35 ——— *Criminal Procedure Code 1872 s 283—Penal Code s 181—Irregular trial—Legal Practitioners Act (XVIII of 1879)* —Where three persons were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of a pleader under the provisions of the Legal Practitioners Act —*Held* that the trial of the three prisoners together was a grave error of procedure vitiating the trial KOTHE SUBBA CHETTI *v* QUEEN [I. L. R., 6 Mad., 252

36 ——— *Criminal Procedure Code 1872 s 283 and s 144—Omission to reduce complaint to writing* —Acting in violation of s. 144 of the Criminal Procedure Code 1872 in not reducing the complaint to writing is not an irregularity for which an Appellate Court has power to reverse the judgment or sentence under s. 283 ANONYMOUS 7 Mad., Ap. 25

37 ——— *Criminal Procedure Code 1872 s 283—Irregularity in trial before Magistrate* —Where a person summoned to answer a charge of criminal trespass appeared and filed a written statement and the Magistrate proceeded accordingly without recording a proceeding under s. 530 of the Criminal Procedure Code it was held that the irregularity was covered by s. 283 of

CRIMINAL PROCEEDINGS—*continued*

the Code the rule then laid down being intended to extend to all proceedings before Magistrates. CORE KORTY MAITY v. DOCLUTTE KASSE

[22 W. R. Cr., 81

37. ——————— *Criminal Procedure Code 1872 s. 283 and s. 278. Power of Court to fix time for hearing.* Where the Appellate Court did not fix a reasonable time for the appearance of the appellant or his counsel as required by s. 278, Act X of 1872, the error was held to vitiate the proceedings. IN THE MATTER OF THE PETITION OF HYE IBRAHIM

24 W. R., Cr., 60

38. ——————— *Criminal Procedure Code 1872 s. 283. Irregularity in trial Court—Conviction wrongly made, under Act XXI of 1856 s. 41.*—The accused, who held a license for the sale of imported liquors, sold country spirits, and was charged and convicted by the Assistant Magistrate under s. 41, Act XXI of 1856. The Assistant Magistrate on the same day found that the conviction should have been under s. 48 of the Abkari Law and recorded a note to that effect. *Held* that as it was clear from the evidence recorded and from the answer of the accused that he was not misled as to the charge against him and consequently in no way prejudiced by the erroneous description of the offence contained in the conviction, the conviction should be altered so as to bring it under s. 48, Act XXI of 1856. QUEEN v. DIGAMBUR KHARA

24 W. R., Cr., 3

40. ——————— *Irregularity in reception of evidence.*—The reception as evidence against an accused person of a confession which ought not to have been proved and which is not in accordance with the law and the grounding of a case against him upon such confession must be held to be irregularities which seriously prejudice the prisoner. QUEEN v. CHUNDER BHUTTACHARJEE

[24 W. R., Cr. 42

41. ——————— *Evidence given at previous trial treated as examination-in-chief—Criminal Procedure Code ss. 353, 537—Evidence Act (I of 1872) s. 167.*—At the trial of a party of Hindus for rioting the Magistrate instead of examining the witnesses for the prosecution caused to be produced copies of the examination-in-chief of the same witnesses which had been recorded at a previous trial of a party of Mahomedans who were opposed to the Hindus in the same riot. These copies were read out to the witnesses, who were then cross-examined by the prisoners and no objection to this procedure was taken on the prisoners' behalf. The accused were convicted. *Held* that although the procedure adopted by the Magistrate was irregular the irregularity was cured by the provisions of s. 537 of the Criminal Procedure Code and of s. 167 of the Evidence Act (I of 1872) as it was not shown that there had been any failure of justice or that the accused had been substantially prejudiced and as the matters elicited in cross-examination were sufficient to sustain the conviction. QUEEN EMPRESS v. NAND RAM

I. L. R., 9 All., 609

CRIMINAL PROCEEDINGS—*continued*

42. ——————— *Criminal Procedure Code s. 203—Examining—Written complaint attested by complainant on oath—Criminal Procedure Code s. 537.*—Where a deposition in the shape of a complaint is made orally or in writing and is sworn to, the requirements of s. 203 of the Criminal Procedure Code in regard to the examination of the complainant are sufficiently satisfied. *Held* therefore where a Magistrate dismissed a complaint of criminal breach of trust without examining the complainant on oath, but after the complainant had sworn to the truth of the matters alleged in the complaint, that the provisions of s. 203 had been sufficiently complied with and if not that the irregularity was covered by the terms of s. 537. QUEEN EMPRESS v. MURPHY

I. L. R., 9 All., 666

43. ——————— *Criminal Procedure Code ss. 268, 423, 537—Material irregularity—Assessors—Statement of deceased person not proved in presence of.*—Where in a trial for murder held with assessors the Court relied on a statement made by the deceased, and the evidence necessary to prove such statement was not recorded until after the close of the trial and the discharge of the assessors.—*Held* that this amounted to a material irregularity which was not covered by s. 537 of the Code of Criminal Procedure. QUEEN EMPRESS v. RAM LALL

[I. L. R., 15 All., 136

44. ——————— *Irregularity in omitting to call on accused for defence—Criminal Procedure Code (1882) s. 289, s. 423 cl. (d) and s. 537—Misdirection to jury.*—The formality of calling upon an accused person to enter on his defence under the provisions of s. 289 of the Criminal Procedure Code is not a mere formality but is an essential part of a criminal trial. Omission to do so occasions a failure of justice and is not cured by s. 537 of the Code. To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection though the Judge omits to charge the jury at all. In such a case cl. (d) of s. 423 of the Criminal Procedure Code does not stand in the way of the Appellate Court's interfering with the verdict of the jury. QUEEN EMPRESS v. IMAM ALI KHAN *alias* NATHU KHAN

[I. L. R. 23 Calc. 252

45. ——————— *Irregularity in omitting to examine witnesses—Trial by jury before Sessions Judge—Verdict of acquittal allowed after examination of some only of the witnesses for the prosecution.*—Certain persons were tried in a Sessions Court for the offence of dacoity. Seven witnesses had been examined for the prosecution by the committing Magistrate and were bound over to give evidence at the trial. After five witnesses had been examined, the Judge asked the jury whether they wished to hear any more evidence and, on their stating that they did not believe the evidence and wished to stop the case the Judge recorded a verdict of acquittal. *Held* that the procedure adopted was wrong and that no final opinion as to the falsehood or insufficiency of the prosecution evidence ought to have been arrived at until the two

CRIMINAL PROCEEDINGS—*continued*.

a yadast from a revenue officer and convicting accused without examining complainant.—A revenue officer sent a yadast to a third class Magistrate charging a certain person with having disobeyed a summons issued by the revenue officer The third class Magistrate thereupon tried and convicted the accused under s 174 of the Penal Code The District Magistrate referred the case on the ground that the conviction was bad under s 530 (*k*) of the Code of Criminal Procedure *Held* that as the yadast amounted to a complaint within the meaning of s 4 although the complainant was not examined on oath as required by s. 200 the conviction was not illegal QUEEN EMPRESS *v* MONU I. L. R. 11 Mad 443

62. ——— *Criminal Procedure Code 1882 s 530 cl (p)—Offence originally cognizable by a second class Magistrate subsequently non cognizable by reason of an aggravating circumstance—Duty of inferior Court*—The accused were charged before a Magistrate of the second class with causing grievous hurt as members of an unlawful assembly under ss 149 and 325 of the Indian Penal Code The evidence showed that one of the accused had used an axe in causing the hurt The Magistrate apparently ignored this fact and he convicted the accused under s 325 of the Code The accused appealed. The District Magistrate who heard one appeal and the first class Magistrate who heard the rest of the appeals were both of opinion that the offence committed by the accused was one of causing grievous hurt with a dangerous weapon within the meaning of s 326 of the Penal Code and as such beyond the jurisdiction of the second class Magistrate But they did not think it proper under the circumstances of the case to quash the convictions. The Sessions Judge on examining the record of the case was of opinion that as the offence committed by the accused was not cognizable by the trying Magistrate his proceedings were void *ab initio* under s 530 of the Criminal Procedure Code He therefore referred the case to the High Court and recommended that the convictions under s. 325 should be set aside. *Held* that the proceedings before the second class Magistrate were not void *ab initio* as he had jurisdiction to try the accused for offences punishable under ss 149 and 325 of the Indian Penal Code with which they were originally charged *Held* also that though it was the duty of the trying Magistrate when the evidence disclosed a circumstance of aggravation such as the use of a dangerous weapon which made the offence cognizable by a higher Court to adopt the proper procedure to send the case to the higher Court still it was not necessary to quash the proceedings as the accused were not in any way prejudiced and the sentences were not inadequate. QUEEN EMPRESS *v* GUNDYA [I. L. R., 13 Bom., 502

63 ——— *Irregularity in criminal trial—Prisoner charged with two offences one of which was committed outside jurisdiction—Objection of jurisdiction taken before Magistrate and in Sessions Court—Criminal Procedure Code (X of 1882) ss 531 532*—The accused was charged under s 498 of the Penal Code (XLV of 1860) with having enticed away a married woman and under s 497 with having committed adultery The woman alleged to have been enticed away resided in Bombay but the alleged adultery took place at Khandala outside the jurisdiction At the enquiry before the Magistrate in Bombay objection was taken as to his jurisdiction with regard to the charge of adultery. The Magistrate however overruled the objections and committed the accused for trial At the trial an application was made on behalf of the accused, under s 532 of the Criminal Procedure Code (X of 1882) that the commitment should be quashed and a fresh enquiry directed on the ground that an objection had been taken to the Magistrate s jurisdiction *Held* refusing the application that the commitment being an order (see *Queen Empress* v *Thaku I L R 8 Bom 312*) under s. 531 of the Criminal Procedure Code the commitment should not be quashed unless a failure of justice would be caused by proceeding with the trial. QUEEN EMPRESS *v* INGLE [I. L. R. 16 Bom. 200

64. ——— *Irregularity in commitment—Criminal Procedure Code (1882) ss 532 and 537—Commitment to Sessions Court by Magistrate having no jurisdiction over place where alleged offence was committed*—A Magistrate who commits a case for trial by a Sessions Court does so in the exercise of powers duly conferred upon him and the fact that he had no territorial jurisdiction over the place where the alleged offence was committed and that an objection to the committal on this ground was taken before the commitment is no ground for the Court to which the commitment is made quashing it under s 532 nor under s. 537 of the Criminal Procedure Code *Queen Empress* v. *Ingle I L R 16 Bom 200* followed. QUEEN EMPRESS *v* ABBI REDDI I. L. R. 17 Mad. 402

65 ——— *Stay of criminal proceedings pending civil litigation—Civil Procedure Code (1882) s 278—Inquiry into claim to attached property—Subsequent civil suit by claimant to establish his right to the property—Criminal Procedure Code (1882) s 478*—It is not an invariable rule that criminal proceedings should be stayed during the pendency of civil litigation regarding the same subject matter Certain property was attached in execution of a decree Thereupon accused No 1 applied to have the attachment raised on the ground that he had purchased the property from the judgment-debtor under a sale-deed executed long before the date of the attachment. In the summary inquiry which was made under s. 278 of the Code of Civil Procedure (Act XIV of 188) he produced the sale-deed and accused No. 2 was called as his witness and supported his claim The Subordinate Judge found that the deed was a forgery and rejected the claim Proceeding then under s. 478 of the Code of Criminal Procedure (Act X of 188) he held the inquiry directed by that section and committed both the accused to the Sessions Court on charges of perjury and forgery During the pendency of the inquiry under s. 478 the accused No. 1 filed a civil suit to establish the genuineness of the

CRIMINAL PROCEEDINGS—*continued*

sale-deed and set aside the attachment He also applied to the High Court to quash the commitment or stay the criminal proceedings pending the disposal of the civil suit *Held* refusing the application that the mere fact that a regular suit was filed to establish the genuineness of the sale-deed was not a sufficient ground for quashing the commitment or for adjourning the trial pending the hearing of the civil suit IN RE DEVJI VALAD BHAVANI

[I. L. R., 18 Bom. 581

66 ——— *Power of the High Court to stay proceedings before Magistrate pending a civil suit*—Per RAMPINI J—The High Court has no power to direct that criminal proceedings in the Court of a Magistrate should be stayed until the disposal of a civil suit in which the question at issue in the criminal proceedings shall have been decided. *In the matter of Ram Prosad Hazra* B L R Sup Vol 426 followed It is very doubtful if the High Court has any power to pass an order quashing the proceedings before a Magistrate No section of the Criminal Procedure Code expressly authorizes the High Court to quash pending proceedings. Per GHOSE J—A proceeding in a criminal Court should not as a general rule be stayed pending the decision of the civil suit in regard to the same subject-matter but ordinarily it is not desirable if the parties to the two proceedings are substantially the same and the prosecution is but a private prosecution, and the issues in the two Courts are substantially identical that both the cases should go on at one and the same time It is open to the Magistrate having regard to the facts of the case before him, to consider whether it is not desirable that the proceedings in his Court should be stayed till the decision of the civil suit or for a limited period of time and it is also open to him to put the defendant on terms as to appearance or otherwise if he does stay proceedings The High Court has the power to order a Magistrate to stay proceedings in his Court if a sufficient cause in that behalf is made out But inasmuch as the Legislature has given him the power to regulate the proceedings in his own Court the direction should ordinarily be left to him either to stay proceedings or not as he in the circumstances of each case may think right and proper RAJ KUMARI DEBI v BAMA SUNDARI DEBI

[I L R. 23 Calc 610

67 ——— *Stay of proceedings by High Court—Duty of Magistrate receiving reliable though not official information that proceedings are stayed*—When a rule is issued by the High Court and proceedings stayed Magistrates on receiving reliable information thereof should stay their hands then and there So where it was brought to the notice of the Magistrate by the muktear for the accused who had received telegrams from counsel and vakil informing him of the issue of the rule directing stay of proceedings by the High Court and the Magistrate refused to look at the telegrams and to stay proceedings but on the other hand proceeded with the enquiry it was held that the Magistrate had acted improperly that he should not have proceeded with the enquiry and in case he entertained any doubt as to authenticity of the telegrams the proper course for him was to send a telegram to the Registrar of the High Court to ascertain the truth RATNESSARI PERSHAD NARAYAN SINGH v EMPRESS 2 C W N 498

See ANANT RAM MARWARI v MANSOOR ROY

[2 C W N 639

68 ——— *Impropriety of applications for stay of proceedings on the pretence of moving the High Court for transfer*—Observations with regard to the impropriety of applications for the stay of proceedings on the ground of moving the High Court for transfer when the applicant has no such intention GUNAMONY SAPUI v QUEEN EMPRESS 3 C W N 758

69 ——— *Adoption by Sessions Judge of wrong procedure—Trial with jury instead of assessors—Rejection of confessional statement without enquiry under s 533 Criminal Procedure Code—Charge under Penal Code ss 395 396 and 412—Criminal Procedure Code 1882 ss 164 307—Procedure of High Court on reference under s 307*—Ten persons were committed to a Sessions Court charged with offences under the Penal Code ss. 395 and 396 and some of them were also charged with offences under s 412 One of the accused had made a confessional statement before the Magistrate who recorded it but did not make on it a memorandum to the effect stated in Criminal Procedure Code s 164 and did not admit it in evidence for the reasons that the accused was produced from the custody of the police in which he had been detained for five days and there was a proposal on the part of the police to treat him as an approver It appeared that a perusal of the preliminary register would have shown that the accused were either guilty under s 396 or not guilty under s 395 at all The accused were tried by the Sessions Judge with a jury The confessional statement was not admitted in evidence The jury found the accused not guilty of dacoity but the Judge disagreeing with the verdict referred the case to the High Court under Criminal Procedure Code s 307 *Held* (1) that the procedure adopted by the Judge was wrong and that he should have tried the accused with the aid of assessors under Indian Penal Code s 396 (2) that the Judge should have enquired under Criminal Procedure Code s 533 whether the confessional statement had been duly made and (3) that under the circumstances the High Court should determine on the evidence on record after giving due weight to the opinions of the Judge and the jury whether the accused were guilty under s 395 QUEEN EMPRESS v ANGA VALAYAN

[I L R 22 Mad. 15

70 ——— Right to institute prosecution—*Convicted person*—There is no rule that a convicted person cannot institute criminal proceedings QUEEN v MADHUB CHUNDER GIRI

[21 W R., Cr 13

71 ——— Suit in Civil Court.—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court MADHUB KYBURTHO v KESHUB SINGH 9 W R. Cr 32

CRIMINAL PROCEEDINGS—*continued*

a yadast from a revenue officer and convicting accused without examining complainant—A revenue officer sent a yadast to a third class Magistrate charging a certain person with having disobeyed a summons issued by the revenue officer The third class Magistrate thereupon tried and convicted the accused under s 174 of the Penal Code The District Magistrate referred the case on the ground that the conviction was bad under s 530 (*k*) of the Code of Criminal Procedure *Held* that as the yadast amounted to a complaint within the meaning of s 4 although the complainant was not examined on oath as required by s. 200 the conviction was not illegal QUEEN EMPRESS *v* MONU I. L. R. 11 Mad., 443

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CRIMINAL PROCEEDINGS—*continued*

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[I L R. 23 Calc 610

67 —— *Stay of proceedings by High Court—Duty of Magistrate receiving reliable though not official information that proceedings are stayed*—When a rule is issued by the High Court and proceedings stayed Magistrates on receiving reliable information thereof should stay their hands then and there So where it was brought to the notice of the Magistrate by the mukhtear for the accused who had received telegrams from counsel and vakil informing him of the issue of the rule directing stay of proceedings by the High Court and the Magistrate refused to look at the telegrams and to stay proceedings but on the other hand proceeded with the enquiry it was held that the Magistrate had acted improperly that he should not have proceeded with the enquiry and in case he entertained any doubt as to authenticity of the telegrams the proper course for him was to send a telegram to the Registrar of the High Court to ascertain the truth RATNESSARI PERSHAD NARAYAN SINGH v EMPRESS 2 C W N 493

See ANANT RAM MARWARI v MANSOOR ROY

[2 C W N 639

68 —— *Impropriety of applications for stay of proceedings on the pretence of moving the High Court for transfer*—Observations with regard to the impropriety of applications for the stay of proceedings on the ground of moving the High Court for transfer when the applicant has no such intention GUNAMONY SAFUI v QUEEN EMPRESS 3 C W N 758

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[I L R 22 Mad, 15

70 —— Right to institute prosecution—*Convicted person*—There is no rule that a convicted person cannot institute criminal proceedings QUEEN v MADHUB CHUNDER GIRI

[21 W R Cr [illegible]

71 —— Suit in Civil Court—[illegible] proceedings do not constitute a bar to a [illegible] in a Criminal Court MADHUB [illegible] [illegible] SINGH

[illegible]

CRIMINAL PROCEEDINGS—*concluded*

72 ——— **Perjury or forgery committed in a civil suit**—*Stay of criminal proceedings pending civil suit—Sanction to prosecution*—Criminal proceedings for perjury or forgery arising out of a civil litigation should not as a rule go on during the pendency of the litigation IN RE NANA MAHARAJ I. L. R. 16 Bom., 729

73 ——— **Sunday**—*Legality of proceedings*—Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday IN THE MATTER OF THE PETITION OF SINCLAIR 6 N W, 177

CRIMINAL TRESPASS

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES I. L. R. 21 Bom. 536

See SENTENCE—CUMULATIVE SENTENCES [I. L. R. 2 All. 101

See THEFT I. L. R. 15 Calc. 388, 402

1. ——— **Penal Code s 441**—*Intention to annoy*—To bring an act of trespass within the meaning of the Penal Code s 441 the entry upon the land must be with the intent to annoy which means with the purpose of annoying the person in possession IN THE MATTER OF THE PETITION OF SHIB NATH BANERJEE 24 W R. Cr., 58

2 ——— *Intention to annoy*—*Being on land in assertion of title.*—Where the trespass (if any) was not committed with the intent to commit an offence or intimidate insult or annoy the persons in possession but in the *bona fide* assertion of a claim of title this does not amount to criminal trespass QUEEN *v* SEITH ROSHUN LAL [2 N W 82

3 ——— *Intention to annoy*—*Causing loss or injury*—*A* built a hut on portion of certain disputed land to which he laid claim and was on the prosecution of another claimant to the land convicted of criminal trespass under s 441 of the Penal Code *Held* that the conviction was bad as in erecting the hut it was not the intention of the accused to annoy Loss or injury would naturally cause annoyance but not the kind of annoyance contemplated by s 441 of the Penal Code SHUMBHU NATH SARKAR *v* RAM KAMAL GUHA [13 C L. R 212

4 ——— *Intention to annoy*—*Enclosing and cultivating portion of burial ground*—Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground *Held* that the conviction was right The person (corporate) in possession of the burial ground is the portion of the public entitled to use the burial ground and the act of ploughing up the burial ground was evidence of intent to annoy such person the defendant not being one of the portion of the public entitled to its use ANONYMOUS 6 Mad., Ap 25

5 ——— *Intention to annoy*—*Taking portion of public foot path as one's*

CRIMINAL TRESPASS—*continued*

own land—Defendant was convicted of criminal trespass for including in his own land a portion of a public foot path. *Held* that as the public generally were entitled to the use of the foot path there was no illegal entry of the defendant on property in the possession of another with intent to annoy the person in possession and consequently that the defendant was wrongly convicted ANONYMOUS [6 Mad., Ap 26

6 ——— *Penal Code (Act XLV of 1860) ss 341 352 448*—*Wrongful restraint house trespass and assault—Entry into premises purchased at a Sheriff's sale whether lawful*—That the entry by a person into premises purchased by him at a Sheriff's sale for the purpose of acquiring possession is not an unlawful entry within the meaning of s 441 of the Penal Code CHAROO CHUNDER MUTTY LALL *v* QUEEN EMPRESS HOSSENEE *v* SARAT CHANDRA HALDAR [4 C W N, 47

7 ——— *Intention to annoy*—*Person not in actual possession of house*—For a legal conviction under s 441 of the Penal Code of criminal trespass there must be an intention to intimidate insult or annoy a person in actual possession To enter a house where the owner is only in constructive possession is not sufficient ISWAR CHUNDER KARMAKAR *v* SITAL DAS MITTER [6 B L. R. Ap., 62

S C ISHUR CHUNDER KARMAKAR *v* SEETUL DOSS MITTER 17 W R. Cr., 47

QUEEN *v* KALINATH NAG CHOWDHRY [9 W R., Cr 1

QUEEN *v* CHOORAMONI SANT [14 W R Cr 25

8 ——— *Intention to annoy*—*Forcible entry*—A person who forcibly enters upon property in the possession of another and erects a building thereon or does any other act with intent to annoy the person so in possession is guilty of criminal trespass within the meaning of s. 441 of the Penal Code without reference to the question in whom the title to the land may ultimately be found. QUEEN *v* RAM DYAL MUNDLE [7 W R., Cr 28

9 ——— *Land dispute*—*Title to land Failure to prove*—*Held* by JACKSON J (setting aside the order of the Magistrate; MARKBY J dissenting) that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code because the complainant did not make out his title to the land; the offence may be committed in respect of property in a person's possession even though such possession may not have originated in right QUEEN *v* SURWAY SINGH [11 W R. Cr 11

10 ——— *Entry into family dwelling house*—Entrance of a member of a Hindu joint family into the family dwelling house is not criminal trespass The entry of a stranger in a family dwelling house with the permission and license

CRIMINAL TRESPASS—*continued*

of one of the members, is not criminal trespass. IN THE MATTER OF THE PETITION OF PRANKRISHNA CHANDRA 6 B. L. R. Ap 80

PRANKRISTO CHUNDER *v* BISSONATH CHUNDER [15 W R. Cr 6

11. ———— *Entry into market with intention to avoid payment of market dues* — Entry of a local fund market with intent to evade payment of market dues is not a criminal trespass QUEEN *v* NARTHAPPA I. L. R. 5 Mad., 382

12 ———— *Unlawful entry to exhibition building* —Where the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended —*Held* that such entry when unaccompanied by any of the intents specified in s. 441 of the Penal Code did not amount to criminal trespass or any other criminal offence REG *v* MEHERVANJI BEJANJI [6 Bom Cr 6

13 ———— *Entry in property and cutting trees* —The entry by one man on another's property accompanied by the cutting down of trees on that property is criminal trespass QUEEN *v* JEETUT BEBEE 1 W R., Cr., 46

14. ———— *Entering on land after decree giving another possession* —Accused was ejman of complainant's family Complainant obtained a decree setting aside an alienation made by accused. In execution complainant obtained possession from the alienee The accused entered on this land. *Held* that he had not committed the offence of criminal trespass ANONYMOUS [6 Mad. Ap 19

15 ———— *Re entry into or remaining on land from which person has been ejected by civil process* —Certain immoveable property was the joint undivided property of C G and a certain other person R obtained a decree against G for the possession of such property and such property was delivered to him in the execution of that decree in accordance with the provisions of s 264 of Act X of 1877 C in good faith with the intention of asserting her right and without any intention to intimidate insult or annoy R or to commit an offence and G in like manner with the intention of asserting the right of his co-owners remained on such property *Held* that under such circumstances they could not be convicted of criminal trespass Re entry into or remaining upon land from which a person has been ejected by civil process or of which possession has been given to another for the purpose of asserting rights he may have solely or jointly with other persons is not criminal trespass unless the intent to commit an offence or to intimidate insult or annoy is conclusively proved IN THE MATTER OF THE PETITION OF GOBIND PRASAD [I L. R. 2 All 465

16 ———— *Entry on land in exercise of claim of right—Mischief* —If a person enters on land in the possession of another in the exercise of a *bond fide* claim of right and without any intention to intimidate insult or annoy such other person or to commit an offence then though he may have no right to the land he cannot be convicted of criminal trespass So also if a person deals injuriously with property in the *bond fide* belief that it is his own he cannot be convicted of mischief The mere assertion however in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief It is the duty of the Criminal Court to determine what was the intention of the alleged offender and if it arrives at the conclusion that he was not acting in the exercise of a *bond fide* claim of right then it cannot refuse to convict the offender assuming that the other facts are established which constitute the offence EMPRESS OF INDIA *v* BUDH SINGH I. L. R 2 All 101

17 ———— *Acting in exercise of right of distraint—Rent Act (Beng Act VIII of 1869) ss 72 71 76* —A the servant of B was convicted of criminal trespass in going upon the land of C one of B's tenants and preventing him from cutting his crops B was convicted of abetment of criminal trespass A and B pleaded that they were acting in the exercise of the legal right of distraint It appeared that no written demand under s 72 of the Rent Act (Bengal Act VIII of 1869) for the amount of the arrears together with an account exhibiting the grounds on which demand had been made was served on C and that no written authority under s 76 had been given by B to A *Held* that it lay upon A and B to show that they had conformed to the provisions of the law or at least had acted with the *bond fide* intention of distraining the complainant's crops; and that the conviction was right *Held* also that as under s 7 standing crops and ungathered products may notwithstanding distraint be reaped and gathered by the cultivator A had no right even if he was acting *bond fide* to restrain C from cutting his crops JHUMUK NONIAH *v* SHADASHIB ROY [I L. R 7 Calc 28

18 ———— *Following up wounded game* —A who had been warned off the lands of B subsequently having shot a deer near the boundary of B's land and the deer having run on to B's land followed it on to such land for the purpose of killing it *Held* that his doing so was not a criminal trespass IN THE MATTER OF THE PETITION OF CHUNDER NARAIN *v* FARQUHARSON [I. L. R. 4 Calc., 837

19 ———— *Plying boat for hire near public ferry* —A person plying a boat for hire at a distance of three miles from a public ferry cannot be said with reference to such ferry to commit criminal trespass within the meaning of that term in s 441 of the Penal Code MUTHRA *v* JAWAHIR I. L. R 1 All. 527

20 ———— *Continuing exercise of right of fishery after prohibition* —An act does not amount to criminal trespass under s 441 of the Penal Code unless it was committed with an intention of committing some offence or of intimidating insulting or annoying some one Where a party had been exercising a right of fishery for a

CRIMINAL PROCEEDINGS—*concluded*

72 ———— **Perjury or forgery committed in a civil suit**—*Stay of criminal proceedings pending civil suit—Sanction to prosecution* —Criminal proceedings for perjury or forgery arising out of a civil litigation should not as a rule go on during the pendency of the litigation IN RE NANA MAHARAJ I. L. R 16 Bom, 729

73 ———— **Sunday**—*Legality of proceedings* —Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday IN THE MATTER OF THE PETITION OF SINCLAIR 6 N W., 177

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See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES I. L. R. 21 Bom. 536

See SENTENCE—CUMULATIVE SENTENCES [I. L. R. 2 All. 101

See THEFT I L R 15 Calc 388 402

1 ———— **Penal Code s 441**—*Intention to annoy* —To bring an act of trespass within the meaning of the Penal Code s 441 the entry upon the land must be with the intent to annoy which means with the purpose of annoying the person in possession IN THE MATTER OF THE PETITION OF SHIB NATH BANERJEE 24 W R., Cr 58

2 ———— *Intention to annoy* —*Being on land in assertion of title* —Where the trespass (if any) was not committed with the intent to commit an offence or intimidate insult or annoy the persons in possession but in the *bonâ fide* assertion of a claim of title this does not amount to criminal trespass QUEEN v SEITH ROSHUN LAL [2 N W, 82

3 ———— *Intention to annoy* —*Causing loss or injury* —*A* built a hut on portion of certain disputed land to which he laid claim and was on the prosecution of another claimant to the land convicted of criminal trespass under s 441 of the Penal Code *Held* that the conviction was bad as in erecting the hut it was not the intention of the accused to annoy Loss or injury would naturally cause annoyance but not the kind of annoyance contemplated by s 441 of the Penal Code SHUMBHU NATH SARKAR v RAM KAMAL GUHA [13 C L R 212

4 ———— *Intention to annoy* —*Enclosing and cultivating portion of burial ground* —Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial ground *Held* that the conviction was right The person (corporate) in possession of the burial ground is the portion of the public entitled to use the burial ground and the act of ploughing up the burial ground was evidence of intent to annoy such person the defendant not being one of the portion of the public entitled to its use ANONYMOUS 6 Mad., Ap 25

5 ———— *Intention to annoy* —*Taking portion of public foot path as one's own land* —Defendant was convicted of criminal trespass for including in his own land a portion of a public foot path *Held* that as the public generally were entitled to the use of the foot path there was no illegal entry of the defendant on property in the possession of another with intent to annoy the person in possession and consequently that the defendant was wrongly convicted. ANONYMOUS [6 Mad., Ap 26

6 ———— *Penal Code (Act XLV of 1860) ss 341 352 448—Wrongful restraint house trespass and assault—Entry into premises purchased at a Sheriff's sale whether lawful* —That the entry by a person into premises purchased by him at a Sheriff's sale for the purpose of acquiring possession is not an unlawful entry within the meaning of s 441 of the Penal Code CHAROO CHUNDER MUTTY LALL v QUEEN EMPRESS HOSENEE v SARAT CHANDRA HALDAR [4 C W N 47

7 ———— *Intention to annoy* —*Person not in actual possession of house* —For a legal conviction under s 441 of the Penal Code of criminal trespass there must be an intention to intimidate insult or annoy a person in actual possession To enter a house where the owner is only in constructive possession is not sufficient ISWAR CHUNDER KARMAKAR v SITAL DAS MITTER [8 B L R. Ap. 62

S C ISHUR CHUNDER KARMAKAR v SEETUL DOSS MITTER 17 W R. Cr 47

QUEEN v KALINATH NAG CHOWDHRY [9 W R., Cr 1

QUEEN v CHOORAMONI SANT [14 W R Cr, 25

8 ———— *Intention to annoy* —*Forcible entry* —A person who forcibly enters upon property in the possession of another and erects a building thereon or does any other act with intent to annoy the person so in possession is guilty of criminal trespass within the meaning of s 441 of the Penal Code without reference to the question in whom the title to the land may ultimately be found. QUEEN v RAM DYAL MUNDLE [7 W R Cr 28

9 ———— *Land dispute—Title to land Failure to prove* —*Held* by JACKSON J (setting aside the order of the Magistrate; MARKBY J dissenting) that a Magistrate ought not to decline to go into a case of criminal trespass under s 441 of the Penal Code because the complainant did not make out his title to the land the offence may be committed in respect of property in a person's possession even though such possession may not have originated in right QUEEN v SURWAN SINGH [11 W R. Cr 11

10 ———— *Entry into family dwelling house* —Entrance of a member of a Hindu joint family into the family dwelling house is not criminal trespass The entry of a stranger into a family dwelling house with the permission and license

CRIMINAL TRESPASS—*continued*

would not be justified in setting such conviction aside merely because the view taken of the evidence by the lower Court is not sustainable or some fact which ought to have been found by that Court is not found or found incorrectly BALMAKAND RAM v GHANSAMRAM I. L. R., 22 Calc 391

24. ——— Penal Code s 443—*Disobedience of illegal order of Municipal Commissioners*—The accused were convicted of criminal trespass under s. 443 of the Penal Code for driving their carts across an open green in violation of an *order* issued by the Municipal Commissioners *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order and that the breach of it was not criminally punishable. ANONYMOUS 5 Mad. Ap 38

25 ——— Penal Code s 447—*Cultivating waste land in village*—The defendant was convicted under s 447 of the Penal Code for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating The High Court upheld the conviction ANONYMOUS 5 Mad., Ap 17

26 ——— *Penal Code ss 441 and 456—House breaking by night—Intent*—When a stranger uninvited and without any right to be there effects an entry in the middle of the night into the sleeping apartment of a woman a member of a respectable household, and when an attempt is made to capture him uses great violence in his efforts to make good his escape a Court should presume that the entry was made with an intent such as is provided for by s 441 of the Penal Code An accused person in the middle of the night effected an entry into a house occupied by two widows members of a respectable family On an alarm being given and an attempt made to capture him he made use of great violence and effected his escape Upon these facts he was charged with offences under ss 456 and 323 of the Penal Code The defence set up was an *alibi* which was disbelieved by both the lower Courts Neither Court found specifically what was the intention with which the accused entered the house but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women There was no evidence that he had been invited by her to go there The lower Courts convicted the accused under s 456 It was contended that as the prosecution had failed to prove that the entry was made with intent to commit any offence the conviction was illegal. *Held* that under the circumstances of the case the Court ought to presume that the entry was effected with such intent as is provided for by s 441 and that the conviction should be upheld IN THE MATTER OF THE PETITION OF KOILASH CHANDRA CHAKRABARTY KOILASH CHANDRA CHAKRABARTY v QUEEN EMPRESS I. L. R. 16 Calc 657

27 ——— During the pendency of a civil suit certain persons on behalf of the plaintiff went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the defendant They went (some of them armed) without the permission of the defendant and in his absence and when the defendant's servant objected to their action they persisted in their trespass and endeavoured to prevent opposition by making false statements as to the authority under which they were acting *Held* that their actions amounted to criminal trespass GOLAB PANDEY v BODDAM [I L R 16 Calc 715

CRIMINAL TRESPASS—*concluded*

28 ——— *Penal Code (Act XLV of 1860) ss 441 456 and 509—House breaking by night—Intent—Intrusion upon privacy*—The accused in the middle of the night effected an entry into a room occupied by four women On an alarm being given and an attempt made to capture him he escaped He was charged with an offence under s 456 of the Penal Code The defence set up was disbelieved by both the lower Courts Neither Court found specifically what was the intention with which the accused entered the room but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women There was no evidence that he had been invited by her to go there The lower Courts convicted the accused under s 456 It was contended that as the prosecution had failed to prove that the entry was made with intent to commit any offence the conviction was illegal *Held* that the facts proved were good evidence of an intent and of an intrusion on privacy within the meaning of s 509 of the Penal Code and that therefore the intent to commit an offence within the meaning of s 441 was made out *Balmakand Ram* v *Ghunsamram I L R 22 Calc 391* followed. PREMANUNDO SHAHA v BRINDABUN CHUNG I. L. R 22 Calc 994

29 ——— Penal Code (Act XLV of 1860) s 448—*Intent*—Although a trespasser knows that his act if discovered will be likely to cause annoyance it does not follow that he does the act with that intent QUEEN EMPRESS v RAYAPADAYACHI I L R 19 Mad. 240

30 ——— Penal Code (Act XLV of 1860) s 451—*House trespass with intent to commit adultery—Evidence*—To sustain a conviction under s 451 of the Penal Code for the offence of house trespass with intent to commit an offence the prospective offence being adultery it is necessary to show that there has been no consent or connivance on the part of the husband of the woman the intent to commit adultery with whom is charged against the accused. BRIJ BASI v QUEEN EMPRESS [I. L. R 19 All. 74

CROPS

——— Assessment of price of—

See N W P RENT ACT s 42 [I. L. R. 19 All. 63

——— Deposit of by order of Collector

See BENGAL TENANCY ACT ss 69 AND 70 [I L R. 22 Calc 460

CROPS—*continued*

——— gathered.

See MADRAS REVENUE RECOVERY ACT s 11 I. L. R. 17 Mad., 404

——— Misappropriation of Suit for damages for—

See LIMITATION ACT ART 36 [I. L. R. 23 Calc. 877

——— Mortgage of—

See REGISTRATION ACT 1877 s. 17 [I. L. R., 10 All. 20

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MORTGAGE [I L. R., 10 All, 20

——— Right to—

See LANDLORD AND TENANT—RIGHT TO CROPS I. L. R. 4 Calc., 880 [3 Agra 188 I. L. R. 5 Calc., 135

——— Seizure of—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DAMAGES [I. L. R., 24 Calc 163

See WRONGFUL DISTRAINT 10 W R. 70 [3 B. L. R. A. C 261 I. L. R 4 Calc. 890 I. L. R , 25 Calc. 285

——— Standing—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS [I. L. R 11 Mad. 193 I L R. 14 All. 30

See LIMITATION ACT 1877 ART 48 (1871 ART 48) 4 W R. 76 [6 Bom A C 114 I. L R 4 Calc., 665

See MADRAS HEREDITARY VILLAGE OFFICES ACT s 5 [I L R. 23 Mad. 492

See POSSESSION ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION [I. L. R., 15 All , 394

See SALE FOR ARREARS OF RENT—UNDER TENURES SALE OF [I L. R. 4 Calc 814

See SALE IN EXECUTION OF DECREE—PURCHASERS RIGHTS OF—EMBLEMENTS [I L. R. 2 Bom. 670 I. L R. 13 Mad. 16

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CROPS [I. L. R., 14 All. 30 I. L R 21 Calc., 430

CROPS—*concluded*

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY [5 B L. R., 194 24 W R. 394 5 Bom., A. C 90

See STAMP ACT 1879 SCH. 1 ART 5 [I L. R., 13 Bom. 89

——— Suit for value of—

See BENGAL RENT ACT 1869 s 93 [I. L R. 1 Calc , 183

See CIVIL PROCEDURE CODE 1882 s 244—QUESTIONS IN EXECUTION OF DECREE I. L. R 4 Calc. 625 [I. L. R., 22 Calc. 501

See LIMITATION ACT 1877 ART 109 [I. L. R., 4 Calc. 625

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRACT [1 B. L. R., S. N , 13

CROSS APPEAL.

See PRIVY COUNCIL, PRACTICE OF—CROSS APPEALS

——— Decree made in—

See PRIVY COUNCIL PRACTICE OF—SPECIAL LEAVE TO APPEAL [I. L. R. 19 All. 95 L. R., 23 I. A. 167

——— Necessity of—

See PRIVY COUNCIL, PRACTICE OF—PRACTICE AS TO OBJECTIONS [I. L. R., 23 Calc., 923

CROSS-APPEALS.

——— separately heard.

See RES JUDICATA—MATTERS IN ISSUE [I. L. R. 12 All., 578

CROSS-CASES TRIED TOGETHER.

See CRIMINAL PROCEEDINGS [I. L. R., 20 Calc., 537

CROSS CLAIM.

——— in summary suit.

See COMPENSATION—CIVIL CASES [I. L. R., 18 Bom. 717

——— under same decree.

See SET-OFF—CROSS DECREES [I. L. R., 5 All., 272 I. L R., 13 All 395

CROSS-DECREE.

See EXECUTION OF DECREE—EXECUTION OF OR AFTER AGREEMENTS OR COMPROMISES 3 B. L. R., Ap., 63

See CASES UNDER SET-OFF—CROSS DECREES

CROSS EXAMINATION

See Cases under Witness—Civil Cases—Examination of Witnesses—Cross Examination

See Cases under Witness—Criminal Cases—Examination of Witnesses—Cross Examination

——— Right of and opportunity for—

See Commission—Criminal Cases.
[I. L. R., 19 Bom., 749

CROWN

——— Applicability of Act to—

See English Law
[I. L. R., 14 Bom. 213

See Limitation Act 1877 s 26.
[I. L. R., 14 Bom., 213

——— Prerogative right of—

See Appeal to Privy Council—Cases in which Appeal lies or not—Appealable Orders
[I. L. R., 15 Bom., 155
L. R., 18 I. A., 6

CROWN DEBTS

——— **Judgment-debt in name of Secretary of State for India in Council**—*Insolvent Act (11 & 12 Vic c 21) s 62.*—A judgment-debt due to the Secretary of State for India in Council, arising out of transactions at a public sale of opium held by the Secretary of State for India in Council is a debt in respect of Crown property and therefore a debt due to our Sovereign lady the Queen within the meaning of s. 62 of the Insolvent Act. In determining whether or no a debt falls under the denomination of a Crown debt the question is not in whose name the debt stands but whether the debt when recovered falls into the coffers of the State Principle in *Secretary of State for India in Council v Bombay Landing and Shipping Company 5 Bom O C 23* followed JUDAH v. SECRETARY OF STATE FOR INDIA IN COUNCIL I L R 12 Calc 445

CRUELTY

See Criminal Procedure Codes s 488
[I L R., 11 All. 480

See Divorce Act s 14

See Hindu Law—Contract—Husband and Wife I. L. R. 13 All., 126

See Hindu Law—Maintenance—Right to Maintenance—Wife
[24 W R. 377
I. L. R. 19 Calc., 84

See Maintenance Order of Criminal Court as to I. L. R 11 All., 480

See Restitution of Conjugal Rights
[11 Moore s I. A., 551
8 W R. P C 3
I. L. R. 1 Bom. 184
I. L. R., 5 Calc. 500

CRUELTY TO ANIMALS

See Prevention of Cruelty to Animals Act I L R 24 Calc 881
[1 C W N., 642

CULPABLE HOMICIDE

See Charge to Jury—Summing up in Special Cases—Culpable Homicide
[6 B L R. Ap 86 87 note
9 W R. Cr 72

See Criminal Procedure Codes s 376 (1872 s 288) I. L. R 1 Bom, 639

See Hurt—Grievous Hurt
[I L R 18 Calc 49

See Cases under Murder

See Verdict of Jury—General Cases
[1 W R. Cr 50
21 W R., Cr 1
I. L. R 20 Bom. 215

——— Conviction for on charge of murder

See Appeal in Criminal Cases—Acquittals Appeals from
[I L R., 2 Calc 273

1. ——— Provocation—*Beating—Deliberation.*—A person who beats another brutally and continuously so that death results is guilty of murder or culpable homicide not amounting to murder according as there may or may not have been grave provocation. QUEEN v TEPRA FAKEER
[5 W R. Cr 78

2 ——— *Penal Code s 300*—Culpable homicide though committed under provocation will amount to murder unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause QUEEN v HARI GIRI
[1 B. L R. A Cr 11 10 W R Cr 26

3 ——— *Grave and sudden provocation—Murder*—Culpable homicide not amounting to murder is when a man kills another on being deprived of self control by reason of grave and sudden provocation But when the act is done after the first excitement had passed away and there was time to cool it is murder QUEEN v YASIN SHEIKH
[4 B L R A. Cr 6 12 W R., Cr., 68

4 ——— *Penal Code s 300*—The provocation contemplated by s. 300 of the Penal Code should be of a character to deprive the offender of his self control. In determining whether it was so it is admissible to take into account the condition of mind in which the offender was at the time of the provocation EMPRESS v KHOGAYI
[I. L. R., 2 Mad. 122

5 ——— *Sudden provocation—Penal Code s 300 excep 1*—To enable a person to plead the extenuating circumstances provided for in s 300 Penal Code excep 1 the provocation and its effects must be sudden as well as grave and

CULPABLE HOMICIDE—*continued*

the deprivation of the power of self control must continue in order to benefit a man who kills another under circumstances of grave provocation QUEEN v BECHOO SAOUT 19 W R., Cr, 35

6 ——— *Grave provocation—Interval between provocation and attack* — Where a man suddenly cut his wife's throat it was held that in order to establish that the act was not done under grave provocation so as to bring the case under excep 1 of s. 300 of the Penal Code it is not sufficient to state that the deceased ceased abusing the prisoner then but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her The offence in this case held to be culpable homicide QUEEN v NOKUI NUSHYO [7 W R. Cr 72

7 ——— *Sudden fight* — Where it appeared in the case of a person charged with murder that while smarting from a severe blow from a stick in the midst of a sudden fight and possibly apprehensive of future violence finding a knife at hand he took it up and in the *melee* inflicted the wound which caused the death of the deceased —*Held* that under the circumstances the accused was guilty under the Penal Code s 304 of culpable homicide not amounting to murder QUEEN v SOMIRUDDIN [24 W R. Cr 48

8 ——— *Hasty and fatal blow* —The prisoner having struck the deceased a hasty but fatal blow with a stick in his hand at the time for abusing his mother was held guilty of culpable homicide not amounting to murder QUEEN v SULEEM 1 W R. Cr 23

9 ——— *Grave provocation* —The prisoners found the deceased lying in the same bed with their sister and ill treated him from the effects of which ill treatment he died *Held* that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder QUEEN v KASSEEMODDEEN [4 W R Cr 38

QUEEN v MAITHYA GAZEE 6 W R. Cr 42

10 ——— *Penal Code (Act XLV of 1860) s 304—Culpable homicide not amounting to murder—Grave and sudden provocation* —A person accused of murder under s 302 of the Penal Code pleaded in defence that he had found his sister having illicit connection with a man named Thakuri and had in a fit of passion killed them both on the spot The statement being accepted was held to be a good plea of grave and sudden provocation so as to reduce the offence to one of culpable homicide not amounting to murder QUEEN EMPRESS v CHUNNI I. L R., 18 All. 497

11 ——— *Grave provocation—Husband finding wife in adultery* —Two prisoners confessed that having caught the deceased in the act of having sexual intercourse with the wife of one of them they then and there killed him *Held* that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder QUEEN v GOUR CHUND POLIE [1 W R. Cr 17

12 ——— *Grave provocation—Husband finding wife in adultery* —Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business that on his return he saw what convinced him of his wife's infidelity; and that maddened at the sight he killed both her and her paramour —*Held* that he was guilty of culpable homicide not amounting to murder and that the case was one in which he ought to be treated with lenity QUEEN v BOODHOO [8 W R Cr 38

13 ——— *Grave provocation—Husband seeing wife seduced to adultery* — The wife of the prisoner had been forcibly taken to the house of the deceased a native physician who alleged that her presence was necessary to the due performance of certain incantations The prisoner armed with a sword and watching from the roof of the house saw his wife being actually violated by the deceased He jumped down from the roof and struck deceased with his sword in several places from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained The offence committed was culpable homicide not amounting to murder QUEEN v RAMTAHAL KAHAR [3 B L R. A. Cr 33

14 ——— *Grave provocation—Husband seeing wife in adultery—Deliberation* —On a certain evening *M* a common workman saw *N* committing adultery with his (*M's*) wife and on the following morning while labouring under the excitement provoked by their misconduct came upon them eating food together while his wife had neglected to provide food for *M* *M* took up a bill hook and killed *N* on the spot *Held* that if *M* connected the subsequent conduct of *N* and his wife with their misconduct on the preceding evening and regarded it as implying an open avowal of their criminal relations which under the circumstances he might have done the provocation was sufficiently grave and sudden to deprive him of self control and to reduce the offence from murder to culpable homicide not amounting to murder BOYA MUNIGADU v QUEEN [I L R 3 Mad. 33

15 ——— Right of private defence—*Penal Code ss 97 99 and 104* —When the accused whose property had frequently been stolen went out with a latee to watch his property and with the latee struck a thief who died from the effects of the blows it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s 99 and that the prisoner was not guilty of culpable homicide not amounting to murder but was protected by ss 97 and 104 of the Penal Code and had not exceeded the legal right of private defence of property QUEEN v MOKEE 12 W R. Cr 15

16 ——— *Search by police for stolen property—Apprehended violence* —A head constable making an investigation into a case of

CULPABLE HOMICIDE—*continued*

house breaking and theft searched the tents of certain gipsies for the stolen property but discovered nothing After he had completed the search the gipsies gave him a certain sum of money which he accepted but at the same time not deeming it sufficient he demanded a *further sum from them* They refused to give any thing more on the ground that they were poor and had no more to give Thereupon he unlawfully *ordered* one of them to be bound and taken away On his subordinates proceeding to execute such order all the gipsies in the camp, men women and children turned out a m four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place where such gipsy was being bound and the head constable was standing Before any actual violence was used by the crowd of advancing gipsies, the head constable fired with a gun at such crowd, when it was about five paces from him and killed one of the gipsies and having done so ran away Any apprehension that death or grievous hurt *would be the consequence of the acts of such crowd* would have ceased had he released the gipsy he had *unlawfully arrested and withdrawn himself and his* subordinates or had he effected his escape *Held* that such head constable had not a right of *private defence* against the acts of such gipsies as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence and such head constable was guilty of culpable homicide amounting to murder EMPRESS OF INDIA v ABDUL HAKIM I L R 3 All. 253

17 ———— **Killing outlaw while endeavouring to escape**—*Penal Code s 300 excep 3* —The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully in furtherance of a plan arranged for them by a police constable and the lumberdar of a village for the capture of an outlaw for whose arrest a reward had been offered and in pursuance thereof killed him while endeavouring to escape *Held* that the *offence committed* came under the third exception in s 300 of the Penal Code and was culpable homicide *not amounting to murder* QUEEN v AMAN [5 N W 130

18 ———— **Unpremeditated assault**—*Penal Code s 300 excep 4* —An *unpremeditated* assault ending in an affray in which death is caused committed *in the heat of passion upon a sudden* quarrel comes within excep. 4 of s 300 of the Penal Code *It is immaterial which party offered* the provocation or committed the first assault QUEEN v ZALIM RAI 1 W R Cr 33

19 ———— **Inflicting injury not sufficient to cause death**—*Want of intention to cause death—Penal Code ss 299 300* —Where the prisoner knocked his wife down put one knee on her chest and struck her two or three violent blows on the face with the closed fist producing extravasation of blood on the brain and she died in consequence either on the spot or very shortly afterwards,—*Held* that there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death the offence committed by the prisoner was not murder but culpable homicide not amounting to murder REG v GOVINDA [I L R, 1 Bom 342

20 ———— **Grievous hurt**—*Blow causing injury not intended* —An accused struck a woman carrying an infant in her arms violently over head and shoulders One of the blows fell on the child's head causing death *Held* that the accused was not guilty of culpable homicide not amounting to murder but had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt EMPRESS v SAHAE RAE

[I. L. R. 3 Calc 623 2 C L. R 304

21 ———— *Death from violent attack* —Where death has resulted from a violent attack the Magistrate is bound to commit to the Court of Session on a charge of culpable homicide not amounting to murder Conviction of grievous hurt in such a case is contrary to law IN THE MATTER OF GOPI NATH SHAHA 1 C L R. 141

22 ———— **Consenting to act likely to cause death**—*Murder—Penal Code s 300 excep 5* —Excep 5 to s 300 refers to cases where a man consents to submit to the doing of some particular act either knowing that it will certainly cause death or that death will be the likely result but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so even by causing the death of the person from whom the danger is to be anticipated *Per* BROUGHTON *J*—Excep 5 to s 300 is not applicable to the case of a premeditated fight but points to a different character such as suttee EMPRESS v ROHIMUDDIN

[I. L. R. 5 Calc 31 4 C L. R. 285

23 ———— **Riot**—*Unlawful assembly—Fight between two contending factions each armed with deadly weapons—Penal Code (Act XLV of 1860) s 300 excep 5* —Where death results in a fight between two bodies of men deliberately fighting together a greater proportion of the men composing both sides being armed with deadly weapons and it being further apparent from the evidence that the man slain was an adult and that no unfair advantage was taken by the one side or the other during the fight the offence committed is culpable homicide but does not amount to murder SAMSHERE KHAN v EMPRESS

[I. L. R. 6 Calc 154 8 C L. R. 158

24 ———— *Penal Code s 300 cl 5 and ss 149 and 307—Murder Attempt to commit—Rioting armed with deadly weapons—Pre arranged fight* —In a case in which it was found that all the accused were guilty of rioting armed with deadly weapons that the fight was premeditated and pre arranged a regular pitched battle or trial of strength between the two parties concerned in the riot and that one of the accused in the course of the riot and in prosecution of the common object of the assembly killed or attempted to kill a man under such circumstances that his act

CULPABLE HOMICIDE—*continued*

amounted to an attempt to murder the question arose whether that act could be said to bear a less grave character by reason of excep. 5 to s 300 of the Indian Penal Code *Per Curiam*—*Held* that upon such finding the case did not fall within the exception *Per* PIGOT J (PETHERAM C.J and MACPHERSON J concurring)—The 5th exception to s 300 should receive a strict and not a liberal construction and in applying the exception it should be considered with reference to the act consented to or authorized and next with reference to the person or persons authorized and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply *Shamshere Khan* v *Empress* I L R 6 Calc 154 and *Queen* v *Kukier Mather* unreported dissented from so far as they decide that from such a finding as the above consent to take the risk of death is inferred. *Per* O'KINEALY J—Before excep 5 can be applied it must be found that the person killed with a full knowledge of the facts determined to suffer death or take the risk of death; and that this determination continued up to and existed at the moment of his death *Queen* v *Kukier Mather* unreported observed on *Per* GHOSE J—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death or took the risk of death with his own consent it being a question of fact and not of law to be decided upon the circumstances of each case as it arises. *Shamshere Khan* v *Empress* I L R 6 Calc. 154 and *Queen* v *Kukier Mather* unreported observed on and the propositions of law laid down therein concurred with. QUEEN EMPRESS v NAYAMUDDIN

I. L. R. 18 Calc. 484

25 ———— **Subjecting person of full age to emasculation**—When a man of full age (i e above 18 years) submits himself to emasculation performed neither by a skilful hand nor in the least dangerous way and dies from the injury the persons concerned in the act are guilty of culpable homicide not amounting to murder QUEEN v BABOOLUN HIJRAH 5 W R. Cr. 7

26 ———— **Knowledge of likelihood to cause death**—*Pre-meditation*—Where a person snatches up a log of heavy wood and strikes another with it on a vital part with so much force and vindictiveness as to cause that other person's death almost on the spot the act must be held to have been done with the knowledge that it was likely to cause death but if done without pre-meditation in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder QUEEN v PAJOO GHOSE 7 W R. Cr 106

27 ———— *Taking persons in old boat—Negligence—Penal Code s 299*—Certain persons whom the accused a ferryman was rowing across a river were drowned by the sinking of the boat which was an old one with holes in it over which planks had been nailed. *Held* that the prisoner could not be convicted of culpable homicide not amounting to murder unless it could be shown that he acted with the knowledge that he was likely by taking them in the boat to cause death within the terms of s 299 of the Penal Code QUEEN v MAGENEE BEHARA 11 W R Cr. 3

28 ———— The knowledge that an act is likely to cause death does not constitute culpable homicide amounting to murder It must be shown that the act was committed with the knowledge that it must in all probability cause death. QUEEN v GIRDHAREE SING 8 N W 28

29 ———— **Act likely to cause death**—*Penal Code ss 304 and 304 (a)—Assault on thief*—The prisoners assaulted a thief so severely that he died One hundred and forty one marks of separate blows were found on the body of the deceased and several of his ribs were broken. *Held* that s 304 (a) of the Penal Code was not applicable to the circumstances of the case and that taking the offence out of the category of murder it must still come under s 304 QUEEN v MAN 5 N W 235

30 ———— *Causing death by branding a thief—Dangerous act*—Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death or such bodily injury as was likely to cause death is punishable under s. 304 of the Penal Code as culpable homicide not amounting to murder QUEEN v KHEDUN MISSER 7 W R. Cr 54

31 ———— *Penal Code s 304 (a)—Administering milk to child in such quantity as to kill it—Rash and negligent act—Knowledge of consequences*—Where there was medical evidence to show that milk had been administered to a child in such quantities as to kill it but there was no evidence to show that the milk was administered by the orders of the mother or that she knew the quantity that was being administered—*Held* that there was not sufficient evidence to bring her within s 304 (a) of the Penal Code The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over fed or of the probable consequences of such over-feeding; such feeding was inconsistent with the terms of s 304 (a) which provides for the causing of death by any rash or negligent act not amounting to murder What a man does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simply rash and negligent act QUEEN v PEMKOER 5 N W 38

32 ————*Intent on to cause injury likely to result in death—Causing death by rash act—Culpable rashness—Culpable negligence*—Prisoner killed his mother by beating and kicking her The Sessions Judge found that the death resulted from brutal beating and kicking but acquitted of culpable homicide because the violence was not such as the prisoner must have known to be likely to cause death *Held* that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions

CULPABLE HOMICIDE—*continued*

Judge convicted the prisoner on the charge of causing death by a rash act. *Held* that the section was wholly inapplicable. Culpable rashness and "culpable negligence" distinguished. QUEEN *v.* NIDAMARTI NAGABHUSHANAM 7 Mad. 119

33. ——— Penal Code ss 299 304 and 323—*Voluntarily causing hurt—Spleen disease*.—Where a person hurt another who was suffering from spleen disease intentionally but without the intention of causing death or causing such bodily injury as was likely to cause death or the knowledge that he was likely by his act to cause death and by his act caused the death of such other person.—*Held* that he was not guilty of culpable homicide and properly convicted under s 323 of the Penal Code of voluntarily causing hurt. EMPRESS OF INDIA *v.* FOX I. L. R., 2 All. 522

34. ——— Penal Code ss 304 325—*Voluntarily causing hurt—Causing death by negligence—Spleen disease*.—B voluntarily caused hurt to N who was *suffering from spleen disease* knowing himself to be likely to cause grievous hurt but without the intention of causing death or causing such bodily injury as was *likely to cause death* or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N from which N died. *Held* that *B* ought not to be convicted under s 304 (a) of the Penal Code of causing death by negligence but under s 325 of that Code of voluntarily causing grievous hurt. EMPRESS *v.* O BRIEN I. L. R. 2 All. 766

35. ——— Penal Code ss 304 (a) 323—*Causing death by a rash or negligent act—Voluntarily causing hurt*.—A person without the intention to cause death or to cause such bodily injury as was likely to cause death or the knowledge that he was likely by his act to cause death or the intention to cause grievous hurt or the knowledge that he was likely by his act to cause grievous hurt but with the intention of causing hurt caused the death of another person by throwing a piece of a brick at him which struck him in the region of the spleen and ruptured it the spleen being diseased. *Held* that the offence committed was not the offence *of causing death by a rash or negligent act* but the offence of voluntarily causing hurt. EMPRESS OF INDIA *v.* RANDHIR SINGH I. L. R. 3 All. 597

36. ——— Penal Code ss 299 300 302 304 (a) 325—*Causing death by rash or negligent act—Grievous hurt*.—Where a person struck another a blow which caused death without any intention of causing death or of causing such bodily injury as was likely to cause death or the knowledge that he was likely by such act to cause death but with the intention of causing grievous hurt.—*Held* that the offence of which such person was guilty was not the offence of causing death by a rash act but the offence of voluntarily causing grievous hurt. *Queen v. Nidamarti Nagabhushanam* 7 *Mad* 119 *Queen v. Pemkoer* 5 *N W* 38 *Queen v. Man* 5 *N W* 235 *Empress v. Ketabdi Mundul* I L R 4 *Calc* 764 *Empress v. Fox* I L R 2 *All* 522 and *Empress v. O Brien* I L R 2 *All* 766 followed. The offences of murder culpable homicide not amounting to murder and causing death by a rash or negligent act distinguished. EMPRESS OF INDIA *v.* IDU BEG I. L. R. 3 All. 776

37. ——— Penal Code s 304 (a)—*Doing act with rashness and negligence*.—Where an accused was charged with culpable homicide and the evidence showed that the deceased had an enlarged spleen and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased.—*Held* that it was not sufficient in order to find the accused guilty of a rash act under s. 304 (a) of the Penal Code that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district and infer therefrom criminal rashness *in beating the deceased* but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district and also aware of the risk to life involved in striking a person afflicted with that disease. EMPRESS *v.* SAFATULLA I. L. R. 4 Calc 815

38. ——— Penal Code s 304 (a)—*Penal Code ss 336 337 and 338—Rashness—Negligence*.—S 304 (a) of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence and consequences beyond his immediate purpose result it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act *to cause the actual result* and *if such knowledge can* be imputed the result is not to be attributed to mere rashness; if it cannot be imputed still the wilful *offence does not take the character of rashness* because its consequences have been unfortunate. Acts, probably or possibly involving danger to others but which in themselves are not *offences* may be offences under s 336 337 338 or 304 (a) if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge or means of knowledge of the offender and placed in their appropriate place in the class of offences of the same character. EMPRESS *v.* KETABDI MUNDUL I. L. R. 4 Calc 764

39. ——— Culpable homicide *not amounting to murder—Penal Code (Act XLV of 1860) s 304—Act done with the knowledge that death would be a probable result*.—Where the prisoner by gripping and squeezing the testicles of deceased reduced them to a pulpy condition thereby causing an injury which resulted in death due to the shock so inflicted on the nervous system.—*Held per* DAVIES J that the death was an unforeseen result for which prisoner could not be held liable and that she ought to be convicted under s 323 Penal Code. *Held per* SUBRAMANIA AYYAR and BENSON JJ that death was a probable *consequence* of the prisoner's act and that she was guilty under s 304 Penal Code of culpable homicide not amounting to murder. QUEEN EMPRESS *v.* KALIYANI I. L. R., 19 Mad. 356

CUSTODY OF CHILDREN—*continued*

case and that the welfare of the infant, irrespective of its age is the main feature to be regarded. *Semble* —A boy of fourteen and a girl of sixteen have a right *to choose their own residence* The provisions of the Guardians and Wards Act VIII of 1890 and the cases on the subject in the English and Indian Courts considered. IN THE MATTER OF SAITHRI JAINOO *v* ABRAMS I L R., 16 Bom. 307

10 ———— *Appointment of Guardian—Guardians and Wards Act (VIII of 1890) ss 9 and 17—Application by a Christian father to be appointed guardian of his Hindu minor son—Matters to be considered by the Court in appointing guardian* —A who was originally a Hindu but afterwards became a Christian and abandoned his family residence applied to be the guardian of the person of his minor son. On the objections of the paternal and maternal uncles of the boy that under the circumstances of the case the father was not fit and proper person to be appointed the guardian of the minor,—*Held* although the father is *prima facie* entitled to the custody of his infant child, he can be deprived of such parental right if the circumstances justify it therefore in a case where a child who was brought up as a Hindu and who expressed a desire to remain a Hindu and was living with his Hindu relation who was maintaining him and was looking after his education properly it would not be to the welfare of the child that he should be handed over to the father and brought up in the Christian faith and that the Court below under the circumstances of the case was right in dismissing the application MOKOOND LAL SINGH *v* NOBODIP CHUNDER SINGHA

[I. L. R., 25 Calc. 881
2 C W N 379

11. ———— Mother's right to custody —*Guardian—Act IX of 1861—Marriage of Mahomedan mother with Christian in Mahomedan form* —A child the offspring of a Christian marriage was living after her father's death under the protection of her mother A married man a Christian came to live with her mother and in order to legaliz their intercourse he and the mother became Mahomedans, and were married in Mahomedan form. About three years after when the child had attained the age of fourteen, some of her relatives applied for an order under Act IX of 1861 that the girl be removed from the guardianship of the mother and her second husband and placed under a Christian guardian. *The girl deposed that she wished to remain with her mother and to become a Mahomedan. Held* by the High Court in granting the application and appointing a guardian in place of her mother that a *Judge in the exercise of his jurisdiction* under the Act is justified in having respect to the religion professed by the father of a minor and in passing such orders with regard to the custody of the person of such minor as he may hold to be in accordance with what would have been the minor's father's wishes had he been alive to express them Where a mother under colour of a change of religion forms a connection or leads a life which by persons professing her husband's faith would be deemed immoral

CUSTODY OF CHILDREN—*concluded*

she thereby ceases to be a proper person to be entrusted with the education of the children of her deceased husband If the Court finds a case made out *for its interference it will not be deterred* from the exercise of its powers because the persons setting it in motion may be actuated by motives other than the interests of the minor Special leave having been given to appeal to the Privy Council, the order was upheld. SKINNER *v* ORDE 10 B L R. 125
[14 Moore's I. A., 309 17 W R., 77

S C In High Court 2 N W., 275

12. ———— *Parent and child —Interference with natural rights for the benefit of the child—Equity and good conscience* —Plaintiff a Brahmin widow sued to recover her illegitimate infant child from defendant to whom she had entrusted it since its birth for nurture *Held* that it being proved that the plaintiff was leading an immoral life the suit was rightly dismissed. VENKAMMA *v* SAVITRAMMA I. L. R. 12 Mad., 67

CUSTODY OF WIFE.

See MAHOMEDAN LAW—CUSTODY OF WIFE 5 B L R. 557
[13 B. L R., 160

CUSTOM.

See CASES UNDER HINDU LAW—CUSTOM.

See CASES UNDER MAHOMEDAN LAW—CUSTOM

See CASES UNDER MALABAR LAW—CUSTOM.

———— of Trade

See SALE BY AUCTION
[I. L R., 19 Calc. 702

1 ———— Origin of custom.—A custom to be valid must be ancient must have been continued and acquiesced in and *must* be reasonable and certain LALA *v* HIRA SINGH I. L. R. 2 All., 49

2. ———— Effect of custom—*Written contract* —*Custom cannot affect the express terms* of a written contract INDUR CHUNDER DUGAR *v* LACHMI BIBI 7 B L R 682 15 W R., 501

3 ———— *Custom contrary to law of inheritance* —Custom, when it is ancient invariable and established by clear and positive proof overrides the usual law of inheritance KUTOORA KOOMAREE *v* MONOHUR DEO GOVERNMENT *v* MONOHUR DEO W R. 1864 39

4. ———— *Custom regulating succession Proof of*—If it is contended that the succession to property is regulated by any special family custom that custom ought to be alleged and proved with distinctness and certainty SEKUMAH UMAH *v* PALATHAN VITIL MARYA COOTHY UMAH
[15 W R., P C 47

CUSTOM—*continued*

5 ——————— *Family custom—Intermarriages* —To establish a family custom at variance with the ordinary law of inheritance it is necessary to show that the usage is ancient and has been invariable and it should be established by clear and positive proof NUGENDER NARAIN v RUGHOONATH NARAIN DEY W R. 1864 20

6 ——————— *Custom contrary to Hindu law* —Where a custom according to which the Rajahs of Beerbhoom had granted a right to a share of property described as Bhabak mehals appeared to have been always recognized by the Courts it was maintained notwithstanding that it was in contravention of the ordinary Hindu law NIL MADHUB GOSSAMEE v CHUNDER MOOKHEE GOSSAMEE 22 W R., 397

7 ——————— *Custom contrary to Limitation Acts* —No custom can be admitted to override the provisions of the Limitation Act MOHANLAL JECHAND v AMRATLAL BECHARDAS [I L R 3 Bom 174

8 ——————— *Inheritance—Converts from Hindu to Mahomedan religion—Custom at variance with law* —The general presumption arising from the intimate connection between law and religion in the Mahomedan faith is that the Mahomedan law governs converts from the Hindu religion to Mahomedanism. *But a well established custom in* the case of such converts to follow their old Hindu law of inheritance would override that general presumption and a usage establishing a special rule of inheritance as regards a special kind of property would be given the force of law even though it be at variance with both Hindu and Mahomedan laws *MAHOMED SIDICK v HAJI AHMED HAJI ABDULA* HAJI ABDSTATAR v HAJI AHMED [I. L. R., 10 Bom., 1

9 ——————— *Custom of trade—Notoriety and definiteness of custom—Requirements of a binding custom of trade* —Suit for damages for breach of a contract to let horses on hire The plaintiff hired a pair of horses at Ootacamund from the defendant for a period of six months and on one occasion drove them beyond the municipal limits of the station on their return the defendant took away the horses from the plaintiff which was the breach complained of The defendant pleaded that the plaintiff's use of the horses as above was contrary to the local custom of the trade *Held* that since the alleged custom was not shown to be either certain or invariable or so notorious that persons should be held to enter into agreements with reference to it it formed no defence to the action PRICE BROWNE [I L. R 14 Mad., 420

10 ——————— *Sale—Exchange—Trade usage—Contract Act ss 49 77 92 151—Delivery of cotton to cotton press—Transfer of Property Act s 118—Ownership of cotton* —According to mercantile usage in the cotton trade in Tuticorin where a dealer delivers cotton to the owner of a cotton press not in pursuance of any special contract the property in the cotton vests in the owner of the cotton press who is bound to give the merchant in exchange cotton of like quantity and quality The transaction is not a sale but an agreement for exchange Where therefore cotton thus delivered was accidentally destroyed by fire —*Held* that the loss fell *on the owner of the press.* VOLKART BROTHERS v VETTIVELU NADAN I. L. R., 11 Mad 459

11 ——————— Evidence of custom—*Mercantile usage* —Proof of mercantile usage needs not either the antiquity the uniformity or the notoriety of custom which in respect of all these becomes a local law The usage may be still in course of growth; it may require evidence for its support in each case but in the result it is enough if it appear to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract JUGGOMOHUN GHOSE v MANICK CHUND [4 W R. P C 8
7 Moore s I. A. 263

12 ——————— *Family usage—Custom repugnant to law* – Evidence of the acts of a single family repugnant or antagonistic to the general law will not establish a valid custom or usage enforceable in a Court of Justice *Tara Chand v Reeb Ram 3 Mad 50* followed MADHAVRAV RAGHAVENDRA v BALKRISHNA RAGHAVENDRA [4 Bom A C 113

13 ——————— *Family custom—Intermarriages* —A family custom as to intermarriages being matter of family history may be proved by declarations made by members of the family NUGGENDUR NARAIN v RUGHOONATH NARAIN DEY [W R. 1864 20

14 ——————— *Mahomedan law of succession—Law in Malabar as to right to superintend mosques* —In Malabar when the right to superintend a mosque is in dispute the Mahomedan law of succession must be applied unless a custom to the contrary is proved Proof that the management of most mosques in a certain district is in the hands of persons who would inherit under the Maramakkatayam law will not warrant a finding of the existence of such a custom in such district KUNHI BIVI v ABDUL AZIZ I. L R 6 Mad. 103

15 ——————— *Land separated from estate by change in course of river* —When a party claims land separated from his estate by a change in the course of a river upon the ground of immemorial custom he must prove such custom The canoongo papers are not sufficient evidence to prove immemorial custom The proceedings shewing that such custom obtains on the banks of one river will be no evidence to prove that it obtains on the banks of another RAI MANIK CHAND v MADHORAM [3 B L.R. P C, 5
11 W R., P C 42
13 Moore s I. A 1

See also BISSESSURNATH v MOHESSAR BUX SINGH [11 B L R 265
18 W R. 160
L. R. I A. Sup Vol., 34

CUSTOM—*continued*

16 ———— *Custom as to transferability of tenures*—In an enquiry as to whether tenures of a certain class are transferable according to local custom it is sufficient if there is credible evidence of the existence and antiquity of the custom and none to the contrary; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable JOY KISHEN MOOKERJEE v. DOORGA NARAIN NAG

[11 W R, 349

17 ———— *Pre emption—Proceedings in former suits*—The proceedings in two former suits where under similar circumstances though the exercise of the right was disputed on other grounds the right of pre emption was admitted to exist may be received in evidence in support of the custom MADHUB CHUNDER NATH BISWAS v. TOMEE DEWAH 7 W R., 210

18 ———— *Haqq i chaharum —Private sale—Sale in execution of decree*—Proof of a custom whereby the zamindar of a village is entitled to one fourth of the purchase money when a house in the village is sold privately is not proof of a similar custom in respect of sales in execution of decrees KALIAN DAS v. BHAGIRATHI

[I L R, 6 All, 47

19 ———— *Right to timber washed ashore—Wreck—Lords of manor*—Where a plaintiff sued for damages for value of timber carried away by Government after being washed on to his estate and to have his right declared as against Government to all timber that in the future may be washed on to his estate *Held* that it was not necessary for plaintiff to produce documentary evidence in support of the right or some decree or decision of competent authority establishing the custom Lords of manors are allowed to establish rights to wrecks etc, by long continued and adverse assertion of and enjoyment under such claim; and the plaintiff was entitled to have the question tried by the evidence he had adduced CHUTTUR LALL SINGH v. GOVERNMENT 9 W R 97

20 ———— *Observations on the use of books of history to prove local custom*—Observations on the use of books of history to prove local custom and on the position as heads of their caste by custom of the representatives of the ancient sovereigns of the West Coast VALLABHA v. MADUSUDANAN I. L. R, 12 Mad., 495

21. ———— *Local custom—Bom Reg IV of 1827 s 26*—By s. 26 Regulation IV of 1827 (Bombay) the usage of the district in which a suit may arise takes precedence over the law of the defendant in the determination of civil suits By local custom in the Broach district wuqf land left as a religious endowment may be mortgaged although such practice is contrary to Mahomedan law ABAS ALI ZENUL ABADIN v. GHULAM MUHAMMAD

[1 Bom 36

22 ———— *Proof of existence of custom—Information derived from deceased persons—Evidence Act 1872 s 32 sub s (5) ss 49 and 60*—A witness may state his opinion as to the existence of a family custom (in this case primogeniture) and give as the grounds thereof information derived from deceased persons. But it must be independent opinion based on hearsay and not on mere repetition of hearsay See Evidence Act 1872 s 32 sub-s. (5) ss. 49 and 60 Its weight depends on the character of the witness and of the deceased persons. GARURUDHWAJA PARSHAD SINGH v. SAPARANDHWAJA PARSHAD SINGH L. R., 27 I A., 238

23 ———— *Custom of inheritance to bhagdari tenures in the Broach district*—The custom in the Broach district of male first cousins succeeding to property held on the bhagdari tenure in preference to daughters or sisters upheld in a case in which the bhagdars were Mahomedans. BAI KHEDU v. DASU LALL 5 Bom., A. C. 123

24 ———— *Bhagdari tenures in Broach—Inheritance—Special custom—Priority of nearest male relative to daughter or sister*—The plaintiff as heir of her father (a deceased Hindu bhagdar) sued the sons of sisters of her father's paternal uncle for possession of certain bhagdari lands situate in a village in the Broach collectorate The defendants pleaded that they were entitled to the property under a special custom regulating the succession to bhagdari lands in the collectorate of Broach under which custom on the death of a bhagdar whether Hindu or Mahomedan without male issue his nearest male relations (after the death of his widow) whether sprung through male or female relatives of the deceased bhagdar succeed to his bhagdari lands to the exclusion of his daughter or [illegible] *Held* that the custom alleged was sufficiently [illegible] and that the defendants were entitled to possession of the bhagdar lands in question. [illegible] *Curiam*—The custom alleged being if not uni[versal] at least general in the Broach collectorat[e] it [illegible] in the case of any particular village at ar[illegible] evidence being given of its continuance in ot[her simi]lar adjacent villages, if not in the parti[cular village] itself (though it would always be more satis[factory if] this could be done) be held still to survive [illegible] and until the opposite party proved the adop[tion of] some other custom or of the ordinary rules of in[herit]ance in the particular village or failing such p[roof] the general prevalence of such rules or such oppos[ite] custom in other similar adjacent villages *Quaere* Whether males sprung of male relatives of a deceas[ed] bhagdar have priority over males sprung of fema[le] relatives of the same *Quaere*—Whether a daughte[r] or sister of a deceased bhagdar is wholly excluded, by the custom from the line of inheritance or would on failure of male relations succeed to the bhagdari lands. RANJIVAN DAYARAM v. BAI REVA

[I. L. R. 5 Bom. 482

25 ———— *Wajib ul urz—Evidence of [illegible] custom*—A wajib-ul urz is not a mere [illegible] a record of [illegible] by a public [illegible] [illegible] executi[illegible] [illegible] it is entitled to [illegible] [illegible] DA SEE DEV [illegible] 295

Cus 702 tom to [illegible]

CUSTOM—*continued*

26 ———————— *Cess Levy of—Wajib ul-urz*—*Held* that the mention of the cess in a wajib-ul urz is n t conclusive proof of the cus tom or usage wh ch gives the right to levy the cess against pers ns not parties to it RAM CHUND v ZAHOOR ALI KHAN 1 Agra 134 135

27 ———————— The wajib ul urz binds co parceners who have verified and attested it and is so far evidence of custom between co parceners but is not a conclusive evidence of custom between co-parceners and their tenants who were no parties to it PUCHOO v MAHOMED TALA A SUDOOLAH [2 Agra, 217

28 ———————— *Record of cess by settlement officer*—The fact that a cess leviable in accordance with village custom has been recorded by a settlement officer is important evidence of the custom but n t conclusive proof of it *Held* on the evidence in this case that the village custom set up was not established. LALA v HIRA SINGH [I. L. R 2 All. 49

29 ———————— *Manorial dues and cesses*—The plaintiffs zamindars sued for a declaration of their ancient rights as against all the tenants of a certain village to appropriate all trees of spontane us growth and the fruits of other trees planted by the tenants also to receive as manorial tribute a certain number of ploughs annually and a an offering of poppy seed and other farm produce the occasion of the marriage of persons of the caste of tenants with a further right to levy tain proportion of the produce of the sugar manufactories and fields in the village The Courts having decreed the suit on vague and parol evidence as to the existence of the said s—*Held* (*a*) that where a custom regarding cesses is alleged the existence of the custom each cess should be tried as a separate that parol evidence as to the existence of such h uld be tested by ascertaining the grounds itness's opinion (*c*) that the best proof of instances in which it has been acted on and entary evidence that it has been enforced (*d*) a custom to be good must be definite LACH RAI v. AKBAR KHAN I L. R 1 All. 440

30 ———————— *Pre emption—Wajib ul-urz—Onus probandi*—A wajib ul urz prepared and attested according to law is *primâ facie* evidence of the existence of any custom of pre emption which it records such evidence being open to be rebutted by any one disputing such cust m ISRI SINGH v GANGA I. L. R. 2 All 876

But such a custom is not established by one instance TOTA RAM v MOHAN LAL 2 Agra, 120

31. ———————— *Pre emption—Wajib-ul urz*—An unsigned wajib ul urz is not binding on the co sharers, and cannot originate a right of pre emption if no prior usage existed To prove usage it is not necessary that documentary evidence should be adduced. JOYKISHORE SINGH v THAKOOR DASS 3 Agra 75

CUSTOM—*continued*

32 ———————— *Pre emption—Wajib ul urz*—*Held* that occasional instances in which a claim to pre-emption on the ground of vici nage may have been admitted or for special reason the vendors submitted to the claim are not sufficient to prove the custom of pre emption in a mahullah but repeated instances of the assertion of pre emp tion as a right and of its recognition or enforcement ranging over a long period of time and in various places should be shown SHEO CHURN KANDOO v GOODUR BURNWAR 3 Agra, 138

33 ———————— *Suit for pre emption—Evidence—Decrees enforcing right*—In a suit for pre emption based on custom evidence of decrees passed in favour of such a custom in suits in which it was alleged and denied is admissible evidence to prove its existence The most satisfac tory evidence of an enforcement of a custom is a final decree based on the custom *Gujju Lal* v *Fateh Lal I L R 6 Calc 171* distinguished *Koodottoollah* v *Mohinee Mohun Shaha 5 Rev Civ and Cr Rep 290 Sheo Churn Kandoo* v *Goodur Burnwar 3 Agra 138* and *Lachman Rai* v *Akbar Khan I L R 1 All 440* referred to. GURDAYAL MAL v JHANDU MAL [I L R 10 All, 585

34 ———————— *Suit by land holder for declaration of right to take land from occupancy tenant for cultivation of indigo—Wajib ul urz Construction of*—The zamindars of a village sued an occupancy tenant for a declaration of their right to maintain a custom which was thus recorded in the wajib ul urz — When necessary one or two bighas out of the tenants lands are taken with their consent (ba khushi) for sowing indigo' Upon the basis of this entry they claimed to be entitled to take a portion of the occupancy holding at a certain period of the year for the purpose of cultivating indigo *Held* by the Full Bench that the word khushi used in the wajib ul urz indicated that the land was only to be taken with the occu pancy tenant s consent and the document created no right of the nature alleged namely to take the land despite the tenant SHEOBARAN v BHAIRO PRASAD I L. R, 7 All, 880

35 ———————— *Pre-emption—Wajib ul urz—Evidence of contract and custom—Act XIX of 1873 s 91—Beng Reg VII of 1822 s 9 cl (i)*—The wajib-ul urz of a village is a docu ment of a public character prepared with all publi city and must be considered as *primâ facie* evidence of the existence of any custom which it records Its record of the existence of a custom of pre emption is sufficiently strong evidence to cast on those denying the custom the burden of proof and in the same manner when it records a contract of pre-emption between the shareholders there is a presumption that it is binding on the shareholders Looking to the public character of the document and the way it is prepared, and that all shareholders whether signing it or not must be presumed to have assented to its terms the inferences to be deduced from it cannot be disregarded except when they are rebutted by evidence of an opposite character A suit to enforce

CUSTOM—*continued*

of pre emption which was based on contract and custom as evidenced by the wajib ul urz of a village, was dismissed by the lower Courts on the ground that any contract which might be founded on the wajib ul urz was not binding on the vendor defendant as that document did not bear his signature and the lower Appellate Court attached no weight to the wajib ul urz as proof of the custom of pre-emption because it was drawn up when Regulation VII of 1822 was in force and at that time there was no legal presumption of its accuracy The claim was dismissed on the ground that the plaintiff s evidence did not prove the existence of a custom of pre-emption in the village. *Held* that the lower Appellate Court had erred in dealing with the evidence and that although this particular wajib ul urz was made before Act XIX of 1873 came into force yet the weight which would attach to its entries both as proof of the contract as well of custom was very strong *Isri Singh* v *Ganga I L R 2 All 876*, referred to MUHAMMAD HASAN v MUNNA LAL **I. L. R., 8 All., 434**

36 ———————— *Wajib ul urz—Mahomedan law*—It having been alleged that an estate by custom descended to a single heir in the male line the High Court concurring with the Court of first instance found that this custom had not been proved to prevail in the family On an appeal contesting this finding it was argued among other objections that the High Court had not given sufficient effect to an entry in the wajib ul urz of a zamindari village the principal one comprised in the family estate now in dispute the last owner of that estate who held all the shares in the village having caused an entry to be made to the effect that his eldest son should be his sole heir the others of the family being maintained. *Held* that though termed an entry in a wajib ul urz the document was not entitled to the name but was rather in the nature of a testamentary attempt to make a disposition contrary to the Mahomedan law of descent MOHAMMAD ISMAIL KHAN v FIDAYAT UN NISSA **[I. L. R., 8 All., 516**

37 ———————— *Dhardhura—Alluvial land*—*Quære*—What is the extent of the applicability of the custom of dhardhura in regard to alluvial land overriding the provisions of Regulation XI of 1825 NASEER-OOD DEEN AHMED v OOMEEDEH **8 Agra 1**

38 ———————— *Dhardhura, Applicability of custom—Accretion.*—The custom of dhardhura applies to lands thrown up or formed by fluvial action either in one year or in the course of a number of years Whether it is equally applicable to chuckee formations or tracts of land severed by a sudden change in the course of a river and yet preserving their identity of site and surface after the severance, must be determined by proof of the extent of the custom. KATIYANEE v MAHOMED SHURFOOD DEEN **3 Agra, 189**

39 ———————— *Dhardhura.*—The custom of dhardhura is, when applied to lands gained otherwise than by gradual accretion opposed to equity; and such a custom must be proved, not by the vague assertions of witnesses but by a sufficient enumeration of instances ISREE SINGH v SHUREEF OODEEN **1 N W., 142 Ed. 1873 224**

40 ———————— *Dhardhura—Beng Reg XI of 1825 ss 2 4 (ii)*—The question whether the custom of dhardhura applies to lands gained by gradual accretion only, or also to lands which have been separated from a mouzah by a sudden change of stream must be determined in each case on the evidence; for although the Court would be disposed to scrutinize with care evidence in regard to a custom which would have the effect of passing from one owner to another lands long held and enjoyed and of which the character is in no way altered by river action yet it cannot be said that such a custom can in no case be established and given effect to *Katyanee* v *Mahomed Shurfoodeen 3 Agra 189 Isree Singh* v *Shurfoodeen 1 N W., 142* and *Rajendur Pertab Sahee* v *Laljee Sahoo 20 W R., 427*, referred to SIBT ALI v MUNIR UD DIN **[I. L. R., 6 All., 479**

41. ———— Validity of custom—*Power of some of mirasidars to bind co owners of village lands.*—A custom that some only of the mirasidars of a village should bind the co owners of the village lands is valid ANANDAYYAN v DEVARAJAYYAN. **[2 Mad., 17**

42. ———————— *Usage of mangrole—Policy of insurance—Evidence of average loss—Certificate of mahajans*—An alleged usage that the mahajans certificate is deemed to be conclusive evidence against the under writer without production of manifest and account sales, and that upon proof of the certificate alone and of the policy the owner is entitled to recover his average loss cannot be upheld such not being a reasonable usage RANSORDAS BHAGILAL v KESRISING MOHANLAL **1 Bom., 229**

43 ———————— *Unreasonable custom—Broker varying contract*—A custom which allows a broker to deviate from his instructions is unreasonable and the Courts of law will not enforce it ARLAPA NAIK NABSI KISHAVJI AND COMPANY **[8 Bom., A. C., 19**

44. ———————— *Customary right of privacy—Right of building and to interfere with erection of building*—A customary right of privacy under certain conditions exists in India and in the North Western Provinces and is not unreasonable but merely an application of the maxims *sic utere tuo ut alienum non laedas and aedificare in tuo proprio solo non licet quod alteri noceat* In the case of a building for parda purposes newly erected without the acquiescence of the owner of an adjacent building site a custom preventing such owner from so building as to interfere with the privacy of the first new building would be unreasonable and consequently bad in law But if such adjacent owner without protest or notice allowed his neighbour to erect and consequently to incur expenses in connection with a building for the use of parda-nashin women a custom preventing him from interfering with the privacy of such new building would not

CUSTOM—*continued*

India be unreasonable GOPAL PRASAD *v* BADHO I. L. R., 10 All., 358

45. ———————— *Customary right —Facts necessary to establish the existence of a customary right—Easement—Easement Act ss. 4 and 15.*—The plaintiff sued for possession of a piece of land which, he alleged, formed part of the courtyard of his kothi and for demolition of a chabutra thereon. The defendants denied the plaintiff's title and alleged that they always used the chabutra as a sitting place and that during the Moharram the tazias and alums were exhibited upon the chabutra, and a takht was placed upon it. The Court of first instance found that the defendants had a right to use the land in the manner claimed during the Moharram. The lower Appellate Court, on the question of the defendant's right to use the said land in the manner claimed by them found as follows:—That various mirasis, whose connection with each other is not established, have within a period of twenty years or so placed tazias upon land and sung there. *Held* that this finding of fact did not necessarily in law lead to the conclusion that there was a local custom by virtue of which the easement now claimed by the defendants was acquired. Where a local custom excluding or limiting the general rule of law is set up a Court should not decide that it exists unless such Court is satisfied of its reasonableness, and its certainty as to extent and application and is further satisfied by the evidence that the enjoyment of the right was not by leave granted or by stealth or by force and that it had been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned KUAR SEN *v* MAMMAN I. L. R. 17 All., 87

Reversing on appeal under the Letters Patent MAMMAN *v* KUAR SEN I. L. R., 18 All., 178

46 ———————— *Usage imported as term of a contract—Practice on a particular estate.*—In order that the practice on a particular estate may be imported as a term of the contract into a contract in respect of land in that estate, it must be shown that the practice was known to the person whom it is sought to bind by it and that he assented to its being a term of the contract; and when the person sought to be bound by the practice is an assignee for value of rights under that contract it must also be shown that he and all prior assignees (if any) for value knew that the practice was a term of the original contract. MAHA VIKRAMA *v* RAMA PATTER I. L. R., 20 Mad., 275

47 ———————— *Custom of burial —Local custom—Right claimed by a certain sect of Mahomedans to bury their dead in a certain locality—Right of burial.*—Where a certain sect of the Mahomedan community had been for many years in the habit of burying their dead near a darga in plaintiff's land, and the plaintiff sued for an injunction restraining them from exercising this right in future,—*Held* that the right of burial claimed by the defendants was not an easement but a customary right, which, being confined to a limited class of persons and a limited area of land, was sufficiently certain and reasonable to be recognized as a valid local custom. MOHIDIN *v* SHIVLINGAPPA

[I. L. R., 23 Bom., 666

CUTCHI MEMONS

See HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI MEMONS

[I. L. R. 9 Bom., 115
I. L. R., 10 Bom., 1

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[I. L. R., 14 Bom., 189

See MAHOMEDAN LAW—CUTCHI MEMONS.

[I. L. R., 8 Bom., 452
I. L. R., 9 Bom., 115 158

See PROBATE—POWER OF HIGH COURT TO GRANT AND FORM OF

[I. L. R., 8 Bom., 452

See WILL—VALIDITY OF WILL.

[I. L. R., 10 Bom., 1

CYPRES PERFORMANCE.

See WILL—CONSTRUCTION 1 Mad., 436
[I. L. R. 1 Calc. 303 L. R., 3 I. A., 32
I. L. R., 11 Calc., 591
I. L. R., 13 Calc., 196



COURT MEANING OF—*concluded*

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY
[I. L. R. 4 Calc 483

See EVIDENCE ACT 1872 s 3
[13 B L R., Ap 40

See EVIDENCE ACT 1872 s 57
[I. L. R 14 Calc 176

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622
[I. L. R. 21 Bom 279

——— Place of trial of criminal case—*Open Court—Pronouncing judgment in private house—Criminal Procedure Code 1861 s 279*—Where a Magistrate conducted and closed the trial in the established Court house but could not by reason of illness pronounce judgment which he did at his private house—*Held* that the procedure being exceptional and in no way prejudicial to the prisoner could not be quashed as illegal under s 279 of the Criminal Procedure Code 1861 GOVERNMENT v HOLASEE SINGH 1 Agra, Cr, 17

COURT OF WARDS

See LIMITATION ACT 1877 s 10
[I. L. R. 5 Mad 91

See LUNATIC 8 B L R., Ap 50
[I. L. R 1 All 478
I. L. R. 13 Calc 81
L R 13 I A 44
I L R 14 Mad. 289

See MINOR—REPRESENTATION OF MINOR IN SUITS 21 W R 312
[I L R 13 Mad 197
I. L. R 23 Calc 374 934
I. L. R 24 Calc 853
L. R. 24 I A, 107

———Agent of—

See ACT XX OF 1863 s 5
[I. L. R., 19 Mad 285

See COLLECTOR I. L. R. 3 All 20
[I. L. R 19 Mad. 255

———Tenure created under—

See BENGAL ACT IV OF 1870
[15 B L. R 343

1. ——— Position of Collector as manager of Court of Wards—In the management of estates under the Court of Wards the Collector acts not in his ordinary capacity as an officer of the executive Government but as a ministerial officer of the Court of Wards, and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court SHEORAJ SINGH v COLLECTOR OF MORADABAD 2 N W., 379

2 ——— Right of suit—*Recovery of land belonging to minor*—The Court of Wards has a perfect right to maintain a suit for the recovery of land belonging to a minor which is in possession of a person not having a good title thereto. BOLAKEE SAHOO v COURT OF WARDS 14 W R. 34

COURT OF WARDS—*continued*

3 ——— Right of female to surrender estate—*Consent of Court of Wards*—A female whose estate is under the management of the Court of Wards cannot without the consent of the Court of Wards give up her rights in favour of the next heir GOVERNMENT v MONOHUR DEO KUSTOORA KOOMAREE v MONOHUR DEO W R. 1864 39

4 ——— Appeal by ward of Court of Wards—*Order in execution of decree*—A widow under the Court of Wards cannot in the summary department appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards KUSTOORA KOOMAREE v BINODE RAM SEIN 4 W R Mis 5

5 ——— Liability of Court of Wards for personal debts of committee—The obligation of the Collector on behalf of the Court of Wards properly to manage the estate of a lunatic does not include liability for his personal debts PEAZOODEEN v COLLECTOR OF CUTTACK 10 W R 175

6 ——— Act of Court of Wards in paying Government revenue to save estate. —*Admission*—Where the Court of Wards in order to save a minor's estate from sale pays on his behalf not only his own share of the revenue due to Government but also all that is not paid by the other shareholders such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid. RAM RUTTUN CHUCKERBUTTY v BANEE MADHUB MOOKERJEE
[21 W R. 253

7 ——— Power of Court of Wards—*Beng Reg X of 1793 s 10—Remuneration to manager Determination of*—The Courts of Wards has authority under s 10 Regulation X of 1793 to determine the proper remuneration to be given to the manager of an estate under their charge and the Civil Courts have no power to question the arrangements made by the Court of Wards SHURUT SOONDERY DEBIA v COLLECTOR OF MYMENSINGH
[7 W R., 221

8 ———Minor under Court of Wards —*Beng Reg X of 1793 s 33—Power to adopt—Beng Reg XXVI of 1793 s 2—Semble*—The operation of s. 33 Regulation X of 1793 which, read together with s 2 Regulation XXVI of 1793 prohibits a landholder under the age of eighteen from making an adoption without the consent of the Court of Wards is confined to persons who are under the guardianship of the Court of Wards JUMOONA DASSYA v BAMASUNDARI DASSYA
[I. L. R., 1 Calc 289
25 W R. 235
L. R 3 I. A., 72

9 ———Ward under Court of Wards —*How far incapacitated from contracting—Beng Reg X of 1793—Court of Wards Act (Beng Act IX of 1879)—Contract Act (IX of 1872) s 11*—On a reasonable construction of the whole of Regulation X of 1793 a ward of Court duly constituted as such is not thereby absolutely incapacitated from contracting but the power of the ward to contract is taken away so far as regards all property which

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under the provisions of the law comes under the charge and control of the Court of Wards. The view taken by the Courts of the Regulation and Acts concerned with the Courts of Wards in Bengal is, that although the possession of a revenue-paying property is a condition precedent to the jurisdiction of the Court of Wards attaching, yet when once that jurisdiction has attached, all the property of the ward comes under the control and management of the Court. *Mahomed Zahoor Ali Khan v Rutta Koer 11 Moore's I A 478* considered. DHUNPUT SINGH v SHOOBHUDRA KUMARI

[I. L. R., 8 Calc., 620 11 C L. R., 385

10 ——— *Disqualification to contract—Beng Reg LII of 1803.*—On a consideration of the provisions of Regulation LII of 1803 (the provisions of Regulation X of 1793 are similar) it was held that the mere fact that the Court of Wards has charge of the estates of a female did not necessarily disqualify her from contracting debts. That Regulation must be construed strictly the provisions requiring the Collector to report to the Board a female as disqualified, and the subsequent procedure thereon should be strictly carried out as not mere matters of form but necessary preliminaries before the female can be considered disqualified. From the absence of the observance of those provisions in the case of *R A* and the conduct of the Government officials representing the Court of Wards the custody of the Court of Wards of her estates was held to be of such a character as did not render her a disqualified female incapable of contracting debts. The case having been framed incorrectly it was under the circumstances, remanded for trial by the High Court under special directions. MAHOMED ZAHOOR ALI KHAN v RUTTA KOOER

[9 W R., P C 9 11 Moore s I. A., 478

11. ——— *Beng Reg LII of 1803—Incompetency of disqualified proprietor to contract.*—Under s 7 of Regulation LII of 1803 lakhiraj lands belonging to a disqualified proprietor may be committed by the Government (on its appearing that this will be for its interests and those of such proprietor) to the charge of the Court of Wards; and thereupon the whole estate and effects real and personal of such proprietor become vested in that Court An estate consisting of lakhiraj lands was duly placed under the management of the Court of Wards the proprietress a Mahomedan being disqualified under the Regulation. This ward having then become a party to a mortgage of such lands to secure repayment of money advanced to her it was held that she neither bound herself nor charged the estate This case distinguished from *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moore s I A 478*; where the proprietress no intention to treat her as disqualified having been shown was adjudged capable of contracting though the Court of Wards was in possession of her estate On the facts of this case it was also *held* that although the Court had given to this ward an authority under certain limitations of which the plaintiff had notice to borrow money for a special purpose there had not been such a holding out to the world of her competency as would have induced any reasonable person to suppose that she had power to make the contract on which this suit was brought. BALKRISHNA v MASUMA BIBI

[I. L. R., 5 All. 142 L. R. 9 I. A., 182
13 C L. R. 232

12 ——— *Beng Reg III of 1803 s 5*—*Disqualified proprietor—Necessity of following procedure preliminary to taking estate under the Court of Wards*—The procedure prescribed by Regulation No. III of 1803 for disqualifying proprietors and taking their estates under the Court of Wards must be strictly followed in order that the disabilities incident to the status of a disqualified proprietor may ensue *Mohummud Zahoor Ali Khan v Rutta Koer 11 Moore s I A 478* referred to. It is incumbent therefore upon one seeking to dispute an adoption on the ground that the person making it was a "disqualified proprietor" to show that all the procedure necessary to make such person a disqualified proprietor was carried out according to law ISURI PRASAD SINGH v LALLI JAS KUNWAR

[I. L R., 23 All., 204

13 ——— *Person'*—The Court of Wards is not a 'person' and letters of administration cannot under the law be granted to it. GANJESSAR KOER v COLLECTOR OF PATNA

[I L. R., 25 Calc 795

14 ——— **Certificate of administration**—*Act XL of 1858*—The Court of Wards is not prevented by Act XL of 1858 from taking an infant and his estate under its protection by reason of a certificate of administration to the estate having been granted by the Civil Court. The Court of Wards has a right to assume charge of the estate, although originally it may have refrained from acting MADHUSUDAN SINGH v COLLECTOR OF MIDNAPORE

[B L R. Sup Vol. 109 3 W R., 82

15 ——— **Act XL of 1858 s 7**—*'Person'*—The Court of Wards is not 'a person' within the meaning of s 7 Act XL of 1858 and is not entitled to administer to an estate by virtue of a will or deed executed by a private person ROWSHUN JEHUN v COLLECTOR OF PURNEAH

[14 W R. 305

16 ——— **Act XL of 1858 s 14**—*Guardianship of minor proprietors*—Under s. 14, Act XL of 1858 an estate ceases to be subject to the jurisdiction of the Court of Wards when any of the co proprietors attain majority; but the Judge may on the representation of the Collector direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification or until such time as it is otherwise ordered SUFFEROONISSA BEEBEE v GHOLAM HOSSEIN CHOWDHRY

[W R. 1864 Mis 2

17 ——— **Release of property from superintendence of Collector**—*North West Provinces Land Revenue Acts XIX of 1873 ss 194 195 and VIII of 1879 s 20—Disqualified proprietor*—M a female proprietor brought a suit to recover possession of certain lands which were in

COURT OF WARDS—*continued*

the hands of the Collector as manager of the Court of Wards on the allegations that she had placed the property in the hands of the Court some years previously, because she was not at that time in a position to manage it herself but that she was now capable of managing it and desired to get it back. The suit was dismissed and the plaintiff appealed on the ground *inter alia* that inasmuch as she was not a disqualified proprietor within the meaning of Act XIX of 1873 (North West Provinces Land Revenue Act) the Court of Wards had no jurisdiction to take the property and that its possession was merely the result of an arrangement to which she was a consenting party and which she now desired to terminate. *Held* that with reference to the provisions of Act XIX of 1873 and Act VIII of 1879 (North West Provinces Land Revenue Acts) the suit as brought was not maintainable inasmuch as there was no evidence that the plaintiff had obtained the previous sanction of the local Government to the release of the property from the superintendence of the Court of Wards as required by s 20 of the latter Act. *Held* also that the plaintiff could not be allowed in appeal entirely to change the nature of the grounds upon which she alleged herself to be entitled to claim relief and that hence she could not now raise the plea that the Court of Wards in taking the property under its management had acted without jurisdiction. The expression "local Government" in ss 194 and 195 of Act XIX of 1873 and s 20 of Act VIII of 1879 means the Lieutenant Governor of the North Western Provinces. MASUMA BIBI v COLLECTOR OF BALLIA I. L. R. 7 All. 687

18 ——— Beng Act IV of 1870—*Death of minor—Right of suit*—*Held* with reference as well to s. 79 Bengal Act IV of 1870 as to the justice and equity of the case that the power of the Court of Wards to represent the estate or bring a suit on behalf of a minor does not cease with the death of the minor. SOOMUNGUL KOOER v COURT OF WARDS 17 W R 560

19 ——— *Minor—Irregular procedure*—On 27th July 1871 a disqualified proprietor *B* signed a duly attested document declaring he had adopted a boy by name *D* the next heir *R* signing a declaration of his approval of the adoption. Before sanction of the Lieutenant Governor could be obtained under Bengal Act IV of 1870 s 74 *B* died and the sanction was subsequently refused on the ground of *B*'s death. On application made under Act XXVII of 1860 the Judge on 28th March 1872 found the adoption good and appointed one *P* to be guardian of the minor *D* and directed the estate to be placed under the management of the Court of Wards. *M* a judgment-creditor of *B*'s failing to execute his decree against the estate of *B* brought a suit to have it declared that *R* as heir had inherited all *B*'s property and that he *M* was entitled to have that property attached and sold in satisfaction of his decree. The only defendants were *A H* manager under the Court of Wards, and *P*. The Subordinate Judge gave plaintiff a decree declaring that *D* was not the legally adopted son of *B*. This was appealed from. *Held* that the Judge had no power to make any such order as that of the 28th March 1872 in regard to the Court of Wards. What he had power to do under Act XL of 1858 s 12 was to direct the Collector to take charge of the estate and it would then have become the duty of the Collector to appoint a manager and a guardian in the same manner etc as if the minor's property and person were subject to the Court of Wards. *Held* that the minor's interests were not properly represented before the Subordinate Judge whose decree therefore could not stand so as to affect the minor and that the minor must be made a party strictly in the manner prescribed by Bengal Act IV of 1870, s 69. ABDOOL HYE v MITTERJEET SINGH 23 W R. 348

20 ——— s 75—*Sale for arrears of rent—Power of Collector—Tenure created under Court of Wards—Previously existing tenure*—The provisions of s. 75 of Bengal Act IV of 1870 apply only to tenures created by the Collector during the time the estate has been in the hands of the Court of Wards and not to tenures created previously. A Collector therefore has no power to sell for arrears of rent a tenure created before he took charge of the estate without previously obtaining a decree for such arrears in the regular way. COLLECTOR OF CHITTAGONG v KALA BIBI 15 B. L. R., 343 24 W R 149

Upholding on appeal under Letters Patent the decision of MARKBY J differing from MITTER J., in KALA BIBEE v COLLECTOR OF CHITTAGONG [20 W R., 383

COURT OF WARDS ACT (BENGAL ACT IX OF 1879)

——— s 20 and ss 51-55—*Suit"—Application for execution by Collector on behalf of ward when manager of Ward's estate has been appointed*—The word suit as used in ss 51 to 55 of Bengal Act IX of 1879 is not limited to what is usually called a regular suit but covers miscellaneous proceedings in a suit such as an application for execution of a decree in which the ward for the first time seeks to have the carriage of litigation instituted by his predecessor in title. When it appeared that a manager of a minor's property had been appointed by the Court of Wards under the provisions of s 20 of Bengal Act IX of 1879 and during the absence of such manager on leave an application was made on behalf of the minor by the Collector of the district for execution of a decree—*Held* that the office of the manager did not become vacant because the manager obtained leave and that if it were not vacant, s. 51 of the Act did not enable the Collector to appear on behalf of the minor. BHOOPENDRO NARAIN DUTT v BARODA PROSAD ROY CHOWDHRY I. L. R. 18 Calc., 500

——— s. 55

See MAJORITY ACT s. 3 [I. L. R. 17 Bom., 944

1 ——— *Effect of claim preferred on behalf of a minor by the manager without the*

COURT OF WARDS ACT (BENGAL ACT IX OF 1879)—*concluded*

sanction of the Court of Wards—An order which was passed during his minority is not binding upon a person whose estate is under the management of the Court of Wards, if the proceeding in which it was passed was not instituted by the manager with the sanction of the Court of Wards, i.e., of the Commissioner to whom the Court of Wards delegated its authority to grant such sanction. RAM CHANDRA MUKERJEE *v.* RANJIT SINGH

[I. L. R., 27 Calc., 242
4 C. W. N., 405

2. ———— *Bengal Act III of 1881 s. 7—Suit on behalf of ward by manager without sanction of the Court of Wards Effect of—Sanction after appeal Effect of*—In the absence of some order by the Court of Wards authorizing the bringing of a suit, a suit instituted by a manager on behalf of a ward must be dismissed. A suit was instituted in the Court of the First Subordinate Judge of Dacca on behalf of a ward by his manager without the order or sanction of the Court of Wards and proceeded to judgment without any such order or sanction. The suit was partially decreed; and the manager appealed to the District Judge for that portion of the claim which had been dismissed by the Court of first instance. At the hearing of the appeal an application was filed on behalf of the appellant accompanied by a letter giving sanction to the institution of the suit, the appeal and other proceedings connected therewith, with retrospective effect from the date of its institution. The Judge dismissed the suit. The plaintiff appealed to the High Court. *Held* having regard to s. 55 of the Court of Wards Act, 1879 as amended by s. 7 of Bengal Act III of 1881 the lower Appellate Court was right in dismissing the suit. *Held* also that the sanction given after appeal did not have a retrospective effect. DINESH CHUNDER ROY *v.* GOLAM MOSTAFHA. DINESH CHUNDER ROY *v.* FAHAMIDUNNESSA BEGAM. DINESH CHUNDER ROY *v.* NISHI KANT GUNGOPADHAYA I. L. R., 16 Calc., 60

3 ———— *Suit rejected when filed on behalf of a minor under the Court of Wards without sanction of that authority to proceed with it* Where under s. 55 of the Bengal Court of Wards Act (IX of 1879) the manager of an estate authorized the plaintiff in order to save limitation to institute a suit on behalf of the Court of Wards, which refused afterwards to sanction the proceeding with the suit —*Held* that the Judge rightly ordered that the suit be rejected as incapable under the above section of being prosecuted. BISESWAR ROY *v.* SHOSHI SIKAR ESWAR ROY

[I. L. R. 17 Calc 688
L R 17 I. A 6

COURT FEES

See CASES UNDER COURT FEES ACTS
See CASES UNDER VALUATION OF SUIT

COURT FEES—*continued*

——— Dismissal of suit for non payment of—

See RES JUDICATA—JUDGMENT ON PRELIMINARY POINTS 4 Bom., A. C. 110
[I. L. R., 9 Calc., 163
I. L. R., 13 All. 41

——— Order for Power to make—

See PAUPER SUIT—SUITS.
[I. L. R., 15 Bom., 77

——— Payment of—

See CASES UNDER LIMITATION ACT 1877 s. 4 I. L. R., 13 All. 305

See PAUPER SUIT—APPEALS.
[I. L. R., 1 Bom., 75
I. L. R. 8 Mad. 214
I. L. R., 11 Calc., 735
I. L. R., 18 Bom., 464

See PAUPER SUIT—SUITS
[I. L. R., 1 Bom. 7
I. L. R., 1 All., 230 596
I. L. R. 20 Bom., 503
I. L. R., 17 All., 526
I. L. R., 18 All., 206

——— Question as to sufficiency of—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT
[1 Bom., 62
14 W R., 196
22 W R. 433
I. L. R. 10 All 165

See DECREE—FORM OF DECREE—GENERAL CASES I. L. R., 18 Mad. 415

——— Recovery of by Government

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.
[I L. R. 20 Calc. 111

See PAUPER SUIT—SUITS
[2 B. L. R., Ap 22
I. L. R., 9 All. 61
I. L. R. 18 All. 410
I. L. R. 20 Calc. 111

——— Remission of—

See PRACTICE—CIVIL CASES—COURT FEES
[I. L. R. 26 Calc. 134
3 C W N 82

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION
[I. L. R. 20 Calc 879

1 ——— Act XXVI of 1867—*Practice—Filing petitions*—Petitions of appeal might be filed on several stamps sufficient to make up the full amount required by law even though the petition was written on one paper. TARINEE CHURN NYADA CHUSPUTTY *v.* TARANATH GOOHO 12 W R., 440

DAWD ALI *v.* NADIR HOSSEIN 10 W R., 153

2. ———— *Mode of making up stamp duty—Case where one stamp of full value*

COURT FEES—*continued*

is available—When a stamp of the full value is available parties ought to use as small a number of stamps as they can KHAJOOROONISSA *v* ROHIMOONISSA 16 W R. 152

3 ——— *Plaint—Insufficient stamp*—There is no illegality in the reception of a plaint engrossed on insufficient stamp paper if the full amount of the stamp duty has been paid at the time GOBIND KUMAR CHOWDHRY *v* HARGOPAL NAG 3 B L. R., Ap 72 11 W R. 537

4. ——— *Appeal presented before Act came into force but returned for irregularity*—Where owing to an irregularity a petition of appeal was returned before the Stamp Act XXVI of 1867 came into force and the appeal was not filed until after that Act came into force—*Held* that the appeal must be filed on a stamp of the amount prescribed by the new law ABADHUN DEY *v* GOLAM HOSSEIN MALOOM 7 W R. 461

See FAGAN *v* CHUNDER KANT BANERJEE [7 W R 452

IN THE MATTER OF THE PETITION OF SREENATH ROY CHOWDHRY 7 W R. 463

5 ——— *Copy of decree and order for execution—Certificate of amount remaining due*—Act XXVI of 1867 required that copies of the decree and of the order for execution should be stamped the certificate as to any sum remaining due under a decree required no stamp VENKATA SUBIA *v* SIVARAMAPPA 4 Mad. 331

6 ——— *Copies of documents for purpose of appeal in criminal case*—The exemption of the Government of India dated the 19th September 1870 cannot be extended to copies of the statement of evidence and grounds of conviction Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written ANONYMOUS 6 Mad. Ap., 12

——— sch B cl. 6 art 10—*Applications for copies of decree*—Applications to the High Court for certified copies of the decree and judgment might be engrossed on a stamp of one anna under cl 6, art. 10 sch B of Act XXVI of 1867 IN THE MATTER OF THE PETITION OF TURIP BISWAS [7 W R., 455

1. ——— *Razinama admitting satisfaction of decree—Petition*—After instituting a suit on a bond for R32 with interest the plaintiff filed a razinama stating satisfaction of his claim and withdrawing the suit *Held* the razinama was rather of the nature of a petition than of an agreement. LUCHANUN SIRCAR *v* GUNESH MUNDUL. MANICK CHUNDER ROY *v* LALLMON SHEIKH [8 W R 214

2. ——— *Petition setting forth terms of parol agreement*—A document in the shape of a petition to a Court setting forth an arrangement come to between the parties in a suit may be received in evidence in support of a fresh suit founded upon the agreement recited in such petition although only stamped as a petition it not appearing that the agreement recited was made in writing RAMDYAL *v* DHOOBEY JHAUNNAN LAL [3 N W., 14

——— cl. 11.

See CASES UNDER VALUATION OF SUIT

1. ——— *Petition of special appeal to High Court appellate side*—Petitions of special appeal to the High Court at Bombay on its appellate side had to be stamped according to the scale contained in cl 11 of sch. B of Act XXVI of 1867 EX PARTE DESAI KALYANRAI HAKUMATRAI [4 Bom., A C 145

2. ——— *Notice of cross appeal*—Though a notice of a cross-appeal may be lodged with the Registrar of the High Court previously the objection itself had under s 348 Act VIII of 1859 to be taken at the hearing of the appeal and to bear the stamp required by s. 6, Act XXVI of 1867 LULEET SINGH *v* ALI REZA 8 W R. 322

RASHOMONEE DOSSEE *v* CHOWDHRY JUNMOJOY MULLICK 9 W R., 356

ABDOOL GUNNEE *v* GOUR MONEE DEBIA [9 W R 375

3 ——— *Notice of objections by respondent*—When the appeal of an appellant was against the whole of the decision of the lower Court and upon the full value of the original suit no additional stamp duty was required in respect of the responaent s objection under s 348 Act VIII of 1859 ANUND MOHUN CHATTERJEE *v* SUTTO RAM MOZOOMDAR 8 W R., 124

4 ———art. 11 cl. (c)—*Objections by respondent—Pauper respondent*—Note (e) to art 11 sch B, Act XXVI of 1867 contained no reservation as to the stamp duty to be levied on a petition of objection under s 348 Act VIII of 1859 filed by a pauper respondent RASHOMONEE DASSEE *v* CHOWDHRY JUNMOJOY MULLICK [9 W R. 356

5 ——— *Plaint*—The object of the note to art 11 sch. B of Act XXVI of 1867 was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint COLLECTOR OF SYLHET *v* KALI KUMAR DUTT [7 B L R. F B 663 16 W R., F B., 10

Contra, MADHUSUDAN CHUCKERBUTTY *v* RYMANI DASI [7 B L R. 664 note 13 W R. 415

6 ——— *Application under Act VIII of 1859 s 230*—*A* had been dispossessed of certain land in execution of a decree which *B* had obtained in a suit against *C* under s 1.. Act XIV of 1859 *A* applied under s. 230 Act VIII of 1859 to recover the land. *Held* no stamp was necessary on *A*'s application BRAHMA MAYI DEBI *v* BARKAT SIRDAR 4 B L R. F B., 94

7 ——— *Act X of 1859 s 25 Petition under*—An application under s. 25 Act X of 1859 for the assistance of the Collector in ejecting a raiyat was not a suit and therefore the

COURT FEES—*concluded*

Revenue Courts could receive such petitions engrossed on a stamp paper of the value of 8 annas. PEARY MOHAN MOOKERJEE *v.* KENA BEWA [2 B. L. R. A. C., 226

S. C. PEARY MOHUN MOOKERJEE *v.* KENA BEWAH 11 W. R. 90

8. ——— *Document Description of—Civil Procedure Code 1859, s. 40.—Held* that the description of a document delivered to the Court under s. 40 of the Code of Civil Procedure 1859 was neither a petition nor an application liable to duty within the meaning of the Stamp Act. CHOTALAL AMRITLAL *v.* BOMBAY BARODA AND CENTRAL INDIA RAILWAY [5 Bom. A. C. 101

9. ——— *Complaint preferred by Munsif under s. 168 of Criminal Procedure Code 1861.*—A complaint preferred by a Munsif under s. 168 of the Criminal Procedure Code 1861 need not, though it did not bear the seal of the Munsif's Court, be on stamped paper. Reg. *v.* SAJJAN VALAD VITHU 5 Bom., Cr., 101

COURT FEES ACT (VII OF 1870)

See CASES UNDER VALUATION OF SUIT

1. ——— **Copy of decree made under old stamp laws.**—Where a decree had been prepared while the old stamp laws were in operation and R6 were awarded in it as the value of the stamps for a copy thereof, the Court allowed a copy to be taken for R4 by a party applying after Act VII of 1870 came into operation. IN THE MATTER OF HURREEHUR MAHTOON 14 W. R. 167

2. ——— **Practice**—*Petition of appeal—Making up stamp fee.*—There is no illegality in making up the stamp fee chargeable in an appeal by means of any number of stamps of smaller values. DAWD ALI *v.* NADIR HOSSEIN 16 W. R. 153

TARANEE CHURN NAYABACHUSPUTTY *v.* TARANATH GOOHO 12 W. R. 449

HURO MONEE *v.* KRISTO INDRO SHAHA [17 W. R. 220

But when a stamp of the full value is available parties should use as small a number of stamps as possible. KHAJOOROONISSA *v.* ROHIMOONISSA [18 W. R. 152

1. ——— **s. 5**—*Court fee on memorandum of appeal—Finality of taxing officer's decision—Mistake—Civil Procedure Code Amendment Act (VI of 1892), s. 3.*—Where an appellant whose memorandum of appeal had been declared by the taxing officer of the Court to be insufficiently stamped applied for relief under s. 3 of Act No. VI of 1892 and it was found that the report of the taxing officer was erroneous and that the correct stamp had as a matter of fact been put on the memorandum of appeal.—*Held* that the appellant was entitled to the relief sought notwithstanding the provisions of s. 5 of the Court Fees Act VII of 1870. PADRI PRASAD *v.* KUNDAN LAL I. L. R. 15 All. 117

COURT FEES ACT (VII OF 1870)—*continued*

2. ——— *Objection as to amount of Court fee on petition of appeal—Decision of taxing officer—Appellate Court, power of.*—An objection taken on behalf of respondents at the hearing of an appeal as to the amount of the Court fee stamp affixed to the petition of appeal to the High Court cannot be entertained, the decision of the officer on that point being final unless referred to the Chief Justice. RANGA LAL *v.* RABA [I. L. R. 20 Mad., 398

3. ——— **and s. 7, cl. 8**—*Value—Suit to set aside attachment on land.*—The meaning of cl. 8, s. 7 of the Court Fees Act VII of 1870 is, that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land. Accordingly in a suit for setting aside a summary attachment, under Bombay Act I of 1865 placed by the Collector on land held on a settlement for a period not exceeding thirty years, the value was held to be five times the assessment and the stamp duty calculated upon it, irrespective of the actual market value or the amount for which the land was attached. COLLECTOR OF THANA *v.* DADABHAI BOMANJI [I. L. R. 1 Bom. 353

4. ——— Where there has been no decision by the taxing officer under s. 5, it is open to the respondent to raise the objection on appeal at the hearing. KASTURI CHETTI *v.* DEPUTY COLLECTOR BELLARY I. L. R. 21 Mad. 269

5. ——— **and s. 12**—*Finality of taxing officer's decision as to Court fee—"Final," Meaning of—Duty of Court Fees Act officer.*—The word "final" in s. 5 of the Court Fees Act has the same meaning as in s. 12, though it is applied to a different subject. The cases in which it has been held that notwithstanding the use of this word in s. 12 an appeal lies from a decision as to the category in which the relief sought by a plaintiff or appellant falls, do not mean that decisions which the section declares to be final are nevertheless appealable, but that the question of category is not a question relating to valuation and therefore is not declared by the section to be final. In both s. 5 and s. 12 "final" is used in its ordinary legal sense of unappealable. A decision under s. 5 of the Act is not open to appeal, revision or review and is final for all purposes, and no means have been provided or suggested by the Legislature for questioning it. The officer mentioned in s. 5 of the Court Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation. BALKARAN RAI *v.* GOBIND NATH TIWARI I. L. R. 12 All. 129

——— **s. 6**

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL I. L. R. 15 Mad., 29

COURT FEES ACT (VII OF 1870) —*continued*

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS
[I L R 12 All. 57

See CIVIL PROCEDURE CODE 1882 s 316
[I L R 13 Bom., 670

See LIMITATION ACT s 4
[I L R., 20 Mad., 319
I L R 22 Mad. 494

See LIMITATION ACT s 5
[I L R 12 All., 57

1 ———— *Applications not required to be in writing*—Applications to the Court not required by the Civil Procedure Code to be in writing do not fall within the 6th section of the Court Fees Act. The term 'application' in sch II of the Court Fees Act when read with s 6 must be construed to mean an application in writing TETLEY v ADMINISTRATOR GENERAL OF BENGAL
[2 N W, 418

2 ———— *Act XL of 1858 s 3—Certificate of guardianship—Period from which authority of guardian dates*—S 6 of the Court Fees Act (VII of 1870) which says that a certificate under Act XL of 1858 (among other documents) shall not be filed exhibited, or recorded in any Court of justice or received or furnished by any public officer unless a certain fee be paid means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty SAHAI NAND v MUNGNIRAM MARWARI
[I L R. 12 Calc 542

3 ———— *Court fee on set off*—In a suit to recover a sum of money due as wages the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. *Held* that the Court fee payable on the claim for set off was the same as for a plaint in a suit. AMIR ZAMA v NATHU MAL
[I L R. 6 All., 396

4. ———— *Written statement—Set off—Civil Procedure Code (Act XIV of 1882) ss 111 and 216*—A written statement containing a claim of set-off is chargeable with the Court fee which would be payable on a plaint of that nature BAI SHRI MAJIRAJBAI v NAROTAM HARGOVAN
[I L R 13 Bom 672

———— s. 7

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL
18 W R. 21

———— cls 1 and 2 and s 11—*Suit for compensation for use and occupation*—The plaintiff sued by virtue of a deed of conditional sale which had been foreclosed for among other things compensation in the nature of rent for the use and occupation of a house from the date of suit to the date on which possession of the house should be delivered to them the defendants having purchased the house subsequently to the conditional sale but before the foreclosure *Held per* SPANKIE, J—That cl. 2 s. 7 of the Court Fees Act did not apply to the claim nor was it one for money within the meaning of cl 1 of that section but one for which s 11 of that Act provided. *Per* OLDFIELD J.—That Court fees were leviable in respect of the claim with reference to cl 1 s 7 and s 11 of the Court Fees Act. CHEDI LAL v KIRATH CHAND
[I L R. 2 All., 682

1. ———— cl 4 (c)—*Suit for declaratory decree—Consequential relief*—In a suit for a declaratory decree to set aside a summary order under Act VIII of 1859 s 246 when the plaintiff asked also for an order confirming possession after declaration of title it was held that consequential relief was sought and that the stamp fee leviable was the *ad valorem* fee prescribed by the Court Fees Act BOHUROONISSA BIBEE v KUREEMOONISSA KHATOON
19 W R., 18

2 ———— *Declaratory decree—Consequential relief—Suit to establish right to attached property—Court Fees Act 1870 sch II art 17*—In a suit under s 283 of Act X of 1877 for a declaration of her proprietary right to certain immoveable property attached in the execution of a decree the plaintiff asked that the property might be protected from sale *Held* that consequential relief was claimed in the suit and Court fees were therefore leviable under s 7 cl (c) and not under sch. II, art 17 (iii) of Act VII of 1870 RAM PRASAD v SUKH DAI
I L R., 2 All. 720

3 ———— *Declaratory decree—Consequential relief—Court fees*—In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought the plaintiff did not, as s 7 of the Court Fees Act directs state in his plaint the amount at which he valued the relief sought nor did the Court of first instance cause him to supply this defect On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit the lower Appellate Court demanded from the plaintiff Court fees in respect of his plaint and memorandum of appeal computed on the market value of such house the plaintiff having only paid in respect of those documents respectively the Court fees payable in a suit for a declaration of right where no consequential relief is prayed. *Held* that the market value of the property could not be taken by the lower Appellate Court to be the value of the relief sought as the plaintiff had not seek possession of the property and that as the valuation of the relief sought rested with the plaintiff and not the Court and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought of which the value was merely nominal further Court fees could

COURT FEES ACT (VII OF 1870)
—*continued*

not be remanded by the lower Appellate Court from the plaintiff. OSTOCHE *v.* HARI DAS

[I. L. R., 2 All., 869

4. ———— *Suit to have a lease set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of building erected thereon—Declaratory decree—Consequential relief*—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside and to have the buildings erected on such land by the lessees demolished on the ground that such lease had been granted without their consent, without which it could not lawfully be granted. They valued the relief sought at R100. The value of the buildings of which they sought demolition was R3,000. *B* sued *A* claiming *inter alia* possession of certain land and to have certain buildings erected thereon by the defendant demolished. *Held* by STRAIGHT, BRODHURST and TYRRELL, JJ., with reference to the first suit, that it was one for a declaratory decree in which consequential relief was prayed, and fell under s. 7, art. 4, cl. (*c*), Court Fees Act, 1870, and such relief being valued at R100, had been properly instituted in the Munsif's Court. JOGAL KISHORE *v.* TALE SINGH

[I. L. R., 4 All., 320

BINDESHRI CHAUBEY *v.* NANDU

[I. L. R., 4 All., 320

5. ———— *Suit to set aside mortgage—Specific Relief Act (I of 1877), s. 39—Suit for declaratory decree.*—*C*'s father mortgaged certain land to *D*. *A* purchased the instrument of mortgage and sued *C*, whose father had died, upon it and obtained a decree enforcing the mortgage. *C* then mortgaged a moiety of the land to *B*, and subsequently sold the same moiety to *A*. *A* sued *B* for the cancellation of the instrument of mortgage to *B*. *Held* that the suit was in the nature of a simple declaratory suit. KARAM KHAN *v.* DARYAI SINGH

[I. L. R., 5 All., 331

6. ———— *Suit to set aside a trust deed and to recover trust-money—Appeal by trustee—Duty payable on memorandum of appeal.*—*A* brought a suit against *B*, a trustee, and others to set aside a trust deed and to recover R2,00,000, the amount of the trust-money, and valued his suit at R2,00,000. *A* obtained a decree. *B* appealed and sought to affix to his memorandum of appeal a ten rupee stamp under art. 17 (cl. 6) of sch. II of Act VII of 1870. *Held* that the duty payable on the memorandum of appeal was the same as that paid on the plaint in the suit. MAHOMED NASIK *v.* MALKAI MUKADBAI UZWA BADSHAH MEHAL SAHEBA

[I. L. R., 10 Calc., 380

7. ———— *Suit for a declaration and injunction—Stamp—Consequential relief.*—The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain devasthan immoveable and moveable property. His plaint, which bore a ten rupee stamp, contained a prayer for an injunction. The Subordinate Judge rejected the plaintiff's claim on the ground that he had not paid the proper stamp fees. On appeal to the High Court,—*Held* that the plaint was insufficiently stamped. The injunction prayed for would be consequential relief, and cl. 4 (*c*) of s. 7 of the Court Fees Act VII of 1870 was, therefore, applicable. The appellant was accordingly required to state in the memorandum of appeal at what amount he valued the relief sought in order that the fee might be computed. RAGHUNATH GANESH *v.* GANGADHAR BHIKAJI

I. L. R., 10 Bom. 60

8. ———— *Application to wind up a partnership under s. 265, Contract Act—Suit for an account.*—An application to the Court to wind up a partnership made under s. 265 of the Contract Act IX of 1872 is in the nature of a suit for an account, and should be stamped accordingly. ABAD ALI PRADHAN *v.* JAMIRUDDIN MAHOMED

[13 C. L. R. 160

9. ———— *Appeal—Contract Act, s. 265.*—The stamp duty payable on an appeal from an order made by a District Judge on an application under s. 265 of the Contract Act (IX of 1872) should be an *ad valorem* fee as in a suit for accounts under s. 7, cl. 4 (*f*) of the Court Fees Act VII of 1870. *Javali Ramasami v. Satham Pakam*, I. L. R., 1 Mad. 340, and *Lachman Lall v. Ram Lall*, I. L. R. 6 Calc. 321, approved. LADUBHAI *v.* REVICHAND

I. L. R., 6 Bom., 143

10. ———— *Suit for accounts—Stamp—Plaint—Contract Act (IX of 1872), s. 265.*—The stamp duty payable on an application to the District Court under s. 265 of the Contract Act (IX of 1872) for an account and winding up of partnership should be an *ad valorem* fee under s. 7, cl. 4 (*f*) of the Court Fees Act (VII of 1870). BHOGILAL *v.* POPATBHAI

I. L. R. 7 Bom. 125

1. ———— s. 7, cl. 5—*Subordinate tenure holder—Assessment of Court fee in suit for possession of a fractional part of an estate.*—The assessment of the Court-fee in a suit by a subordinate tenure holder to recover possession of a definite portion of an entire estate paying a permanently settled annual revenue to Government should be made under the first part of sub-division (*a*), cl. 5 of s. 7 of the Court Fees Act. HUBIBUL HOSSEIN *v.* MAHOMED REZA. I. L. R., 8 Calc. 192: 10 C. L. R. 385

2. ———— *Stamp—Construction and applicability of the proviso—Valuation of suits for land in a talukhdari village—Talukhdar's jumma—Remission.*—Per WEST and NANABHAI, JJ.—The proviso to art. 5 of s. 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency not only for the comparatively rare case of land forming part but not a definite share of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisement made in order to show the proper amount

COURT FEES ACT (VII OF 1870)
—*continued*

of the land tax may be regarded as a remission In the case of a talukhdari village the proprietor of which had under a settlement with Government for a period of twenty two years agreed to pay a fixed annual jumma or lump assessment instead of the full survey assessment for the whole village *Held* by a majority of the Full Bench that the difference in amount between the jumma and the full survey assessment was a remission and therefore a suit for possession of lands in this village was to be valued according to cl 3 of the proviso to art 5 of s 7 of the Court Fees Act (VII of 1870) *Per* BIRDWOOD J—The remission contemplated by cl (3) of the proviso is an *express* remission and not a mere difference in amount between the actual assessment payable by a talukhdar and the survey assessment The three clauses of the proviso seem to apply *only* to lands which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency the first clause being applicable to lands settled for a period not exceeding thirty years the second to lands settled for a longer period or permanently and the third to inam lands on which the whole or a part of the survey assessment has been expressly remitted. The talukhdars are not inamdars They are land holders liable to pay a land tax but not under a survey settlement such as is applicable to lands for which provision seems to have been specially made in the proviso to art 5 of s 7 of the Court Fees Act No part of the proviso therefore applies to a suit for the possession of lands in a talukhdari village Such a suit should be valued according to cl (*d*) of art 5 of s 7 of the Court Fees Act ALA CHELA v OGHAD BHAI THAKERSI I. L. R. 11 Bom. 541

BAVAJI MOHANJI v PUNJABHAI HANUBHAI
[I. L. R. 11 Bom 550 note

3 ———— *Paramba in Malabar—Valuation of suit for*—On its appearing that a paramba in Malabar is not subject to land tax but that a tax is levied on trees of certain kinds which may grow on it,—*Held* that a paramba must be regarded for the purposes of the Court Fees Act as a garden or as land which pays no revenue according to the circumstances of each case AUDATHODAN MOIDIN v PULLAMBATH MAMALLY
[I. L. R. 12 Mad., 301

———— s 7 cl. 8—*Suit to restore attachment—Civil Procedure Code 1859 s 246*—A stamp of R10 is sufficient for the plaint or memorandum of appeal in a suit brought under s 246 of Act VIII of 1859 to restore an attachment upon a house which has been removed at the instance of an intervenient under that section A person whose property was attached was not compelled to resort in the first instance to an application under s 246 of the late Civil Procedure Code (Act VIII of 1859) There was nothing to prevent him from commencing his litigation by a regular suit if such were his pleasure Cl 8 of s 7 of the Court Fees Act (VII of 1870) would apply to such a suit The language of that section is not limited to suits to set aside any special kind of attachments on land. It is large enough to include suits brought in pursuance of the permission given by s 246 of Act VIII of 1859 to set aside attachments on land, as well as other suits for that purpose brought independently of that section The term land in cl 8 s 7 of the Court Fees Act does not include a house *Quære*—Whether that clause includes all suits to set aside attachments upon land or all such suits except where the result of setting aside the attachment would be to alter or set aside a summary decision or order of any Civil Court not established by Letters Patent or of Revenue Court. DAYA CHAND NIM CHAND v HEM CHAND DHARAM CHAND
[I L R, 4 Bom 515

1. ———— s 7, cl 9—*Suit against a mortgagee for the recovery of a portion of property mortgaged*—In cases in which it is competent to the mortgagor to sue to recover a portion of the mortgaged property the debt must be regarded as distributed over the whole property and as regards the portion of the property sued for the principal money expressed to be secured must be taken to be the proportionate amount of the debt for which such portion of the property is liable. BALKRISHNA v NAGVEKAR I. L. R., 6 Bom, 324

2. ———— *Redemption suit—Separate memorandum of appeal presented by each of two appellants Proper fees chargeable on*—A decree having been given by the lower Courts in a redemption suit directing that the mortgaged property should be redeemable on payment of the amount expressed to be secured by the mortgage deed *viz* R1 152 15-4 to the defendants—*viz* R568 9 8 to the defendant Umarkhan and R584 5-8 to the defendant Moro and two others—appeals were preferred to the High Court by Umarkhan and Moro, each of them presenting a separate memorandum of appeal A question arose as to what Court-fees should be levied on them. On reference by the taxing officer of the Court—*Held* that the Court fees to be computed upon each memorandum of appeal was under s 7 cl 9 of the Court Fees Act VII of 1870 to be according to the principal money expressed to be secured by the deed of mortgage *viz* R1 15 5 4. UMARKHAN v MAHOMED KHAN
[I. L. R., 10 Bom., 41

———— s. 10

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS I L R., 8 All. 282

1. ———— *Civil Procedure Code 1877 s 54—Rejection of plaint*—S 54 of Act X of 1877 which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered whereas the application of s 10 of the Court Fees Act which directs that a suit shall be dismissed in a certain case, is not susceptible of restriction to any particular stage VALIYA KESAVA VADHYAR v SUPPEN NAIR
[I. L R, 2 Mad. 308

2. ———— *Dismissal of suit—Civil Procedure Code 1882 ss 54 56—Court Fees Act s 11*—The dismissal of a suit under s 10 or s 11

COURT FEES ACT (VII OF 1870)—*continued*

of the Court Fees Act has the same effect as that provided by s. 56 of the Code in the case of "rejection" of a plaint under s. 54 BALKARAN RAI *v* GOVIND NATH TEWARI I. L. R., 12 All., 129

3. ———— *Suit insufficiently valued—Order for payment of additional Court fees—Power of Court to enlarge time for payment.*—*Held* that it is competent to a Court which has made an order under s. 10 cl. ii, of Act VII of 1870 for the payment of an additional Court fee to enlarge either before or after its expiration, the time limited for the payment of such additional fee *Bodri Narain v. Sheo Koer I. L. R., 17 Calc., 512 L. R., 17 I. A., 1* and *Bhagwandas Bagla* v *Abu Ahmed I. L. R., 16 Bom., 263* referred to. CHUNNI LAL *v* AJUDHIA PRASAD I. L. R. 19 All., 210

4. ———— *Court fee—Procedure—Second appeal—appeal to lower Appellate Court by respondent in High Court insufficiently stamped.*—Where it was discovered in second appeal in the High Court that the respondent, when appellant in the lower Appellate Court had not paid a sufficient Court fee on his memorandum of appeal in that Court, and up to the date of the hearing of the appeal in the High Court, though called upon to do so, had not made good the deficiency it was *held* that the proper procedure was not to dismiss the respondent's appeal to the lower Appellate Court under s. 10 of the Court Fees Act but to stay the issuing of the decree if any of the High Court in favour of the respondent until such time as the additional Court-fee due by him might be paid. NARAIN SINGH *v* CHATURBHUJ SINGH I. L. R., 20 All. 302

5 ———— *Order requiring additional Court fee on claim passed subsequent to decree—Decree prepared so as to give effect to subsequent order—Civil Procedure Code ss 54 56 584—Court Fees Act ss 12 and 28.*—A Judge after disposing of an appeal on the 1st March 1883 again took it up and on the 21st March 1883 directed the appellant to pay additional Court-fees on her memorandum of appeal On the 2nd May 1883 the appellant paid the additional Court-fees under protest, and a decree was then prepared bearing date the 1st March 1883 but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May *Per* MAHMOOD *J* that as soon as the Judge had passed the decree of the 1st March 1883 he ceased to have any power over it and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May whether right or wrong were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent and was therefore liable to correction in second appeal under s 584 of the Civil Procedure Code The powers conferred by ss 54 (a) and (c) and 55 read with s 582 of the Civil Procedure Code or by s. 12 of the Court Fees Act (VII of 1870) read with cl (ii) of s 10 are intended to be exercised before the disposal of the case and not after it has been decided finally so far as the Court is concerned The powers conferred by s. 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court fees relates and even assuming that they can be so exercised, such an order though it may be subject to such rules as to appeal or revision as the law may provide cannot be given effect to by making insertions in an antecedent decree *Per* OLDFIELD *J*—That the Court had power to make the order it did inasmuch as the collection of Court fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt filing or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped. MAHADEI *v* RAM KISHEN DAS I. L. R., 7 All., 528

1. ———— s. 11—*Interest accruing on decree in suit for money lent.*—The Court Fees Act (No. VII of 1870) s 11 is not applicable to interest accruing upon a decree in a suit which is neither for mesne profits, nor for immoveable property nor for an account but simply an action for money lent. KRISHNARAV *v* ANTAJI VIRUPAKSHA [13 Bom. 227

2. ———— *Execution of part of decree—Payment of full amount of Court fees not necessary for such part execution—Construction of Act—Court Fees Act s 17.*—The plaintiff sued the defendant to recover possession of a house and for mesne profits In the same suit he also claimed certain account books and documents from the defendant. In paying Court fees he estimated the mesne profits at R151 and paid on that amount He obtained a decree and the amount of mesne profits awarded to him was R3,349-13 3 The decree further directed that possession of the house should be given to him and that the books and documents should be handed over to him He now applied for execution of that part of the decree which directed the delivery of the house and of the account books and other documents The defendant contended that, under s 11 of the Court Fees Act (VII of 1870) the plaintiff was not entitled to execution of any part of the decree until he paid the proper Court fees on the sum awarded as mesne profits *viz* R3 349 13 3 *Held* that the plaintiff might obtain execution of that part of the decree which ordered delivery of the house and books and documents without paying the fees payable on the amount awarded for mesne profits S 11 and s 17 of the Court Fees Act (VII of 1870) ought to be similarly construed; and the language of the latter section which deals with multifarious suits shows that for the *purposes of the stamp revenue* such suits are deemed to be a collection of distinct suits relating to the several causes of action combined in them In applying s 11 to such suits, in order to

COURT FEES ACT (VII OF 1870) —*continued*

give a harmonious construction to the Act as a whole the term suit in that section should be construed as confined to that part of the suit in question which related to mesne profits FULCHAND *v* BAI ICHHA [I L R., 12 Bom., 98

3 ——— *Suit for possession and mesne profits—Code of Civil Procedure (1882) s 212—Assessment of mesne profits—Dismissal of suit—Application for execution of decree* —Where upon the application of the decree holder the Court executing the decree has assessed the amount of mesne profits but the necessary Court fees have not been deposited within the time fixed by the Court as provided by s 11 of the Court Fees Act (VII of 1870) the suit that is the claim in respect of those mesne profits must be dismissed after such dismissal no application for execution of the decree for mesne profits can be entertained as no such decree is in existence The word suit in the last part of para. 2 of s. 11 of the Court Fees Act does not mean the entire suit it means the claim in respect of the mesne profits KEWAL KISHAN SINGH *v* SOOK HARI I. L. R. 24 Calc 173 [1 C W N, 243

——— s 12.

See APPEAL—ACTS—COURT FEES ACT 1870 19 W R 214 [23 W R 296 I L R. 2 Bom 145 219 I. L R. 6 Calc 249 I L R., 14 Mad. 169

See APPEAL—DECREES [I L. R. 11 All. 91

See APPELLATE COURT — OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT [1 Bom. 62 14 W R 196 23 W R 433 I. L. R, 19 All. 165

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW — VALUATION OF SUIT ERROR IN

See COSTS—SPECIAL CASES—VALUATION OF SUIT 20 W R., 206

——— and s 28—*Finality of decision of Court on question of Court fee* —The decision of the Court on a question of the Court fee payable on a plaint or memorandum of appeal which is to be final as between the parties to the suit must be a decision made between the parties on the record and after they had an opportunity of being heard and not a mere decision based upon the report of a Munsarim before the plaint or memorandum of appeal is filed and therefore before any parties are before the Court Hence where a Court of first instance held on the report of the Munsarim that a plaint presented to it had been insufficiently stamped but subsequently both parties being before the Court and arguments having been heard decided that the Court fee originally paid was sufficient it was *held* that the latter decision was the decision which was final as between the parties within the meaning of s 12 of the Court Fees Act 1870 AMJAD ALI *v* MUHAMMAD ISRAIL I. L. R. 20 All., 11

——— s 14 and sch. I art 5—*Application for review filed after time* —An application for a review of judgment having been made on the first day after the vacation after the ninetieth day from the date of the judgment which it was sought to review it appeared that the ninetieth day fell during the vacation when the High Court was closed *Held* that the full fee leviable on the memorandum of appeal must be paid in the first instance but that the Court if satisfied that the delay was not caused by the laches of the applicant might direct a refund of one-half of such fee IN THE MATTER OF DOORGA PROSUNNO GHOSE 9 C L R 479

——— s 16

See PAUPER SUIT—APPEALS [I. L. R., 1 Bom., 75

——— *Alteration in form of decree on appeal* —Where plaintiff prayed for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled and the lower Court decreed to her joint and undivided possession of her half share and she also succeeded in the whole of her claim as before the High Court in special appeal —*Held* that as the separate possession by partition is a form of decree at the option of the plaintiff the Court was in justice bound to grant her request that the decree should be re framed in such a manner as to award possession to her in severalty without regard to any stamp fee S 16 of the Court Fees Act refers to a case where a party l[eavi]ng substantially a portion of his claim is precluded from re asserting it before the Appellate Court without paying the proper stamp fee BISSONATH CHATTERJEE *v* MADHUBMOYEE DABEE [15 W R., 511

1. ——— s 17— *Distinct subjects —Distinct causes of action.*—*Held* (SPANKIE, J., dissenting) that the words distinct subjects in s. 17 of Act VII of 1870 mean distinct causes of action or distinct kinds of relief *Per* SPANKIE J —Such words mean every separate matter distinctly forming a subject of the claim CHAMAILI PANI *v* RAM DAI [I. L. R., 1 All., 552

2. ——— *Civil Procedure Code (1859) s 9 (1877 ss 44 45)—Multifarious suit— Distinct subjects —Plaint—Memorandum of appeal* —*Held* that the words distinct subjects in s 17 of the Court Fees Act 1870 mean distinct and separate causes of action *Chamaili Rdai v Ram Dai I L R 1 All 552* o[b]served on The plaintiff sued his brothers and a n[e]phew f[o]r his share according to the Hindu law of inheritance and under a will of the moveable and immoveable property of his deceased uncle by the cancelment of a deed of gift of the immoveable property in favour of the nephew *Held per* STUART C J and

COURT FEES ACT (VII OF 1870) —*continued*

STRAIGHT J that under s. 17 of the Court Fees Act 1870 the plaint and memorandum of appeal in the suit were chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under that Act Per OLDFIELD J that Court fees were leviable on the plaint and memorandum of appeal on the total value of the claim the suit not being one of the nature to which s. 17 of the Court Fees Act referred. MUL CHAND v SHIB CHARAN LAL I. L. R., 2 All, 676

3 ———— "*Distinct subjects* — *Plaint and memorandum of appeal* —The plaintiffs sued, in virtue of a conditional sale which had been foreclosed for (i) possession of a house (ii) compensation in the nature of rent for its use and occupation from the date of foreclosure to the date of suit and (iii) like compensation from the latter date to the date on which possession of the house should be delivered to them the defendants having purchased the house subsequently to the conditional sale, but before the same was foreclosed. The plaintiffs stated that their cause of action arose on the date of foreclosure. *Held* (SPANKIE J., dissenting) that the suit embraced distinct subjects within the meaning of s 17 of the Court Fees Act 1870 and the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable CHEDI LAL v KIRATH CHAND I. L. R 2 All, 682

4. ———— *Distinct subjects'* —*Suit for specific moveable property or for compensation* —"*Multifarious suit* —*A* to whom a certificate of administration in respect of the property of a minor had been granted in succession to *B* whose certificate had been revoked sued *B* claiming the delivery of specific moveable property of various kinds belonging to the minor which had been intrusted to *B* and *B* detained or the value of each kind of property as compensation in case of non delivery *Held* that the suit did not embrace distinct subjects within the meaning of s 17 of the Court Fees Act 1870 and the Court-fees payable in respect of the plaint in the suit should be computed under cl 1 s 7 of that Act according to the total value of the claim AMAR NATH v THAKURDAS [I. L. R 3 All. 131

5 ———— *Suit on hundis*—*Distinct causes of action* — *Distinct subjects* —In a suit upon three different hundis executed on the same date by one of the defendants in favour of the other three defendants and by them assigned to the plaintiff and not paid on maturity —*Held* that each hundi afforded a separate cause of action that the suit embraced three separate and distinct subjects and that the memorandum of appeal by the first defendant was chargeable with the aggregate amount of the Court fees to which the memorandum of appeal in suits embracing separately each of such subjects would be liable under the Court Fees Act PARSHOTAM LAL v LACHMAN DAS [I. L. R. 9 All. 252

6 ———— *Suit for possession of immoveable property and for mesne profits or damages*— *Distinct subjects* —*Valuation of suit* —A suit upon one and the same cause of action for possession of immoveable property and for mesne profits or damages for the wrongful retention of such property is not a suit embracing two or more distinct subjects within the meaning of s 17 of Act VII of 1870 *Chamaili Rani* v *Ram Dai I L R 1 All 85*? *Mul Chand* v *Shib Charan Lal I L R 2 All 676 Chedi Lal* v *Kirath Chand I L R 2 All 682* and *Kishori Lal Roy* v *Sharut Chunder Mozumdar I L R 8 Calc 593* discussed PREFERENCE UNDER THE COURT FEES ACT 1870 s 5 I. L. R. 16 All., 401

7 ———— *Multifarious suit* — *Court fees on plaint and memorandum of appeal*—*Court Fees Act 1870 sch I art 1* —The rule laid down in s. 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of art 1 sch. I of that Act and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is under that proviso R3 000 RAGHOBIR SINGH v DHARAM KUAR I L R 3 All 108

8. ———— *Suit for possession and mesne profits*—*Stamp fee payable on appeal* —For the purposes of determining the stamp fee payable on an appeal to the High Court in a suit for possession and for mesne profits the claim for possession and mesne profits is to be taken as one entire claim. *Chedi Lal* v *Kirath Chand I L R 2 All 682* dissented from KISHORI LAL ROY v SHARUT CHUNDER MOZOOMDAR [I. L R. 8 Calc 593
10 C L R 359

———— s 19

See WRITTEN STATEMENT [I. L. R. 5 Bom 400
12 C L R 367

1. ———— *Stamp on memorandum of appeal by judgment debtor in custody from order refusing application to be declared insolvent* — A judgment-debtor whilst in custody applied to the Court under Ch XX of the Civil Procedure Code to be declared an insolvent The application was refused and the judgment debtor appealed against the order rejecting his application No Court fee was affixed to the memorandum of appeal *Held* that no Court fee was leviable under cl 17 of s. 19 of the Court Fees Act KALI PROSAD BANERJI v GISBORNE & Co [I. L. R. 10 Calc 61 13 C L R. 156

2 ———— *Complaints made by municipal officers*—*Process fees* —*Court Fees Act s 21* —No process fee is leviable on complaints made by municipal officers and the accused are not liable to refund sums illegally levied from the complainants as process fees QUEEN EMPRESS v KHAJABHOY [I L R 16 Mad 423

COURT FEES ACT (VII OF 1870)
—*continued*

give a harmonious construction to the Act as a whole the term suit in that section should be construed as confined to that part of the suit in question which related to mesne profits FULCHAND v BAI ICHHA
[I. L. R., 12 Bom., 98

3 ———— *Suit for possession and mesne profits—Code of Civil Procedure (1882) s 212—Assessment of mesne profits—Dismissal of suit—Application for execution of decree* —Where upon the application of the decree holder the Court executing the decree has assessed the amount of mesne profits but the necessary Court fees have not been deposited within the time fixed by the Court as provided by s 11 of the Court Fees Act (VII of 1870) the suit that is the claim in respect of those mesne profits must be dismissed after such dismissal no application for execution of the decree for mesne profits can be entertained as no such decree is in existence The word suit in the last part of para. 2 of s. 11 of the Court Fees Act does not mean the entire suit it means the claim in respect of the mesne profits KEWAL KISHAN SINGH v SOOK HARI I. L. R 24 Calc 173
[1 C W N 243

———— s 12.

See APPEAL—ACTS—COURT FEES ACT 1870 19 W R 214
[23 W R 296
I L. R. 2 Bom 145 219
I L R. 6 Calc 249
I. L R. 14 Mad. 169

See APPEAL—DECREES
[I. L R. 11 All 91

See APPELLATE COURT — OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—VALUATION OF SUIT
[1 Bom 62
14 W R 196
23 W R 433
I. L R. 19 All. 165

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW — VALUATION OF SUIT ERROR IN

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———— and s 28—*Finality of decision of Court on question of Court fee* —The decision of the Court on a question of the Court fee payable on a plaint or memorandum of appeal which is to be final as between the parties to the suit must be a decision made between the parties on the record and after they had an opportunity of being heard and not a mere decision based upon the report of a Munsarim before the plaint or memorandum of appeal is filed and therefore before any parties are before the Court Hence where a Court of first instance held on the report of the Munsarim that a plaint presented to it had been insufficiently stamped but subsequently both parties being before the Court and arguments having been heard decided that the Court fee originally paid was sufficient it was *held* that the latter decision was the decision which was final as between the parties within the meaning of s 12 of the Court Fees Act 1870 AMJAD ALI v MUHAMMAD ISRAIL I. L. R., 20 All, 11

———— s 14 and sch. I, art 5—*Application for review filed after time* —An application for a review of judgment having been made on the first day after the vacation after the ninetieth day from the date of the judgment which it was sought to review it appeared that the ninetieth day fell during the vacation when the High Court was closed *Held* that the full fee leviable on the memorandum of appeal must be paid in the first instance but that the Court if satisfied that the delay was not caused by the laches of the applicant might direct a refund of one-half of such fee IN THE MATTER OF DOOB A PROSUNNO GHOSE 9 C L R 479

———— s 16

See PAUPER SUIT—APPEALS
[I. L. R., 1 Bom, 75

———— *Alteration in form of decree on appeal* —Where plaintiff prayed for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled and the lower Court decreed to her joint and undivided possession of her half share and she also succeeded in the whole of her claim as before the High Court in special appeal —*Held* that as the separate possession by partition is a form of decree at the option of the plaintiff the Court was in justice bound to grant her request, that the decree should be re-framed in such a manner as to award possession to her in severalty without regard to any stamp fee. S 16 of the Court Fees Act refers to a case where a party leaving substantially a portion of his claim is precluded from re-asserting it before the Appellate Court without paying the proper stamp fee BISSONATH CHATTERJEE v MADHUBMONEE DABEE
[15 W R. 511

1. ———— s 17— *Distinct subjects*—*Distinct causes of action*.—*Held* (SPANKIE, J dissenting) that the words distinct subjects in s. 17 of Act VII of 1870 mean distinct causes of action or distinct kinds of relief *Per* SPANKIE J —Such words mean every separate matter distinctly forming a subject of the claim CHAMAILI RANI v RAM DAI
[I. L. R., 1 All., 552

2. ———— *Civil Procedure Code (1859) s 9 (1877 ss 44 45)—Multifarious suit— Distinct subjects —Plaint—Memorandum of appeal* —*Held* that the words distinct subjects" in s 17 of the Court Fees Act 1870 mean distinct and separate causes of action *Chamaili Rani* v *Ram Dai I L R 1 All 552* referred to The plaintiff sued his brothers and a nephew for his share according to the Hindu law of inheritance and under a will, of the moveable and immoveable property of his deceased uncle by the cancelment of a deed of gift of the immoveable property in favour of the nephew *Held per* STUART C J., and

COURT FEES ACT (VII OF 1870) —*continued*

STRAIGHT J., that under s. 17 of the Court Fees Act 1870 the plaint and memorandum of appeal in the suit were chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under that Act *Per* OLDFIELD J that Court fees were leviable on the plaint and memorandum of appeal on the total value of the claim the suit not being one of the nature to which s. 17 of the Court Fees Act referred. MUL CHAND v SHIB CHARAN LAL I. L. R., 2 All., 676

3 ———— "*Distinct subjects*"— *Plaint and memorandum of appeal* —The plaintiffs sued, in virtue of a conditional sale which had been foreclosed for (i) possession of a house (ii) compensation in the nature of rent for its use and occupation from the date of foreclosure to the date of suit and (iii) like compensation from the latter date to the date on which possession of the house should be delivered to them the defendants having purchased the house subsequently to the conditional sale but before the same was foreclosed The plaintiffs stated that their cause of action arose on the date of foreclosure. *Held* (SPANKIE J., dissenting) that the suit embraced distinct subjects within the meaning of s 17 of the Court Fees Act 1870 and the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable CHEDI LAL v KIRATH CHAND I. L. R., 2 All. 682

4. ———— *Distinct subjects —Suit for specific moveable property or for compensation — Multifarious suit* —A to whom a certificate of administration in respect of the property of a minor had been granted in succession to *B* whose certificate had been revoked sued *B* claiming the delivery of specific moveable property of various kinds belonging to the minor which had been intrusted to *B* and *B* detained or the value of each kind of property as compensation in case of non delivery *Held* that the suit did not embrace distinct subjects within the meaning of s 17 of the Court Fees Act 1870 and the Court fees payable in respect of the plaint in the suit should be computed under cl 1 s 7 of that Act, according to the total value of the claim AMAR NATH v THAKURDAS [I. L. R 3 All., 131

5 ———— *Suit on hundis—Distinct causes of action — Distinct subjects* —In a suit upon three different hundis executed on the same date by one of the defendants in favour of the other three defendants and by them assigned to the plaintiff and not paid on maturity,—*Held* that each hundi afforded a separate cause of action that the suit embraced three separate and distinct subjects and that the memorandum of appeal by the first defendant was chargeable with the aggregate amount of the Court fees to which the memorandum of appeal in suits embracing separately each of such subjects would be liable under the Court Fees Act PARSHOTAM LAL v LACHMAN DAS [I. L. R., 9 All., 252

6 ———— *Suit for possession of immoveable property and for mesne profits or damages— Distinct subjects —Valuation of suit* —A suit upon one and the same cause of action for possession of immoveable property and for mesne profits or damages for the wrongful retention of such property is not a suit embracing two or more distinct subjects within the meaning of s 17 of Act VII of 1870 *Chamaili Ram* v *Ram Dai I L R 1 All., 552 Mul Chand* v *Shib Charan Lal I L R 2 All 676 Chedi Lal* v *Kirath Chand I L R., 2 All 682* and *Kishori Lal Roy* v *Sharut Chunder Mozumdar I L R 8 Calc 593* discussed. REFERENCE UNDER THE COURT FEES ACT 1870 s 5 I. L. R 16 All. 401

7 ———— *Multifarious suit — Court fees on plaint and memorandum of appeal—Court Fees Act 1870 sch I art 1* —The rule laid down in s 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of art 1 sch I of that Act and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is under that proviso R3 000 RAGHOBIR SINGH v DHARAM KUAR I L R 3 All 108

8. ———— *Suit for possession and mesne profits—Stamp fee payable on appeal* — For the purposes of determining the stamp fee payable on an appeal to the High Court in a suit for possession and for mesne profits the claim for possession and mesne profits is to be taken as one entire claim *Chedi Lal* v *Kirath Chand I L R 2 All 682* dissented from. KISHORI LAL ROY v SHARUT CHUNDER MOZOOMDAR [I. L. R. 8 Calc 593 10 C L R 359

———— s 19

See WRITTEN STATEMENT [I. L. R. 5 Bom. 400 12 C L R 367

1. ———— *Stamp on memorandum of appeal by judgment debtor in custody from order refusing application to be declared insolvent.*— A judgment-debtor whilst in custody applied to the Court under Ch XX of the Civil Procedure Code to be declared an insolvent. The application was refused and the judgment-debtor appealed against the order rejecting his application. No Court-fee was affixed to the memorandum of appeal. *Held* that no Court fee was leviable under cl 17 of s. 19 of the Court Fees Act. KALI PROSAD BANERJI v GISBORNE & Co [I. L. R., 10 Calc., 61 13 C L R., 156

2. ———— *Complaints made by municipal officers—Process fees—Court Fees Act s 21* —No process fee is leviable on complaints made by municipal officers, and the accused are not liable to refund sums illegally levied from the complainants as process fees. QUEEN EMPRESS v KHAJABHOY [I L R., 16 Mad. 423

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costs The petitioner paid stamp duty on the relief asked for *i e* for the entire amount of costs The lower Court ordered that the petitioner to pay stamp duty on the entire value of the suit and the petitioner not complying with this order his application was rejected *Held* that, having regard to the language of art. 5 sch I of the Court Fees Act the Munsif did not come to an erroneous conclusion *In re Manohar G Tambekar I L R. 4 Bom 26* distinguished NOBIN CHANDRA CHUCKERBUTTY *v* MOHAMED UZIR ALI SARKAR 3 C W N 292

4 ——————— *Fee payable on application to review appellate decree under Letters Patent s 10*—For the purpose of ascertaining the Court-fee to be paid under sch I art 5 of the Court Fees Act (VII of 1870) upon an application to review an appellate decree the fee to be considered is the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed and not the fee which was leviable on the plaint nor—where the decree sought to be reviewed was passed on appeal under s 10 of the Letters Patent from an appellate judgment of a Division Bench—the fee which was leviable on the memorandum of the appeal before such bench HUSAINI BEGAM *v* COLLECTOR OF MUZAFFARNAGAR [I L R 11 All 176

——— sch. I, art 7—*Notes of judgment furnished to parties—Copies of decrees*—Notes of judgment furnished to parties under the Rules of Practice for the guidance of Small Cause Courts are copies of decrees which require a stamp under art 7 sch. I of Act VII of 1870. ANONYMOUS [6 Mad. Ap 24

See ANONYMOUS CASE 6 Mad. Ap, 12

——— sch I, art 8—*Stamp Act 1879 s h I art 1—Copies of originals returned to the party—Liability of such copies to stamp duty.*—In the course of a suit the plaintiff put in evidence certain entries from his day books and ledger The books had been produced in Court and had been returned to the plaintiff as usual on his furnishing copies of the said entries. The Subordinate Judge feeling doubt as to whether such copies should be furnished on stamped paper referred the question to the High Court. *Held* that the original entries not having been in the handwriting of the debtor were not liable to stamp duty under sch I art 1 of the Stamp Act, I of 1879 and that therefore the copies of them were not chargeable with any Court fees under sch. I art 8 of the Court Fees Act (VII of 1870) HARICHAND *v* JIVNA SUBHANA [I. L. R., 11 Bom., 526

1. ——— sch I art. 11—*Ad valorem fee—Property subject to a mortgage—Stamp duty found insufficient on taking account*—By cl 11 sch. I Act VII of 1870 The Court Fees Act 1870" an *ad valorem* duty of two per cent on the amount or value of the estate is charged for probate of a will, where the amount or value of the property in respect of which probate is granted exceeds R1 000 The term "value" in the Act apparently means market value and the market value of mortgaged property is the equity of redemption An executor having applied for probate in respect of property which was alleged to be charged and mortgaged in excess of its value no fee was charged for the probate of the will In such a case however if it be found when the accounts are filed that sufficient stamp duty has not been paid, payment of any deficiency can be enforced. IN THE GOODS OF MACLEAN 6 N W 214

2 ——————— *Probate granted to second executor when leave has been reserved to him to take out probate*—No stamp duty is payable under the Court Fees Act 1870 on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted IN THE GOODS OF AMEERUN 15 W R., 496

3 ——————— *Letters of administration*—Before the passing of the Court Fees Act the Administrator General obtained letters of administration to a certain estate limited until the will should be proved and the fixed duty prescribed by the Succession Act was paid in respect of such letters of administration The will was proved, and a petition presented for general letters of administration with the will annexed, after the passing of the Court Fees Act *Held* that the fee therein prescribed must be paid on the amount of the property irrespective of the duty paid on the grant of the former letters of administration IN THE GOODS OF CHALMERS

[6 B L R. Ap, 137 21 W R 246 note

4 ——————— *Letters of administration with will annexed*—The Administrator General obtained letters of administration with a copy of exemplification of probate of the will annexed and the full *ad valorem* duty prescribed by sch. I cl 11 of the Court Fees Act was paid on the amount of the property Subsequently the Administrator General produced a document referred to in the will of the testator, and obtained an order for letters of administration with a copy of the exemplification of probate of the will annexed, and of the document produced as part of the will, in lieu of the former letters of administration *Held* that he was not liable to pay a second *ad valorem* duty IN THE GOODS OF MOSSON 6 B.L.R., Ap., 130

5 ——————— *Property subject to a trust*—Where property was conveyed by *T* to *L* on trust to pay the income to *T* for her life and after her death to hold the property for her children in such manner or form as she should by will appoint and *T* afterwards intermarried with *G* and shortly afterwards made a will of which she appointed her husband and the trustee of the settlement executors,—*Held* that the *ad valorem* duty prescribed by sch. I cl 11, of the Court Fees Act was not payable in respect of such trust property The words of that clause mean property which the deceased was

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possessed of or entitled to. IN THE GOODS OF GEORGE
[6 B. L. R. Ap. 138: 15 W. R., 457 note

6. ——— *Letters of administration—Trust property—Financial Resolution 2004, 14th July 1871*.—A and B were brothers joint in estate. A died unmarried leaving no relative except B. B obtained grant of letters of administration of the estate of A, consisting of a half share of certain property, the other half share of which was claimed by B to belong to himself. By Financial Resolution No. 2004, 14th July 1871, the fees chargeable under sch. I, art. 11, of the Court Fees Act were remitted in respect of letters of administration relating to "property which a deceased person was possessed of as a trustee for any other person." *Held* that B's half share should be treated as trust property, and exempted from the 2 per cent. *ad valorem* fee. IN THE GOODS OF BRINDABUN GHOSE
[11 B. L. R. Ap. 39: 19 W. R. 230

7. ——— *Letters of administration—Estate of Hindu in hands of deceased daughter's representatives—Trust property*.—On the death of a Hindu lady who had succeeded to her father's property for the estate of a Hindu daughter, it appeared that certain Government promissory notes which formed a portion of the father's property were then standing in her own name. On an application by the sons for letters of administration to her estate,—*Held* that on her death the grandfather's estate became in the hands of her representatives trust property in respect of which no duty was payable under the Court Fees Act. IN THE GOODS OF JOYMONEY DOSSEE　14 B. L. R. 184

8. ——— *Property on which there is a mortgage or incumbrance—Duty on letters of administration*.—When letters of administration are granted in respect of property which is subject to a mortgage, the value of the property for the purpose of estimating the *ad valorem* duty payable under the Court Fees Act is the value of the entire property less the amount of the incumbrance. A duty paid on former letters of administration which were afterwards cancelled was allowed to be deducted from the amount payable for fresh letters of administration. IN THE GOODS OF INNES
[8 B. L. R. Ap. 43: 16 W. R. 253

9. ——— *Letters of administration—Duty payable on*.—A suit for a division of a joint estate having terminated in a settlement, the terms of which were embodied in a decree, the receivers who had been appointed *pendente lite* endorsed and transferred certain securities and shares to one of the parties, D, pursuant to the decree. The Bank of Bengal Account Department and the companies concerned having refused to recognize the transfer, D applied for letters of administration in respect of the securities and shares in question, claiming exemption from the duty prescribed by the Court Fees Act, sch. I, cl. 11, on the ground that she ought not to have been required to obtain such letters, her right having been declared by a decree of the High Court. *Held* that the prescribed duty must be paid, and that there was no ground of exemption from it. IN THE GOODS OF SRINATH DASS　20 W. R. 440

10. ——— *Letters of administration—Duty payable on—Debts due by deceased—Letters limited to collect rents*.—The fee payable for letters of administration under Act VII of 1870, sch. I, art. 11, is to be calculated on the amount or value of the property in respect of which the letters are sought without deducting therefrom the debts due by the deceased. Where letters are granted limited for the purpose of collecting the rent of a house, the duty is to be assessed on the value of the house. IN THE GOODS OF RAM CHANDRA DAS
[9 B. L. R. 30: 18 W. R. 153

11. ——— *Appointment by will*.—Where a person having a life interest in a fund with a general and absolute power of appointment thereover exercises such power by will, no *ad valorem* fee is payable in respect of such fund under the Court Fees Act. IN THE GOODS OF ORAM
[12 B. L. R. Ap., 21: 21 W. R. 245

12. ——— *Letters of administration—Doubtful debt*.—The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of letters of administration to such estate. IN THE GOODS OF BEAKE
[13 B. L. R., Ap. 24: 21 W. R. 397

13. ——— *Value of annuity—Property subject to a mortgage*.—For the purpose of determining the probate fee in respect of an annuity, the word "value" in the Court Fees Act VII of 1870, sch. I, cl. 11, must be taken to mean the market value of the annuity, and not ten times the amount of a yearly payment. Where the property in respect of which probate is sought is mortgaged, the amount of the mortgage incumbrance must be deducted from the market value of the property, and the probate fee charged on the balance. IN RE WILL OF RAMCHANDRA LAKSHMANJI
[I. L. R. 1 Bom., 118

14. ——— *Executors obtaining second grant of probate—Grant of probate before Court Fees Act came into force*.—Executors obtaining a second grant of probate subsequent to the enactment of the Court Fees Act of 1870 (the first grant having been taken out previously to that enactment) are not exempted from the payment of the *ad valorem* duty chargeable under that Act, although the full fee then chargeable by law had already been paid at the time when the first probate was taken out. IN THE GOODS OF GASPER　I. L. R., 3 Calc., 733
[2 C. L. R. 436

15. ——— *Probate duty—Annuity charged on property of testator*.—Where it appeared that property disposed of by a will was bequeathed to the testatrix subject to the payment thereout of an annuity for life to a person who survived her,—*Held* that the *ad valorem* fee prescribed by sch. I, cl. 11

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of the Court Fees Act ought to be levied upon the value of the property less the capitalised value of the annuity IN THE GOODS OF RUSHTON

[I. L. R., 3 Calc., 738

16 ——————— *Letters of administration —Liability of property on which duty has been paid in England—Fees* —A testator died in England and his executrix proved his will there and then in this Court paying duty in each country on the assets there On the death of the executrix the Administrator General obtained letters of administration *de bonis non* of the testator's unadministered property valued at a greater sum than the sum on which duty was originally paid in this country by the executrix but which sum was made up of assets from England upon which duty had already been paid there *Held* that as the assets were within the jurisdiction of this Court at the time of the grant of administration and the Administrator General could not have obtained possession of them otherwise than by virtue of the grant they were liable to the *ad valorem* fee prescribed by cl 11 sch I of the Court Fees Act. IN THE GOODS OF MURCH

[I. L. R. 4 Calc. 725

17 ——————— *Ad valorem duty on probate—Parties married and holding property under the Code Napoleon—Law of France—Trust property* —The deceased *F* was a European subject of the German Empire He married a lady of Solingen in Rhenish Prussia where the Code Napoleon is in force There in contemplation of the marriage the parties entered into a contract whereby it was provided that there should be and rule universal community of his and her present and future moveable and immoveable property which contract placed the parties under the law of France respecting community of property between husband and wife Under that law a husband and wife have an equal interest in the property comprised in the community; on the death of either the property is divided into two parts of which one part goes to the survivor and the other to the heirs or to donees under a testamentary disposition *Held* that on the death of *F* only one half of the property was chargeable with the *ad valorem* duty payable under art. 11 of sch I of the Court Fees Act the other half being trust property which should under the provisions of s. 19D of that Act be exempted from payment of such duty IN THE GOODS OF FROESCHMAN

[I. L. R. 20 Calc 575

18 ——————— *Duty payable on taking out probate or administration—Value of property not reduced to possession and as to which suit is brought* —Under art 11 of sch. I of the Court Fees Act, duty is payable by a person taking out probate on the amount or value of the property in respect of which probate or letters of administration shall be granted if the amount or value of such property exceeds R1 000 In a case where property has not been reduced into possession at the time of taking out probate and the right to it is the subject of a suit it is impracticable to declare the value of the property as not exceeding R1,000 IN THE GOODS OF ABDOOL AZIZ I. L. R. 23 Calc. 577

19 ——————— *Probate duty — Asset in British India at date of death* —Probate duty is payable only on assets which at the date of the testator's death are in British India IN RE ABRAHAM I. L. R 21 Bom, 139

20 ——————— *Probate fee — Doubtful debt* —The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of probate as a will IN THE GOODS OF RAM CHUNDER GHOSE

[I. L. R., 24 Calc 567

21 ——————— *Locality of assets—Partner of firm with head office in London and branches in Calcutta and Bombay* —*S* died in England in October 1896 and probate of his will was obtained in England on 1st December 1896 He left a large amount of property and credits in Bombay and he was a partner in the firm of David Sassoon & Co, which had its head office in London and had branches in Bombay and Calcutta *Held* that no probate duty was payable on the value of the share of the deceased as a partner in the firm of David Sassoon & Co or the properties of the firm situated in British India at his death. IN THE GOODS OF SASSOON

[I. L. R., 21 Bom, 673

22 ——————— and act 12 —*Trust property* —The term property in cls 11 and 12 of sch I of the Court Fees Act includes not only property to which the deceased was beneficially entitled during his lifetime but also all property which stood in his name as trustee or of which he was possessed benami for others IN THE GOODS OF BERESFORD

[7 B. L. R. 57 15 W. R., 456

——— sch I cl. 13

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE 6 Mad. 131

1 ——————— *Probate duty Exemption from—Interest in partnership property* —The testator a member of the firms of *G A & Co.* of Calcutta and *O G & Co* of Liverpool died in England leaving a will of which he appointed *G* in England and *O* in Calcutta his executors. As a partner in the Calcutta firm the testator was entitled to a share in an indigo concern and in certain immoveable property in Calcutta and his share in these properties was on his death estimated, and the money value thereof paid to his estate by the firm in Liverpool and probate duty had been paid thereon by *G* in obtaining probate of the will in England Shortly after the testator's death the indigo concern was contracted to be sold and the testator's name appearing on the title deeds as one of the owners *O* applied for probate of the will to enable him to join in the conveyance and in any future sale of the other immoveable property An unlimited grant of probate was made to *O* who claimed exemption from probate duty in respect of the properties on the grounds (*a*) that duty had already been paid in

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England on the testator's share in them and (*b*) that there was no amount or value in respect of which probate was to be granted in India *Held* on a case referred by the taxing officer that O was not entitled in obtaining probate to exemption from the probate duty payable under sch. I cl. 12 of the Court Fees Act in respect of the properties IN THE GOODS OF GLADSTONE I L R. 1 Calc 168

2. ———— *Application for certificate of heirship*—In cases in which the value of property in respect of which a certificate of heirship is sought exceeds R1 000 the stamp duty should be calculated on the whole amount and not on the excess over R1 000 under Act VII of 1870 sch I art. 12 but the exceeding R1 000 is the condition of liability ANONYMOUS 5 Mad. Ap. 45

3 ———— *Certificates of administration to estate of deceased*—The Court fee stamp to be imposed on a certificate of administration ought not to be assessed on a valuation including property absolutely denied by the applicants to belong to the intestate's estate until the contrary be proved NITTYO KALI DABEA *v* KADER NATH CHATTERJEE 5 C L R. 388

———— sch. II art. 1.

See CLAIM TO ATTACHED PROPERTY [I. L. R. 16 Bom 700

1. ———— *Civil Procedure Code 1859 s 281—Act XXIII of 1861 s 8—Examination of defendant*—When the plaintiff in order to make the proof referred to in s 281 Act VIII of 1859 chooses to examine the defendant he must pay for the oath and the cost of reducing the deposition of the witness to writing It would be otherwise under s 8 Act XXIII of 1861 in which case the fee is demandable from the applicant EDMOND *v* NIEBSES 8 B L R. Ap 42 16 W R. 84

2. ———— *Fees for translations*—When portions of khatta books are translated each portion translated is treated as a separate document and any portion less than a folio is charged for under the Court Fees Act as a whole folio The portions containing less than a folio are not to be taken together and charged according to the whole number of folios they contain. BRAJANATH DHAR *v* BHABO MOHAN DHAR 6 B L R, Ap 137

3 ———— *Petition for new trial in Small Cause Court—Court Fees Act 1870 sch I art 5*—A petition for a new trial in a Small Cause Court is under the Court Fees Act (VII of 1870) properly stamped with a one anna stamp as it falls within sch. II art 1 of that Act and not under sch. I art. 5 CHOTA LAL JAMNADAS *v* BULAKIDAS JETHA 7 Bom. A C 109

4. ———— *Stamp for application for probate or administration*—The stamp requisite for an application for a probate of a will or letters of administration is not required to be proportionate to the value of the property involved as such applications come under the provisions made in art 1 sch II Act VII of 1870 for common applications and petitions. IN THE MATTER OF JUDOONATH SADHOOKHAN 15 W R 40

5 ———— *Application by witness for return of document*—Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons ANONYMOUS CASE 15 W R 237

6 ———— *Petition to withdraw suit—Agreement—Bond*—A petition stamped as an agreement having been presented to a District Court by the parties to a suit informing the Court that they had entered into an agreement whereby *inter alia* the defendant was bound to deliver to the plaintiff certain wood and requesting that the suit might be removed from the file the District Judge impounded it levied a sum for insufficient stamp duty and a penalty on the ground that it was a bond and forwarded it to the Collector Upon a reference made by the Board of Revenue at the instance of the Collector—*Held* that the duty leviable was a Court fee stamp under art 1 (*b*) of sch II of the Court Fees Act 1870 REFERENCE UNDER STAMP ACT 1879 I L R., 8 Mad. 15

7 ———— *Complaint of illegal seizure and detention of cattle—Act III of 1857 s 14—Order to repay stamp to complainant—Court Fees Act s 31*—The illegal seizure and detention of cattle to which s. 14 of Act III of 1857 refers is not an offence within the meaning of s 31 and sch II art. 1 cl (*b*) of the Court Fees Act VII of 1870 Complaints of such illegal seizure and detention do not require a stamp If such complaints be stamped it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant REG *v* AVJI BIN NARU 8 Bom Cr 22

———— sch II art 6—*Security bond for costs of appeal—Act I of 1879 sch I No 13*—*Held* by the Full Bench that where a bond is given under the orders of a Court as security by one party for the costs of another it is subject to two duties—(*a*) an *ad valorem* stamp under the Stamp Act art 13 sch I (*b*) a Court fee of eight annas under the Court Fees Act art 6 sch II KULWANTA *v* MAHABIR PRASAD I L R. 10 All. 16

———— sch II art. 10 (a)—*Stamp Act sch I art 50 (b)—Power to vakil to obtain copies from Collector's office—Stamp*—A document authorizing a vakil to apply for copies of records from the Collector's office is properly stamped with a Court fee stamp under art 10(*a*) of sch. II of the Court Fees Act 1870 and does not require to be stamped as a power of attorney under art 50 (*b*) of sch I of the Stamp Act 1879 REFERENCE UNDER STAMP ACT 1879 s 46 I. L. R. 9 Mad., 146

1 ———— sch. II, art. 11—*Application to set aside order directing award to be filed*—An application to the High Court to set aside an order of a District Court reversing an order of a Court of first instance directing an award made without the

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intervention of a Court to be filed should be treated as an application for a miscellaneous special appeal Such an application may be made on a stamp of the value of two rupees under sch II art 11 of the Court Fees Act (VII of 1870) LAKSHMAN SHIVAJI v RAMA ESU 8 Bom A C, 17

2 ——— *Appeal from order under s 331 of the Civil Procedure Code (Act X of 1877) as amended by s 52 of Act XII of 1879*—Appeals from orders under s 331 of Act X of 1877 as amended by s 52 of Act XII of 1879 are chargeable with the same Court fee as is required in the case of appeals from decrees MAHBUBAN v UMRAO BEGUM SHAYAMA SUNDURI DASI v WATSON & Co

[I. L R 8 Calc, 720 11 C L R 99

3 ——— *Memorandum of appeal from order under Companies Act (VI of 1882) s 214—Decree—Valuation of appeal*—An order under s 214 of Act VI of 1882 (Indian Companies Act) is not a decree or an order having the force of a decree and consequently an appeal from such an order to a High Court is properly stamped with reference to the Court Fees Act (VII of 1870) sch II art 11 (b) with a Court fee stamp of R2 REFERENCE UNDER COURT FEES ACT

[I L R. 17 All., 238

4. ——— *Appeal under cl 10 Letters Patent High Court N W P from an order of remand under s 562 of the Code of Civil Procedure —Court fee*—*Held* that in an appeal under s 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under s 562 of the Code of Civil Procedure the proper Court fee is R2 BALLI RAI v MAHABIR RAI

[I L. R., 21 All. 179

1. ——— sch. II art 17 cl. 1—*Suit to contest award of Settlement Officer—Mad Act XXVIII of 1860 s 25*—A suit under (Madras) Act XXVIII of 1860 s. 25 to contest the award of a settlement officer falls within the terms of art 17 (1) of sch. II of the Court Fees Act. ANNAMALAI CHETTI v CLOETE I. L. R. 4 Mad., 204

2. ——— *Suit to set aside order under Act VIII of 1859 s 246—Stamp*—A suit brought under the provisions of s 246 of Act VIII of 1859 to set aside an order allowing a claim to attached property and releasing the property from attachment is a suit to try the title and establish the right of the person who brings the suit; and such a suit must be valued according to the value of the property and cannot be brought upon a stamp of R10 under art. 17 of sch. II of the Court Fees Act MUTTI JALALUDDEEN MAHOMED v SHOHORULLAH

[15 B. L. R., Ap., 1 22 W R., 423

3. ——— *Suit after rejection of claim to attached property—Ad valorem stamp*—In execution of a decree by the defendant certain property was attached as being that of the judgment debtor The plaintiff preferred a claim, but his claim was disallowed and the property ordered to be sold. In a suit to have it declared that the property belonged to the plaintiff—*Held* it was a suit in which consequential relief was asked for and that the *ad valorem* duty prescribed by sch I of the Court Fees Act was payable on the plaint and not that provided by sch II art 17 *Jalaluddin Mahomed v Shohorullah 15 B L R Ap 1 22 W R., 423* followed. AHMED MIRZA SAHEB v THOMAS

[I. L. R., 13 Calc., 162

4. ——— *Suits brought to set aside or restore attachment—Civil Procedure Code 1859 s 246—Summary decision—Limitation Act 1871 art 15 (1877, art 13)—Interpretation of Acts—Valuation of suits.*—Suits brought to set aside or to restore an attachment upon a house in pursuance of the permission given in s 246 of the Civil Procedure Code may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed" so as to fall within s. 1 cl 4 art (c) of the Court Fees Act (VII of 1870) or as suits to obtain or set aside a summary decision or order in which case the stamp duty payable would be that prescribed by art 17 cl. 1 sch. II of the Court Fees Act The Court Fees Act being a fiscal enactment it is the duty of the Courts to treat such suits as belonging to the latter class (it being the more favourable for the suitor) and to impose fees accordingly Decisions under s. 246 of Act VIII of 1859 as to the removal or retention of attachments are summary decisions or orders within the meaning of art 17 cl 1 sch II of the Court Fees Act (VII of 1870) The words summary decision or order in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal The construction which has been given to these words or nearly similar words in the Limitation Acts (*e.g* Act IX of 1871 sch II art 15 and Act XV of 1877 sch II art 13) affords no guide to their construction in the *Court Fees Act.* When Acts are in *pari materia* they may be treated as forming a Code and may be read together; but when this is not so, the construction which has been put upon one cannot be relied upon as a guide to the construction of another The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts which are fiscal enactments are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. *Motichand Jaichand v Dadabhai Pestonjee 11 Bom., 186* explained. *Parlaji Tamaji v Dholapa Raghu I L R., 4 Bom 123* dissented from by WESTROPP C.J DAYACHAND NEMCHAND v HEMCHAND DHURAMCHAND I. L. R. 4 Bom., 515

5 ——— *Stamp—Valuation of suit —Summary decision.*—The plaintiff had attached certain immoveable property in execution of a decree against a third party The attachment was removed on application by the defendant under s 246 of Act VIII of 1859 whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor and was liable to be attached and sold under his decree The plaint

COURT FEES ACT (VII OF 1870) —*continued*

which did not state any amount as the value of the claim bore a R10 stamp The suit was dismissed on the ground that the plaint ought to have been stamped according to the value of the plaintiff's claim *Held* by the High Court on appeal that the plaint was properly stamped under sch II art 17 cl 1 of Act VII of 1870 as the suit was a suit to set aside a summary decision of a Civil Court not established by Letters Patent SADASHIV YESHWANT *v* ATMARAM SAKHARAM I. L. R., 4 Bom 535

6 ———— *Suit for a declaration of right—Suit to set aside an order under s 246 of Act VIII of 1859 disallowing a claim to property under attachment—Consequential relief—Held* that a suit for a declaration of the plaintiff's proprietary right to certain moveable property attached in the execution of a decree while in the possession of the plaintiff, and for the cancelment of the order of the Court executing the decree made under s 246 of Act VIII of 1859 disallowing his claim to the property could be brought on a stamp of R20 and need not be valued according to the value of the property under attachment *Chunia* v *Ram Dial I L R., 1 All., 360* followed *Jalal ud-din Mahomed* v *Shohorulla 15 B L R Ap 1* dissented from. *Motichand Jaichand* v *Dadabhai Pestanji 11 Bom., 186* and *Chakalingapeshana Naiker* v *Achiyar I L R., 1 Mad., 40* distinguished. GULZARI LAL *v* JADAUN RAI [I. L. R 2 All. 63

7 ———— *Suit to set aside summary decision—Suit to establish right*—The plaintiffs alleged in their plaint as follows Certain property having been attached in execution of a decree their mother the wife of the judgment-debtor objected to the attachment on the ground that the property had previously come into her possession under a transfer by sale in lieu of her dower-debt The plaintiff's mother died pending the determination of the objection having devised her property to the plaintiffs They succeeded to the same and certain other property which also had been transferred to their mother in lieu of her dower-debt having been also attached in execution of the same decree the plaintiffs objected to the attachment The Court executing the decree passed orders disallowing both objections Upon these allegations the plaintiffs claimed to set aside both orders They paid with reference to cl 1 art 17 sch II of the Court Fees Act 1870 a Court fee of R 0 on their plaint but the Court of first instance held that this was not sufficient, and that the Court fee should be calculated on the amount of the decree in execution of which the property had been attached *Held* that looking at the nature of the reliefs sought cl 1 art 17 sch. II of the Court Fees Act 1870 was applicable and that a R10 stamp in respect of each order sought to be set aside was payable *Dayachand Nemchand* v *Hemchand Dharamchand I L R 4 Bom 515* and *Gulzari Mal* v *Jadaun Rai I L R 2 All 63* followed. FATIMA BEGAM *v* SUKH RAM [I. L. R. 6 All. 341

COURT FEES ACT (VII OF 1870) —*continued*

8. ———— and s 7 (viii)—*Suit to obtain a declaratory decree—Suit to set aside a summary order—Attachment of property—Suit to establish right*—Certain immoveable property having been attached in execution of two Rent Court decrees the wife of the judgment-debtor under s 148 of the North Western Provinces Rent Act (XII of 1881) objected to the attachment on the ground that the property had previously been conveyed to her by her husband under a deed of gift The objection was disallowed and she thereupon brought a suit with reference to the provisions of s 181 (*b*) of the Rent Act (1) to establish her right to the property (2) to set aside the order passed on her objection *Held* that looking at the nature of the reliefs sought cls (1) and (3) art 17 sch II of the Court Fees Act 1870 were applicable and that the plaintiff should pay a ten rupee stamp on each of her claims *Fatima Begam* v *Sukh Ram I L R 6 All 341*, followed MANRAJ KUARI *v* RADHA PRASAD SINGH I. L. R., 6 All 466.

———— sch II, art 17 cl. 2

See DECLARATORY DECREE SUIT FOR—ADOPTIONS I. L. R. 1 Bom., 248.

1. ———— cl 3—*Suit for declaration of right to have doors closed*—A right or interest in the subject-matter of a suit for the purpose of closing a new door alleged to have been opened with a design to assert (injuriously) rights over adjacent lands may be shown without paying the stamp necessary in a suit directly for the land itself CHUNDUN *v* TALIB ALI 2 N W 41

2. ———— *Suit for declaratory decree*—In a suit for possession and wasilat plaintiff obtained a decree declaring his right to possession upon the death of his father Defendant appealed *Held* that as the decree had given consequential relief *i e* relief from the operation of conveyances and mortgages which on the face of them affected plaintiff's interest an appeal from the decree should bear an *ad valorem* stamp duty MILLER *v* AKHOREE RAM 15 W R., 412.

3 ———— *Suit for declaratory decree—Stamp—Valuation of suit*—The plaintiff claiming under a will of the deceased applied for a certificate under Act XXVII of 1860 but the High Court on appeal refused the same He now brought a suit alleging that he was in possession of the property of deceased and asked for confirmation of right and possession by enforcement of the will in reversal of the summary order of the High Court *Held* that cl 3 art 17 sch. II of Act VII of 1870 did not apply This was not a suit to obtain a declaratory decree where no consequential relief was prayed. DINABANDHU CHOWDHRY *v* PARMOHINI CHOWDRAIN 8 B L. R., Ap 32

S C DINOBUNDHOO CHOWDHRY *v* PARMOHINI CHOWDHRAIN 16 W R. 213

4 ———— *Valuation of suit for declaratory decree—Consequential relief—Court*

COURT FEES ACT (VII OF 1870)
—*continued*

Fees Act 1870 s 7 cl 4 and s 17—A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him and to permit him to inspect their books is simply a suit for a declaratory decree without consequential relief and falls within art 17 cl 3 of sch II of Act VII of 1870 A suit praying for such a declaration as the above and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands or a suit praying for such declaration as the above and also for a positive decree for an account to be taken by the Court and for the production of the books and property would range under s 7 cl 4 art (c) of Act VII of 1870 as being a suit to obtain a declaratory decree or order where consequential relief is prayed and also within art (d) of the same section as being a suit to obtain an injunction and a suit of the third species described above would fall under art (f) of the same clause as being a suit for accounts *Quære*—Whether in the case of a suit for a declaration of the right of the plaintiff to an account and to inspection of the defendants books and for a mandatory injunction for the production of those books or of a suit for such declaration and for a positive decree for the taking of an account by the Court and the production of the defendants books the plaint would by virtue of s 17 of Act VII of 1870 require separate stamps under arts (d) and (f) of cl 4 s 7 or be sufficiently covered by the stamp under art (c) of the same clause and whether assuming the declaration and the account each to require a stamp the prayer for an injunction or order for the production of books is not merely ancillary to and not a distinct subject from the taking of an account *Quære*—Whether the provision in s 7 cl 4 of Act VII of 1870 that the amount of the fee payable in suits falling within that clause shall be computed according to the amount at which the relief sought is valued in the plaint is so inconsistent with that portion of s 31 of Act VIII of 1859 which permits the Court receiving the plaint to revise the valuation of the claim as to render that portion of s. 31 of Act VIII of 1859 inoperative in suits within s 7 cl 4 of Act VII of 1870 notwithstanding the concluding passage in the clause *Quære*—Whether the concluding passage in cl 4 s. 7 of Act VII of 1870 is too express to admit of a limitation of the power of the Judge and leaves him the right to revise the valuation placed on suits under cl 4 by the plaintiff But assuming this to be so it would generally not be advisable that the Judge should enhance the valuation on the reception of the plaint The fee payable under s 7 cl 4 of Act VII of 1870 is according to the amount at which the relief sought is valued in the plaint and not the value of the subject matter of the plaint MANOHAR GANESH *v* BAWA RAM CHARAN DAS

I. L. R. 2 Bom. 219

5 ———— *Stamp—Declaratory decree—Substantial relief*—Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance and asked to have her removed from the mutwalliship and themselves appointed in her place whereby they would have been entitled to a share in the profits of the wuqf—*Held* that the fixed stamp fee of R10 required by cl 3 art 17 sch II of Act VII of 1870 was not sufficient but the plaint should bear a stamp of a value proportionate to the subject matter of the suit DELROOS BANOO BEGUM *v* ASHGUR ALLY KHAN

[15 B L R., 167 23 W R. 453

6 ———— *Valuation of suit—Mahomedan law—Wuqf—Endowment—Removal of trustee—Court Fees Act Act VII of 1870 s 7 cl (3) and sub cl (f)*—In a suit for the removal of the defendant from the management of certain trust funds on the ground of misconduct the plaintiff stamped his plaint with a Court fee stamp of R10 and valued the suit at R7 000 for the purpose of jurisdiction *Held* that the R7 000 must be taken under the circumstances to be the plaintiff's interest in the subject matter of the suit and that the Court fee must be estimated upon that sum. *Delroos Banoo Begum v Asgur Ali Khan 15 B L R 167* followed OMRAO MIRZA *v* JONES

[I. L. R. 10 Calc., 599

7 ———— *Stamp—Suit to set aside a deed or will—Declaratory decree—Consequential relief*—In a suit for confirmation of possession by declaration of proprietary right and also to set aside a forged and invalid will—*Held* that the plaintiff sought consequential relief over and above the declaratory decree prayed for and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject matter of the suit JOY NARAIN GIREE *v* GREESH CHUNDER MITTER

[15 B L R., 173 22 W R 438

See THAKOOR DEEN TEWARRY *v* ALI HOSSEIN KHAN 13 B. L. R., 427 21 W R 34
L. R., 1 I. A., 192

8 ———— *Declaratory suit*—Where a suit was brought against the holder of an impartible palaiyapat and others to whom portions of the estate had been alienated by the son of the palaiyakar entitled to succeed to the estate on *his father's* demise for a decree declaring that the alienations made by his father did not affect his rights—*Held* that the Court fee leviable on the plaint was R10 under art. 17 (3) of sch II of the Court Fees Act 1870 and not an *ad valorem* fee calculated upon the amount for which the alienations had been made SANKARA NARAINA *v* VIJAYA RAGHUNADHA MATTAYAN PANNIKONDAR

I. L. R. 7 Mad. 134

9 ———— *Suit for declaratory decree—Consequential relief*—A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will and in which he claims damages to the extent of R35,000 in default of his obtaining the accounts should be filed on the stamp required for a suit for the recovery of R35,000 and not on a stamp of R10 which under cl 3 s 17 sch II of the Court Fees Act 1870 is the stamp laid down for a declaratory suit in which no consequential

COURT FEES ACT (VII OF 1870)
—*concluded*

relief is sought and which cannot be valued. RAM DOOLAL SINGH v. GOPAL KRISTO SINGH
[16 W R. 156

10 ———— *Suit for declaratory decree—Consequential relief*—Where plaintiff sued to establish her right as the heir of her deceased son and to set aside a certificate under Act XXVII of 1860 granted jointly to her as well as to the defendant with a view to being permitted to draw interest on Government promissory notes belonging to the estate of the deceased—*Held* that as consequential relief was to follow the declaratory decree sought the stamp fee of R10 prescribed by art 3 s 17 sch II Court Fees Act was not sufficient for the plaint MOKHODA DASSEE v. NOBIN CHUNDER MITTER
[16 W R. 259

11. ———— *Suit for declaratory decree*—The plaintiff recognized the validity of a mortgage for a term of twenty years of her deceased father's estate made in 1854 by her two brothers nor did she dispute the sale in 1863 after the death of the brothers of the estate to the mortgagees by M her mother describing herself as sole owner as a transfer of M s rights. She claimed to be declared to have a right to redeem from the mortgage of 1854 in due course of time the share in the estate which devolved upon her by inheritance from her father and brothers the sale deed of 1863 notwithstanding The Court was of opinion that the suit was one for declaration of right only and that the fee of R10 which was paid by her in respect of the memorandum of special appeal was the fee properly payable IMAMAN v. LALTA BAKSH 7 N W 343

———— sch II art 17 cl. 6—*Stamp duty on appeals arising out of suits under s 77 of the Registration Act (III of 1877)*—The Court fees payable on all appeals to the High Court arising out of suits brought under s 77 of the Registration Act of 1877 is a fee of ten rupees irrespective of the value of the suit JANTOO v. RADHA CANTO DOSS
[I. L. R. 8 Calc. 515

COURT FEES ACT AMENDMENT ACT (XI OF 1899)

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION
[I. L. R 26 Calc 404 407

COURTS (COLONIAL) JURISDICTION ACT 1874 (37 & 38 Vic c 27)

See OFFENCE COMMITTED ON THE HIGH SEAS I. L. R., 21 Calc. 782

COUSINS

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSINS

COVENANT

See BUILDING LEASE
[I. L. R., 6 Bom. 528

See CONTRACT—CONDITIONS PRECEDENT
[3 Mad 125

COVENANT—*concluded*

See REGISTRAR OF HIGH COURT
[I. L. R. 16 Calc. 330

———— Breach of—

See CASES UNDER LANDLORD AND TENANT —FORFEITURE—BREACH OF CONDITIONS

See REGISTRATION ACT 1877 s 49
[I L R 2 Bom 273

See CASES UNDER VENDOR AND PURCHASER —BREACH OF COVENANT

———— in restraint of trade

See CASES UNDER CONTRACT ACT s 27

———— not to alienate

See CASES UNDER MORTGAGE—FORM OF MORTGAGE

COVENANT RUNNING WITH LAND

1 ———— Transfer of the land.—S by an instrument in writing duly registered agreed for valuable consideration for himself his heirs and successors to pay his wife A a certain sum monthly out of the income of certain land and not to alienate such land without stipulating for the payment of such allowance out of its income He subsequently gave L a usufructuary mortgage of the land subject to the payment of the allowance L gave R a sub mortgage of the land agreeing orally with R to continue the payment of the allowance himself *Held* in a suit by A against L and R for the arrears of the allowance that A was not affected by an agreement between L and R as to the payment of the allowance and R being in possession of the land was bound to pay the allowance ABADI BEGAM v. ASA RAM I L R 2 All. 162

2 ———— Malikana—*Heritable charge—Suit for arrears of malikana allowance—Bonâ fide transferee without notice—Transfer of Property Act (IV of 1882) s 3*—S sold a share in immoveable property to M by a registered deed of sale which contained the following provisions — The said vendee is at liberty either to retain possession himself or to sell it to some one else and he is to pay R25 of the Queen s coin to me annually (as malikana) which he has agreed to pay M mortgaged the property to B who obtained possession and after the mortgage the annual payments provided for by the deed of sale ceased The representatives of the vendor sued M and B to recover arrears of malikana *Held* without expressing any opinion as to whether registration of the deed of sale operated as notice to all the world or whether notice of the terms of the deed was necessary to bind B and assuming B to have had no such notice in fact that if he had searched the register he would have ascertained these terms and if he did not search the register he must have wilfully abstained from so doing or was guilty of gross negligence in not so doing; that in either case he could not be treated as a *bonâ fide* mortgagee without notice; and that being in receipt of the profits of the property he was liable for the annual

COVENANT RUNNING WITH LAND —*concluded*

payment of the R25 from the date when he took possession as mortgagee *Agra Bank* v *Barry L R 7 H L* 135 and *Pilcher* v *Rawlins L R 7 Ch App* 259 distinguished *Abadi Begam* v *Asa Ram I L R 2 All* 162 referred to The definition of the word "notice" in s 3 of the Transfer of Property Act (IV of 1882) correctly codifies the law as to notice which existed prior to the passing of the Act CHURAMAN *v* BALLI
[I. L. R 9 All. 591

COVENANT TO RENEW

———— Settlement—*Amalnama*—*A* a zamindar entered into negotiations with Government for settlement of certain lands Pending the settlement *A* sublet to *B* and granted him an amalnama for one year and covenanted therein that whatever term of settlement he might obtain from Government he would grant to *B* a pottah for the corresponding term The negotiations with *A* were broken off and Government settled with *C* on condition that he should abide by the above amalnama *Held* that *C* was bound by the covenant to renew the amalnama did not require to be registered RADIKA PRASAD CHUNDER *v* RAMSUNDER KUR
[1 B L R, A C, 7

COVERTURE PLEA OF—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES
[1 N W Ed. 1873 243

See HUSBAND AND WIFE
[8 B L R. 372

COW, DEFINITION OF—

See PENAL CODE s 429
[I. L. R., 22 Calc., 457

CO WIDOWS

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT
[I. L R 13 Bom 160
I. L. R. 22 Bom 416
I L R. 23 Bom., 250, 327

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW
[I. L. R 1 Mad. 290
L. R. 4 I A 212
1 Bom 66
3 Mad. 288 424
1 Ind Jur O S 59
I. L. R. 3 Mad., 194
I. L. R., 7 All. 114

See HINDU LAW—PARTITION—RIGHT TO PARTITION—WIDOW
[I. L. R. 1 Mad., 290
L. R. 4 I. A 212
I. L. R., 2 Mad 194
3 Mad. 424
6 B L. R. 134
I. L. R. 12 All., 51
L. R., 16 I. A., 166
L. R., 23 Mad., 523

CO WIDOWS—*concluded*

See HINDU LAW—WIDOW—POWER OF DISPOSITION—ALIENATION
[I. L R 9 Calc 580
I L R 16 Mad 1
L. R. 19 I A., 184
I L R, 22 Mad, 523

COWRIE

See GAMBLING I L R, 18 All 33
[I L R, 19 All, 311
I. L R., 25 Calc, 432

CRABS

See PREVENTION OF CRUELTY TO ANIMALS ACT I L R, 24 Calc, 881

CREDITOR.

See DEBTOR AND CREDITOR

See CASES UNDER MAHOMEDAN LAW—DEBTS

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
[I L. R., 2 Calc, 208
I L R 6 Calc 429 460
I. L. R. 10 Calc. 19 413
L. R. 10 I A., 60
I. L. R. 17 Mad. 373
I L R 19 Calc 48

———— Removal by of debtor's property

See THEFT
[I. L R 23 Calc., 869 1017
[I. L. R. 18 All., 88

———— Suit by—

See ADMINISTRATION 15 B L R. 296
[I L. R., 10 Calc 731

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON

CREMATION

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I. L. R., 25 Calc 425
[2 C. W N., 113

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I. L. R. 19 Mad., 464

CRIMINAL BREACH OF CONTRACT

See CASES UNDER ACT XIII OF 1859

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF CONTRACT I. L. R., 7 Mad., 354
[I L R., 10 Mad., 21

CRIMINAL BREACH OF CONTRACT
—*concluded*

1. ——— Penal Code s 490—*Contract of service to convey and go to the vats*—An agreement for personal service in conveying indigo from the field to the vats is not a contract the breach of which is punishable by s. 490 of the Penal Code. RE NOWA TEWAREE 6 W R., Cr 80

2 ——— *Offences against travellers*—*Quare*—Whether the words "during a voyage or journey" in s 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section however does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. SAGE v NIRUNJUN CHATTERJEE [9 W R. Cr 12

CRIMINAL BREACH OF TRUST

See ABETMENT 4 C W N, 309

See BANKERS I L R 16 All 88

See CHARGE—FORM OF CHARGE—CRIMINAL BREACH OF TRUST
[8 Bom, Cr 115
I L R, 17 All., 153
I L R 18 All. 116
I L R. 24 Calc, 193

See COMPOUNDING OFFENCE
[I L R 1 Mad. 191
6 C L R. 392

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
[I L R, 1 Mad 55

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I L R 13 Bom 147
[I L R 19 All 111

See PARTNERSHIP PROPERTY
[6 B L R. Ap 133
13 B L R. 310 note 15 W R Cr 51
13 B L R. 307 21 W R Cr 58
13 B L R 308 note 21 W R. Cr., 10

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
[I L R 19 Bom 749

1. ——— Act XIII of 1859—*Furnishing false accounts*—Where there is no provision in the Penal Code and any other law (such as the Breach of Trust Law Act XIII of 1859) provides punishment for an offence any person committing such offence may be tried under that law WATSON & Co v BYKANTNATH DASS 14 W R Cr., 80

2 ——— Requisites for offence—To constitute the offence of criminal breach of trust there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the

CRIMINAL BREACH OF TRUST
—*continued*

breach of trust is charged. ISSUR CHUNDER GHOSE v PEARI MOHUN PALIT 16 W R Cr, 39

3 ——— Immoveable property—*Penal Code (Act XLV of 1860) ss 403 and 405.*—The property referred to in s 403 of the Penal Code is as in s. 403 moveable property and criminal breach of trust cannot be committed in respect of immoveable property *Reg v Girdhar Dharamdas 6 Bom H C., Cr. 33* followed JUGDOWN SINHA v QUEEN EMPRESS I L R. 23 Calc 372

4 ——— Pledging of articles already in possession of pledgee by way of pledge—A person who pledges what is pledged to him may be guilty of criminal breach of trust There are two elements—(1) the disposal in violation of any direction of law or contract express or implied prescribing the mode in which the trust ought to be discharged, (2) such disposing dishonestly ANONYMOUS 6 Mad Ap 28

5 ——— Pledgee of turban using it—*Dishonesty*—The pledgee of a turban cannot be convicted of criminal breach of trust for wearing it there being no dishonesty in the Act Meaning of the word dishonesty in the Penal Code ANONYMOUS 3 Mad Ap 6

6 ——— Misappropriation of pay of thanna police—*Penal Code ss 405 409*—A constable who dishonestly misappropriates to his own use the pay of his thanna police entrusted to him is guilty of criminal breach of trust QUEEN v SUBDAR MEEAH 8 W R Cr 44

7 ——— Refusal to give up land mortgaged—*Denial of mortgage—Penal Code s 305*—A refusal to give up land alleged to have been mortgaged the mortgage being denied cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under s 405 of the Penal Code REG v JAYFER NAIK 2 Bom 133 2nd Ed. 127

8 ——— Fraud by mortgagor in respect of mortgaged property—If a mortgagor in possession who is entrusted with the dominion over the mortgaged property by the mortgagee (the mortgage being in the English form) wilfully defaults and causes the property to be sold for arrears of Government revenue for the purpose of defrauding the mortgagee and purchases it benami, he is liable to be punished for criminal misappropriation under s 405 of the Penal Code RAM MANICK SHAH v BRINDABUN CHUNDER POTDAR 5 W R, 230

9 ——— Cheating—*Penal Code ss 405 417*—Where silver was entrusted to the prisoner for the purpose of making ornaments and he introduced copper into the ornaments—*Held* the offence committed was not cheating but criminal breach of trust REG v BABAJI BIN BHAU 4 Bom., Cr 18

10 ——— Intention to cause wrongful gain or loss—*Penal Code ss 405 406—Cattle Trespass Act (I of 1871) s 19*—The accused was sub inspector of police at the thana of Dunyar A pony was brought to the pound at the police station

CRIMINAL BREACH OF TRUST
—continued

and confined there under Act I of 1871 The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time the pony had eventually been purchased by the accused from a vendor from Gopinath The Magistrate found on the evidence that there had been no sale under Act I of 1871 and convicted the accused of criminal breach of trust and sentenced him under s 406 of the Penal Code *Held* the conviction was illegal There must be an entrusting of the accused with the property and that he dishonestly misappropriated it there must be an intention on the part of the accused to cause wrongful gain or wrongful loss QUEEN *v* RAI KRISHNA BISWAS 8 B L R. Ap 1

S C IN MATTER OF RAM KISTO BISWAS [10 W R. Cr 52

11 ———— **Failure to account**—*Penal Code ss 406 407 408*—The prisoner a gomastah took from his employers between 15th April and 30th June sums amounting to R600 for the purchase of wood During that period he supplied wood to the value of R234 but the prosecutor alleged that most of that was to be set off against balance to the debit of the prisoner for the year before and that the value of the firewood was as a fact only R34 The prisoner was charged with criminal breach of trust as a servant The defence was that he had purchased wood and made advances on that account but this defence was proved to be false The Magistrate convicted him but the Judge held it was merely a failure to account and acquitted the prisoner *Held* the prisoner was guilty of criminal breach of trust WATSON *v* GOLAB KHAN

[1 B. L. R. S N 21 10 W R. Cr 28

12 ———— **Penal Code s 405**—Where a complaint only amounted to a statement that the accused had in consequence of certain arrangements made with the complainant s father received certain moneys and had refused to render accounts but contained no allegation that he had in fact realized and dishonestly misappropriated any particular sum and obviously was made for the purpose of forcing him to render accounts—*Held* that the Magistrate was right in dismissing it since the facts alleged did not constitute criminal breach of trust QUEEN EMPRESS *v* MURPHY I L. R., 9 All, 666

13 ———— **Partner**—*Master and servant*—The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor *Held* by JACKSON J that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner but a servant; that such finding could not be interfered with by the High Court as a Court of revision unless there was a mistake in law; that the finding was correct in law that the defence of the prisoner could not be taken to mean to say that he was a partner but merely that he claimed a small share in the profits and that such claim did not make him a partner an agent s remuneration being a share in the profits not constituting the agent a partner *Held* by KEMP and MITTER JJ (releasing the prisoner) that though the allowance of a portion of the profits or goods does not destroy the relation of master and servant the accused in this case distinctly pleaded he was a partner and not only that he was entitled to a share in the profits that the lower Courts did not specifically decide that the accused was a servant and that the prosecutor s remedy was a civil suit for an account IN THE MATTER OF LALL CHAND POT[...] [8 W R., Cr 5[...]

14 ———— **Public servant**—*Penal Code s 409*—A village shroff whose duty it was to assist in collecting the public revenue received grain from raiyats and gave receipts as if for money received by virtue of a private arrangement *Held* that he could not be convicted of criminal breach of trust by a public servant under s 409 of the Penal Code as he was not authorized to receive the public revenue in kind and the party who delivered the grain did not thereby discharge himself from liability for the revenue ANONYMOUS 4 Mad., Ap, 3[...]

15 ———— *Penal Code ss 408 409*—*Sentence Mitigation of*—Where a Court inspector improperly delegated to a constable the custody etc of Government moneys (taking from him private security to save himself from loss in case of defalcation) and the constable dishonestly converted the money to his own use although he afterwards restored it the case was held to fall under s. 408 and not s 409 of the Penal Code, and the sentence reduced from ten years' rigorous imprisonment and a fine of R500 to one year's rigorous imprisonment without fine QUEEN *v* BANEE MADHUB GHOSE [8 W R., Cr., 1[...]

16 ———— *Penal Code s 409*—To constitute an offence under s. 409 it is not necessary that the property should be that of Government but that it should have been entrusted to a public servant in that capacity IN THE MATTER OF RAM SOONDER PODDAR 2 C L. R., 515

17 ———— *Penal Code s 409*—*Naib Nazir*—The Naib Nazir is a public servant within the meaning of s 409 of the Penal Code and not the mere private servant of the Nazir QUEEN *v* MAHMOOD HOSSEIN 2 N W, 398

18 ———— *Penal Code s 409*—*Absence of dishonest intention*—Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple allowances and did not at once pay over the same to the persons entitled to receive them as he was bound to do, but it appeared that such persons were willing to trust him and had actually passed receipts which the accused forwarded to the revenue authorities—*Held* that the accused fulfilled the trust reposed in him by Government and that his mere retention of the money

CRIMINAL BREACH OF TRUST
—*continued*

for a time in th absence of any evi l nce of dis honesty did not am unt to criminal breach of trust with in the meaning of s 409 of the Penal Code (XLV of 1860) QUEEN EMPRESS v GANPAT TAPIDAS [I. L. R. 10 Bom. 258

19 ———— Master and servant—*Servant entrusted with moneys for payment to tradesman of account settled with master for a specific sum—Gratuity of tradesman to servant—Right of master to benefit of gratuity—Act XLV of 1860 ss 405 409*—When a master entrusts his servant with money for the payment of an open account i.e an account of which the items have never been checked or settled and the tradesman makes the servant a present and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit the money in his hands always remains the master's property and if he appropriates it he commits criminal breach of trust. But where the master himself has settled the account with the tradesman for a specific sum and sends the servant with money and the servant after making the payment accepts a present from the tradesman in that case the servant does not commit criminal breach of trust inasmuch as the money is given to him by a person whom he believes to have a right to give it though it may be that according to the strict equitable doctrines of the Court of Chancery he is bound to account to the master for the money *Hay's case In re Canadian Oil Works Corporation L. R., 10 Ch App 593* referred to QUEEN-EMPRESS v IMDAD KHAN [I. L. R 8 All 120

20 ———— Penal Code *s 408—Criminal breach of trust by a servant—Criminal misappropriation*—An accused person who was in the service of zamindars and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a kist received from them a certain sum of money with no specific instruction as to its application On receipt of that money he paid a portion only of it into the Collectorate on account of the revenue and having done so he then altered the challan given back to him showing the amount actually paid and made it appear that a much larger amount had been paid in than was the fact This challan he sent to his employer for the purpose of showing the application of the money He was charged (amongst other offences) with criminal breach of trust as a servant (s 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered challan The accused was convicted on all the charges It was contended that the charge under s 408 was not sustainable inasmuch as the money was not alleged to have been sent to the accused for the specific purpose of paying the Government revenue and that the accounts between him and his employers had not been adjusted and that it was not shown whether at the date of the alleged breach of trust the accused was indebted to his employer or the reverse *Held* that as the money was sent to the accused

CRIMINAL BREACH OF TRUST
—*concluded*

immediately before the kist day and the challan was sent to the employers showing in its altered state the amount really payable as revenue which nearly covered the whole amount remitted, it was reasonable to infer that the accused was aware of the implied purpose for which the money was remitted and as he deposited a very much smaller amount than that remitted and tried to pass off the altered challan as genuine there was a dishonest misappropriation of the difference sufficient to constitute the offence under s 408 LOLIT MOHAN SARKAR v QUEEN EMPRESS [I. L. R. 22 Calc., 313

21. ———— Penal Code s 409 *—Rice condemned and ordered to be destroyed—Property according to the Penal Code—Sale of the same by municipal inspector*—A certain consignment of rice lay unclaimed at the Kidderpore Docks and was advertised for sale by auction by the Port Commissioners Before it was put up to auction the rice was found to be in a rotten condition It was condemned and with the consent of the Port Commissioners seized by the officers of the Health Department of the Corporation of Calcutta and ordered to be destroyed *Held* that assuming that the rice was entrusted by the Superintendent of the Health Department to the accused (who were inspectors employed in that department) for the purpose of destruction and that the accused instead of destroying the rice sold the same to a third party and retained the proceeds of such sale they did not commit the offence of criminal breach of trust as public servants *Semble*—The accused committed no offence punishable under the Penal Code though they may have been guilty of infringing a departmental rule. EMPRESS v WILKINSON 2 C W N., 216

CRIMINAL CASE

See ACT XIII OF 1859 [I L R. 27 Calc 131
4 C W N 201

See INSOLVENT ACT s 50 [I L R. 19 Calc. 605

See LETTERS PATENT HIGH COURT CL. 15 [I. L. R., 17 Mad 105

CRIMINAL COURT

———— Disposal of property by—

See CRIMINAL PROCEDURE CODES ss 517 523

See CASES UNDER STOLEN PROPERTY—DISPOSAL OF BY THE COURT

———— Proceedings in—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT PROCEEDINGS IN

See CASES UNDER RES JUDICATA—COMPETENT COURT—CRIMINAL COURTS

CRIMINAL BREACH OF TRUST
—*continued*

and confined there under Act I of 1871 The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time the pony had eventually been purchased by the accused from a vendor from Gopinath The Magistrate found on the evidence that there had been no sale under Act I of 1871 and convicted the accused of criminal breach of trust and sentenced him under s 406 of the Penal Code *Held* the conviction was illegal There must be an entrusting of the accused with the property and that he dishonestly misappropriated it there must be an intention on the part of the accused to cause wrongful gain or wrongful loss QUEEN *v* RAJ KRISHNA BISWAS 8 B L R, Ap 1

S C IN MATTER OF RAM KISTO BISWAS [16 W R, Cr, 52

11 ——— Failure to account—*Penal Code ss 406 407 408* —The prisoner a gomastah took from his employers between 15th April and 30th June sums amounting to R600 for the purchase of wood During that period he supplied wood to the value of R234 but the prosecutor alleged that most of that was to be set off against balance to the debit of the prisoner for the year before and that the value of the firewood was as a fact only R34 The prisoner was charged with criminal breach of trust as a servant The defence was that he had purchased wood and made advances on that account but this defence was proved to be false The Magistrate convicted him but the Judge held it was merely a failure to account and acquitted the prisoner *Held* the prisoner was guilty of criminal breach of trust WATSON *v* GOLAB KHAN
[1 B. L. R. S N 21 10 W R. Cr 28

12 ——— Penal Code s 405 —Where a complaint only amounted to a statement that the accused had in consequence of certain arrangements made with the complainant s father received certain moneys and had refused to render accounts but contained no allegation that he had in fact realized and dishonestly misappropriated any particular sum and obviously was made for the purpose of forcing him to render accounts —*Held* that the Magistrate was right in dismissing it since the facts alleged did not constitute criminal breach of trust QUEEN EMPRESS *v* MURPHY I L R, 9 All., 666

13 ——— Partner—*Master and servant* — The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor *Held* by JACKSON J that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner but a servant; that such finding could not be interfered with by the High Court as a Court of revision unless there was a mistake in law; that the finding was correct in law that the defence of the prisoner could not be taken to go so far as to say that he was a partner but merely that he claimed a small share in the profits and that such claim did not make him a partner an agent s remuneration being a share in the profits not constituting the agent a partner *Held* by KEMP and MITTER JJ (releasing the prisoner) that though the allowance of a portion of the profits or goods does not destroy the relation of master and servant the accused in this case distinctly pleaded he was a partner and not only that he was entitled to a share in the profits that the lower Courts did not specifically decide that the accused was a servant and that the prosecutor s remedy was a civil suit for an account IN THE MATTER OF LALL CHAND ROY
[8 W R., Cr 37

14 ——— Public servant—*Penal Code s 409* —A village shroff whose duty it was to assist in collecting the public revenue received grain from raiyats and gave receipts as if for money received by virtue of a private arrangement *Held* that he could not be convicted of criminal breach of trust by a public servant under s 409 of the Penal Code as he was not authorized to receive the public revenue in kind and the party who delivered the grain did not thereby discharge himself from liability for the revenue ANONYMOUS 4 Mad., Ap 33

15 ——— *Penal Code ss 408 409—Sentence Mitigation of*—Where a Court inspector improperly delegated to a constable the custody etc, of Government moneys (taking from him private security to save himself from loss in case of defalcation) and the constable dishonestly converted the money to his own use although he afterwards restored it the case was held to fall under s 408 and not s 409 of the Penal Code, and the sentence reduced from ten years' transportation and a fine of R500 to one year's rigorous imprisonment without fine QUEEN *v* BANEE MADHUB GHOSE
[8 W R., Cr., 1

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17 ——— *Penal Code s 409—Naib Nazir* —The Naib Nazir is a public servant within the meaning of s. 409 of the Penal Code and not the mere private servant of the Nazir QUEEN *v* MAHMOOD HOSSEIN 2 N W., 298

18 ——— *Penal Code s 409—Absence of dishonest intention.*—Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple allowances and did not at once pay over the same to the persons entitled to receive them as he was bound to do, but it appeared that such persons were willing to trust him and had actually passed receipts which the accused forwarded to the revenue authorities,—*Held* that the accused fulfilled the trust reposed in him by Government and that his mere retention of the money

CRIMINAL BREACH OF TRUST
—continued

for a time in the absence of any evidence of dishonesty did not amount to criminal breach of trust within the meaning of s 409 of the Penal Code (XLV of 1860) QUEEN EMPRESS v GANPAT TAPIDAS
[I. L. R. 10 Bom. 256

19 ———— **Master and servant**—*Servant entrusted with moneys for payment to tradesman of account settled with master for a specific sum—Gratuity of tradesman to servant—Right of master to benefit of gratuity—Act XLV of 1860 ss 405 409* —When a master entrusts his servant with money for the payment of an open account i e an account of which the items have never been checked or settled and the tradesman makes the servant a present and the transaction amounts to a taxation of the bill and a reduction of the price by the servant the latter obtains the reduction for his master's benefit the money in his hands always remains the master's property and if he appropriates it he commits criminal breach of trust But where the master himself has settled the account with the tradesman for a specific sum and sends the servant with money and the servant after making the payment accepts a present from the tradesman in that case the servant does not commit criminal breach of trust inasmuch as the money is given to him by a person whom he believes to have a right to give it though it may be that according to the strict equitable doctrines of the Court of Chancery he is bound to account to the master for the money *Hay's case In re Canadian Oil Works Corporation L R 10 Ch App 593* referred to QUEEN EMPRESS v IMDAD KHAN I L R 8 All 120

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[I. L. R. 22 Calc. 313

CRIMINAL BREACH OF TRUST
—concluded

21 ———— *Penal Code s 409 —Rice condemned and ordered to be destroyed—Property according to the Penal Code—Sale of the same by municipal inspector* —A certain consignment of rice lay unclaimed at the Kidderpore Docks and was advertised for sale by auction by the Port Commissioners Before it was put up to auction the rice was found to be in a rotten condition It was condemned and with the consent of the Port Commissioners seized by the officers of the Health Department of the Corporation of Calcutta and ordered to be destroyed *Held* that assuming that the rice was entrusted by the Superintendent of the Health Department to the accused (who were inspectors employed in that department) for the purpose of destruction and that the accused instead of destroying the rice sold the same to a third party and retained the proceeds of such sale they did not commit the offence of criminal breach of trust as public servants *Semble*—The accused committed no offence punishable under the Penal Code though they may have been guilty of infringing a departmental rule. EMPRESS v WILKINSON 2 C W N., 216

CRIMINAL CASE

See ACT XIII OF 1859
[I L R. 27 Calc 131
4 C W N 201

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[I L R 19 Calc 605

See LETTERS PATENT HIGH COURT CL 15
[I. L. R. 17 Mad 105

CRIMINAL COURT

———— **Disposal of property by**—

See CRIMINAL PROCEDURE CODES ss 517 523

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See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT PROCEEDINGS IN

See CASES UNDER RES JUDICATA—COMPETENT COURT—CRIMINAL COURTS

I. L. R. 10 I. — 2

I. L. R. 23 Calc. 313

19 —— Master ...

... master ... with money ... an account ... checked ... servant ... the servant ... master's ... remains the master ... where the master ... with the trad ... the servant ... the payment ... in that case ... breach of trust ... by a person ... it, though it may ... equitable ... bound to account ... case ... R., 10 Cal. App. ... v. IMDAD KHAN

Retaining by servant of ... wages ...

... I. L. R. 14 Mad. 40

10 —— Misappropriation of property of deceased person ...

... CHUNDER SIRKAR

IN THE MATTER ...

11 ——

— Held by MARKBY ... elements are ... would be ... nal ... alive. QUEEN ...

20 —— s. 408—Criminal ... minal misappropriation ... was in the service ... was to pay into ... due in respect ... due date of a ... of money ... cause. On ... only of ... revenue and ... given back ... and made ... been paid ... to his employ ... ent ... (Offence) ... (s. 408 ... between ... and the ... altered ... the charge ... s. 406 ... was not ... the prec... and the ... had ... whole ...

I. L. R. 18 Bom. 212

... retaining money ... 383 ... on fraudulently ... Penal Code ... but ... money ... QUEEN ... 3 W. R. Cr. 32

... Use of money paid by mistake—Cheating ... of mistake ... by mistake and ... of the receipt of the ... subsequently before its refund, ... at any ... determines to appropriate ... the mistake ...

12. —— ... s. 409 ... It ... with ... the ... the ... if ... v. ...

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 127 (1872 s. 480)

See UNLAWFUL ASSEMBLY
[I L. R. 7 Bom 42

——— s 133 (1872 s 521 1861 69 s 308) ss 134 135 136 137 138, 139 140 141 (1872 ss 522 523 524 525 1861 69 ss 309, 310 311)

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE

See JUDICIAL OFFICERS LIABILITY OF
[2 Bom 407
4 Bom, A C 150
5 Mad 345
4 B L R. A.C 37
13 W R. 13
7 B L R. 449
16 W R 63

See CASES UNDER JURISDICTION OF CIVIL COURT—MAGISTRATE S ORDERS INTERFERENCE WITH

See JURY - JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE
[I. L. R., 16 All, 158

——— s 133

See DECLARATORY DECREE SUIT FOR—ORDERS OF CRIMINAL COURTS
[6 B L R 642
I L R. 17 Bom, 293

See PENAL CODE s 188
[10 C L R 193
12 C L R, 231
I L. R. 13 All. 577
I L R., 16 Calc 9
I. L. R. 12 Mad. 475

——— ss. 136 140 (1872 s 525 1861 69 s 311)

See RIGHT OF SUIT - JUDICIAL OFFICERS SUITS AGAINST 8 Bom. A C, 94

——— s 137

See DECLARATORY DECREE SUIT FOR—DECLARATION OF TITLE
[I L. R., 15 Calc. 400

——— s 140

See PENAL CODE s 188
[I. L. R., 13 All., 377

——— s. 144 (1872 s 518 1861-69 ss 62, 63)

See FINE 7 W R., Cr 37

See JUDICIAL OFFICERS LIABILITY OF
[4 B L R. A C 37 13 W R 13
7 B L R 449 16 W R 63

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS OBSTRUCTION OF
[I L R., 3 Calc., 20

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R., 17 All 485

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE
[I. L R. 8 All 99

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L R., 18 Mad., 402

——— Proceeding under—

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION
[I L. R 19 Mad., 18

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CRIMINAL CASES
[21 W R., Cr 26
22 W R. Cr 24, 76
23 W R Cr 34
24 W R. 30
I. L. R. 2 Calc 293
I L R. 8 Calc 580
I L R., 16 Calc 80

——— s 145 (1872 s 530, 1861 69 s 318)

See BENCH OF MAGISTRATES
[I L R 3 Calc 754

See EJECTMENT SUIT FOR
[I L. R., 4 Calc, 339

See LIMITATION ACT, 1877 ART 47 (1859 s 1 CL. 7)
8 W R. 490
[9 W R., 480
3 N W 171
6 C L. R., 93
I. L. R., 6 Calc., 709
I. L. R., 19 Calc. 646
I L R., 23 Calc., 731

See POSSESSION—NATURE OF POSSESSION
[I. L. R. 4 Calc. 376

See CASES UNDER POSSESSION ORDER OF CRIMINAL COURT AS TO.

——— s. 146 (1872 s 531, 1861-69 s 319)

See DAMAGES—REMOTENESS OF DAMAGES.
[I L. R., 6 Mad. 426

See LIMITATION ACT (1877 ART. 4 1871 ART 47)
7 N W., 93
[I. L. R. 20 All., 120

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See Cases under Possession Order of Criminal Court as to—Attachment of Property

See Possession Order of Criminal Court as to—Decision of Magistrate as to Possession
[I. L R 22 Calc. 297
I. L R. 18 Mad 41
3 C W N 329

——— s 147 (1872 s 532 1861-69 s. 320).

See Easement I L R 23 Calc 55

See Onus of Proof—Easements
[21 W R. 140
I. L. R. 11 Calc 52
2 C L R. 555

See Cases under Possession Order of Criminal Court as to—Disputes as to Right of Way Water User etc

——— s 148 (1872 s 533)

See Cases under Possession Order of Criminal Court as to—Costs

See Cases under Possession, Order of Criminal Court as to—Local Inquiry

——— ss 155 and 156 (1872 ss 109 110 1861-69 s. 133)

See Opium Act s 9
[I. L R 24 Calc 691

See Police Inquiry
[2 B L. R. S N 6 10 W R. Cr 49

——— ss 156 157 159 (1872, ss 114 115 1861-69 s. 135).

See Private Defence Right of
[7 Bom. Cr 50

——— s. 157

See Accused Person Right of
[I. L R 20 Mad, 189

See Evidence Act s 74
[I. L. R 20 Mad 189

See Evidence—Criminal Cases—Statements to Police Officers
[2 C W N 702
I. L R 22 Bom. 596

——— s 160 (1872 s. 118).

See False Evidence—Generally
[I L. R. 7 Calc., 121 8 C L R. 300

See Police Inquiry
[I. L. R. 7 Mad. 274

See Witness—Criminal Cases—Summoning Witnesses
[I. L R 24 Calc. 320
1 C W N., 154

CRIMINAL PROCEDURE CODES (ACT V OF 1898, ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 161 (1872 ss 118 119).

See Accused Person Right of
[I. L. R. 19 Mad. 14
I L R. 19 All 390

See False Evidence—Contradictory Statement I L R. 16 Calc 349

See False Evidence—Generally
[I. L R 8 Bom 216
I L R 7 Calc 121
I. L R. 15 All 11
I L R 23 Mad. 544

——— ss 161, 162 (1872 s 119).

See Cases under Evidence—Criminal Cases—Statements to Police Officers.

——— s 162

See Confession—Confessions to Magistrate I. L. R. 22 Calc. 50

——— s 163

See Confession—Confessions under Threat or Pressure
[I. L. R. 10 Calc 775

——— s 164 (1872 s 122).

See Cases under Confession—Confessions to Magistrate

See False Evidence
[I. L R., 16 Mad. 421
I L R., 22 All. 115

1. ——— *Power of Magistrate—Statement of person appearing as witness*—S 122 of the Code of Criminal Procedure (Act X of 187.) authorizes a Magistrate to record the statement of a person who appears before him as a witness as well as the confession of a person accused of an offence Empress v Malka I L. R., 2 Bom 643

2 ——— *Refusal to sign statement—Penal Code s 180*—S 180 of the Penal Code does not apply to statements made under this section Empress v Seriapa
[I. L. R., 4 Bom. 15

——— s 165.

See Opium Act s 9
[I. L. R., 24 Calc., 691

——— s 167 (1872 s 124 1861 69 s 152).

See Detention of Accused by Police
[1 W R. Cr., 5
I. L. R. 11 Mad., 98
I. L R., 23 Bom., 32

See Escape from Custody
[I. L. R., 6 All., 129

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS
[I. L. R. 19 All., 390

See POLICE INQUIRY 3 N W 275

See WRONGFUL DETENTION
[19 W R. Cr., 36

———— ss 168 170 (1872, s 123).

See ACCUSED PERSON RIGHT OF
[I. L. R. 20 Mad., 189

See EVIDENCE ACT s 74
[I. L. R. 20 Mad. 189

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[10 Bom., 70

———— ss 169 173 para 2 (1872 s 126 1861 69 s 154)

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE DIARIES PAPERS ETC
[8 W R., Cr 87
13 W R Cr 22

———— s 172

See ACCUSED PERSON RIGHT OF
[I L. R., 19 All. 390
I. L. R. 19 Mad 14

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS
[I. L. R 18 Calc. 610 612 note
I L. R 20 Calc 642
I. L. R., 19 All. 390

———— s 173

See ACCUSED PERSON RIGHT OF
[I. L. R. 20 Mad., 189

See EVIDENCE ACT s 74
[I. L. R 20 Mad., 189

———— s 176 (1872 s 135)—*Enquiry into cause of death—Report by Magistrate—Judicial proceeding—Power of High Court under s 296 Criminal Procedure Code—Coroner's inquest*—Where the Magistrate of a division held an enquiry under s 135 of the Criminal Procedure Code into the cause of the death of a person found dead under suspicious circumstances and without making a specific charge against any person drew up a report embodying the result of his enquiry and sent the report to the Magistrate of the district and subsequently proceedings were taken against one of the witnesses, which ultimately resulted in an acquittal—*Held* by the High Court that there being nothing in the language of s 135 requiring the Magistrate holding such an enquiry either to make a report or to come to a finding the report actually sent could not be [illegible] as part of a judicial proceeding and that [illegible] High Court had no power to send for [illegible] 296 of the Criminal Procedure Code [illegible] between a Coroner's inquest and an enquiry [illegible] death under the Criminal

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued.*

Procedure Code IN THE MATTER OF TROILOKHONATH BISWAS I. L. R., 3 Calc., 742

———— s 177 (1872 s. 63).

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO
[I. L. R., 24 Calc., 636
1 C W N., 577

———— s 178 (1872, s 63).

See CRIMINAL PROCEEDINGS
[I. L. R., 3 All., 256

See TRANSFER OF CRIMINAL CASE—GENERAL CASES
[I. L. R. 10 Calc., 643

———— s 179

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I. L. R., 19 All., 111

———— s 180 (1872 s. 66, 1861-69 ss. 31 31A)

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY
[I. L. R., 9 All., 523

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING
[I. L. R., 18 All., 350

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY 4 Bom., Cr., 38

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT
[I. L. R. 6 Calc., 307

———— s 182 (1872 s. 67)

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
[I. L. R. 18 Calc., 667
I L. R., 25 Calc., 858
2 C. W N., 577

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY
[13 B. L. R., Ap., 4
25 W R. Cr., 45

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY
[I. L. R. 1 Bom., 50

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT
[I L. R., 1 Mad., 171

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*contd.*

1. ——— *Local area" meaning of —Criminal Procedure Code 1882 s 531*—The words "local area" used in s. 182 only apply to a "local area" over which the Criminal Procedure Code applies, and not to a local area in a foreign country or in other portions of the British Empire to which the Code has no application; and similarly s. 531 only refers to districts, divisions, sub-divisions, and local areas governed by the Code of Criminal Procedure IN THE MATTER OF BICHITRANUND DASS v. BHUGGUT PERAL. IN THE MATTER OF BICHITRANUND DASS v. DUKHIA JANA

[I. L. R., 16 Calc., 667

2. ——— *"Local area" meaning of* —The expression "local area" includes and was intended to include a "district." LUNARDEO NARAIN SINGH v. RAM SARUP ROY

[I. L. R. 25 Calc., 858
2 C W N., 577

3 ——— *Offence punishable by law —Jurisdiction of Magistrate—Criminal Procedure Code s 145*—S 182 relates only to cases of offences which are punishable by law. A case under s 145 of the Code is not a case relating to an offence HURBULLUBH NARAIN SINGH v. BAJRANG DASS

[3 C W N 148

——— s 185 (1872 s 69)

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I. L. R. 19 All. 111

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER

[22 W. R. Cr 6

——— s 186 (1872 s 157)

See WARRANT OF ARREST—CRIMINAL CASES I. L. R. 1 Bom. 340

——— s 188

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION

[I L R 13 Mad 423

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS

[I L R., 16 Bom 176

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT

[I L R 19 Bom 105
I L R. 24 Bom., 287

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I. L. R. 13 Bom 147

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING

[I. L. R., 10 All., 109

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*contd.*

——— s. 100

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

[I. L. R., 21 All., 109
I. L. R., 22 Mad., 148
I. L. R., 26 Calc., 780
3 C. W. N., 60, 401
4 C. W. N., 307, 660

——— s 101.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

[I. L. R., 13 Calc., 334
I. L. R., 14 Calc., 707
I. L. R., 18 All., 405
I. L. R., 21 All., 109
I. L. R., 22 Mad., 148
I. L. R., 26 Calc. 780 3 C. W. N., 60, 401

See FALSE CHARGE

[I. L. R. 14 Calc. 707
I. L. R., 10 Bom., 51

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES

[I. L. R 13 All., 345
I L R., 22 Mad. 148
I. L. R. 26 Calc 768 3 C W N., 401
I L R. 21 All., 109
I L R., 22 Mad., 148

——— ss 101 108 (1872, s 142, 1861-69, s 68)

See COMPLAINANT

[I. L. R., 10 Bom., 340
I. L. R. 26 Calc., 338
I L. R. 14 Mad. 379

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

8 W R., Cr., 0
[11 W R. Cr., 1
10 W R Cr 4
1 C L R 523
5 B L R, 274 13 W R Cr., 27
4 B L R, Ap 1 13 W R., Cr 1
I. L. R 14 Mad 379
I. L. R 18 All 405
I L R. 26 Calc. 338

See JUDICIAL OFFICERS LIABILITY OF

[3 Bom A C 36

See SANCTION FOR PROSECUTION—NON COMPLIANCE WITH SANCTION

[I L R 4 Calc 712

See WARRANT OF ARREST—CRIMINAL CASES

16 W R., Cr., 50
[8 Bom. Cr 113
4 B L R Ap 1

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION 19 W R, Cr 53

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L R Ap 1
23 W R Cr 9
I L R. 3 All. 382
I L R 4 Mad 329

———— s 209 (1872 s 195 Presidency Magistrates Act 1877 s 87)

See DISCHARGE OF ACCUSED
[I. L R., 5 All., 161

See EXAMINATION OF ACCUSED PERSON
[I. L R. 23 Mad. 636

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L R. 5 All., 161
I. L. R. 11 Bom. 372

See MALICIOUS PROSECUTION
[I. L R. 6 Bom 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I. L. R. 5 Calc 121 4 C L R 305

———— s 210

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[I. L R 11 Bom 372

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I. L. R. 21 Calc 642

———— ss. 210 211 (1872 ss 199 200, 1861 69 s 227)

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L R Ap., 1
I. L. R. 19 All. 502

———— ss 210 212

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I. L. R., 18 All. 380

———— ss 214 216 (1872 s 197).

See CASES UNDER COMMITMENT

———— s. 216 (1872 s 350 1861 69 s 229).

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—WITNESS 6 Mad. Ap 9

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[4 B L. R. Ap 1
I. L. R 3 Calc 573
I. L. R., 4 All. 63
I. L. R. 8 All. 668

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s 221 (1872 s 439) ss 222 223 224 225, 226 (1872 s 446) s 227 (1872 s 245) s 228 (1872 s 447) ss 229 230 (1872 s 450) ss 231 and 232.

See CASES UNDER CHARGE

———— s 221

See PRISONER I. L. R., 11 Calc., 106

———— ss 221 and 222

See CRIMINAL TRESPASS
[I L R, 22 Calc, 391

———— s 222A

See OFFENCE RELATING TO DOCUMENTS
[I. L R. 26 Calc 580
3 C W N 412

———— s 225

See UNLAWFUL ASSEMBLY
[I. L R., 23 Calc., 276

———— s 233 (1872 s 452)

See CRIMINAL PROCEEDINGS
[I. L R. 12 Mad 273
I. L. R. 14 Calc 128
I. L R 20 Calc 537
1 C W N 35
4 C W N, 656

———— ss 233 234 (1872 s 453) and s 235 (1872 s 454)

See CASES UNDER JOINDER OF CHARGES

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES

———— s 236 (1872 s 455)

See AUTREFOIS ACQUIT
[I. L. R, 22 Calc 377

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING
[I. L R., 21 Calc 955

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS
[13 B. L. R. 324 325 note

———— *Alternative charges*—S 455 of Act X of 1872 applies to cases in which not the facts are doubtful but the application of the law to the facts is doubtful. QUEEN *v* JAMTRHA
[7 N W 137

———— ss 236 237 (1872, s 456) and 238 (1872 s 457).

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R. 8 All., 665
I. L. R. 8 Bom., 200
I. L. R., 17 Bom., 369
I. L. R. 23 Calc 503 3 C. W. N., 6.3

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s. 238 (1872 s 457)

See CONVICTION 11 Bom 240 [12 Bom. 1

See VERDICT OF JURY—GENERAL CASES [I. L. R. 5 Calc 871 I. L. R. 20 Bom. 215

1. ——— *Minor offence Conviction of without formal charge—Penal Code (Act XLV of 1860) ss 365 366 and 376—Criminal Procedure Code (1882) s 307* —An offence under s. 365 of the Penal Code is within the meaning of s 238 of the Criminal Procedure Code a minor offence as compared with offences under ss 366 and 376 of the Penal Code and the High Court in dealing with a case under s 307 of the Criminal Procedure Code can convict an accused of the former offence without a formal charge having been framed *Per* BANERJEE *J*—The words minor offence have not been defined by law they are to be taken not in any technical sense but in their ordinary sense QUEEN EMPRESS *v* SITANATH MANDAL [I. L. R., 22 Calc 1006

2. ——— *Penal Code (Act XLV of 1860) ss 366 498—Cognizance of offence by Court—Criminal Procedure Code (1882) s 199—Enticing away married woman—Conviction for minor offence where evidence is insufficient for grave offence* —The complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife The Deputy Magistrate convicted the accused of an offence under s 498 of the Penal Code and sentenced him to one month s rigorous imprisonment The Sessions Judge being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498 there being no complaint by the husband under s 199 of the Criminal Procedure Code and that the offence did not fall under s 238 of the Criminal Procedure Code referred the case to the High Court. *Held* that such a case is within the intention of s 238 The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage unless the husband or other person authorized moves them to do so But when the husband is complainant and brings his complaint under s. 366 a conviction under s. 498 may properly be had if the evidence be such as to justify a conviction for the minor offence and yet insufficient for a conviction for the graver one JATRA SHEKH *v* REAZAT SHEKH I. L. R. 20 Calc. 483

——— s 239

See BANKERS I. L. R. 18 All. 88

See CRIMINAL PROCEEDINGS [I. L. R. 9 All. 452 I. L. R. 20 Calc. 537

See JOINDER OF CHARGES [I. L. R., 15 Bom. 491 1 C W N 35

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 243 (1872 s 208)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [23 W R. Cr, 63

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL. [23 W R, Cr 40

——— s 244 (1872 ss 207 361, 1861-69 ss 262 266)

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL [I. L. R 5 Mad 160

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY [4 Mad Ap 29 4 B L R Ap 77 7 B L R 508 note 13 W R Cr, 63

——— s 245 (1872 s 221)

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT 22 W R Cr., 12 [I L R 6 Calc 581 I L R., 10 Bom 190

——— s 247 (1872 ss 205 212 1861 69 s 259)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL [10 W R Cr, 53 23 W R Cr 61 24 W R, Cr 94 25 W R Cr 63 4 C W N 549

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND OF DISMISSAL [4 Mad Ap 41 I L R 5 Mad 160 13 C L R 303 I L R, 7 Mad 356 4 C W N, 28

——— ss 247, 253

See JOINDER OF CHARGES [I L R 11 Calc, 91

——— s 248 (1872 s 210)

See COMPLAINANT [I. L R., 2 Bom 653

See COMPLAINT—REVIVAL OF COMPLAINT [I L R 22 Bom, 711

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT [4 B L R, F B 41 I L R, 5 Mad 378 I L R 13 Bom 600

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES
[3 B L R A Cr, 59

——— s 288 (1872, s 249)

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED
[I L R, 12 Mad 123
I L R, 27 Calc, 295 4 C W N 129

See EVIDENCE CRIMINAL CASES—DEPOSITIONS
I L R. 12 Mad. 123
[I L R. 23 Calc, 361

See SESSIONS JUDGE JURISDICTION OF
[I L R, 15 Mad, 352

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I. L. R, 7 All. 862

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION
I L R., 21 Calc. 642

1. ——— *Deposition taken before Magistrate—Evidence before Sessions Judge—Discretion of Sessions Judge*—The purpose of s 249 of the Code of Criminal Procedure as amended by s 20 of Act XI of 1874 is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Session only when the Sessions Judge determines in the exercise of his discretion that they are to be used in this way But the exercise of this discretion considering it as a matter of fact or law is open to review by the Appellate Court REG v ARJUN MEGHA
[11 Bom 281

2. ——— *Former deposition of witness—Evidence Act s 80*—The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s. 249 Criminal Procedure Code 1872—that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *prima facie* evidence under s 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement ought to give the facts necessary to render the deposition admissible under s. 249 QUEEN v NESSURUDDIN
[21 W R. Cr 5

3 ——— *Depositions taken before Magistrate*—A Court of Session is not at liberty under Act X of 1872 s 249 to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh QUEEN v MAJOOUR POY 24 W R. Cr, 11

4 ——— *Witnesses before committing Magistrate*—On the trial of a prisoner for the murder of his wife and child the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate; and the Sessions Judge purporting to act under s 249 Act X of 1872 discarded the evidence taken before himself and grounded his judgment on the evidence given before the Magistrate and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner,—*Held* that s. 249 did not warrant such a course of proceeding That section merely authorizes the Court to take a particular statement made by a witness before the Magistrate as the true statement notwithstanding that it is denied or a statement inconsistent with it was made by the witness before the Judge only if the Judge should see that the original statement was worthy of belief and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer QUEEN v AMANULLA
[13 B. L R., Ap 15 21 W R. Cr 49

See QUEEN EMPRESS v JADUB DASS
[I. L R., 27 Calc, 295

5 ——— *Use in Sessions Court of evidence taken before the committing Magistrate*—Although under certain circumstances a Court of Session may use evidence given before the committing Magistrate as if it had been given before itself it is not proper for a Court of Session to base a conviction solely upon such evidence there being no other evidence on the record to corroborate it *Queen v Amanulla 12 B L R Ap 15 Queen Empress v Bharamappa I L R 12 Mad 123* and *Queen Empress v Dhan Sahai I L R 7 All 862* referred to QUEEN EMPRESS v JHOCHI I. L. R. 21 All 111

6 ——— *Duty of Sessions Judge as to evidence taken before the Magistrate*—Sessions Judges should act with great caution in exercising the discretion given to them by s. 288 Code of Criminal Procedure in admitting evidence given by a witness before the committing Magistrate Where at a Sessions trial the Sessions Judge admitted, under s. 288 Code of Criminal Procedure such evidence without any inquiry as to the allegation made by the witness that her statement before the Magistrate was made under pressure and threat by the police—*Held* that the District Judge should not have placed reliance on the evidence as given before the Magistrate and that he would have shown a better discretion if he had first made some inquiry by examining the police officer as to the restraint and pressure under which the statement was alleged to have been made A witness was not examined in the Sessions Court with regard to the particular statements made by him before the committing Magistrate and he did not repeat those statements before the Sessions Court *Held* that the Sessions Judge could not properly admit such statements in evidence under s. 288 Criminal Procedure Code Where a witness was examined in the Sessions Court and had shown no disposition in any way to resile from any statement he had made before the committing Magistrate

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

the admission of that deposition by a Sessions Judge under s. 288 Code of Criminal Procedure was improper *Queen* v *Amanulla* 12 *B L R* 4p *Jo* 21 *W R., Cr* 49 and *Queen Empress* v *Din Sahai* *I L R., 7 All., 862* followed. Where a medical officer gave evidence before the committing Magistrate and it was not certified that the evidence was given in presence of the accused —*Held* that the admission of such evidence by the Sessions Judge under s. 288 Code of Criminal Procedure was also improper Where the police had kept a witness under surveillance for four days and the Sessions Judge considered that they were justified under the circumstances of the case —*Held* that there is no warrant in law for the police to keep the witness under such restraint and that statements so obtained can hardly be regarded as voluntary BAJRANGI LAL v EMPRESS

[4 C W N., 49

7 ——————— *Previous statement to committing Magistrate retracted in Sessions Court —Use of such statement by Sessions Court as substantive evidence* —Where a witness who has made a statement before the committing Magistrate subsequently resiles from that statement in the Court of Session the statement made before the committing Magistrate can be used under s 288 of the Code of Criminal Procedure to contradict the witness but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril and could never have been the intention of the Legislature QUEEN EMPRESS v NIRMAL DAS I L R 22 All 445

8 ——————— *Admissibility of evidence —Statement of approver made before committing Magistrate and afterwards retracted in the Court of Session* —Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity The pardon was accepted and the person to whom it was tendered made a statement as a witness before the Magistrate The case having been committed to the Court of Session the approver in that Court totally repudiated his statement made before the Magistrate *Held* that this repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of s 288 of the Code of Criminal Procedure QUEEN EMPRESS v SONEJU

[I. L. R., 21 All. 175

9 ——————— *Depositions in former case —Refusal to allow cross examination of witnesses —A B* and *C* having been charged with murder before a Magistrate two vakils presented their vakalutnamahs and applied to be allowed to conduct the defence of the accused. The Magistrate refused permission and, after recording the depositions of the witnesses committed the accused to take their trial before the Sessions Court In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who on being examined in the Sessions Court denied all knowledge of the facts to which they had deposed before the Magistrate Two of them denied having made the statements recorded while the third admitted the statements attributed to him but asserted they were false and made under pressure The Sessions Judge disbelieving the statements made in his Court thereupon under s 219 of the Code of Criminal Procedure 1872 (as amended by s 20 of the Amending Act) used the previous depositions as evidence in the case and mainly upon these convicted the accused of murder and sentenced them to transportation for life Against this conviction and sentence the prisoners appealed to the High Court on the ground that the previous depositions ought not to have been used as evidence in the case as the Magistrate had refused to allow their pleaders to appear and cross-examine the witnesses who made the depositions The High Court affirmed the convictions and sentence IN THE MATTER OF DHAM MUNDUL

[6 C L R 53

———— s 289

See CASES UNDER RIGHT OF REPLY

——————— *Meaning of words no evidence in section* —The words no evidence in the second and third clauses of s 289 of the Code of Criminal Procedure (Act X of 1882) must not be read as meaning no satisfactory trustworthy or conclusive evidence If there is evidence the trial must go on to its close; when in trials by jury the jury and in other trials the Judge after considering the opinions of the assessors have to find on the facts It is only in the absence of any evidence as to the commission of the offence by the accused that the Court can record an acquittal without allowing the trial to go on or obtaining the opinion of the assessors or that the Court can direct the jury without going into the defence to return a verdict of not guilty *Queen Empress* v *Munna Lal I L R 10 All 414* approved. QUEEN EMPRESS v VAJIRAM

[I L R 16 Bom 414

———— ss 289 290 (1872 s 251)

See COUNSEL 11 Bom 102

See CRIMINAL PROCEEDINGS

[I L R 10 All. 414
I L R 23 Calc 252

See SESSIONS JUDGE POWER OF

[I. L R 10 All. 414

——————— *Procedure—Absence of witnesses for defence* —If an accused has not his witnesses present the Judge should under s 251 Criminal Procedure Code if he sees grounds for proceeding first call upon him for his defence and then postpone the case QUEEN v JUMIRUDDIN

[23 W R., Cr 58

———— s 290

See CASES UNDER RIGHT OF REPLY

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES
[3 B L R., A Cr 59

———— s 288 (1872 s 249)

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED
[I L R 12 Mad 123
I L R, 27 Calc 295 4 C W N 129

See EVIDENCE CRIMINAL CASES—DEPOSITIONS
I L R. 12 Mad. 123
[I L R 23 Calc 361

See SESSIONS JUDGE JURISDICTION OF
[I L R 15 Mad 353

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I L R 7 All. 862

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION
I L R. 21 Calc, 642

1 ———————— *Deposition taken before Magistrate—Evidence before Sessions Judge—Discretion of Sessions Judge* —The purpose of s 249 of the Code of Criminal Procedure as amended by s 20 of Act XI of 1874 is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Session only when the Sessions Judge determines in the exercise of his discretion that they are to be used in this way But the exercise of this discretion considering it as a matter of fact or law is open to review by the Appellate Court REG *v* ARJUN MEGHA
[11 Bom 281

2. ———————— *Former deposition of witness—Evidence Act s 80* —The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s. 219 Criminal Procedure Code 187— —that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *prima facie* evidence under s. 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement ought to give the facts necessary to render the deposition admissible under s. 219 QUEEN *v* NUSSURUDDIN
[21 W R. Cr 5

3 ———————— *Depositions taken before Magistrate* —A Court of Session is not at liberty under Act X of 1872 s. 219 to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh QUEEN *v* MAJONUR FOY 24 W R. Cr., 11

4 ———————— *Witness before committing Magistrate* —On the trial of a prisoner for the murder of his wife and child the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate; and the Sessions Judge purporting to act under s 249 Act X of 1872 discarded the evidence taken before himself and grounded his judgment on the evidence given before the Magistrate and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner —*Held* that s 249 did not warrant such a course of proceeding That section merely authorizes the Court to take a particular statement made by a witness before the Magistrate as the true statement notwithstanding that it is denied or a statement inconsistent with it was made by the witness before the Judge only if the Judge should see that the original statement was worthy of belief and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer QUEEN *v* AMANULLA
[12 B L R. Ap, 15 21 W R. Cr 40

See QUEEN EMPRESS *v* JADUB DASS
[I. L R. 27 Calc 295

5 ———————— *Use in Sessions Court of evidence taken before the committing Magistrate* —Although under certain circumstances a Court of Session may use evidence given before the committing Magistrate as if it had been given before itself it is not proper for a Court of Session to base a conviction solely upon such evidence there being no other evidence on the record to corroborate it. *Queen v Amanulla 12 B L R Ap 15 Queen Empress v Bharamappa I L R 12 Mad 123* and *Queen Empress v Dhan Sahai I L R 7 All 862* referred to QUEEN EMPRESS *v* JEOCHI I. L. R. 21 All 111

6 ———————— *Duty of Sessions Judge as to evidence taken before the Magistrate* —Sessions Judges should act with great caution in exercising the discretion given to them by s. 288 Code of Criminal Procedure in admitting evidence given by a witness before the committing Magistrate Where at a Sessions trial the Sessions Judge admitted, under s. 288 Code of Criminal Procedure such evidence without any inquiry as to the allegation made by the witness that her statement before the Magistrate was made under pressure and threat by the police —*Held* that the District Judge should not have placed reliance on the evidence as given before the Magistrate and that he would have shown a better discretion if he had first made some inquiry by examining the police officer as to the restraint and pressure under which the statement was alleged to have been made A witness was not examined in the Sessions Court with regard to the particular statements made by him before the committing Magistrate and he did not repeat those statements before the Sessions Court *Held* that the Sessions Judge could not properly admit such statements in evidence under s. 288 Criminal Procedure Code Where a witness was examined in the Sessions Court and had shown no disposition in any way to resile from any statement he had made before the committing Magistrate

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

the admission of that deposition by a Sessions Judge under s. 288 Code of Criminal Procedure was improper *Queen v Amanulla 12 B L R, Ap 15 21 W R Cr 49* and *Queen Empress v Dan Sahai I L R., 7 All., 862* followed Where a medical officer gave evidence before the committing Magistrate and it was not certified that the evidence was given in presence of the accused —*Held* that the admission of such evidence by the Sessions Judge under s. 288 Code of Criminal Procedure was also improper Where the police had kept a witness under surveillance for four days and the Sessions Judge considered that they were justified under the circumstances of the case —*Held* that there is no warrant in law for the police to keep the witness under such restraint and that statements so obtained can hardly be regarded as voluntary BAJRANGI LAL v EMPRESS

[4 C W N, 49

7 ——— *Previous statement to committing Magistrate retracted in Sessions Court —Use of such statement by Sessions Court as substantive evidence* —Where a witness who has made a statement before the committing Magistrate subsequently resiles from that statement in the Court of Session the statement made before the committing Magistrate can be used under s 288 of the Code of Criminal Procedure to contradict the witness but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril and could never have been the intention of the Legislature QUEEN EMPRESS v NIRMAL DAS I L R 22 All 445

8 ——— *Admissibility of evidence —Statement of approver made before committing Magistrate and afterwards retracted in the Court of Session* —Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity The pardon was accepted and the person to whom it was tendered made a statement as a witness before the Magistrate The case having been committed to the Court of Session the approver in that Court totally repudiated his statement made before the Magistrate *Held* that this repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of s 288 of the Code of Criminal Procedure QUEEN EMPRESS v SONEJU

[I. L. R 21 All 175

9 ——— *Depositions in former case —Refusal to allow cross examination of witnesses —A B and C* having been charged with murder before a Magistrate two vakils presented their vakalutnamahs and applied to be allowed to conduct the defence of the accused The Magistrate refused permission and after recording the depositions of the witnesses committed the accused to take their trial before the Sessions Court In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses who on being examined in the Sessions Court, denied all knowledge of the facts to which they had deposed before the Magistrate Two of them denied having made the statements recorded while the third admitted the statements attributed to him but asserted they were false and made under pressure The Sessions Judge disbelieving the statements made in his Court thereupon under s 249 of the Code of Criminal Procedure 1872 (as amended by s 20 of the Amending Act) used the previous depositions as evidence in the case and mainly upon these convicted the accused of murder and sentenced them to transportation for life Against this conviction and sentence the prisoners appealed to the High Court on the ground that the previous depositions ought not to have been used as evidence in the case as the Magistrate had refused to allow their pleaders to appear and cross examine the witnesses who made the depositions The High Court affirmed the convictions and sentence IN THE MATTER OF DHAM MUNDUL

[6 C L R 53

——— s 289

See CASES UNDER RIGHT OF REPLY

——— *Meaning of words no evidence in section* —The words no evidence in the second and third clauses of s 289 of the Code of Criminal Procedure (Act X of 1882) must not be read as meaning no satisfactory trustworthy or conclusive evidence If there is evidence the trial must go on to its close when in trials by jury the jury and in other trials the Judge after considering the opinions of the assessors have to find on the facts It is only in the absence of any evidence as to the commission of the offence by the accused that the Court can record an acquittal without allowing the trial to go on or obtaining the opinion of the assessors or that the Court can direct the jury without going into the defence to return a verdict of not guilty *Queen Empress v Munna Lal I L R 10 All 414* approved QUEEN EMPRESS v VAJIRAM

[I L R 16 Bom 414

——— ss 289 290 (1872 s 251)

See COUNSEL 11 Bom. 102

See CRIMINAL PROCEEDINGS

[I L R 10 All. 414
I L R 23 Calc 252

See SESSIONS JUDGE POWER OF

[I. L. R. 10 All. 414

——— *Procedure—Absence of witnesses for defence* —If an accused has not his witnesses present the Judge should under s 251 Criminal Procedure Code if he sees grounds for proceeding first call upon him for his defence and then postpone the case QUEEN v JUMIRUDDIN

[23 W R Cr

——— s 290

See CASES UNDER RIGHT OF REPLY

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES
[3 B L R., A Cr, 59

——— s 288 (1872 s 249)

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED
[I L R 12 Mad 123
I L R, 27 Calc, 295 4 C W N 129

See EVIDENCE CRIMINAL CASES—DEPOSITIONS
I L R. 12 Mad. 123
[I L R. 23 Calc, 361

See SESSIONS JUDGE JURISDICTION OF
[I L R 15 Mad, 352

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I.L. R., 7 All. 862

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION
I L R. 21 Calc., 642

1. ——————— *Deposition taken before Magistrate—Evidence before Sessions Judge—Discretion of Sessions Judge*—The purpose of s 219 of the Code of Criminal Procedure as amended by s 20 of Act XI of 1874 is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Session only when the Sessions Judge determines in the exercise of his discretion that they are to be used in this way But the exercise of this discretion considering it as a matter of fact or law is open to review by the Appellate Court REG v ARJUN MEGHA
[11 Bom, 281

2. ——————— *Former deposition of witness—Evidence Act s 80*—The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by s. 219 Criminal Procedure Code 1872—that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *primâ facie* evidence under s. 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement ought to give the facts necessary to render the deposition admissible under s. 219 QUEEN v NASSERUDDIN
[21 W R., Cr 5

3 ——————— *Depositions taken before Magistrate*—A Court of Session is not at liberty under Act X of 1872 s. 219 to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh QUEEN v MAJOHUR POY 24 W R., Cr 11

4 ——————— *Witnesses before committing Magistrate*—On the trial of a prisoner for the murder of his wife and child the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate; and the Sessions Judge purporting to act under s 249 Act X of 1872 discarded the evidence taken before himself and grounded his judgment on the evidence given before the Magistrate and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner—*Held* that s 249 did not warrant such a course of proceeding That section merely authorizes the Court to take a particular statement made by a witness before the Magistrate as the true statement notwithstanding that it is denied or a statement inconsistent with it was made by the witness before the Judge only if the Judge should see that the original statement was worthy of belief and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer QUEEN v AMANULLA
[12 B L R. Ap, 15 21 W R., Cr 40

See QUEEN EMPRESS v JADUB DASS
[I. L R., 27 Calc, 295

5 ——————— *Use in Sessions Court of evidence taken before the committing Magistrate*—Although under certain circumstances a Court of Session may use evidence given before the committing Magistrate as if it had been given before itself it is not proper for a Court of Session to base a conviction solely upon such evidence there being no other evidence on the record to corroborate it. *Queen v Amanulla 12 B L R Ap 15 Queen Empress v Bharamappa I L R 12 Mad 123* and *Queen Empress v Dhan Sahai I L R 7 All 862* referred to QUEEN EMPRESS v JEOCHI I. L. R. 21 All 111

6 ——————— *Duty of Sessions Judge as to evidence taken before the Magistrate*—Sessions Judges should act with great caution in exercising the discretion given to them by s 288 Code of Criminal Procedure in admitting evidence given by a witness before the committing Magistrate Where at a Sessions trial the Sessions Judge admitted, under s. 288 Code of Criminal Procedure such evidence without any inquiry as to the allegation made by the witness that her statement before the Magistrate was made under pressure and threat by the police—*Held* that the District Judge should not have placed reliance on the evidence as given before the Magistrate and that he would have shown a better discretion if he had first made some inquiry by examining the police officer as to the restraint and pressure under which the statement was alleged to have been made A witness was not examined in the Sessions Court with regard to the particular statements made by him before the committing Magistrate and he did not repeat those statements before the Sessions Court *Held* that the Sessions Judge could not properly admit such statements in evidence under s. 288 Criminal Procedure Code Where a witness was examined in the Sessions Court and had shown no disposition in any way to resile from any statement he had made before the committing Magistrate

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

the admission of that deposition by a Sessions Judge under s. 288 Code of Criminal Procedure was improper *Queen v Amanulla 12 B L R Ap 15 21 W R, Cr 49* and *Queen Empress v Dan Sahai I L R, 7 All, 662* followed. Where a medical officer gave evidence before the committing Magistrate and it was not certified that the evidence was given in presence of the accused —*Held* that the admission of such evidence by the Sessions Judge under s. 288 Code of Criminal Procedure was also improper Where the police had kept a witness under surveillance for four days and the Sessions Judge considered that they were justified under the circumstances of the case —*Held* that there is no warrant in law for the police to keep the witness under such restraint and that statements so obtained can hardly be regarded as voluntary BAJRANGI LAL v EMPEROR

[4 C W N, 49

7 ———— *Previous statement to committing Magistrate retracted in Sessions Court —Use of such statement by Sessions Court as substantive evidence.*—Where a witness who has made a statement before the committing Magistrate subsequently resiles from that statement in the Court of Session the statement made before the committing Magistrate can be used under s. 288 of the Code of Criminal Procedure to contradict the witness but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril and could never have been the intention of the Legislature QUEEN EMPRESS v NIRMAL DAS I L R 22 All 445

8 ———— *Admissibility of evidence —Statement of approver made before committing Magistrate and afterwards retracted in the Court of Session* —Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity The pardon was accepted and the person to whom it was tendered made a statement as a witness before the Magistrate The case having been committed to the Court of Session the approver in that Court totally repudiated his statement made before the Magistrate *Held* that this repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of s 288 of the Code of Criminal Procedure QUEEN EMPRESS v SONEJU

[I L R 21 All. 175

9 ———— *Depositions in former case —Refusal to allow cross examination of witnesses —A B* and *C* having been charged with murder before a Magistrate two vakils presented their vakalutnamahs and applied to be allowed to conduct the defence of the accused. The Magistrate *refused* permission and after recording the depositions of the witnesses committed the accused to take their trial before the Sessions Court In the Court of the Magistrate the only material evidence for the prosecution was that *of three* witnesses who on being examined in the Sessions Court denied all knowledge of the facts to which they had deposed before the Magistrate Two of them denied having made the statements recorded while the third admitted the statements attributed to him but asserted they were false and made under pressure The Sessions Judge disbelieving the statements made in his Court thereupon under s 219 of the Code of Criminal Procedure 1872 (as amended by s 20 of the Amending Act) used the previous depositions as evidence in the case and mainly upon these convicted the accused of murder and sentenced them to transportation for life Against this conviction and sentence the prisoners appealed to the High Court on the ground that the previous depositions ought not to have been used as evidence in the case as the Magistrate had refused to allow their pleaders to appear and cross examine the witnesses who made the depositions. *The High Court affirmed the convictions and* sentence IN THE MATTER OF DHAM MUNDUL

[6 C L R, 53

———— s 289

See CASES UNDER RIGHT OF REPLY

———— *Meaning of words no evidence in section* —The words no evidence *in the second and third clauses of s 289 of the Code* of Criminal Procedure (Act X of 1882) must not be read as meaning no satisfactory trustworthy or conclusive evidence If there is evidence the trial must go on to its close; when in trials by jury the jury and in other trials the Judge after considering the opinions of the assessors have to find on the facts It is only in the absence of any evidence as to the commission of the offence by the accused that the Court can record an acquittal without allowing the trial to go on, or obtaining the opinion of the assessors or that the Court can direct the jury without going into the defence to return a verdict of not guilty *Queen Empress v Munna Lal I L R 10 All 414* approved QUEEN EMPRESS v VAJIRAM

[I L R, 16 Bom, 414

———— ss 289 290 (1872 s 251)

See COUNSEL 11 Bom 102

See CRIMINAL PROCEEDINGS

[I L R 10 All. 414
I L R 23 Calc 252

See SESSIONS JUDGE POWER OF

[I L R 10 All. 414

———— *Procedure—Absence of witnesses for defence* —If an accused has not his witnesses present the Judge should under s 251 Criminal Procedure Code if he sees grounds for proceeding first call upon him for his defence and then postpone the case QUEEN v JUMIRUDDIN

[23 W R, Cr, 58

———— s 290

See CASES UNDER RIGHT OF REPLY

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 291 (1872, s 363, 1861-69, s 375)

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [23 W R., Cr 56 I. L. R, 8 All, 668

——— s. 292 (1872 s. 252)

See COUNSEL 11 Bom. 102

See RIGHT OF REPLY

——— s 297

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS [I. L. R 23 Calc., 252

——— s 297 (1872 s 255 para. 1, 1861-69 s 379) and s 298

See CASES UNDER CHARGE TO JURY

——— ss 298 302

See VERDICT OF JURY—GENERAL CASES [I. L. R., 19 Bom. 735

——— ss 300-303 306 307 (1872 s 263)

See RIGHT TO BEGIN [20 W R., Cr 33

——— s. 303

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—RIOTING [I. L. R. 21 Calc 955

See VERDICT OF JURY—GENERAL CASES [I. L. R. 10 Calc 140

——— s 307

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R., 9 All., 420

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES

See REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION [I. L. R., 15 Calc., 269

See VERDICT OF JURY—GENERAL CASES [I. L. R., 10 Calc., 140

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS

——— s. 309 (1872 s. 255 para. 1, and s. 231 1861-69 s 324)

See CASES UNDER ASSESSORS.

——— s 310

See CRIMINAL PROCEEDINGS [13 C. L. R., 110

——— *Trials before jury or assessors—Record—Previous conviction*—In trials before a jury or assessors the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence KRISTO BEHARY DASS *v* EMPRESS 12 C L. R., 555

See BEPIN BEHARY SHAW *v* EMPRESS [13 C. L. R., 110

——— s 332 (1872, s 414 1861-69, s 354)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [8 W R., Cr., 83

——— s. 337 (1872, s. 347, 1861-69 s 209).

See APPROVERS I. L. R., 11 All. 79 [I. L. R., 23 Bom 493

See CHARGE TO JURY—MISDIRECTION [I. L R., 17 Calc., 642

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 22 Calc., 50

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED [I. L. R., 1 Bom., 610 I. L. R., 2 All., 260 I. L. R. 10 Bom., 190 I. L. R. 23 Bom., 213

See CASES UNDER PARDON

——— s. 338 (1872 s. 348).

See APPROVERS I. L. R., 7 All., 160 [I. L. R., 14 All., 502

See PARDON 7 W R., Cr., 114 [I. L. R., 10 Calc., 936

——— s. 339 (1872 s 349).

See CASES UNDER APPROVERS

See CONFESSION—CONFESSIONS TO MAGISTRATE I L. R. 22 Calc., 50

See PARDON I L. R., 11 All., 79 [I. L. R., 24 Calc., 492 I. L. R., 20 All., 529

——— ss 340 341 (1872 s 186).

See ADVOCATE 7 Mad., Ap., 41

See ATTORNEY 7 Mad., Ap., 41

See INSANITY I. L. R., 5 Bom., 282

See PLEADER—APPOINTMENT AND APPEARANCE 7 Mad., Ap., 37 41 [I. L. R., 23 Calc., 493 I L. R., 16 Bom., 661 I. L. R., 21 All., 103

1. ——— *Deaf and dumb person—Procedure*—G was convicted by the Joint Magistrate of house-breaking by night with intent to commit theft and the case referred under the provisions of s. 15? of Act X of 1872 to the High Court

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

for orders. It appeared that *G* whose understanding was of the most limited character was caught at night in a house with some anklets in his possession. He was a lad of 15 or 16 years of age and had been deaf and dumb from his birth. He sometimes lived with his father and sometimes by begging and there was little doubt that hunger had driven him to break into the house He had never been in arrest before. The Court recommended that he should be made over to his father QUEEN *v* GANGA 7 N W., 131

2.——— *Deaf and dumb person—Ability to understand charge* —In the case of an accused person who was deaf and dumb the Deputy Magistrate who tried and convicted him considered that he did not understand the proceedings and accordingly referred the case to the Magistrate under s 186 of the Code of Criminal Procedure. The Magistrate considered that the accused did understand what he was charged with. *Held* that the finding of the Magistrate must prevail and s 186 did not apply DOOBRI HULWAI *v* ANONYMOUS [19 W R Cr., 37

3. ——— *Deaf and dumb person Trial of*—The High Court under the circumstances of this case which came before it under the last clause of s 186 of the Criminal Procedure Code 1872 set aside the conviction of the prisoner who was deaf and dumb and directed that he be admonished and discharged. DWARKANATH HALDAR *v* NODER CHAND KAMTH 22 W R. Cr., 35

4. ——— *Deaf and dumb person Trial of*—The High Court may under s 186 Criminal Procedure Code in the trial of a person who is deaf and dumb and who cannot understand the proceedings against him or plead to the charge treat the proceedings as amounting to a sufficient trial and pass sentence upon the prisoner according to the facts which seem to be established in the course and as the result of those proceedings In this case the Court had no doubt that the prisoner was guilty but before passing final orders, it gave the prisoner a further opportunity of being heard and accordingly directed the Magistrate to give him notice QUEEN *v* BOWRA HARI 22 W R., Cr 35

He was subsequently convicted by the Magistrate and this conviction was confirmed by the High Court QUEEN *v* BOWRA 22 W R Cr., 72

5 ——— *Accused Meaning of—Criminal Procedure Code (Act V of 1898) s 123—Person liable to imprisonment in default of giving security* —The term accused in s. 340 of the Code of Criminal Procedure applies to a person who is liable under s. 123 of that Code to imprisonment in default of giving security NAKRI LAL JHA *v* QUEEN EMPRESS I L. R. 27 Calc 658

6 ——— *Deaf and dumb—Accused person unable to understand proceedings in Court Commitment of—Report by Magistrate of such proceedings to High Court—Power of High Court to pass final orders on such report—Discretion of High Court to order Sessions trial to be held—Code of Criminal Procedure (Act V of 1898) ss 341 and 471—Penal Code (XLV of 1860) s 302* —An accused person who had been for some time confined in a lunatic asylum was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder The accused was deaf and dumb and could not be made to understand the proceedings which had been taken On the proceedings being forwarded to the High Court under s. 341 of the Code of Criminal Procedure it was held that the law does not contemplate that the Sessions trial should necessarily take place That it is discretional with the High Court on a commitment made to order the Sessions trial to be held and the High Court must consider whether any benefit would be likely to result especially to the accused by such trial The High Court in this case having come to the conclusion that no benefit would be likely to result to the accused by his being tried by the Court of Sessions found that the accused was guilty of the alleged murder but that he was by reason of unsoundness of mind not responsible for his action and directed him to be kept in the district jail to await the orders of Government. QUEEN EMPRESS *v* SOMIR BOWRA [I L R. 27 Calc 368 4 C W N 421

——— s 342 (1872 ss 193 and 250 1861 69 s 202)

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 5 All. 253

See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED [I. L. R. 10 Mad., 295

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED I. L R 10 Mad., 295 [I. L. R., 26 Calc., 49 I. L R 27 Calc., 295

See EXAMINATION OF ACCUSED PERSON [16 W R. Cr., 21 1 C L. R. 436 I L R. 6 Calc. 96 6 C L. R., 521

See FALSE EVIDENCE—GENERALLY [I L. R., 19 All., 200

See PENAL CODE, s 182 [I L. R., 12 Mad., 451

See WITNESS—CRIMINAL CASES—PERSON COMPETENT OR NOT TO BE WITNESS [I. L. R., 16 Bom., 661 I L R 20 All., 426

1. ——— *Examination of prisoner by Judge—Nature of examination* —It is improper on the part of a Judge when examining a prisoner under s. 342 of the Criminal Procedure Code to cross examine him The only questions which are

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

permissible are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. HURRY CHURN CHUCKERBUTTY v EMPRESS I. L. R 10 Calc 140

2 ———— *Meaning of accused* — By the word accused in s 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction QUEEN EMPRESS v MONA PUNA I. L. R., 16 Bom., 661

JHOJA SINGH v QUEEN EMPRESS [I. L. R. 23 Calc., 493

QUEEN EMPRESS v MUTASADDI LAL [I. L R 21 All., 107

3 ———— *Examination of accused person—Power of Magistrate to question the accused* —Where a Magistrate before evidence taken for the prosecution put questions to the accused of the nature of a cross examination such procedure was illegal as it could not be said that the questions were put for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence within the meaning of s. 342 of the Code of Criminal Procedure QUEEN EMPRESS v HAWTHORNE I. L. R., 13 All., 345

4. ———— *Sessions trial—Accused persons Examination of*—Questions put by the Court to an accused person under the provisions of s. 342 of the Code of Criminal Procedure 188, must be strictly limited to the purpose described in that section *i e* of enabling the accused to explain any circumstances appearing in the evidence against him The evidence referred to in that section is the evidence already given at the trial at the time when the Court puts questions to the accused. QUEEN EMPRESS v HARGOBIND SINGH I. L R. 14 All. 242

5 ———— *Witness—Accused person calling as witnesses persons charged with him and awaiting a separate trial for same offence—Evidence Act (I of 1872) s 132* —The accused *D* a European British subject was charged together with others who were natives of India under ss 384 385 and 389 of the Penal Code (Act XLV of 1860) with conspiring to commit extortion *D* claimed to be tried by a mixed jury under s. 450 of the Criminal Procedure Code (Act V of 1898) The other accused who were natives of India then claimed to be tried separately under s 452 The trial of *D* then proceeded and at the close of the case for the prosecution he proposed to call as his witnesses the persons who had been charged with him and who were awaiting their trial They objected to be called *Held* that he was entitled to call them as witnesses and to examine them on oath The words the accused in cl 4 of s 342 of the Criminal Procedure Code (Act V of 1898) mean the accused then under trial and under examination by the Court QUEEN EMPRESS v DURANT I. L. R. 23 Bom., 213

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

6 ———— *Statement of accused under that section—Misdirection* —A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under s 342 of the Criminal Procedure Code It is a misdirection to ask the jury to consider a document, purporting to be proved by such a statement as evidence against the accused. BASANTA KUMAR GHATTAK v QUEEN EMPRESS I. L. R., 26 Calc 49

———— s 343 (1872 s 344)

See CONFESSION—CONFESSIONS TO MAGISTRATE I. L. R. 2 All., 260

———— s 344 para 1 (1872 s 219, 1861-69 s 253)

See CRIMINAL PROCEEDINGS [I. L. R. 19 Mad., 375

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [4 B L R., Ap 78 7 B L R. 564 2 N W., 148 393

———— (1872 s 194 1861-69 s 224)

See BAIL I. L. R. 6 Mad. 63, 69 [I. L. R. 15 Calc., 455

See WARRANT OF ARREST—CRIMINAL CASES 5 Bom., Cr., 31

———— (Presidency Magistrates Act 1877, s 124)

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [I. L. R. 6 Calc., 523

———— s 345 (1872 s 188)

See CASES UNDER COMPOUNDING OFFENCE

———— s 347 (1872 s 221 1861-69 s 256)

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE [1 N W Ed 1873 307

———— *Stay of proceedings after charge is drawn up—Committal for trial—Magistrate Powers of*—S 221 of the Criminal Procedure Code authorizes a Magistrate after a charge has been drawn up to stop further proceedings and commit for trial EMPRESS v KUDRUTOOLLA [I. L. R 3 Calc 495 2 C L. R. 2

———— ss 347 349 (1872 s 46 paras 1, 2 and 3 1861-69 s 277)

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L R 13 Calc 305 I L R. 9 Mad 377 I L R 10 Bom 198

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See CASES UNDER MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES

——— s 349

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT [I. L R. 14 Calc 355 I. L R. 4 Bom. 240

See PRISONER 7 Bom Cr 31 [7 W R Cr 38

——— s 350 (1872 s 328)

See BENCH OF MAGISTRATES [I. L. R 20 Calc 870 I L R. 18 Mad. 394 I. L. R 23 Calc 194 I L. R 21 Mad. 246

See SESSIONS JUDGE JURISDICTION OF [23 W R. Cr 59 I L R 3 Mad. 113

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES [I. L. R. 25 Calc 863

1. ——— *Magistrate deciding case on evidence taken by his predecessor—Case under s 530 Criminal Procedure Code 1872*—In a case under s 530 Code of Criminal Procedure the High Court set aside the proceedings of a Deputy Magistrate who on succeeding his predecessor who had gone into the case instead of recalling the witnesses *de novo* and examining them himself decided the question of possession on the evidence which had been taken by his predecessor GURU CHURN SEN *v* KALI NATH DASS BISWAS 23 W R Cr 62

2 ——— *Evidence heard by one Magistrate and case decided by another—Irregularity not prejudicing accused*—In two cases in one of which the evidence was taken entirely by one Deputy Magistrate whilst the decision was passed by another and in the other of which although the Deputy Magistrate who decided the case heard part of the evidence he decided it on the same grounds as the first case the High Court declined to interfere because the accused was not said to have been prejudiced by the decision in either case THAKUR DAS MANJHI *v* NAMDAR MUNDUL UJAL MUNDUL *v* NAMDAR MUNDUL [24 W R. Cr 13

3 ——— *Transfer of case by subordinate Magistrate to District Magistrate—District Magistrate deciding on evidence taken by subordinate—Magistrate Jurisdiction of—Criminal Procedure Code ss 192 349*—S 350 of the Criminal Procedure Code was intended to provide for a case where an inquiry or trial has been commenced before one incumbent of a particular magisterial post and that officer ceases to have jurisdiction in that post and is succeeded by another officer A subordinate Magistrate having taken all the evidence for the prosecution and for the defence sent the case to the Magistrate of the District not on the grounds mentioned in s 349 of the Criminal Procedure Code and the District Magistrate observing that none of the accused asked to have the witnesses reheard gave judgment upon the evidence taken by the subordinate Magistrate The Sessions Judge refused to interfere in revision with the District Magistrate s proceedings on the ground that they were covered by s 350 of the Code *Held* that this view was erroneous that neither under s. 192 nor under s 349 was there any transfer to the District Magistrate by his subordinate that s 350 was inapplicable and that the order passed by the District Magistrate must be quashed QUEEN EMPRESS *v* RADHE I. L. R 12 All. 66

See QUEEN EMPRESS *v* BASHIR KHAN [I. L R 14 All. 346

4 ——— *Evidence recorded partly by one Magistrate and partly by another—Proceedings for recognisance to keep the peace—Criminal Procedure Code 1872 s 491*—Notwithstanding the introduction into the section of the words "the accused person" and "conviction" the provisions of s 328 of the Criminal Procedure Code apply to an inquiry instituted under s. 491 with a view to enforcing the giving of security against a breach of the peace, and in such a case where the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while such inquiry is pending the person called upon to show cause why he should not give security may insist before the latter upon the recall and re-examination of the witnesses whose evidence has been already taken by the former Magistrate BARODA KANT ROY *v* KARIMUDDI MOONSHEE 4 C L R., 452

1. ——— s 351 (1872 s 104 1861-69 s. 206)—*Preliminary investigation*—A Magistrate is not justified by s. 206 of the Code of Criminal Procedure in taking a person without any previous notice or summons from among the audience or attendant witnesses in open Court and placing him in the dock to be immediately tried upon a charge which has already been commenced to be entertained against other prisoners and on which evidence has already been given That section applies to investigations preliminary to commitment for a subsequent trial and not to cases where the trial is actually being proceeded with QUEEN *v* SUTHERLAND QUEEN *v* NARAIN SINGH 14 W R. Cr 20

2 ——— *Offence disclosed by evidence of witness in course of case—Powers of Magistrate—Criminal Procedure Code s 191 cl (c)*—A Magistrate taking cognizance of an offence against a witness in a case which is pending before him upon the facts disclosed by the evidence of another witness does so under s 191 cl. (c) of the Crimin

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Procedure Code and not under s. 351 KHUDIRAM MOOKERJEE v EMPRESS 1 C W N., 105

——— s. 352 (1872, s. 187 1861-69 s. 279).

See COURT 1 Agra Cr., 17

——— s. 355

See CRIMINAL PROCEEDINGS [I. L. R., 19 Mad., 269

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS W R. 1864, Cr., 18

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I. L. R. 20 Calc. 361

——— s 356 (1872 s 334).

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES [20 W R. Cr., 14

——— ss 357 and 362, para. 1 (1872 s 335 1861 69 s 196).

See PRACTICE—CRIMINAL CASES—EVIDENCE MODE OF RECORDING [5 Mad. Ap 9

——— ss 359 and 362 para. 2 and s. 361 (1872 ss 338-340 1861-69 s. 198)

See INTERPRETER 16 W R. Cr 71

——— s. 360 (1872 s 339, 1861-69 s 199)

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS I. L. R., 13 Calc., 121

See WITNESS—CRIMINAL CASES—SWEARING OR AFFIRMATION OF WITNESSES 13 W R Cr., 17

——— *Witnesses not understanding depositions when read over—Ground for setting aside conviction*—S 339 of Act X of 1872 being for the protection of witnesses only the fact that witnesses did not understand their depositions when read over although they may not have required them at the time to be interpreted affords no ground for an application by the accused to set aside a conviction. IN THE MATTER OF OKHOY KUMAR [7 C L. R. 393

——— s. 364 (1872 s 346 1861-69 s. 205)

See CHARGE TO JURY—MISDIRECTION [I. L. R. 17 Calc., 642

See CASES UNDER CONFESSION—CONFESSIONS TO MAGISTRATE

See CASES UNDER EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See EXAMINATION OF ACCUSED PERSON [8 W R., Cr., 65
1 B L. R. 8. N., 16
7 B. L. R., Ap, 62

——— ss 366 367

See JUDGMENT—CRIMINAL CASES [I. L. R., 21 Calc., 121
I. L. R., 23 Calc., 502

See SENTENCE—GENERAL CASES [I. L. R., 14 All., 242

——— s 367 (1872, s 287, para 2, and s 464 para. 4)

See CASES UNDER JUDGMENT—CRIMINAL CASES

——— ss 367 369 (1872 s 464, para. 1) —*Omission to order retrial when annulling conviction—Subsequent addition to judgment*—When a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction and omits to order a re-trial at the time under s 284 of the Criminal Procedure Code he is not precluded by virtue of s. 464 from passing such an order subsequently IN THE MATTER OF THE PETITION OF RAMI REDDI [I. L. R. 3 Mad, 48

——— *Alteration of illegal sentence*—A Sessions Judge has no power under s 464 Code of Criminal Procedure to alter or set aside a conviction and sentence once made and signed by him The sentence in this case was altered on reference to the High Court QUEEN v PORAN MAL 23 W R., Cr, 49

——— s 369

See REVIEW—CRIMINAL CASES [I. L. R. 7 All 672
I L R. 10 Bom 176
I. L R. 14 Calc. 42

——— s 370

See JUDGMENT—CRIMINAL CASES [I. L. R. 14 Calc., 174

See PRESIDENCY MAGISTRATE [I. L R. 13 Calc. 272
4 C W N., 201
I. L R. 27 Calc 131 461

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN [I. L R 13 Calc 272

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L R 27 Calc 131 [4 C W N., 201

——— s 374 (1872 s 287 para. 1)

See CONFESSION—CONFESSION TO MAGISTRATE I. L. R 22 Calc. 50

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued.*

———— *Reference to High Court*—The High Court as a Court of reference can under s 37 Criminal Procedure Code 1872 only deal with cases in which a sentence of death has been passed. QUEEN v OMAN 5 N W 130

1. ———— s 376 (1872, s 288)—*Culpable homicide not amounting to murder—Reference to High Court for confirmation of sentence of death—New trial Order for—Murder Conviction on charge of*—Under s 288 of the Code of Criminal Procedure the High Court to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder cannot in the absence of an appeal alter the conviction to one of culpable homicide not amounting to murder if it be of opinion that the evidence does not establish the former but the latter offence It must order a new trial for that purpose Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges but the Sessions Judge being of opinion that the evidence established the former charge recorded a conviction and sentence for murder only the High Court being of opinion, on a reference under s 287 of Act X of 1872 that the offence proved was culpable homicide not amounting to murder did not order a new trial *ab initio* but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder [illegible] APA BIN DANDAPA I L R. 1 Bom 639

2. ————(1872 s 288, and s 287) —*Conviction by verdict of jury—Facts of case*—Where a case is referred to the High Court under s. 287 Act X of 1872 the Court is bound under s. 288 of the same Act to go into the facts of the case although the conviction was by the verdict of jury QUEEN v JAFFIR ALI 19 W R Cr [illegible]

3 ———— *Power of High Court to go into facts—Criminal Procedure Code s 376—Reference under s 374—Appeal in jury trial*—Although the trial of an accused is by a jury ss 376 [illegible] Criminal Procedure Code show that in a case [illegible] confirmation of sentence of death under [illegible] High Court must deal with the case upon [illegible] as well as with reference to any questions of [illegible] arising in it and that its powers are not limited in the way they are in an appeal from a conviction in a trial by jury But in an appeal against a conviction in a trial by a jury it is not open to the High Court to go into the facts and the appeal must only be limited as laid down in ss 418 and 423 cl (d), Criminal Procedure Code to points of law notwithstanding the appeal is heard along with a reference made under s 374 Criminal Procedure Code in the case of a co accused Queen v Jaffir Ali 19 W R 57 approved of. QUEEN EMPRESS v CHATRADHARI GOALA 2 C W N 49

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s 380 (1872, s 18)—*Enhancement of sentence*—Where a Magistrate having passed a sentence of more than three years [illegible] the Sessions Judge cannot [illegible] [illegible] I L R, 4 Bom 239

———— s. 381 (1872 s. 305).

See WARRANT OF COMMITMENT [I. L. R., 6 Mad. 200

———— s 386

See COMPENSATION CRIMINAL CASES—COMPENSATION FOR LOSS OR INJURY CAUSED BY OFFENCE [I. L. R., 23 Calc., 134 I. L. R 19 Mad. 238

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I. L. R., 24 Calc., 979

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES. [I. L. R. 22 Calc 635

———— ss 386 387 389 (1872, s 307)

See ACT XII OF 1859 [8 B L R. Ap 47 17 W R. Cr. 7

See FINE 5 Bom., Cr 63 [9 W R., Cr 50 I. L. R. 23 Calc 478

———— s 391 para 1 (1872 s 310)

See WHIPPING 7 Mad., Ap 30 [20 W R Cr 71

———— s 395

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [I L. R. 11 All. 308

See SENTENCE—WHIPPING [I L R 11 All, 308 I L. R. 21 All 35

———— ss 396, 397 (1872 ss 316 317, 1861 69 ss 47 48).

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [3 B L R., A Cr 50 12 W R. Cr 47 I L R 20 All. 1

———— s 399

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R. 12 Mad 94

See REFORMATORY SCHOOLS ACT s 2 [I L R 25 Calc 333 2 C W N 11

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 403 (1872 s 460)

See AUTREFOIS ACQUIT PLEA OF
[7 N W 371
2 Ind. Jur N S 67
13 W R Cr., 42
I L R., 10 Bom., 181
I L R., 23 Calc., 377

1 ——— *Acquittal—Re trial—Interference of the High Court—Criminal Procedure Code s 530.*—Where an offence is tried by a Court without jurisdiction the proceedings are void under s 530 of the Code of Criminal Procedure Act X of 1882 and the offender if acquitted is liable to be re tried under s 403 It is therefore not necessary for the High Court to upset the acquittal before the re trial can be had. QUEEN EMPRESS v HUSEIN GAIBU I L R 8 Bom 307

2 ——— *Previous acquittal*—Upon a charge of dacoity the Magistrate having split up the charge convicted the accused of rioting using criminal force and misappropriating the property of a deceased person On appeal the Sessions Court reversed the conviction holding that the offence if any was dacoity but that the facts alleged being incredible there was no need to order a committal. The complainant thereupon lodged a fresh complaint of dacoity based on the same facts before another Magistrate *Held* that the judgment of the Sessions Court was no bar to further proceedings. VIRAN KUTTI v CHITAMU I L R. 7 Mad. 557

3 ——— and s 437—*Different charges arising out of same transaction—Acquittal—Further inquiry—Re trial —E* being charged with theft and mischief in respect of certain branches cut from a tree claimed by the complainant was tried by a Subordinate Magistrate on the charge of mischief and acquitted on the ground that as against the complainant *E* had title to the tree On the application of the complainant the District Magistrate directed further inquiry into the case under s 437 of the Code of Criminal Procedure and on a reference to the Court of Session the Sessions Judge held that as no inquiry into the charge of theft had been held the order was legal *Held* that the District Magistrate had no power to pass such an order under s 437 and that a trial on the charge of theft was barred by virtue of s 403 of the Code of Criminal Procedure QUEEN EMPRESS v ERRAMREDDI
[I L R 8 Mad, 296

4. ——— *Previous conviction or acquittal—Second trial upon the same facts for a different offence—Penal Code ss 486 and 487—Bengal Excise Act (Bengal Act VII of 1878) s 61—Merchandise Marks Act (IV of 1889) ss 6 and 7—Criminal Procedure Code s 235*—The accused had been prosecuted and convicted under s 61 of the Bengal Excise Act (Bengal Act VII of 1878) and the proceedings were instituted against him under ss 486 and 487 of the Penal Code and ss 6 and 7 of the Merchandise Marks Act (IV of 1889) On an application to quash the proceedings on the ground that the accused had been at the first trial put in peril of a conviction for the latter offences, and therefore the first trial operated as a bar to the institution of the present proceedings —*Held* the provisions of s 403 of the Criminal Procedure Code did not operate as a bar to the institution of the present proceedings Under the second part of that section the fact of the accused having been charged at the first trial with one offence only did not prevent the institution of a separate proceeding in respect of some other offence which was disclosed during the course of the first trial. QUEEN EMPRESS v CROFT
[I L R., 23 Calc 174

——— s 404 (1872 s 283 and s 286 illus (d) 1861 69 s 422) s. 406 (1872 s 277) ss 407 408 410-418 (1872, s 271 1861 69 s. 403) ss. 411, 412, and 413 (1872 s 273 1861 69 s 411).

See CASES UNDER APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES

——— s 404

See REMAND—CRIMINAL CASES
[3 B L R. A. Cr., 62
6 B L R., 698
9 B L R. Ap., 31

——— s 407 (1872, s 283 1861-69 s. 412)

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE 3 Bom. Cr 18

See DEPUTY COMMISSIONER
[16 W R. Cr., 1

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION
[I L R. 18 Mad., 487

——— s 408 (1872 s.270 1869 s 445C).

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L R., 9 Calc. 513

——— ss 411 412 (Presidency Magistrates Act 1877 s 167)

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATES ACT
[I L R. 5 Bom., 85

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[I L R., 2 Mad. 30

——— s 417 (1872, s 272)

See CASES UNDER APPEAL IN CRIMINAL CASES—ACQUITTALS APPEALS FROM

——— (Presidency Magistrates Act, 1877 s 168)

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s. 15—CRIMINAL CASES
[I L R 7 Calc. 447

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 418

See APPEAL IN CRIMINAL CASES—ACQUITTALS APPEALS FROM
[I. L R 10 Calc 1029

See REFERENCE TO HIGH COURT—CRIMINAL CASES I. L. R. 9 All 420

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
[I L R 9 All. 420
I L R 14 Mad. 36

——— ss. 418 419 420 421 (1872 s 278) s 422 (1872 s 279) and s 423 (1872 ss 280 284 1861 69 ss 419 427)

See CASES UNDER APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

——— s 421

See JUDGMENT—CRIMINAL CASES
[I. L R 21 Calc 92
I. L. R 17 All 241
I. L R., 20 Bom. 540

See REVIEW—CRIMINAL CASES.
[I. L. R 19 Bom., 732

See REVISION—CRIMINAL CASES—JUDGMENT DEFECTS IN
[I L R. 8 All. 514

——— s 423 (1872 ss 280 284 1861 69 ss 419 427)

See APPEAL IN CRIMINAL CASES—ACQUITTALS APPEAL FROM
[I L R 10 Calc 1029

See AUTREFOIS ACQUIT PLEA OF
[I. L. R. 22 Calc 377

See COMMITMENT I L R 8 All 14
[I L R 15 All 205
I L R 23 Calc 350 975
I L R 27 Calc 172
4 C W N 166

See COMPLAINT—REVIVAL OF COMPLAINT
[I L R 24 Calc 528

See MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES
[12 Bom 234

See REFERENCE TO HIGH COURT—CRIMINAL CASES I L R 9 All 420

See REVISION—CRIMINAL CASES—COMMITMENTS I L R. 16 Bom 580

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I L R 16 Calc 730
I. L. R. 26 Calc. 6 746
3 C W N 598 601

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[I L R. 23 Bom 439
I. L R 17 All 67
I. L R 27 Calc 175

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT

See SESSIONS JUDGE JURISDICTION OF
[I L R 20 Calc 633
I. L. R 18 Bom 751
I L R. 18 All 301

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICT
[I. L R 9 All. 420
I L R 23 Calc 252
I L R 25 Calc 711

1 ——————— (1872 s 284)—*Annulling conviction—Omission to make order for re trial—Criminal Procedure Code 1872 s 464*—When a Sessions Judge in appeal annuls the conviction by a Magistrate for want of jurisdiction and omits to order a re trial at the time under s 284 of the Criminal Procedure Code he is not precluded by s 464 from passing such an order subsequently The order annulling the conviction in such a case does not amount to an order of acquittal IN THE MATTER OF THE PETITION OF PAMI REDDI
[I. L R 3 Mad 48

2 ——— s 423 (a) and ss 247 404 417—*Acquittal—Appeal Powers of District Magistrate*—S 423 (a) of the Code of Criminal Procedure applies only to a High Court A second class Magistrate having held that a *prima facie* case had been established against the accused in a case of mischief adjourned the trial to enable the accused to adduce evidence On the day to which the trial was adjourned the complainant not being present the Magistrate acquitted the accused under s 247 of the Code of Criminal Procedure The District Magistrate entertained an appeal from this order under s 423 (a) of the Code of Criminal Procedure reversed it and directed a re hearing on the ground that the complainant and his vakil had appeared before the Court shortly after the case had been dismissed by the second class Magistrate *Held* that the order of the District Magistrate was illegal PANGASAMI AIYANGAR v NARASIMHULU NAYAK
[I L R 7 Mad. 213

——— s 424

See JUDGMENT—CRIMINAL CASES
[I L R. 11 Calc 449
I L R 13 Calc 110
I. L. R 15 Bom. 11
I L. R., 22 Calc 241
I L R 23 Calc., 420
I L R 19 All 506
1 C W N 169

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

to subsequently direct their committal under s. 296 ANONYMOUS 7 Mad Ap 28

3. ———— *Criminal Procedure Code s 4—Sessions case Definition of—Charges under Penal Code ss 380 457* —The appellant after his discharge by the Assistant Magistrate upon a charge under s 457 of the Penal Code, was committed to the Sessions Court by order of the Sessions Judge under the Criminal Procedure Code 1872 s. 296 upon charges under ss 380 and 457 of the Penal Code *Held* by the Full Bench (SPANKIE J and OLDFIELD J dissenting) that the commitment was illegal and that Sessions case within the meaning of s. 296 of the Code of Criminal Procedure is a case exclusively triable by the Court of Session EMPRESS OF INDIA v KANCHAN SINGH I. L. R., 1 All. 413

EMPRESS v TARA CHAND BAGDI [7 C L R., 188

4 ———— *Jurisdiction of Magistrate —Commitment to Sessions—Criminal Procedure Code (Act XXV of 1861) ss 427 435* —The Sessions Judge has no power to commit to the Sessions a case in which persons were convicted by the Deputy Magistrate of an offence under s 457 of the Penal Code such a case being one triable by the Deputy Magistrate ss 427 and 435 of Act XXV of 1861 do not apply QUEEN v HAKIM SIRDAR [2 B L R. S N 2 10 W R, Cr 35

5 ———— *Revival of proceedings after discharge—Jurisdiction of Magistrate— Sessions case—Fresh evidence* —A Deputy Magistrate having dismissed a case instituted under s 380 of the Penal Code without taking certain evidence which in his opinion would have been of little value the Magistrate of the district on the application of the complainant took such evidence and committed the accused for trial before the Sessions Court. *Held* on reference to the High Court that as the words Sessions case in s 296 of the Criminal Procedure Code had reference only to a case triable exclusively by a Court of Session the Magistrate's action could not be supported under that section but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in *Empress v Donnelly I L R 2 Calc 405* EMPRESS v HARY DOYAL KARMOKAR I. L. R 4 Calc 16

S C ISHEN CHUNDER KURMOKAR v HURRY DOYAL KURMOKAR 3 C L R 263

6 ———— *Revival of proceedings after discharge—Jurisdiction of Magistrate—Fresh evidence—Procedure* —A Magistrate has no power to remand a criminal case to a Subordinate Magistrate for re trial after the case has once been dismissed the courses open to him are (1) to accept a fresh complaint supported by fresh evidence which was not before the Court when the case was dismissed or (2) if there be no additional evidence to be procured to report the case for the orders of the High Court under s. 296 of Act X of 1872 IN THE MATTER OF THE PETITION OF DIJAUCK DUTT [I. L. R. 4 Calc., 647

7 ———— *Discharge of accused persons under s 215—Revival of proceedings at the instance of the Court of Session—Commitment of accused persons* —Certain persons were charged under s 417 of the Penal Code and were discharged by the Magistrate inquiring into the offence under s 215 of Act X of 1872 The Court of Session considering that the accused persons had been improperly discharged forwarded the record to the Magistrate of the district suggesting to him to make the case over to a Subordinate Magistrate with directions to enquire into any offence other than the offence in respect of which the accused persons had been discharged which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry and committed the accused persons for trial before the Court of Session on charges under ss 363 and 420 of the Penal Code It was contended that the Court of Session was not competent to direct the accused persons to be committed under s. 296 of Act X of 1872 the case not being a Sessions case within the meaning of that section and that the commitment was consequently illegal *Held* that there was no direction to commit within the meaning of that section that is to say to send the accused persons at once to the Sessions Court without further inquiry and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial and that the inquiry upon the charges under ss. 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate and the commitment could not be impeached. EMPRESS OF INDIA v BHUP SINGH I. L. R. 2 All. 570

8 ———— *Discharge by Magistrate—Order of commitment by Sessions Judge—Omission to call on accused to show cause against such commitment—Criminal Procedure Code (Act X of 1872) ss 296 283* —A Sessions Court has no power under s 296 of the Criminal Procedure Code to direct the commitment of a person discharged by a Deputy Magistrate without first giving such person an opportunity of showing cause against such commitment But under s. 296 as amended by Act XI of 1874 the Court has power to direct the subordinate Court to enquire into any offences for which it considers a commitment should be ordered. When however a trial under such a commitment made by order of a Sessions Judge has been duly held and no actual failure of justice has been caused by the error of the Sessions Judge s 283 of the Criminal Procedure Code would be a bar to the reversal of his judgment EMPRESS v KHAMIR [I. L. R. 7 Calc 662 10 C L R. 8

9 ———— *Commitment by Sessions Judge Offence of cheating—Criminal Procedure Code 1882 s 4* —An order of commitment by a Sessions Judge under s 296 of the Criminal

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—continued

Procedure Code is bad in form if it does not specify the offence for which the parties are to be committed for trial at the Sessions. A trial for the offence of cheating is not a Sessions case within the meaning of s. 296 having regard to the first portion of the definition of Sessions case in s. 4 of the Code which must be read as if the word "only" followed the words triable by a Court of Session JOY KURN SINGH v MAN PATUCK 21 W R., Cr., 41

10 ———— *Summoning or giving notice to accused person*—The Sessions Judge under s. 296, Criminal Procedure Code 1872 made an order upon the Deputy Magistrate for the commitment of the accused who had previously been discharged by the Deputy Magistrate but it was alleged that such order of the Sessions Judge was made without calling upon the petitioners to show cause in the matter *Held* that although there is nothing in s. 296 with regard to summoning or giving notice to the accused person, no person should be affected in his personal liberty without having opportunity given him to answer the charge for which he is arrested and put into prison. The Court accordingly was of opinion that if the accused had no opportunity given them of meeting the charge the commitment was not a good commitment IN THE MATTER OF THE PETITION OF BUNDHOO

[22 W R. Cr 67

NOWAB SINGH v KOKIL SINGH

[24 W R Cr 70

IN THE MATTER OF DWARKANATH BHATTACHARJEE 1 C L R 93

11. ———— *Order of committal—Illegal commitment—Irregular procedure*—Where an accused person had been discharged by a Sub Magistrate and the District Magistrate directed the committal of the accused to the Court of Session under s 436 of the Code of Criminal Procedure 1882 without calling upon him to show cause why he should not be committed—*Held* that the order of committal and the commitment made thereunder were illegal QUEEN v KANJAMALAI PADAYACHI

[I L R 6 Mad 372

12 ———— *Order by the District Magistrate under s 436 for committal of a person discharged by first class Magistrate under s 209—Validity of such commitment—Ultra vires*—Where a Magistrate of the first class discharged under s 209 of the Criminal Procedure Code (Act X of 1882) a person charged with an offence exclusively triable by the Court of Session and the District Magistrate directed him under s 436 to commit the accused to the Court of Session and a commitment was made but the Sessions Judge referred the case under s 215 for the order of the High Court—*Held* that the order of the District Magistrate under s 436 was not *ultra vires* and that the commitment thereunder to the Court of Sessions

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—continued

was good, and could not be quashed ... QUEEN EMPRESS v PERTAB CHAND

[I L R., 9 Bom. 100

———— s. 437

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATE

[I L R., 18 Calc 75

See CHARGE—UNDER CRIMINAL PROCEDURE CODE I L R 24 Calc 605

[1 C W N., 217

I L R 25 Calc 415

3 C W N 113

1. ———— *Inferior—Subordinate—First class Magistrate—Magistrate of District*—A Magistrate of the first class is within the meaning of s 437 of the Criminal Procedure Code "subordinate" to the Magistrate of the District who is therefore competent to call for the record of the former and to deal with it under s 437 QUEEN EMPRESS v LASKARI I L R 7 All 853

2 ———— *"Inferior"—Subordinate Magistrate of first class—Magistrate of District*—The Court of a Magistrate of the first class is inferior and subordinate to that of the District Magistrate—s 17 of the Criminal Procedure Code (Act X of 1882) expressly providing that all Magistrates of whatever class shall be subordinate to the District Magistrate The District Magistrate is superior in respect of executive as well as judicial functions to all other Magistrates The term inferior as used in the Code means statutably incompetent to hold or exercise equal powers and carries with it the idea of subordination which latter means inferior in rank *Nobin Kristo Mookerjee* v *Russick Lall Laha I L R 10 Calc 268 Queen Empress* v *Nawal Jan I L R, 10 Calc 551* dissented from QUEEN EMPRESS v PIRYA GOLAI

[I L R 9 Bom, 100

3 ———— *Different charges arising out of same transaction—Acquittal—Further inquiry—Re trial*—E being charged with theft and mischief in respect of certain branches cut from a tree claimed by the complainant was tried by a subordinate Magistrate on the charge of mischief and acquitted on the ground that as against the complainant E had title to the tree On the application of the complainant the District Magistrate directed further inquiry into the case under s 437 of the Code of Criminal Procedure and on a reference to the Court of Session the Sessions Judge held that as no inquiry into the charge of theft had been held the order was legal *Held* that the District Magistrate had no power to pass such an order under s 437 QUEEN EMPRESS v EBRAMBEDDI

[I L R 8 Mad 296

4 ———— *Penal Code s 497 I R accused—Re trial ordered—Wife ordered to be examined on re trial*—In an inquiry into a case of

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alleged adultery and enticing away a married woman for illicit purposes the complainant refused to examine his wife as to the marriage; the Deputy Magistrate declined to frame a charge and discharged the accused The Sessions Judge directed a re trial to be held by another Deputy Magistrate and ordered that the evidence of the wife should be taken as to the marriage *Held* that the Sessions Judge in ordering a re trial had not exercised a proper discretion he having admitted that the prosecution had failed to prove the marriage and it not being alleged that any evidence was tendered by the prosecution and not taken by the Deputy Magistrate CHUNDER NATH GHOSE v. KUNDOLOLL CHATTERJEE

I. L. R. 11 Calc 81

5 ——— *Further inquiry—Proceedings against accused—Notice*—No order affecting an accused in a criminal matter should be made without giving him notice so as to enable him to appear and show cause against it A Sessions Judge has no power under s 437 of the Criminal Procedure Code to direct a particular Magistrate by name to make the further inquiry contemplated by that section The further inquiry contemplated by s 437 of the Criminal Procedure Code is an inquiry upon further materials not a re hearing of the matter upon the same evidence which was before the Magistrate who held the first inquiry IN THE MATTER OF THE PETITION OF CHUNDI CHURN BHUTTACHARJEA CHUNDI CHURN BHUTTACHARJEA v. HEM CHUNDER BANERJEA

I. L. R. 10 Calc 207

6 ——— *Further inquiry—Power of District Magistrate to direct—Inferior Criminal Court—Notice to accused*—The words Inferior Criminal Court in s 435 of the Criminal Procedure Code mean inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction A criminal charge instituted before a Magistrate of the first class was finally disposed of by him by an order discharging the accused Subsequently the Magistrate of the district proceeding under s 437 of the Code of Criminal Procedure directed a further inquiry to be made by a subordinate Magistrate This order was made without notice to the accused *Held* that the Magistrate of the district had no jurisdiction to direct a further inquiry *Semble*—That as a matter of strict law the accused was not entitled to be heard by the District Magistrate before granting the order directing the inquiry IN THE MATTER OF THE PETITION OF NOBIN KRISTO MOOKERJEE NOBIN KRISTO MOOKERJEE v. RUSSICK LALL LAHA I. L. R. 10 Calc 268

7 ——— *Further inquiry*—A Deputy Magistrate having discharged a person accused of an offence on the ground that the evidence was insufficient for conviction the Magistrate of the district recorded an order stating that in his opinion the accused had been improperly discharged and directing under s 437 Criminal Procedure Code that further inquiry should be made and the accused called on to enter upon his defence The accused was not called upon to show cause why a further inquiry should not be made but a summons in the terms of s 68 of the Criminal Procedure Code was issued to him On his appearance he was tried by the Magistrate of the district convicted and sentenced. The witnesses for the prosecution were not recalled but the Magistrate relied upon their evidence as recorded in the first trial and also upon the statement of a witness for the defence which was not receivable in evidence *Held* that the proceedings of the Magistrate of the district were irregular *first* because notice to show cause why action should not be taken against him in the terms of s. 437 of the Code of Criminal Procedure was not served upon the accused person before proceedings ostensibly under that section were commenced and *secondly* because the subsequent proceedings of the Magistrate were not such as are contemplated by the provisions of s. 437 inasmuch as the conviction was practically based upon evidence which was not recorded in the course of a further inquiry before the Magistrate of the district but upon evidence which was recorded by the Deputy Magistrate and had been adjudicated upon by that officer and such irregularities were fatal to the conviction QUEEN EMPRESS v. HASNU I. L. R. 6 All., 387

8 ——— *Discharge—Order for further inquiry—Trial for minor offence—Criminal Procedure Code s 253*—A Magistrate having under s 253 of the Code of Criminal Procedure discharged a person accused of rioting an order for further inquiry was made by the Court of Session under s. 437 *Held* that the offence of rioting not being proved the Magistrate was competent to try the accused for the offence of assault QUEEN EMPRESS v. LAPADU

I. L. R., 7 Mad. 454

9 ——— *Further inquiry—Power of District Magistrate to direct Subordinate Magistrate—Compoundable offence*—A criminal charge under s 448 of the Penal Code having been instituted the accused was sent up by the police before a Deputy Magistrate of the first class Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled and that he did not wish to proceed further in the matter upon which the Magistrate recorded an order Compromised defendant acquitted Subsequently the Magistrate of the district relying upon ss 248 and 259 and professing to act under s 437 of the Criminal Procedure Code directed the Deputy Magistrate to send up the parties and proceed regularly with the case *Held* further that in addition to the Magistrate's order not being warranted by the fact it was *ultra vires* inasmuch as the Deputy Magistrate was a Magistrate of the first class and not inferior to the District Magistrate and to give the District Magistrate jurisdiction to call for a record under s 435 from another

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Magistrate and to act under s. 437 the latter must be inferior Nobin Kristo Mookerjee v Russick Lall Laha I L R 10 Calc 268 followed. QUEEN EMPRESS v NAWAB JAN

[I. L. R. 10 Calc 551

10 ——— *Discharge of accused—Further inquiry Power to direct* —An accused having been discharged after a full inquiry before a competent Court is entitled to the benefit of such discharge unless some further evidence is disclosed Consequently an order made by a District Judge directing a further inquiry to be held under s 437 of the Criminal Procedure Code in a case where a Magistrate had discharged the accused under s 253 was not warranted by law when there had been a full inquiry by a competent Court and when no further evidence was disclosed such order being based merely upon the ground that in the opinion of the District Judge the evidence recorded was sufficient for the conviction of the accused. JEEBUN KRISTO ROY v SHIB CHUNDER DASS

[I. L. R. 10 Calc 1027

11. ——— *Power of District Magistrate to direct further inquiry by Magistrate of the first class— Inferior Magistrate* —Where a District Magistrate called for the record of a case in which a Magistrate of the first class had discharged certain accused persons and directed another Magistrate of the first class to make further inquiry into the case—*Held* following *Nobin Kristo Mookerjee v Russick Lal Laha I L R 10 Calc 268* and *Queen Empress v Nawab Jan I L R 10 Calc 551* that the District Magistrate's order was *ultra vires* and illegal JHINGURI v BACHU

[I. L. R. 7 All 134

12. ——— *Further inquiry—Re trial —District Magistrate Powers of* —Where an accused person has been discharged by a Magistrate further inquiry cannot be directed under s 437 of the Code of Criminal Procedure on the ground that the Magistrate has not rightly appreciated the credit due to the witnesses Further inquiry should only be directed when other witnesses might have been examined or when the witnesses have not been properly examined and inasmuch as s 437 does not direct that the evidence already taken should be taken again the further inquiry should ordinarily be made by the Magistrate who made the original inquiry Where a District Magistrate being of opinion that a subordinate Magistrate had without just cause refused credit to the witnesses in a certain case and had improperly discharged an accused person directed a further inquiry by another Magistrate and the accused was on the same evidence re-tried and convicted —*Held* that the conviction must be quashed QUEEN EMPRESS v AMIR KHAN

[I. L. R. 8 Mad. 336

13 ——— *Further inquiry—Power of District Magistrate to suggest a committal* —A District Magistrate who refers a case to a Subordinate Magistrate for further inquiry has no authority to fetter him in the exercise of his judicial discretion as to the question whether the case should or should not be committed to the Court of Session QUEEN EMPRESS v MUNISAMI I L R 15 Mad 39

14. ——— *Complaint —District Magistrate Power of to order further inquiry—Dispute concerning land—Criminal Procedure Code s 145* —S 437 of the Code of Criminal Procedure does not give power to order a further inquiry in a case under s 145 of that Code CHATHU RAI v NIRANJAN RAI I L R 20 Calc 729

15 ——— *Further inquiry Order of without notice to the accused—Magistrate Power of to order further inquiry which had been refused by his predecessor* —One *M* was tried and discharged by the Sub Divisional Magistrate and the complainant moved the District Magistrate for a further inquiry not only against *M* but also against other persons who were charged with being connected with the same offence and the District Magistrate expressly directed a further inquiry only as against *M* who was tried and convicted by the Sessions Judge The complainant then moved the District Magistrate for further inquiry against the other persons and the District Magistrate a different officer without giving them notice ordered a further inquiry to be made *Held* that the District Magistrate was not competent on the face of his predecessor's order to direct a further inquiry which had already been practically refused That in the circumstances of the case the Sessions Judge was the proper officer to direct a further inquiry RATTO SINGH v HARI SINGH

[4 C W N 100

16 ——— *Jurisdiction of District Magistrate to order further inquiry in a proceeding under s 133 of the Code of Criminal Procedure* —A District Magistrate has strictly speaking no power under s 437 of the Criminal Procedure Code (Act V of 1898) to order a further inquiry into a proceeding under s 133 of the Code which has been practically dropped by a Subordinate Magistrate the proper course being to refer the matter to the High Court INDRA NATH BANERJEE v QUEEN EMPRESS

[I. L. R. 25 Calc., 425
2 C W N., 113

17 ——— *Further inquiry —Sessions Judge Jurisdiction of* —It is competent to a Sessions Judge acting under the Criminal Procedure Code s 437 to direct further inquiry to be held where additional evidence is not forthcoming QUEEN EMPRESS v BALASINNATAMBI

[I L R. 14 Mad. 334

18 ——— *Power of Sessions Judge to order further inquiry* —A Sessions Judge is not competent under s 437 Criminal Procedure Code to direct the re-opening of the proceedings merely because in his opinion the Subordinate Magistrate has not rightly appreciated the credit due to the witnesses Further inquiry' under the section

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means the taking of additional evidence n t the re hearing of the same evidence DARSUN LALL v JUMUK LALL I. L R 12 Calc 522

19 ——— *Inquiry—Further inquiry—Fresh inquiry—Jurisdiction—Notice—District Magistrate—Subordinate Magistrate*—When a complaint has been dismissed under s. 203 of the Criminal Procedure Code (Act X of 1882) or an accused person discharged by a Subordinate Magistrate the District Magistrate has power under s 437 of the Code to direct any Magistrate subordinate to him to make further inquiry into the complaint dismissed or into the case of the accused person discharged even though there be no additional evidence disclosed or allegation that such exists The term further inquiry in s 437 is not restricted to inquiry upon further materials or further or additional evidence " Before directing further inquiry under s 437 it is not obligatory on the District Magistrate to give notice to the person discharged or against whom the complaint was dismissed When an order directing such inquiry is made the Subordinate Magistrate to whom it is directed has jurisdiction and is bound to carry it out Such order remains in force until it is duly set aside or withdrawn Difference between the powers of the District Magistrate under the former Criminal Procedure Code (Act X 1872) and the present one (Act X 1882) pointed out *Empress v Goudapa I L R 2 Bom 535* explained *Chundi Churn Bhutta charjee v Hem Chunder Banerjee I L R 10 Calc 207* commented on and *Jeebunkristo Roy v Shib Chunder Das I L R 10 Calc 1027 Queen Empress v Hosein I L R 6 All 367* and *Queen Empress v Amir Khan I L R 8 Mad 336* commented on and doubted. QUEEN EMPRESS v DORABJI HORMASJI I L R 10 Bom 131

20 ——— *Further inquiry—Practice—Notice to show cause*—*Held* by the Full Bench that when a Magistrate has discharged an accused person under s 253 of the Criminal Procedure Code the High Court or Court of Session under s 437 has jurisdiction to direct further inquiry on the same materials and a District Magistrate may under like circumstances himself hold further inquiry or direct further inquiry by a Subordinate Magistrate *Queen Empress v Dorabji Hormasji I L R 10 Bom 131* referred to *Empress v Bhole Singh W N All 1883 p 150 Queen Empress v Hasnu I L R 6 All 367 Chundi Churn Bhuttacharjya v Hem Chunder Banerjee I L R 10 Calc 207 Jeebun Kristo Roy v Shib Chunder Dass I L R 10 Calc 1027 Darsun Lall v Jamuk Lall I L R 12 Calc 522* and *Queen Empress v Amir Khan I L R 8 Mad 336* dissented from In exercising the powers conferred by s 437 Sessions Judges and Magistrates should in the first place always allow the person who has been discharged an opportunity of showing cause why there should not be further inquiry before an order to that effect is made and next they should use them sparingly and with great caution and circumspection especially in cases where the questions involved are mere matters of fact As to the mode in which their discretion should be regulated under such circumstances the remarks of STRAIGHT and TYRRELL, JJ in *Queen Empress v Gayadin I L R 4 All 148* in reference to appeals from acquittals are applicable QUEEN EMPRESS v CHOTU I. L. R. 9 All 52

21. ——— *Orders for further inquiry—Order to the prejudice of an accused person—Notice to show cause*—Before any order is made to the prejudice of an accused person under s 437 of the Criminal Procedure Code notice should be given to that person to appear and show cause why the order should not be passed. *Queen Empress v Chotu I. L. R 9 All 52* referred to QUEEN EMPRESS v AJUDHIA I. L R., 20 All. 339

22 ——— *Power to order further inquiry—Accused person—Criminal Procedure Code s 437*—*Held* that a person against whom proceedings under Ch. VIII (relating to security for good behaviour) of the Code of Criminal Procedure are being taken is an accused person within the meaning of s 437 of the Code *Queen Empress v Mona Puna I L R 16 Bom 661* and *Jhojha Singh v Queen Empress I L R 23 Calc 493* followed QUEEN EMPRESS v MUTASADDI LAL [I L R, 21 All. 107

23 ——— *Complaint Dismissal of—Revival of proceedings—Criminal Procedure Code s 437*—A complaint was made before a Magistrate of the first class of an offence punishable under s 323 of the Penal Code The Magistrate recorded a brief statement by the complainant but did not ask him if he had any witnesses to call An order was passed directing that a copy of the petition of complaint should be sent to the police station calling for a report on the matter and on receipt of the report the Magistrate dismissed the complaint under s 203 of the Criminal Procedure Code There was nothing in the Magistrate's original order to show that he saw reason to distrust the truth of the complaint nor did he direct any local investigation to be made by a police officer for the purpose of ascertaining the truth or falsehood of the complaint Subsequently to the dismissal of the complaint the same complainant brought a fresh charge upon the same facts against the same persons in the same Court and upon this charge the accused were tried convicted and sentenced *Held* that the Magistrate in ordering a further inquiry on receipt of the complainant's second petition did not act contrary to any provision of the law and that considering the circumstances under which the first complaint had been dismissed a further inquiry was necessary QUEEN EMPRESS v DURAN [I L R. 9 All. 85

24 ——— *Notice to accused—Discharge by Magistrate—Criminal Procedure Code*

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(*Act X of 1882*) *s 437*—No n tice to an accused person is necessary in p int of law before an order under s. 437 can be passed but as a matter of discretion it is proper that such n tice should be given. *Held* by the majority of the Full Bench (PRINSEP WILSON TOTTENHAM NORRIS PIGOT and O KINEALY JJ)—After an inquiry by a subordinate Magistrate and the discharge of an accused person a Sessions Judge or Magistrate has jurisdiction under s. 437 of the Criminal Procedure Code to order a further inquiry or a re-hearing upon the same materials which were bef re the subordinate Magistrate i.e wh n no further evidence is forthcoming But (PRINSEP J dissenting) the words further inquiry in that section mean the inquiry preliminary to trial which regularly results in a charge or discharge and do not include the trial And if on the evidence taken the accused ought to be committed then in a case triable only at the Sessions the proper c urse is to c mmit under s. 476 in other cases to refer to the High Court *Per* PRINSEP J—The word inquiry includes a trial and the further inquiry would therefore allow of the framing of a charge and the cross examination of witnesses for the prosecution *Per* PETHERAM C.J and GHOSE J—The power given by s 437 of the Criminal Procedure Code to order a further inquiry is confined to cases in which the revising officer is satisfied for one of the reasons mentioned in s 435 that the subordinate officer has proceeded on insufficient materials and that with a more exhaustive inquiry further material would be forthcoming It was not intended that such an enquiry should be granted simply for the reconsideration of evidence IN THE MATTER OF HARI DASS SANYAL v SARITULLA I L R 15 Calc 608

25 ——— *Further inquiry—Notice to the accused—Practice*—Before making an order for further inquiry under s 437 Criminal Procedure Code a n tice should be given to the accused person to give him an opportunity of being heard upon the question whether any further inquiry sh uld be made *Hari Das Sanyal v Saritulla I L R 15 Calc 608* followed. JAIJAT RAM v SUPHAL SINGH 2 C W N 198

26 ——— *Discretion of Court—Further inquiry—Notice*—Although there is nothing in s 437 rendering it incumbent to give notice before directing a further inquiry yet a Court would not be exercising a proper discretion if before ordering a further inquiry it did not give notice to the accused to show cause against such ord r Where theref re a further inquiry was directed with ut such previous n tice to the accused the High Court set aside the order *Hari Dass Sanyal v Saritulla I L R 15 Calc 608* followed. IN THE MATTER OF AMIR I ARIADAR 3 C W N 249
KATTI SINGH v KARI SINGH 4 C W N 100

27 ——— *Further inquiry—Wrongful confinement—Wrongful restraint—Malice—Penal Code ss 340 34*—The accused as abkari inspector visited a toddy sh p where the complainant and one *D* were employed as agents for the sale of toddy Having reas n to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed the accused made an inquiry in the course of which the complainant made certain statements implicating his fellow servant The accused thereupon resolved to prosecute *D* and make the complainant a witness in the case In order to prevent him being tutored the accused ordered his sepoy to bring the complainant to his camp and there detained him during the night and on the following morning sent him in charge of a sepoy to a Magistrate s Court where the complainant repeated the statements made by him before the accused He was then allowed to go away The accused prosecuted *D* and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp and had detained him there during the night After the termination of *D's* trial the complainant charged the accused with wrongful confinement under s. 342 of the Penal Code The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing and that he had of his own accord stopped in his camp during the night The trying Magistrate held this plea proved and discharged the accused under s 253 of the Code of Criminal Procedure (Act X of 1882) The Sessions Judge held that though the accused had detained the complainant in his camp during the night still he was n t guilty of any offence under the Penal Code as he had acted with ut malice and to the best of his judgment He therefore declined to interfere or order an further inquiry *Held* by the High Court on revision that the trying Magistrate had wr ngly omitted to take into considerati n the admissions made by the accused in his deposition in *D's* case Those admissions had an important bearing on the present case They were admissible in evidence against the accused and as they were left out of consid ration the inquiry was necessarily incomplete and imperfect Further inquiry was therefore ordered DHANJA v CLIFFORD
I L R 13 Bom. 376

28 ——— *Order of Sessions Judge rejecting application under s 437—Subsequent order of District Magistrate granting similar application—Practice*—Where a Sessions Judge has passed orders under s. 437 of the Criminal Procedure Code a District Magistrate acting under the same section sh uld not pass orders of a contrary kind but if he thinks that the Judge s orders were wrong he should submit them to the High Court through the medium of the Public Prosecutor *Queen Empress v Shere Singh I L R 9 All 362* referred to Where a Sessions Judge had, under s 437 of the Criminal Procedure Code refused to order further inquiry into the case of an accused person who had been discharged the High Court set aside a subsequent order of the Magistrate of the

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district passed under the same section and ordering further inquiry into the same case QUEEN EMPRESS v PIRTHI I L R 12 All, 434

29 ——— *Jurisdiction of Sessions Judge and Magistrate to grant further inquiry—Power of the Sessions Judge to interfere with orders passed by the District Magistrate*—Both the Sessions Judge and the District Magistrate are competent under s 437 of the Criminal Procedure Code to order a further inquiry but the Sessions Judge has no jurisdiction to review an order made by the District Magistrate under that section refusing a further inquiry It is open to the Sessions Judge to refer the matter to the High Court under s 438 DARBARI MANDAR v JAGOO LAL [I L R 22 Calc 573

30 ——— *Further inquiry of offence not charged against other persons not before Magistrate—Code of Criminal Procedure (Act V of 1898) ss 203 204 and 437—Penal Code ss 114 and 426*—On a complaint made to the Deputy Magistrate he convicted one of the accused *H* of mischief On application made to the Sessions Judge he directed a further inquiry to be made by the Magistrate into another offence under s 114 of the Penal Code in respect of *H* no charge of any such offence having been made at any time against him The Sessions Judge also directed a further inquiry against other persons who apparently were mentioned in the complaint but who had not been summoned to appear before the Magistrate *Held* that the order of the Sessions Judge was without jurisdiction not being within the powers described by s 437 of the Code of Criminal Procedure HAR KISHORE DASS v JUGAL CHUNDER KABYARATHNA BHUTTACHARJEE [I L R 27 Calc, 858

31 ——— *Power of superior Magistrates to direct a Subordinate Magistrate to issue warrants previously issued and cancelled by such subordinate Magistrate*—Where a Sub-Divisional Magistrate issued warrants for the apprehension of some accused persons for trial and afterwards cancelled the warrants and a District Magistrate purporting to act under s 437 Criminal Procedure Code directed the said Sub Divisional Magistrate to re issue the warrants—*Held* that the Magistrate's order directing the Sub Divisional Officer to re-issue the warrants against the accused was *ultra vires* *Held* also that s 437 Criminal Procedure Code does not contemplate a case of a Magistrate directing a Subordinate Magistrate to issue warrants for the apprehension of a person *Held* further that the order complained against was not authorized by s 437 Criminal Procedure Code and should therefore be set aside IN THE MATTER OF THE PETITION OF GURU CHARAN AICH 1 C W N 650

See INDERJIT SINGH v THAKUR SINGH [2 C W N 290

32 ——— *Order directing accused against whom a warrant of arrest had issued not to be tried—Issue of warrants when no further proceedings taken Effect of*—Where after the issue of warrant of arrest against certain persons the Magistrate does not think it proper to proceed further—*Held* that the termination of proceedings against them is in effect an order of discharge and is, therefore subject to revision under s 437 Criminal Procedure Code MOUL SINGH v MOHABIR SINGH [4 C W N, 242

33 ——— *Order for further inquiry in case of discharge of person called upon to give security for good behavior—Further inquiry Power to order in such proceedings—Code of Criminal Procedure (Act V of 1898) ss 110 and 437*—A further inquiry cannot be made into the case of a person against whom proceedings under s. 110 of the Code of Criminal Procedure have been taken and who has been discharged If it be considered by the Magistrate that it is necessary to institute further proceedings he is competent to do so under the law on fresh information received. The further inquiry which can be ordered under s 437 of the Code of Criminal Procedure is into a complaint which has been dismissed or into the case of any accused person who has been discharged Proceedings under s. 110 of the Code of Criminal Procedure cannot be regarded as on a complaint nor can they be regarded as a case in which any accused person has been discharged For the terms accused person and discharge in s. 437 of the Code of Criminal Procedure clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch XIX of the Code QUEEN EMPRESS v IMAN MONDAL I L R. 27 Calc, 662

——— s 438

See REFERENCE TO HIGH COURT—CRIMINAL CASES I L R 9 All 362
[I L R. 10 All 146
I. L R. 23 Calc 249 250

——— s 439 (1872 s 297 1861 ss 426)

See COMMITMENT I L R. 8 All 14
[I. L R. 15 All 205

See COMPLAINT—REVIVAL OF COMPLAINT
[I. L. R 24 Calc 528
1 C W N 49
I. L R 27 Calc 126
4 C W N 48

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I L R 16 Calc 137
[2 C W N 572

See POSSESSION ORDER OF CRIMINAL COURT AS TO—COSTS
[I L R., 22 Calc 387

See PRACTICE—CRIMINAL CASES—REVISION I. L R., 21 Calc 627

See REVIEW—CRIMINAL CASES
[I L R. 10 Bom 176

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See CASES UNDER REVISION—CRIMINAL CASES

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES

See SESSIONS JUDGE JURISDICTION OF [I. L. R. 20 Calc 633

———— s. 440

See REVISION—CRIMINAL CASES—ACQUITTALS I. L. R., 14 Mad. 363

———— ss 443-463 (1872 ss 71-88)

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS
[14 B L R. 106
I L. R, 4 All 141
I L R. 12 Bom 561

———— ss 443 444 (1872 s 72)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—MERCHANT SEAMEN'S ACT 1859 4 Mad., Ap 23
[7 Mad. Ap, 32

———— s 451—"*Europeans Meaning of*—The word "Europeans in s 451 of the Code of Criminal Procedure means persons born in Europe QUEEN EMPRESS v MOSS I. L. R. 16 All. 88

———— s. 452 (Act X of 1875 s 37)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE
[I L. R. 14 Bom. 160

See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE
[I L. R 1 Bom , 232

———— ss 453 454

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS
[I. L. R 12 Bom. 561

———— s 454 (1872 s 84)

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R 16 Mad 308

———— *Privilege of European British subject—Waiver of privilege*—The provisions of s. 72 of the Code of Criminal Procedure relating to the kind of Court which shall have jurisdiction and shall not have jurisdiction to inquire into a complaint or try a charge against a European British subject constitute a privilege that is to say they are not so much words taking away jurisdiction entirely as words which confer on the British subject a right to be tried by a certain class of Magistrates and by no others which right the Code enables him to give up S 84 of the Criminal Procedure Code must be construed strictly with s. 72 and before a European British subject can be considered to have waived the privilege conferred upon him by s 72 it must appear that his rights under that section have been distinctly made known to him and that he must have been enabled to exercise his choice and judgment whether he would or would not claim those rights The waiver of privilege spoken of in s 84 must be an absolute giving up of all the rights with reference to Ch VII of the Code of Criminal Procedure which a European British subject has and the words dealt with as such before the Magistrate mean everything contained in the chapter —that is to say the tribunal having cognizance of the case the procedure and also the punishment to which the accused would be liable IN THE MATTER OF THE PETITION OF QUIROS EMPRESS v ALLEN
[I. L. R 6 Calc 83 6 C L R. 463

———— s 464 (1872 s 423) s 465 (1872 s 45) s 466 (1872 s 426) ss 467 438 469 470 471 (1872 s 430) and s 473 (1872 s 432)

See CASES UNDER INSANITY

———— s 465

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—UNSOUNDNESS OF MIND
[19 W R. Cr 26

———— ss 471 and 473

See DECLARATORY DECREE SUIT FOR—ORDERS OF CRIMINAL COURT
[23 W R 329

———— s 476 (1872 s 471 1861 69 s 171).

See CONTEMPT OF COURT—PROCEDURE
(4 N W 86
9 W R., Cr 3
5 B. L. R. 100 13 W R. Cr 63
13 W R. Cr 45
15 W R , Cr 2, 88

See MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES
[I. L. R. 16 Mad., 491

See REMAND—CRIMINAL CASES
[8 B L. R 698

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R. 18 Calc 730
I. L. R. 20 Calc 349
I. L. R. 16 All. 80
I L. R., 21 Mad 124
I. L. R. 26 Calc., 869
3 C W N , 539

See CASES UNDER SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION

See SESSIONS JUDGE JURISDICTION OF
[I. L. R., 4 Calc., 570
I. L. R., 23 Mad., 225

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district passed under the *same section and ordering* further inquiry into the same case QUEEN EMPRESS v PIRTHI I L R 12 All, 434

29 ———— *Jurisdiction of Sessions Judge and Magistrate to grant further inquiry—Power of the Sessions Judge to interfere with orders passed by the District Magistrate*—Both the Sessions Judge and the District Magistrate are competent under s 437 of the Criminal Procedure Code to order a further inquiry; but the Sessions Judge has no jurisdiction to review an order made by the District Magistrate under that section refusing a further inquiry It is open to the Sessions Judge to refer the matter to the High Court under s 438 DARBARI MANDAR v JAGOO LAL [I L R 22 Calc 573

30 ———— *Further inquiry of offence not charged against other persons not before Magistrate—Code of Criminal Procedure (Act V of 1898) ss 203 204 and 437—Penal Code ss 144 and 426*—On a complaint made to the Deputy Magistrate he convicted one of the accused *H* of mischief On application made to the Sessions Judge *he directed a further inquiry to be made by the* Magistrate into another offence under s 144 of the Penal Code in respect of *H* no charge of any such offence having been made at any time against him *The Sessions Judge also* directed a further inquiry against other persons who apparently were mentioned in the complaint but who had not been summoned to appear before the Magistrate *Held* that the order of the *Sessions Judge* was without jurisdiction not being within the powers described by s 437 of the Code of Criminal Procedure HAR KISHORE DASS v JUGUL CHUNDER KABYARATHNA BHUTTACHARJEE [I L R. 27 *Calc*, 853

31 ———— *Power of superior Magistrates to direct a Subordinate Magistrate to issue warrants previously issued and cancelled by such subordinate Magistrate*—Where a Sub Divisional Magistrate issued warrants for the apprehension of some accused persons for trial and afterwards cancelled the warrants and a District Magistrate purporting to act under 437 Criminal Procedure Code directed the said Sub Divisional Magistrate to re issue the warrants—*Held* that the Magistrate's order directing the Sub Divisional Officer to re-issue the warrants against the accused was *ultra vires* *Held* also that s. 437 Criminal Procedure Code does not contemplate a case of a Magistrate directing a Subordinate Magistrate to issue warrants for the apprehension of a person *Held* further that the order complained against was not authorized by s 437 Criminal Procedure Code and should therefore be set aside IN THE MATTER OF THE PETITION OF GURU CHARAN AICH I C W N 850

See INDERJIT SINGH v THAKUR SINGH [2 C W N 290

32 ———— *Order directing accused against whom a warrant of arrest had issued not to be tried—Issue of warrants when no further proceedings taken Effect of*—Where after the issue of warrant of arrest against certain persons the Magistrate does not think it proper to proceed further—*Held* that the termination of proceedings against them is in effect an order of discharge and is, therefore subject to revision under s. 437 Criminal Procedure Code MOUL SINGH v MOHABIR SINGH [4 C W N 242

33 ———— *Order for further inquiry in case of discharge of person called upon to give security for good behavior—Further inquiry Power to order in such proceedings—Code of Criminal Procedure (Act V of 1898) ss 110 and 437*—A further inquiry cannot be made into the case of a person against whom proceedings under s 110 of the Code of Criminal Procedure have been taken and who has been discharged If it be considered by the Magistrate that it is necessary to institute further proceedings he is competent to do so under the law on fresh information received. The further inquiry which can be ordered under s 437 of the Code of Criminal Procedure is into a complaint which has been dismissed or into the case of any accused person who has been discharged Proceedings under s 110 of the Code of Criminal Procedure cannot be regarded as on a complaint nor can they be regarded as a case in which any accused person has been discharged for the terms accused person and discharge in s 437 of the Code of Criminal Procedure clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch XIX of the Code QUEEN EMPRESS v IMAN MONDAL I L R. 27 Calc 662

———— s 438

See REFERENCE TO HIGH COURT—CRIMINAL CASES I L R 9 All 362
[I. L R. 10 All 146
I. L R 23 Calc 249 250

———— s 439 (1872, s 297, 1861-69 s 426)

See COMMITMENT I L R. 8 All 14
[I L R. 15 All. 205

See COMPLAINT—REVIVAL OF COMPLAINT
[I. L R 24 Calc 528
1 C W N 49
I L R 27 Calc 128
4 C W N 46

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I L R 19 Calc, 127
[2 C W N 572

See POSSESSION ORDER OF CRIMINAL COURT AS TO—COSTS
[I L R. 22 Calc 387

See PRACTICE—CRIMINAL CASES—REVISION I. L R 21 Calc 827

See REVIEW—CRIMINAL CASES
[I L R 10 Bom 176

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

See CASES UNDER REVISION—CRIMINAL CASES

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES

See SESSIONS JUDGE JURISDICTION OF [I. L. R. 20 Calc 633

——— s. 440

See REVISION—CRIMINAL CASES—ACQUITTALS I. L. R., 14 Mad. 363

——— ss 443-463 (1872 ss 71-88)

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS [14 B L R. 106
I L. R., 4 All 141
I L. R. 12 Bom 561

——— ss 443 444 (1872, s 72)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—MERCHANT SEAMEN'S ACT 1859 4 Mad., Ap 23
[7 Mad. Ap, 32

——— s 451—"*European*" *Meaning of*—The word "Europeans" in s 451 of the Code of Criminal Procedure means persons born in Europe QUEEN EMPRESS v MOSS I L R. 16 All. 88

——— s. 452 (Act X of 1875 s 37)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE [I. L. R., 14 Bom. 160

See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE [I. L. R 1 Bom. 232

——— ss 453 454

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS [I. L. R 12 Bom., 561

——— s 454 (1872 s 84)

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I L. R 16 Mad. 308

——— *Privilege of European British subject—Waiver of privilege*—The provisions of s 72 of the Code of Criminal Procedure relating to the kind of Court which shall have jurisdiction and shall not have jurisdiction to inquire into a complaint or try a charge against a European British subject constitute a privilege that is to say they are not so much words taking away jurisdiction entirely as words which confer on the British subject a right to be tried by a certain class of Magistrates and by no others which right the Code enables him to give up S 84 of the Criminal Procedure Code must be construed strictly with s. 72 and before a European British subject can be considered to have waived the privilege conferred upon him by s 72 it must appear that his rights under that section have been distinctly made known to him and that he must have been enabled to exercise his choice and judgment whether he would or would not claim those rights The waiver of privilege spoken of in s 84 must be an absolute giving up of all the rights with reference to Ch VII of the Code of Criminal Procedure which a European British subject has and the words dealt with as such before the Magistrate' mean everything contained in the chapter—that is to say the tribunal having cognizance of the case the procedure and also the punishment to which the accused would be liable IN THE MATTER OF THE PETITION OF QUIROS EMPRESS v ALLEN [I. L. R. 6 Calc 83 6 C L R. 463

——— s 464 (1872 s 423) s 465 (1872 s 45) s 466 (1872 s 428) ss 467 438 469 470 471 (1872 s 430) and s 473 (1872 s 432)

See CASES UNDER INSANITY

——— s 465

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—UNSOUNDNESS OF MIND [19 W R. Cr 26

——— ss 471 and 473

See DECLARATORY DECREE SUIT FOR—ORDERS OF CRIMINAL COURT [22 W R 329

——— s 476 (1872 s 471, 1861 69 s 171)

See CONTEMPT OF COURT—PROCEDURE [4 N W 86
9 W R. Cr 3
5 B L. R. 100 13 W R. Cr 63
13 W R. Cr 45
15 W R Cr 2 88

See MAGISTRATE JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES [I. L. R. 16 Mad., 451

See REMAND—CRIMINAL CASES [6 B L R. 698

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R. 16 Calc 730
I. L. R. 20 Calc 349
I. L. R. 16 All. 80
I. L R., 21 Mad., 124
I. L. R. 26 Calc., 869
3 C W N 539

See CASES UNDER SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION

See SESSIONS JUDGE JURISDICTION OF [I. L. R. 4 Calc. 570
I. L. R. 23 Mad., 225

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

1. ——— *Act XXIII of 1861 s 16* —*Sending case for investigation by Magistrate* —A Subordinate Judge finding that a person had made a false verification of a plaint sent his case for investigation to a Magistrate of the district who refused to investigate it on the ground that the alleged offence was one triable exclusively by the Court of Session to which the Subordinate Judge himself should under s 173 of the Code of Criminal Procedure have committed it *Held* that the Magistrate of the district was bound to proceed with the investigation of the case according to s 16 of Act XXIII of 1861 REG *v* AMRUTA NATH
[7 Bom. Cr 29

2 ——— *Preliminary enquiry—Procedure* —Under s 471 Criminal Procedure Code the Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused; and after being so satisfied it must either commit the case or send the case to the Magistrate for enquiry whether a committal should be made or not IN THE MATTER OF THE PETITION OF KALI PROSUNNO BAGCHEE
[23 W R, Cr, 39

3 ——— *Power of High Court as Civil Court to interfere with order under s 471* —Where a Civil Court directs an inquiry to be made by the Magistrate of the district under s 471 of the Criminal Procedure Code in respect to the evidence given by the witnesses in a case before it the High Court cannot as a Civil Court on appeal interfere See *Queen v Baijoo Lall I L R 1 Calc 450* UMBICA SUNDURI CHOWDRAIN *v* AJITULLA MONDUL
8 C L R, 148

4 ——— *Act XXIII of 1861 s 16* —*Order sending case to Magistrate for enquiring into offence of giving false evidence—Preliminary enquiry—Vagueness of charge* —Although s 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s 471 of the Criminal Procedure Code the whole law as to the procedure in cases within these sections is now embodied in s 471 of the Criminal Procedure Code In a suit brought to recover possession of certain property the Judge decided one of the issues raised in the plaintiff's favour but on the important issue as to whether the plaintiff ever had possession he found for the defendant The plaintiff was not examined but on the issue as to possession he called two witnesses The Judge disbelieved their statements and considering that the plaintiff had failed to prove his case gave judgment for the defendant without requiring him to give evidence on that issue In the concluding paragraph of his judgment the Judge directed the depositions of the two witnesses above referred to together with the English memoranda of their evidence to be sent to the Magistrate with a view to his enquiring whether or not they had voluntarily given false evidence in a judicial proceeding; and he further directed the Magistrate to enquire whether or not the plaintiff had abetted the offence of giving false evidence on the ground that as the witnesses were the plaintiff's servants he must personally have influenced them and also to enquire whether the plaint which the plaintiff had attested contained averments which he knew to be false On a motion to quash this order —*Held* that under s. 471 of the Criminal Procedure Code the Judge had no power to send a case to a Magistrate except when after having made such preliminary enquiry as may be necessary he is of opinion that there is sufficient ground (*i e* ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire and that the order was bad because the Judge had made no preliminary enquiry and because it was too vague and general in its character QUEEN *v* BAIJOO LALL. IN THE MATTER OF THE PETITION OF BAIJOO LALL
[I. L. R., 1 Calc. 450

5 ——— *Power of and procedure of Court in making order under section—Order directing prosecution* —Before a Court is justified in making an order under s 476 directing the prosecution of any person it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge either in the course of the preliminary enquiry referred to in that section or in the earlier proceedings out of which the enquiry arises It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person had been guilty of an offence; but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted *Queen v Baijoo Lall I L R 1 Calc 450* and *In the matter of the petition of Kali Prosunno Bagchee 23 W R Cr 33* followed IN THE MATTER OF THE PETITION OF KHEPU NATH SIKDAR *v* GRISH CHUNDER MUKERJI
[I L R 13 Calc 730

6 ——— *Offence against public justice—Contempt of Court—Prosecution procedure* —That Court civil or criminal which is of opinion that there is sufficient ground for enquiring into a charge mentioned in ss 467 468 469 Act X of 1872 may not except as is provided in s 472 try the accused person itself for the offence charged. QUEEN *v* KULTARAN SINGH
I. L. R. 1 All. 129

ANONYMOUS
7 Mad Ap 28

Nor can he try a person for the abetment of such an offence ANONYMOUS
7 Mad Ap 28

7 ——— The Court civil or criminal which is of opinion that there is sufficient ground for enquiring into a charge mentioned in ss. 467 468 469 of Act X of 1872 is not precluded by the provisions of s 471 from trying the accused person itself for the offence charged QUEEN *v* JAGAT MAL
[I. L. R. 1 All. 168

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

8 ———— S 4 1, Act X of 1872 does not deprive the Court which possesses the power of trying an offence mentioned in ss 467 468 and 469 of the power of trying it when committed before itself QUEEN v GUR BAKSH I. L. R. 1 All. 193

9 ———— *Institution of criminal prosecution pending appeal in Civil Court*—If in the course of a proceeding either civil or criminal a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice he is justified in directing criminal proceedings against such person under s 471 of the Criminal Procedure Code without any further enquiry than that which he has already held in his own Court As a matter of discretion and propriety it is right for a Court before committing a person on a charge of perjury upon his own uncontradicted statement to await the hearing of the appeal where an appeal is pending in the case in which he is charged with such perjury IN THE MATTER OF MUTTY LALL GHOSE I. L. R., 6 Calc 303

10 ———— *Power to commit for offences*—S 471 deals with a more extended class of cases, viz all those mentioned in ss 467 468 and 469 in which not merely a Civil Court but any Court Civil or Criminal and whether possessing or not possessing the power to commit to the Court of Session is of opinion that there is sufficient ground for holding an enquiry and it enacts the procedure to be followed by the Court which may elect to adopt one of two courses that is to say it may either commit a case to the Court of Session if and where it has the power to do so or if it has not that power or is not disposed to exercise it it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged EMPRESS v POPAT NATHU I. L. R., 4 Bom 287

11. ———— *Offence under*—Where a Court thinks that there is sufficient ground for enquiring into a charge mentioned in s 467 468 or 469 of Act X of 1872 it should proceed under s 471 of that Act Attention of the Court of Session in this case directed to *Queen* v *Baijoo Lall* I L R 1 Calc 450 EMPRESS OF INDIA v GOBARDHAN DAS [I L R 3 All 62

12 ———— *Preliminary enquiry*—An order made under s 471 of Act X of 1872 sending a case for enquiry to a Magistrate is not necessarily bad because the Court did not make a preliminary enquiry before making such order The law requires only such preliminary enquiry as may be necessary *Held* therefore where a Munsif being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points sent the case for enquiry to the Magistrate under s. 471 of Act X of 1872 with a proceeding embodying the facts of the case and charging the parties respectively with giving false evidence on such points and there was nothing to show that any enquiry that the Munsif could have made was necessary or would have put the Magistrate into a better position for dealing with the case than he was in that the Munsif's proceedings were not bad because he did not hold a preliminary enquiry EMPRESS v JUALA PROSAD I. L. R 5 All 62

———— s 477 (1872 s 472 1861-69 s 172)

See CONTEMPT OF COURT—PENAL CODE s 175 I L R 12 Mad. 24
[I L R 12 Bom 63

See DISTRICT JUDGE JURISDICTION OF
[I L R. 6 All 103

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS 4 B L R A Cr 9

See SESSIONS JUDGE JURISDICTION OF
[3 B L R A Cr 35
I L R 2 All. 398
I. L. R 4 Calc 570

———— *Power of commitment by Sessions Judge—False evidence*—Under s 472 Criminal Procedure Code 1872 before a Sessions Judge can commit a person to the Court of Session it is necessary that the offence should have been committed before the Sessions Court and that it be one within the cognizance of and triable exclusively by that Court The offence of intentionally giving false evidence (s 193 Penal Code) not being triable exclusively by the Sessions Court is not one in which the Sessions Judge can convict QUEEN v BUNDHOO BANERJEE [21 W R Cr 37

———— s 478 (1872 s 474)

See CRIMINAL PROCEEDINGS
[I L R. 18 Bom 581

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION
[I L R. 15 Mad. 224

1 ———— *Power of Civil Court to commit to Court of Session*—The power of a Civil Court to commit a case to the Court of Session, after completing the preliminary enquiry is given by s 474 of the Code of Criminal Procedure and is restricted to the class of cases provided for in that section viz where offences exclusively triable by a Court of Session are committed before the Civil Court EMPRESS v POPAT NATHU I. L. R 4 Bom 287

2 ———— *Power of Civil Court to order commitment*—A Civil Court has no power to order the commitment of persons for offences under ss 171 465 and 193 of the Penal Code without holding the preliminary enquiry required by s. 474 of the Criminal Procedure Code QUEEN v PUNGATOONEE [22 W R., Cr 52

3 ———— *Sanction to prosecution Effect of—Criminal Procedure Code (Act X of 1882) s 195—Civil Court's power to proceed under s 478 after sanction given to a private person—Dismissal of a complaint by a private person*

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

Effect of—The granting of a sanction to a private person under cl (c) of s 195 of the Code of Criminal Procedure (Act X of 1882) does not debar a Civil Court from proceeding under s 478 nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar till set aside to a proceeding under that section QUEEN EMPRESS *v* SHANKAR I. L. R., 13 Bom 384

4 ———————— *Forged documents filed in Court—Order of commitment for trial— Any such offence in s 478 Meaning of—Criminal Procedure Code s 195*—Certain documents were filed annexed to a petition in a suit pending before a Munsif but were not given in evidence. The Munsif on suspicion that they had been tampered with held an enquiry and committed the petitioners for trial by the Court of Session. *Held* that it was a proper commitment under s 478 of the Criminal Procedure Code The words any such offence in that section mean an offence referred to in s 195 of the Code and not an offence referred to in that section qualified by the circumstances under which it is committed. AKHIL CHANDRA DE *v* QUEEN EMPRESS

[I L R. 22 Calc., 1004

———— s 480

See CONTEMPT OF COURT—PENAL CODE s 175 I. L. R. 13 Mad 24
[I. L. R. 12 Bom 63

See CONTEMPT OF COURT—PROCEDURE
[I. L R. 11 All 361

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES I. L R. 12 Bom 63

———— ss 480 481 (1872 s 435, Act XXIII of 1861, s 21)

See CONTEMPT OF COURT—PENAL CODE s 228 10 Bom 69

See CONTEMPT OF COURT—PROCEDURE
[1 N W 162 Ed. 1873 241
I L R. 11 All, 361

———— ss 480 481 482 (1872 ss 435 436 1861 69 s 163)

See CONTEMPT OF COURT—CONTEMPTS GENERALLY 6 Mad Ap 14

See MUNSIF JURISDICTION OF
[I L R 15 Mad 131

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[6 Mad. Ap 16

———— *Sub Registrar—Offence during judicial proceeding—Penal Code s 228*—A was charged before an Assistant Magistrate by a Sub Registrar with having committed an offence under s 228 of the Penal Code and fined. *Held* that the Sub Registrar should have tried the matter himself under ss 435 and 436 of the Criminal Procedure Code and as the Magistrate acted without jurisdiction the order must be quashed IN THE MATTER OF THE PETITION OF SARDHARI LAL

[13 B L R. Ap, 40 22 W R., Cr 10

———— s 485

See COMPLAINANT
[I. L. R., 13 Bom, 600

See CONTEMPT OF COURT PENAL CODE s 175 I L R., 13 Mad. 24
[I L R. 12 Bom. 63

See PENAL CODE s 179
[I. L. R., 13 Bom 600

———— s 487 para 1 (1872 s 473)

See CONTEMPT OF COURT—PENAL CODE, s 175 I. L. R. 13 Mad. 24
[I. L. R 12 Bom., 63

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L R. 18 Bom. 380

See SESSIONS JUDGE JURISDICTION OF
[I L R. 16 Calc. 766

1 ———————— *Giving false evidence in judicial proceeding—Power of Magistrate—Offence in contempt of Court—Criminal Procedure Code s 435*—The offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given this offence being an attempt to pervert the proceedings of the Court to an improper end is a contempt of its authority (ss 435 436 471 472 and 473 of the Code of Criminal Procedure) LEO *v* NAI RANBEO DULABAO 10 Bom., 73

Contra QUEEN *v* RAMLOCHUN SINGH
[18 W R. Cr., 15

2 ———————— *Judicial proceedings—Sanction to prosecute—Criminal appeal Hearing of by District Judge who has granted sanction to prosecute—Penal Code s 210*—A complainant applied to a Munsif for sanction to prosecute a decree holder for an offence under s 210 of the Penal Code and upon the Munsif s refusing such application preferred an appeal to the District Judge who granted the sanction asked for The decree holder having been prosecuted and convicted before a Deputy Magistrate preferred an appeal which came on for hearing before and was disposed of by the same District Judge who had granted the sanction. *Held* that the words shall try any person as used in s 487 of the Code of Criminal Procedure include the hearing of an appeal, and that the hearing of the appeal from the order of the Munsif refusing sanction was a judicial proceeding within the meaning of the Code and consequently that under the provisions of s 487 the District Judge had no jurisdiction to entertain the appeal against the judgment and sentence passed by the Deputy Magistrate IN THE

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

MATTER OF MADHUB CHUNDER MOZUMDAR v NOVODEEP CHUNDER PUNDIT I. L. R., 16 Calc 121

Overruled by QUEEN EMPRESS v SARAT CHANDRA RAKHIT I. L. R. 16 Calc. 766

3 ———— *Penal Code (Act XLV of 1860) s 193—False evidence Sanction for prosecution for—Jurisdiction of Sessions Judge—Criminal Procedure Code s 195*—A Sessions Judge who has directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding of a criminal nature before him cannot try the case himself *Empress v Ganga Din All W N 1884 p 329* distinguished. QUEEN EMPRESS v MAKHDUM I L. R. 14 All. 354

4 ———— *Judicial proceedings—Magistrate Jurisdiction of—Criminal Procedure Code ss 4 and 195*—A Magistrate who has refused to set aside an order sanctioning a prosecution on the charge of perjury has no jurisdiction under Criminal Procedure Code s 487 to try the case himself QUEEN-EMPRESS v SESHADRI AYYANGAR I. L R. 20 Mad. 383

5 ———— *Disobedience of order under s. 518 Criminal Procedure Code—Penal Code s 188*.—A second class Magistrate who issues an order under s 518 of the Criminal Procedure Code has no jurisdiction to punish for its disobedience by reason of s. 473 of the Criminal Procedure Code REG v RANCHHOD DYAL 10 Bom 424

6 ———— *Offence committed in contempt of Court—Sessions case—Criminal Procedure Code 1872 s 4—Sessions Judge and Assistant Sessions Judge*—To make a case a Sessions case within the meaning of s 4 of the Code of Criminal Procedure it is not necessary that it should be triable exclusively by the Court of Session For the purposes of s 473 of the Code an Assistant Sessions Judge is a different Court from the Sessions Judge Accordingly an offence which is committed in contempt of the Sessions Judge's authority is cognizable by an Assistant Sessions Judge REG v GULABDAS KUBERDAS 11 Bom. 98

REG v RAMAJIRAV JIVBAJIRAV 12 Bom. 1

7 ———— *Information by accused of offence—Report by a police of falsity of information—Sanction by District Magistrate on police report—Jurisdiction of Magistrate to try the case—Penal Code (Act XLV of 1860) s 182*—The accused gave certain information to the police who after investigating the matter reported that the information given was false and constituted an offence under s. 182 of the Penal Code The District Magistrate on this sanctioned the prosecution of the accused who was convicted and sentenced under that section. The accused appealed against the conviction and sentence His appeal was heard and dismissed by the District Magistrate who had previously sanctioned his prosecution. On revision the accused contended that the District Magistrate, having sanctioned his prosecution on the police report was not competent to hear the appeal *Held* that s 487 of the Code of Criminal Procedure did not apply as the offence was not committed before the District Magistrate nor was it in contempt of his authority nor brought to his notice in the course of a judicial proceeding RAMASORY LALL v QUEEN EMPRESS I L R 27 Calc 452 4 C W N 594

8 ———— and s 471—*Jurisdiction of Magistrate—Giving false evidence*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and convicted of that charge by that Magistrate and the conviction was confirmed on appeal by the Sessions Judge *Held* that the jurisdiction of the Magistrate was not barred by the operation of s 473 Act X of 1872 the giving of false evidence in the presence of a Court not being an offence committed in contempt of the authority of the Court within the meaning of that section The Magistrate's jurisdiction in such a case was however held barred by s 471 of the Code the Magistrate being bound under that section either to commit or send the case for enquiry to another Magistrate. IN THE MATTER OF THE PETITION OF SUFATULLAH 22 W R Cr 49

9 ———— *Court—Construction*—The prohibition in s 473 of the Criminal Procedure Code (Act X of 1872) is a personal prohibition. ANONYMOUS CASE I L R 1 Mad. 305

10 ———— *Offence against public justice—Contempt of Court*—An offence against public justice is not an offence in contempt of Court within the meaning of s 473 Act X of 1872 QUEEN v KALTARAN SINGH I. L R 1 All. 129

QUEEN v JAGATMAL I. L. R. 1 All 162

11 ———— *Offence under Penal Code s 185—Illegal bid for property offered for sale by public servant*—The public servant concerned in an offence described in s. 185 of the Penal Code is not competent himself to try the person committing such offence. QUEEN v JAGANATH 7 N W., 133

12 ———— *Giving false evidence*—Giving false evidence is "an offence committed in contempt of the authority of a Court within the meaning of s 473 of Act X of 1872 *Reg v Barranbeg Dulabeg 10 Bom 73* and *Anonymous case 7 Mad Ap 17* followed. *Queen v Kaltaran Singh I L R 1 All ,129* and *Queen v Jagatmal I L R 1 All., 162* dissented from. Where the accused was, by a Magistrate first class committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge there being no Assistant Sessions Judge or Joint Sessions Judge—*Held* that the commitment could not be quashed there being no error in law and the case must therefore be transferred for trial to another Court of Session. In such

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

a case as the above the better course would be for the Magistrate to try the case himself and if he is incompetent to pass a sufficient sentence for the Sessions Judge to refer the case to the High Court for enhancement of sentence REG *v* GAJI KOM PANU I L R, 1 Bom 311

13 ——— *Nuisance Injunction to discontinue* —S 473 of the Code of Criminal Procedure which except as therein provided forbids a Court to try any person for an offence committed in contempt of its own authority is not limited to offences falling under Ch X of the Penal Code but extends to all contempts of Court REG *v* PARSAPA MAHADEVAPA I L R, 1 Bom 339

14 ——— *Offence against public justice—Contempt of Court—Criminal Procedure Code s 471—Penal Code s 193—Held* (STUART C J dissenting) that an offence under s 193 of the Penal Code being an offence in contempt of Court within the meaning of s 473 of Act X of 1872 cannot under that section be tried by the Magistrate before whom such offence is committed *Queen v Kaltaran Singh I L R 1 All 129* and *Queen v Jagalmal I L R 1 All 162* overruled. *Per* STUART C J—A Magistrate before whom such an offence is committed if competent to try it himself is not precluded from so doing by the provisions of s 471 of Act X of 1872 EMPRESS OF INDIA *v* KASHMIRI LAL I. L. R., 1 All 625

15 ——— *Penal Code s 174—Contempt of Court* —Where a settlement officer who was also a Magistrate summoned as a settlement officer a person to attend his Court and such person neglected to attend and such officer as a Magistrate charged him with an offence under s 174 of the Penal Code and tried and convicted him on his own charge —*Held* that such conviction was with reference to ss 471 and 473 of Act X of 1872 illegal EMPRESS OF INDIA *v* SUKHARI [I. L. R. 2 All 405

16 ——— *False charge—Contempt—Prosecution—Charge—Act X of 1872 (Criminal Procedure Code) ss 468 473* —*B* charged certain persons before a police officer with theft Such charge was brought by the police to the notice of the Magistrate having jurisdiction who directed the police to investigate into the truth of such charge Having ascertained that such charge was false such Magistrate took proceedings against *B* on a charge of making a false charge of an offence an offence punishable under s 211 of the Penal Code and convicted him of that offence *Held* that as such false charge was not preferred by *B* before such Magistrate the offence of making it was not a contempt of such Magistrate's authority and the provisions of ss 468 and 473 of Act X of 1872 were inapplicable and such Magistrate was not precluded from trying *B* himself nor was his sanction or that of some superior Court necessary for *B*'s trial by another officer *Empress v Kashmiri Lal I L R 1 All 625* distinguished EMPRESS *v* BALDEO [I. L. R., 3 All. 323

17 ——— *Sanction to prosecute granted by District Judge—Power of same person as Sessions Judge to try the offence* —A District Judge who has, on hearing a civil appeal sanctioned the prosecution of a party for forgery is not debarred by s 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Sessions Judge EMPRESS *v* D SILVA [I. L. R., 6 Bom 479

18 ——— *Perjury—Contradictory statements—Power of trial by Sessions Court before which one of such statements was made* —A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Session respectively was convicted by the same Court of Session on a charge in the alternative of giving false evidence either before a Magistrate or before the Court of Session. *Held* that the Court was precluded by s 473 of the Criminal Procedure Code from trying the charge SUNDRIAH *v* QUEEN [I. L. R. 3 Mad 254

——— s 488 (1872 s 536 1861-69 s 316) s 489 (1872 s 537 1861 69 s 317), and s 490 (1872 s 538)

See CASES UNDER MAINTENANCE ORDER OF CRIMINAL COURT AS TO

——— s 488 (1872 s 536 1861 69 s 316)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [7 W R. Cr 10 2 Ind. Jur N S 88

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION [I L R 9 Bom 40

See MAHOMEDAN LAW—MAINTENANCE [I. L. R. 8 Calc 736

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE [I. L. R. 8 Mad, 70

See WITNESS — CIVIL CASES — PERSON COMPETENT TO BE WITNESS [I. L. R 16 Calc. 781 I L R., 18 All. 107

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES I L R 18 All 107 [I. L. R, 16 Calc 781

——— *Cruelty* —The word cruelty in s 488 of the Criminal Procedure Code is not necessarily limited to personal violence *Kelly v Kelly L R 2 P D 59* and *Tomkins v Tomkins 1 S & T 168* referred to LUXMIN *v* PEARE LAL [I L R 11 All, 460

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 491.

See CUSTODY OF CHILDREN
[I. L. R. 18 Bom 307
I. L. R. 23 Calc 290

See FOREIGNERS
[I. L. R 18 Bom. 633

See LETTERS PATENT HIGH COURT CL 15 I. L R 14 Bom. 555

See WARRANT OF ARREST — CRIMINAL CASES I. L. R. 18 Bom 636

——— s 493 (1872 s 60)

See COUNSEL 11 Bom 102

——— s 494.

See DISCHARGE OF ACCUSED
[I L R. 12 Mad. 35

See PUBLIC PROSECUTOR
[I. L. R. 8 All. 291

——— s 495 (1872 s 59)

See BOMBAY DISTRICT POLICE ACT 1867 s 23 I. L. R 8 Bom 534

See COUNSEL 11 Bom 102
[I L R 6 Calc 59 6 C L R 374

——— s 496 (1872 ss 194 204 para 1 1861 69 s 224)

See BAIL I. L R 6 Mad. 63 69

See RECOGNIZANCE TO APPEAR
[6 N W 360

See WARRANT OF ARREST—CRIMINAL CASES 5 Bom Cr 31

——— s 497 (1872 s 389 1861 69 s 212)

See BAIL
[1 B L R S N 26 10 W R Cr 34

See JUDICIAL OFFICERS LIABILITY OF
[3 Bom A C 36

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I L R 22 Bom 549

——— s 498 (1872 s 390 1861 69 s 436)

See BAIL 1 B L R A Cr 7
[23 W R Cr 40
24 W R Cr 8
3 C L R 404 405 note
I. L R, 1 All 151

——— s 503 (1872 s 330)

See CASES UNDER COMMISSION—CRIMINAL CASES

——— ss 503 504 505 506 507 (Act X of 1875 s 76)

——— s 509 (1872 s 323).

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS I L R. 9 All 720
[I. L R. 10 All 174
I L. R. 18 Calc 129

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE I. L R 8 Calc 739

See WITNESS—CRIMINAL CASES — EXAMINATION OF WITNESSES—GENERALLY
[I. L. R 9 Calc 455

——— s 510 (1872 s 325 1861 69 s 370)

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER
[6 B L. R. Ap 123
I L R. 10 Calc 1026

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE 12 W R., Cr 25

——— s 512 (1872 s 327)

See EVIDENCE CRIMINAL CASES—DEPOSITIONS I L R 10 Calc 1097
[I. L. R. 8 All. 672

See WITNESS — CRIMINAL CASES — EXAMINATION OF WITNESSES GENERALLY
[21 W R Cr 12 61
22 W R. Cr 33
12 C L R. 120

——— s 514 paras 1 2 3 4 (1872

——— ss 306, 307 1861 69 s 219)

See CONTEMPT OF COURT—PENAL CODE s 1 4 1 B L. R. A Cr 1

See RECOGNIZANCE TO APPEAR
[23 W R Cr 74
I L R 11 Calc, 77
4 Mad Ap 44
2 C W N 519

See SECURITY FOR GOOD BEHAVIOUR
[I L R. 21 All. 80

——— ss 514 515 516 (1872 s 398, 1861 69 s 221)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—MADRAS ABKARI ACT
[I L. R 18 Mad. 46

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 2 N W 113

——— s 514 (1872 s 502)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES
[I. L R 2 Mad 168

See RECOGNIZANCE TO KEEP PEACE—FORFEITURE OF RECOGNIZANCES
[11 Bom 170
10 C L R 571
I. L. R. 4 Calc 865

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— s 517 (1872 s 418 Act X of 1875 s 115) ss 518 519, 520 (1872, s 419) ss 521, 523 (1872 ss 415 416 1861 69 s 131) s 524 (1872 s 417 1861-69, s 132) and s 525

See CASES UNDER STOLEN PROPERTY—DISPOSAL OF BY THE COURTS

——— s 517

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE [I L R., 9 Mad., 448

See OBSCENE PUBLICATION [I. L R 3 All., 837

1 ——— *Order as to disposal of property as to which no offence has been committed —Property found by police in possession of accused —Magistrate Power of*—The accused was convicted of criminal breach of trust in respect of certain money belonging to the complainant and on this conviction the Magistrate made an order under s 517 of the Code of Criminal Procedure directing that an amount equal to the moneys embezzled should be repaid to the complainant out of certain sums of money found by the police on the person of the accused. *Held* that the Magistrate had no power to make the order under s 517 of the Criminal Procedure Code there being nothing to show that any offence had been committed with regard to the property or that it had been used for the commission of any offence QUEEN EMPRESS v FATTAH CHAND [I. L R 24 Calc 499

FATEH CHAND v DURGA PROSAD [I C W N 435

2 ——— *Proper order to make in respect of property in regard to which no offence is proved—Criminal Procedure Code s 523*—Where at the trial of a case the accused is acquitted and some property the subject matter of the charge was found by the police during investigation to be in the possession of persons accused of the offence and was brought before the Court —*Held* the proper order to make in this case is an order under s 517 Criminal Procedure Code *Held* also that the money in this case having come from the possession of the petitioners and no offence having been found at the trial to have been committed in respect of it it should be returned to the party or parties from whose possession it came IN THE MATTER OF THE PETITION OF MATI GHOSE 1 C W N 561

——— s 520 (1872 s 419)—*Government currency note Theft of—Court of appeal*—A Government currency note was stolen from *A* and cashed by *B* in good faith for *C* On the conviction of *C* for theft the Magistrate ordered the note to be given to *B* *A* appealed to the Sessions Judge who was of opinion that he was not competent to interfere as a Court of appeal under s 419 of the Criminal Procedure Code but submitted the case for the orders of the High Court *Held* that the case could be disposed of by the Judge under s. 419 of the Criminal Procedure Code and that the words "Court of appeal in that section are not necessarily limited to a Court before which an appeal is pending EMPRESS v JOGGESSUR MOCHI [I. L. R. 3 Calc, 379

S C IN THE MATTER OF MICHELL [I C L. R., 339

——— s 522 (1872 s 534)

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE [I L. R. 25 Calc, 630 2 C W N, 225

See CASES UNDER POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE

——— s 523 (1872, ss 415 416)

See TREASURE TROVE [I. L. R., 19 Bom 688

1 ——— *Property seized by police —Seizure of property on suspicion—Magistrate Duty of—Procedure*—By the provisions of s 523 of the Code of Criminal Procedure it is not intended that any final steps should be taken by the Magistrate nor is he bound to take any final steps to ascertain whether the property seized on suspicion belongs to the person in whose possession it was found until after the expiry of the six months mentioned in the section but when the proclamation has been issued and the six months have expired then under the provisions of s 524 the person in whose possession the property was found can come forward and show that it is his own QUEEN EMPRESS v MAHALABUDDIN [I. L R, 22 Calc 761

2 ——— *Property seized by the police pending an inquiry or trial under a search warrant issued by the Court—Magistrate's power to deal with such property where no offence is committed—Criminal Procedure Code s 517*—S 523 of the Code of Criminal Procedure (Act X of 1882) does not apply to property which is produced before a Court in the course of an inquiry or trial under a search warrant issued by itself under s 96 of the Code To such property s 517 alone would apply and if no offence is found in respect thereof the Court can make no order The property must be given back into the possession from which it came The scope of s 523 must be confined to property seized by the police of their own motion in the exercise of the powers conferred on them by law for instance under s. 51 54 164 or 165 of the Code of Criminal Procedure *Per* TELANG J—Under s 523 of the Code of Criminal Procedure a Magistrate is bound to institute an inquiry before making any order touching the right not of property but of possession to the property seized by the police IN RE RATANLAL RANGILDAS I L R 17 Bom., 748

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

——— ss 523 524.

See FORFEITURE OF PROPERTY [9 W R Cr 13

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 18 W R. Cr 5

——— s 524.

See FIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT [I. L. R., 19 Bom 668

See TREASURE TROVE [I. L. R., 19 Bom 668

——— s. 526 (Act X of 1875 s. 147 Act X of 1872 s. 64 Presidency Magistrate s Act 1877 s. 181) ss 527 and 528 (1872 ss. 47 48)

See CASES UNDER TRANSFER OF CRIMINAL CASE.

——— s 526

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT [I. L. R., 4 Calc 667

See CRIMINAL PROCEEDINGS [I. L. R. 19 Mad., 375

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL [I. L. R., 9 Bom. 333

See HIGH COURT JURISDICTION OF—MADRAS—CRIMINAL [I L. R., 12 Mad. 39

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION [I. L. R 23 Calc 44
4 C W N 604

See SECURITY FOR GOOD BEHAVIOUR [I. L. R. 16 All 9
I. L. R. 19 All, 291

——— s 526A.

See CRIMINAL PROCEEDINGS [I. L R. 19 Mad., 375

——— *Application for postponement of case in order to apply for transfer of case—Discretion of Magistrate in granting adjournment—Criminal Procedure Code Amendment Act (III of 1884) s 12*—*M* the complainant on the 19th November 1887 made an application to the Deputy Magistrate under s 526A of the Criminal Procedure Code for the postponement of his case against *G* to enable him to apply to the High Court under s. 526 for a transfer of the case from the file of the Deputy Magistrate to that of another officer On the same date the Deputy Magistrate refused the application and proceeded with the case acquitting *G* *Held* having regard to the words the Court shall exercise etc in s. 526A the order of the Deputy Magistrate of the 19th November refusing to grant the application was illegal QUEEN EMPRESS v GAYITRI PROSUNNO GHOSAL I. L. R. 15 Calc., 455

——— s 528

See MAGISTRATE JURISDICTION OF—WITHDRAWAL OF CASES [I. L. R. 3 All. 749
I. L R 8 Calc 851
I L R. 14 Mad. 399
I L R. 15 Mad. 94
I. L R. 22 Bom. 549

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS [I. L. R. 22 Calc., 898

——— s 529

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [4 C W N, 821

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT [I. L R. 23 Calc 300 442

See PARDON I. L. R. 20 All., 40

——— s 530 (1872 s 34).

See CRIMINAL PROCEEDINGS [22 W R. Cr 43
23 W R. Cr., 33
1 C L R. 434
I. L. R., 8 Bom. 307
I. L. R. 11 Mad. 443
I L R 13 Bom 502

——— s. 531.

See CRIMINAL PROCEEDINGS [I. L. R. 8 Bom., 312
I. L. R., 16 Bom., 200
I. L. R., 17 All. 36

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R., 16 Calc. 667

——— s 532 (1872 s 33)

See CRIMINAL PROCEEDINGS [I. L. R. 3 All., 258
I. L. R., 16 Bom. 200
I. L. R. 17 Mad. 402

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL [I. L. R. 9 Bom 288

See SANCTION FOR PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION [I. L. R., 22 Bom 112

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*continued*

———— s 533

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R 9 Mad., 224
[I. L. R. 14 Calc., 539
I L. R. 15 Calc 595
I L R 17 Calc 862
I L R 18 Calc 549
I L R 21 Bom 495
I L R 23 Bom , 221
2 C W N 702
3 C W N 387

See CRIMINAL PROCEEDINGS
[I L R , 22 Mad., 15

———— s 537 (1872, ss 283 300, 1861 69 ss 426, 439).

See ABSCONDING OFFENDER
[I. L. R. 19 Mad 3

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
[I L R. 21 Calc , 955

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[I L R 23 Calc 983

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[5 B L R 660

See COMPLAINT—POWER TO REFER TO SUBORDINATE MAGISTRATE
[3 B L R. A. Cr 67
5 B L. R. 160
7 B L R. 513
9 B L R. 146 147 note

See CASES UNDER CRIMINAL PROCEEDINGS

See CRIMINAL TRESPASS
[I. L. R. 22 Calc., 391

See JOINDER OF CHARGES
[I L R. 12 Mad. 273
I L R 14 All. 502
I. L R 14 Calc 395
I. L. R. 20 Calc 413
4 C W N 656

See JUDGMENT—CRIMINAL CASES
[I L R 20 Calc 353
I L R. 21 Calc. 121
I. L R 23 Calc 502

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I L. R. 23 Calc 328

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT
[I L R 23 Calc 442

See POSSESSION ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE I. L. R 20 Calc 520

See POSSESSION ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS
[I L R. 21 Calc. 404

See REVISION—CRIMINAL CASES—JUDGMENT, DEFECTS IN
[I L R. I All., 680
I. L R., 13 Calc., 272

See SANCTION FOR PROSECUTION—EXPIRY OF SANCTION I. L. R , 22 Calc. 176

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—REVERSAL.
[B L. R., Sup Vol 459
5 B L R. 39

See SESSIONS JUDGE JURISDICTION OF
[19 W R , Cr 43

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
[I L. R. 25 Calc , 863
2 C W N 465

———— *Court of competent jurisdiction* —Meaning of the expression "a Court of competent jurisdiction" in s 537 of the Criminal Procedure Code considered QUEEN EMPRESS v KRISHNABHAT I. L R. 10 Bom., 319

———— s 540 (1872 s 192)

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
[I. L R 24 Calc 167
4 C W N , 604

See PENAL CODE s 182
[I L. R. 12 Mad. 451

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS EXAMINATION I. L R. 14 Calc., 245
[I. L. R. 24 Calc 288

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
[I L R 24 Calc. 167

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 21 W R Cr., 61
[I L. R. 8 All 668

———— *Order of examination of witnesses* —It is not intended by s 540 of the Code of Criminal Procedure 1882 that a Judge shall reverse the order of a Sessions trial and call the witnesses summoned for the defence before the case for the prosecution is closed QUEEN EMPRESS v HAR GOBIND SINGH I. L. R., 14 All 242

———— ss 545 546 (1872 s 308 1861-69 s 44)

See CASES UNDER COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE

CRIMINAL PROCEDURE CODES (ACT V OF 1898 ACT X OF 1882 ACT X OF 1872 ACTS XXV OF 1861 AND VIII OF 1869)—*contd*

See FINE 3 C. L. R. 404 405 note [I. L. R., 12 Mad., 3[illegible]2 I. L. R., 10 All., 112

——— s. 548 (Presidency Magistrates Act, 1877 s. 170)—*Prosecutor Right of—"Person affected by an order"—Application for copy of order and depositions Refusal of Specific Relief Act (I of 1877) s. [illegible]* —All prosecutors whose charges are dismissed by the Presidency Magistrate are affected by the order of discharge and are therefore entitled, under s. 170 of the Presidency Magistrate's Act to obtain copies of the order made by and of the depositions taken before the Magistrate IN THE MATTER OF THE PETITION OF DINONATH ROY

[I. L. R., 8 Calc. 186 10 C. L. R., 190

——— s. 551—*Unlawful detention for an unlawful purpose—Infant Custody of*—A Hindu girl under the age of 13 years went of her own accord to a Mission house where she was received and allowed to remain. The mother and husband of the girl thereupon applied to the Magistrate who took proceedings under s. [illegible] of the Criminal Procedure Code The lady superintendent of the Mission house denied that the girl was legally married and alleged that she was practically being brought up with the connivance of the mother to a life of prostitution The Magistrate after recording evidence found that the girl was legally married; that the other allegation was not established; and that although she went to and remained in the Mission house of her own free will there was under the circumstances an unlawful detention for an unlawful purpose He further found that there were no facts established which would disentitle the husband or the mother to the custody of the girl and passed an order under the section directing the girl to be restored to her mother *Held* upon the facts as found by the Magistrate as it was immaterial whether the girl did or did not consent to remain at the Mission house there was an unlawful detention within the meaning of these words as used in the section as the girl was kept against the will of those who were lawfully entitled to have charge of her *Held* also that s. 551 applying only as it does to women and female children must not be construed so as to make it include purposes which, although not unlawful in themselves might only become so when entertained towards a child in opposition to the wishes of its guardian but that the purpose whether entertained towards a woman or a female child must be in itself unlawful *Held* consequently that in the circumstances of the case there was no detention for an unlawful purpose and that the Magistrate had no power to make the order *Held* further that although the Magistrate had no power under the section to make the order he did it did not follow that the Court should direct the girl to be restored to the custody of the lady superintendent even if it had the power to do so and that having regard to the circumstances of the case there was nothing to justify such an order being passed ABRAHAM *v.* MAHTABO I. L. R. 16 Calc 487

CRIMINAL PROC[illegible] (ACT V OF 18[illegible] ACT X OF [illegible] OF 187[illegible] ACT XXV OF [illegible] VIII OF 18[illegible])—[illegible]

——— [illegible]

[illegible]

[illegible]

[illegible]

——— s. [illegible]

See [illegible]

[I. L. R. [illegible]

——— s. [illegible] (187[illegible] s. [illegible] s. 444)

See ARMS ACT 18[illegible] s. 1[illegible]

[I. L. R., [illegible] Calc [illegible]

See [illegible]

[3 B. L. R., A. Cr. [illegible]

See GENERAL CLAUSES [illegible] ACT 1[illegible] [illegible] I. L. R., [illegible] Mad., [illegible]

——— s. 560

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO [illegible] OF COMPLAINT

CRIMINAL PROCEEDINGS

——— Effect of striking off—

See [illegible] ORDER OF CRIMINAL COURT AS TO—STRIKING OFF [illegible] PROCEEDINGS I. L. R., 20 Calc [illegible]

——— Institution of—

See CASES UNDER COMPLAINT INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES

See CASES UNDER FALSE CHARGE

——— Revival of—

See COMPLAINT—REVIVAL OF COMPLAINT

See CRIMINAL PROCEDURE CODE 1872 ss. 436 178 (18[illegible] s. 2[illegible])

[I. L. R. 4 Calc 10 617
I. L. R. 3 All 570

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE TRIAL

——— Withdrawal of—

See MAGISTRATE JURISDICTION OF—WITHDRAWAL OF CASES

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS

[I. L. R. 23 Calc 893

1 ——— Dispute as to right to give girl in marriage—The practice of instituting criminal proceedings with a view to determining disputes arising in cases as to the right to give a girl

CRIMINAL PROCEEDINGS—*continued*

in marriage condemned. IN THE MATTER OF EMPRESS v ABDOOL KURREEM

[I L R. 4 Calc, 10 3 C L R., 81

2. ———— Irregularity—*Waiver or consent by prisoner—Recording statements of witnesses*—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government the matter was enquired into by the District Magistrate and the jailor was by the Magistrate s order placed on trial before a Bench of Magistrates consisting of the District Magistrate himself *L* the Officiating Superintendent of the jail and three other Honorary Magistrates The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned that they had no objection to the composition of the Bench but after the charges had been framed the prisoner's counsel objected to the Bench as formed The District Magistrate directed the Government pleader to prosecute and both the District Magistrate and *L* gave evidence for the prosecution After the case for the prosecution was closed two formal charges were drawn up namely that the prisoner had debited Government with the price of more oil seed than he actually purchased and that he had received payment for certain oil at a higher rate than he credited to Government The moneys the receipt of which were the subject of the first charge were obtained by the prisoner on the strength of certain vouchers which he had induced *L* to sign as correct and *L* had sanctioned the sale at the rates credited to Government Upon the prisoner's giving the names of the witnesses he intended to call in his defence *L* was deputed by his brother Magistrates to examine s me of them who were connected with the jail in order to guard against deviation and the depositions so taken were placed on the record to be used by either party though not themselves as evidence The prisoner was convicted On a motion to quash the conviction—*Held* that the recording the statements of the prisoner s witnesses was irregular *(Comm* ... in in expres

proceedings are bad unless they a ... isfied that a dispute likely

manner prescribed by law an... of the peace existed in respect of

tially bad the defect ...uestion between *A* on the one side and

waiver or consent of ... u the other nor did it set forth the grounds

NATH SEN which he was so satisfied that such dispute

[I. J ... xisted. *Held* that the proceeding was therefore defective In the proceedings the Magistrate referred

p to a police report which, however did not show that a breach of the peace was imminent. *Held* that although this report might be taken to be incorporated by reference yet that it was not sufficient to justify the order *Per* FIELD *J*—Unless the parties are able to show that there is such a dispute as is likely to induce a breach of the peace the Magistrate should hold his hand and not proceed further When the rights of the parties have been determined by a competent Court the dispute is at an end, and it is the duty of the Magistracy to maintain the ri bts of the successful party and the proper course for the Magistrate to pursue if the defeated party does any act that may probably cccasion a breach of the peace is to take action under s 491 of the Criminal Procedure Code and require from such person security to keep the peace IN RE GOBIND CHUNDER MOITRA

[I L R 6 Calc. 835 8 C L R. 217

18 ———— *Charges d stinct and separate s multaneously tried by jury—Consent*

CRIMINAL PROCEEDINGS—*continued.*

such a complaint should be referred to another Magistrate IN RE THE PETITION OF BASAPA

[I. L. R., 9 Bom., 172

5. ———— *Summary jurisdiction wrongly exercised—Unlawful assembly armed with deadly weapons—Splitting offence—Right of appeal Deprivation of*—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction If a charge of an offence not triable summarily is laid and sworn to the Magistrate must proceed with the case accordingly unless he is at the outset in a position to show from the dep sition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore a Magistrate when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon and so to give himself jurisdiction to try the case summarily and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal EMPRESS v ABDOOL KARIM. EMPRESS v GOLAM MAHOMED I. L. R. 4 Calc., 18 3 C L. R., 44

6 ———— *Exercise of summary jurisdiction after inquiry into charge which cannot be tried summarily—Criminal Procedure Code (Act V of 1898) s. 260—Summary procedure under Penal Code s. 323 after enquiring into charges under ss 147 and 324*—A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss 147 and 324 of the Indian Penal Code but after hearing evidence and being of opinion that only an offence under s 323 of the Indian Penal Code had been made out he proceeded to deal with the case summarily *Held* that, inasmuch as the evidence adduced was not sufficient to justify a committal but clearly disclosed an offence over which he had summary jurisdiction the

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291 ———— *Accused affirmed*

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CRIMINAL PROCEEDINGS—*continued*

if taken in time was too late and that the evidence of the prisoners might be used, whether the order directing them to be affirmed was correct or otherwise The appointment of the Magistrate who in the first instance had tried and convicted the accused, to be Crown Prosecutor to conduct an enquiry subsequently directed in the same case censured as being un preced nted and objectionable A Public Prosecutor should be without a personal interest in the cases which he conducts. Prisoners sh uld be all wed to have free converse with their vakils out of the hear ing of the police fficers in charge of su h prisoners It is undesirable that Magistrates whose decisions are under appeal or who have been engaged in promoting the prosecution or p lice officers concerned in a case should sit n the bench besid or converse privately in Court with, the Judge who is engaged in trying the prisoners appeal If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused he sh uld examine the Magistrate upon oath or solemn affirma tion in the same manner as an ordinary witness REG v. KASHINATH DINKAR 8 Bom. Cr, 126

8 ———— *Magistrate actively employed in prosecution—Judge on appeal* — Where a Magistrate took an active part in the pro secution of the prisoners and recorded the evidence of the material witnesses preliminary to deciding whether the case should go to trial or not and by whom it should be tried, it was held that he was not a proper Court to hear the appeal fr m the conviction come to in the case IN THE MATTER OF THE PE TITION OF HET LALL ROY 22 W R., Cr, 75

9 ———— *Trial by Magis trate instituted by h m as Collector* —The District Magistrate should not himself try a case in which he instituted the prosecution as Collector QUEEN v NADI CHAND PODDAR 24 W R., Cr 1

10 ———— *Interest of Ma gistrate in convicting prisoner—Penal Code s 18 —Beng Act V of 1876 s 256—Disobedience of lawful order—Disqualification of Judge* — On the 29th of March 1883 the Municipal Commissi ers of Commillah at a meeting issued an order und s. 256 of the Bengal Municipal Act of 1876 The ac cused was tried and convicted before the District Ma gistrate under s 188 of the Penal Code and fi R100 for having disobeyed that order The Ma trate who tried and convicted the accused was p sent as Chairman of the Municipal Commission at the meeting of the 29th of March when the or was passed for disobedience of which the accu was tried and convicted. *Held* that the convict was illegal and must be set aside. *Sergeant v Da L R 2 Q B D 558* cited and followed. KHAR CHAND PAL v TARACK CHUNDER GUPTA [I. L. R 10 Calc, 10

11. ———— *Criminal P cedure Code 1861 s 439* —Where a Deputy Ma trate did not draw up a charge in accordance w s. 250 of the Code of Criminal Procedure but to the accused clearly to understand the nature of the charges made against them the irregularity was f

to fall within s. 439 of that Cod BHUGWAN v DOYAL GOPE 10 W R Cr 7

12 ———— *Preliminary in quiry—Perjury* —It is necessary to a proper preli minary enquiry that the accused (or under certain circumstances his agent) should be present that the witnesses whose evidence is to be the foundation of the commitment should be examined before him and that he should have the opportunity of cross examin ing them It is essential too in a case of perjury that he should know at what period he ceas d to be a witness and his position was changed to that of the accused. QUEEN v KALICHURN LAHOOREE [9 W R. Cr 54

13 ———— *Omission to com ply with formalities before service of summons* — The omission to comply with prescribed formalities be fore issuing the summons will not vitiate the proceed ings after summons so as to enable a complainant to re-open the case EASTERN BENGAL RAILWAY COM PANY v KALIDAS DUTT 23 W R. Cr 63

14. ———— *Contempt of Court—Postponement of final order—Irregular procedure* —Where a Magistrate in whose presence contempt was committed took cognizance of the offence immediately but in order to give the accused an opportunity of showing cause postponed his final order for some days —*Held* that such action though it might be irregular was not illegal and as the accused had not been in any way prejudiced was covered by s 537 of the Criminal Procedure Code QUEEN EMPRESS v PAIAMBAR BAKHSH [I. L. R 11 All., 361

15 ———— *Irregular com mitment—Want of jurisdiction—Criminal Pro cedure Code 1872 ss 33 63* —S 33 of Act X of ffence of rioting on the 5th ntingency of a case which those persons and one *F* were charg ner place as indi committed the offence of criminal trespas mitted to the December These two cases were taken Magistrate tried together in one trial and were deci led by mmit judgment *Held* that the trial was illegal and the to defect was not cured by s 537 of the Criminal Pro cedure Code IN THE MATTER OF THE PETITION OF CHANDI SINGH QUEEN EMPRESS v CHANDI SINGH I L. R. 14 Calc 395

See BISHNU BANWAR v EMPRESS [1 C W N 35

28 ———— *Code of Crimi nal Procedure ss 233 and 537—Obtaining a min r for prost tution—Penal Code ss 372 373—Misjoinder of charges—Immaterial irregularity* — A woman being a member of the dancing girl caste obtained possession of a minor girl and empl yed her for the purp se of prostituti n; she subsequently obtained in ad ption another minor girl fr m her parents who belonged to the same caste She and the parents of the secon l girl were charged t gether under ss 372 373 of the Penal Code The charges related to both girls *Held* (1) that the two charges should not have been tried toge her but irregularity committed in so trying them had caused no failure of justice ; (2) that ss 372 373 of the Penal Code may

CRIMINAL PROCEEDINGS—*continued*

be applicable in a case where the minor concerned is a member of the dancing girl caste *Per* MUTTUSAMI AYYAR J.—It would be no offence if the intention was that the girl should be brought up as a daughter and that when she attains her age she should be allowed to select either to marry or follow the profession of her prostitute mother QUEEN EMPRESS *v* RAMANNA I L R, 12 Mad. 273

29 ———— *Irregularity prejudicing the accused—Rioting Counter charges of—Cross cases tried together—Evidence in one case considered in the other—Criminal Procedure Code (Act X of 1882) ss 233 239 537—Illegality—Fight between two parties not transaction—Joinder of charges* —Where two cross cases of rioting and grievous hurt were committed separately for trial before a Sessions Judge who, having heard the evidence in the first case heard the evidence in the second case examined some of the accused in the one case as witnesses for the prosecution in the other and *vice versâ* and subsequently heard the arguments in both the cases together and the opinions of the assessors (who were the same in both the cases) were taken at one time and both the cases were dealt with in one judgment —*Held* that this mode of trial, although irregular did not prejudice the accused in their defence and that under such circumstances a re trial was not made necessary by reason of such irregularity *Queen* v *Basu B L R Sup Vol 750 8 W R Cr 47*, and *Queen* v *Surroop Chunder Paul 12 W R Cr 75* approved. Nor did the examination of the accused who were on their trial in one case as witnesses for the prosecution in the other affect the validity of their conviction Observations in *Bachu Mullah* v *Sia Ram Singh I L R 14 Calc 358* dissented from *Hussein Buksh* v *Empress I L R 6 Calc 96* considered and distinguished. *Semble*—A fight between two parties cannot be treated as a transaction within the meaning of s 239 of the Code of Criminal Procedure On the law as contained in that section the two parties cannot regularly be charged in the same trial QUEEN EMPRESS *v* CHANDRA BHUIYA I. L. R. 20 Calc 537

30 ———— *Aggregate sentence instead of separate sentences—Material error or defect* —Two prisoners having been convicted by an Assistant Judge of forgery and other offences were sentenced each to an aggregate amount of punishment which the Court was competent to inflict but without specifying the several penalties awarded for each offence. On reference by the Sessions Judge under s. 434 of the Criminal Procedure Code —*Held* that it was an irregularity on the part of the Assistant Sessions Judge not to pass a separate sentence under each independent head of the charge but that it was not an error or defect in consequence of which the High Court could reverse or alter the sentence on revision. REG *v* VINAYAK TRIMBAK

[2 Bom. 414 2nd Ed., 391

31. ———— *Case not finally disposed of—Criminal Procedure Code 1882 s 537*—S 537 does not apply to a pending case but only to a case which has been finally disposed of. NILRAT SEN *v* JOGESH CHANDRA BUTTACHARJEE

[I. L. R. 23 Calc., 983 1 C W N.,

32 ———— *Criminal Procedure Code 1872 s 537 (1872 s 283; 1861 ss 426 439)—Irregularity prejudicing prisoner his defence* —An omission by a Magistrate to hol preliminary inquiry on a charge under s. 307 of t Penal Code of attempting to murder was on app by the prisoner to the High Court held to be irregularity which prejudiced the prisoner in her fence and the proceedings were ordered to be quash and a new trial held QUEEN *v* ITWARYA

[14 B L R., 54 22 W R., Cr.,

33 ———— *Irregular appointment of jurors* —Where the Magistrate had appoint as jurors persons who had been appointed by the op site party it was held to be an error affecting t merits of the case SHATYANUNDO GHOSAL *v* CA PERDOWN PRESSING Co 21 W R. Cr.,

34. ———— *Irregular selection of jurors—Criminal Procedure Code 187 s 240—Per* FIELD J —Irregularities under s 240 the Criminal Procedure Code in the selection of t jurors and in the admission of the deposition of medical witness treated it not being shown that t prisoners had been thereby prejudiced as being obje tions which ought not to be entertained for the pu pose of interfering with the verdict regard being h to the provisions of s 283 of the Criminal Procedu Code and s 167 of the Evidence Act IN THE MATTE OF THE PETITION OF JHUBBOO MAHTON EMPRESS JHUBBOO MAHTON

[I. L R. 8 Calc 739 12 C L. R., 2

35 ———— *Criminal Procedure Code 1872 s 283—Penal Code s 181—Irregular trial—Legal Practitioners Act (XVIII 1879)* —Where three persons were tried together a convicted under s 181 of the Penal Code of havi made false statements on solemn affirmation abo the same matter in the course of an inquiry into th conduct of a pleader under the provisions of the Leg Practitioners Act —*Held* that the trial of the three pr soners together was a gave error of procedure vitiati the trial. KOTHE SUBBA CHETTI *v* QUEEN

[I. L. R, 6 Mad. 25

36 ———— *Criminal Procedure Code 1872 s 283 and s 144—Omission to reduce complaint to writing* —Acting in violation o s 144 of the Criminal Procedure Code 1872 in no reducing the complaint to writing is not an irregula ity for which an Appellate Court has power t reverse the judgment or sentence under s 283 ANO NYMOUS 7 Mad., Ap., 2

37 ———— *Criminal Procedure Code 1872 s 283—Irregularity in trial before Magistrate* —Where a person summoned t answer a charge of criminal trespass appeared and filed a written statement and the Magistrate pro ceeded accordingly without recording a proceeding under s 530 of the Criminal Procedure Code, it wa held that the irregularity was covered by s. 283 o

CRIMINAL PROCEEDINGS—*continued*

the Code the rule therein laid down being intended to extend to all proceedings before Magistrates GOUR MOHUN MAJEE *v* DOOLUBH MAJEE [23 W R Cr, 61

38 ———— *Criminal Procedure Code 1872 s 283 and s 278—Error in omission to fix time for hearing*—Where the Appellate Court did not fix a reasonable time for the appearance of the appellant or his counsel as required by s. 278, Act X of 1872 the error was held to invalidate the proceedings. IN THE MATTER OF THE PETITION OF HUR PERSHAD 24 W R., Cr, 80

39 ———— *Criminal Procedure Code 1872 s 283—Irregularity in trial—Conviction on wrong charge under Act XXI of 1856 s 44*—The accused who held a license for the sale of *imported* liquors, sold *country* spirit and was charged and convicted by the Assistant Magistrate under s. 44 Act XXI of 1856. The Assistant Magistrate on the same day found that the conviction should have been under s 48 of the Abkari Law and recorded a note to that effect. *Held* that as it was clear from the evidence recorded and from the answer of the accused that he was not misled as to the charge against him and consequently in no way prejudiced by the erroneous description of the offence contained in the conviction the conviction should be altered so as to bring it under s. 48 Act XXI of 1856 QUEEN *v* DIGAMBUR SHAHA 24 W R., Cr, 3

40 ———— *Irregularities in reception of evidence*—The reception as evidence against an accused person of a confession which ought not to have been proved and which is not in accordance with the law and the grounding of a case against him upon such confession must be held to be irregularities which seriously prejudice the prisoner QUEEN *v* CHUNDER BHUTTACHARJEE [24 W R Cr, 42

41. ———— *Evidence given at previous trial treated as examination-in-chief—Criminal Procedure Code ss 353 537—Evidence Act (I of 1872) s 167*—At the trial of a party of Hindus for rioting the Magistrate instead of examining the witnesses for the prosecution caused to be produced copies of the examination-in-chief of the same witnesses which had been recorded at a previous trial of a party of Mahomedans who were opposed to the Hindus in the same riot These copies were read out to the witnesses, who were then cross-examined by the prisoners and no objection to this procedure was taken on the prisoners' behalf The accused were convicted *Held* that although the procedure adopted by the Magistrate was irregular the irregularity was cured by the provisions of s. 537 of the Criminal Procedure Code and of s. 167 of the Evidence Act (I of 1872) as it was not shown that there had been any failure of justice or that the accused had been substantially prejudiced and as the matters elicited in cross examination were sufficient to sustain the conviction. QUEEN EMPRESS *v* NAND RAM I. L. R., 9 All. 609

CRIMINAL PROCEEDINGS—*continued*

42. ———— *Criminal Procedure Code s 203—"Examining"—Written complaint attested by complainant on oath—Criminal Procedure Code s 537.*—Where a deposition in the shape of a complaint is made orally or in writing and is sworn to the requirements of s 203 of the Criminal Procedure Code in regard to the examination of the complainant are sufficiently satisfied *Held* therefore where a Magistrate dismissed a complaint of criminal breach of trust without examining the complainant on oath but after the complainant had sworn to the truth of the matters alleged in the complaint that the provisions of s. 203 had been sufficiently complied with and if not that the irregularity was covered by the terms of s. 537 QUEEN EMPRESS *v* MURPHY I. L. R. 9 All. 666

43 ———— *Criminal Procedure Code ss 268 428 537—Material irregularity—Assessors Statement of deceased person not proved in presence of*—Where in a trial for murder held with assessors the Court relied on a statement made by the deceased and the evidence necessary to prove such statement was not recorded until after the close of the trial and the discharge of the assessors—*Held* that this amounted to a material irregularity which was not covered by s 537 of the Code of Criminal Procedure QUEEN EMPRESS *v* RAM LALL [I. L. R., 15 All., 136

44. ———— *Irregularity in omitting to call on accused for defence—Criminal Procedure Code (1882) s 289, s 423 cl (d) and s 537—Misdirection to jury*—The formality of calling upon an accused person to enter on his defence under the provisions of s. 289 of the Criminal Procedure Code is not a mere formality but is an essential part of a criminal trial Omission to do so occasions a failure of justice and is not cured by s 537 of the Code To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection though the Judge omits to charge the jury at all In such a case cl (d) of s. 423 of the Criminal Procedure Code does not stand in the way of the Appellate Court's interfering with the verdict of the jury QUEEN EMPRESS *v* IMAM ALI KHAN *alias* NATHU KHAN [I. L. R. 23 Calc 252

45 ———— *Irregularity in omitting to examine witnesses—Trial by jury before Sessions Judge—Verdict of acquittal allowed after examination of some only of the witnesses for the prosecution*—Certain persons were tried in a Sessions Court for the offence of dacoity Seven witnesses had been examined for the prosecution by the committing Magistrate and were bound over to give evidence at the trial After five witnesses had been examined, the Judge asked the jury whether they wished to hear any more evidence and on their stating that they did not believe the evidence and wished to stop the case the Judge recorded a verdict of acquittal *Held* that the procedure adopted was wrong and that no final opinion as to the falsehood or insufficiency of the prosecution evidence ought to have been arrived at until the two

CRIMINAL PROCEEDINGS—*continued.*

a yadast from a revenue officer and convicting accused without examining complainant —A revenue officer sent a yadast to a third class Magistrate charging a certain person with having disobeyed a summons issued by the revenue officer The third class Magistrate thereupon tried and convicted the accused under s 174 of the Penal Code The District Magistrate referred the case on the ground that the conviction was bad under s 530 (k) of the Code of Criminal Procedure *Held* that as the yadast amounted to a complaint within the meaning of s 4 although the complainant was not examined on oath as required by s. 200 the conviction was not illegal QUEEN EMPRESS *v* MONU I. L. R., 11 Mad., 443

62 ———— *Criminal Procedure Code 1882 s 530 cl (p)—Offence originally cognizable by a second class Magistrate subsequently non cognizable by reason of an aggravating circumstance—Duty of inferior Court* —The accused were charged before a Magistrate of the second class with causing grievous hurt as members of an unlawful assembly under ss 149 and 325 of the Indian Penal Code The evidence showed that one of the accused had used an axe in causing the hurt The Magistrate apparently ignored this fact and he convicted the accused under s 325 of the Code The accused appealed. The District Magistrate who heard one appeal and the first class Magistrate who heard the rest of the appeals were both of opinion that the offence committed by the accused was one of causing grievous hurt with a dangerous weapon within the meaning of s 326 of the Penal Code and as such beyond the jurisdiction of the second class Magistrate. But they did not think it proper under the circumstances of the case to quash the convictions. The Sessions Judge on examining the record of the case was of opinion that as the offence committed by the accused was not cognizable by the trying Magistrate his proceedings were *void ab initio* under s 530 of the Criminal Procedure Code He therefore referred the case to the High Court and recommended that the convictions under s 325 should be set aside. *Held* that the proceedings before the second class Magistrate were not *void ab initio* as he had jurisdiction to try the accused for offences punishable under ss. 149 and 325 of the Indian Penal Code with which they were originally charged *Held* also that though it was the duty of the trying Magistrate when the evidence disclosed a circumstance of aggravation such as the use of a dangerous weapon which made the offence cognizable by a higher Court to adopt the proper procedure to send the case to the higher Court still it was not necessary to quash the proceedings as the accused were not in any way prejudiced and the sentences were not inadequate. QUEEN EMPRESS *v* GUNDYA [I. L. R., 13 Bom., 502

63 ———— *Irregularity in criminal trial—Prisoner charged with two offences one of which was committed outside jurisdiction—Objection to jurisdiction taken before Magistrate and in Sessions Court—Criminal Procedure Code (X of 1882), ss 531 532* —The accused was charged under s 498 of the Penal Code (XLV of 1860) with having enticed away a married woman and under s. 497 with having committed adultery The woman alleged to have been enticed away resided in Bombay but the alleged adultery took place at Khandala outside the jurisdiction At the enquiry before the Magistrate in Bombay objection was taken as to his jurisdiction with regard to the charge of adultery The Magistrate however overruled the objections and committed the accused for trial At the trial an application was made on behalf of the accused, under s 532 of the Criminal Procedure Code (X of 1882) that the commitment should be quashed and a fresh enquiry directed on the ground that an objection had been taken to the Magistrate's jurisdiction. *Held* refusing the application that the commitment being an order (see *Queen Empress v Thaku I L R 8 Bom 312*) under s 531 of the Criminal Procedure Code the commitment should not be quashed unless a failure of justice would be caused by proceeding with the trial. QUEEN EMPRESS *v* INGLE [I. L. R. 16 Bom. 200

64. ———— *Irregularity in commitment—Criminal Procedure Code (1882) ss 532 and 537—Commitment to Sessions Court by Magistrate having no jurisdiction over place where alleged offence was committed* —A Magistrate who commits a case for trial by a Sessions Court does so in the exercise of powers duly conferred upon him and the fact that he had no territorial jurisdiction over the place where the alleged offence was committed and that an objection to the committal on this ground was taken before the commitment is no ground for the Court to which the commitment is made quashing it under s. 532 nor under s. 537 of the Criminal Procedure Code *Queen-Empress v. Ingle I L R 16 Bom 200* followed QUEEN EMPRESS *v* ABBI REDDI I. L R., 17 Mad., 402

65. ———— *Stay of criminal proceedings pending civil litigation—Civil Procedure Code (1882) s 278—Inquiry into claim to attached property—Subsequent civil suit by claimant to establish his right to the property—Criminal Procedure Code (1882) s 478* —It is not an invariable rule that criminal proceedings should be stayed during the pendency of civil litigation regarding the same subject matter Certain property was attached in execution of a decree Thereupon accused No 1 applied to have the attachment raised on the ground that he had purchased the property from the judgment-debtor under a sale-deed executed long before the date of the attachment. In the summary inquiry which was made under s 278 of the Code of Civil Procedure (Act XIV of 188) he produced the sale-deed and accused No 2 was called as his witness and supported his claim The Subordinate Judge found that the deed was a forgery and rejected the claim Proceeding then under s 478 of the Code of Criminal Procedure (Act X of 1882) he held the inquiry directed by that section and committed both the accused to the Sessions Court on charges of perjury and forgery During the pendency of the inquiry under s. 478 the accused No. 1 filed a civil suit to establish the genuineness of the

CRIMINAL PROCEEDINGS—*continued*

sale deed and set aside the attachment He also applied to the High Court to quash the commitment or stay the criminal proceedings pending the disposal of the civil suit *Held* refusing the application that the mere fact that a regular suit was filed to establish the genuineness of the sale-deed was not a sufficient ground for quashing the commitment or for adjourning the trial pending the hearing of the civil suit IN RE DEVJI VALAD BHAVANI

[I. L. R. 18 Bom., 581

66 ———————— *Power of the High Court to stay proceedings before Magistrate pending a civil suit*—Per RAMPINI J—The High Court has no power to direct that criminal proceedings in the Court of a Magistrate should be stayed until the disposal of a civil suit in which the question at issue in the criminal proceedings shall have been decided. *In the matter of Ram Prosad Hazra B L R Sup Vol 420* followed It is very doubtful if the High Court has any power to pass an order quashing the proceedings before a Magistrate No section of the Criminal Procedure Code expressly authorizes the High Court to quash pending proceedings *Per* GHOSE J—A proceeding in a criminal Court should not as a general rule be stayed pending the decision of the civil suit in regard to the same subject matter but ordinarily it is not desirable if the parties to the two proceedings are substantially the same and the prosecution is but a private prosecution, and the issues in the two Courts are substantially identical, that both the cases should go on at one and the same time It is open to the Magistrate having regard to the facts of the case before him to consider whether it is not desirable that the proceedings in his Court should be stayed till the decision of the civil suit or for a limited period of time and it is also open to him to put the defendant on terms as to appearance or otherwise if he does stay proceedings The High Court has the power to order a Magistrate to stay proceedings in his Court if a sufficient cause in that behalf is made out But inasmuch as the Legislature has given him the power to regulate the proceedings in his own Court the direction should ordinarily be left to him either to stay proceedings or not as he in the circumstances of each case may think right and proper PAJ KUMARI DEBI v BAMA SUNDARI DEBI

[I. L. R. 23 Calc., 610

67 ———————— *Stay of proceedings by High Court—Duty of Magistrate receiving reliable though not official information that proceedings are stayed*—When a rule is issued by the High Court and proceedings stayed Magistrates on receiving reliable information thereof should stay their hands then and there So where it was brought to the notice of the Magistrate by the muktear for the accused who had received telegrams from counsel and vakil informing him of the issue of the rule directing stay of proceedings by the High Court and the Magistrate refused to look at the telegrams and to stay proceedings but on the other hand proceeded with the enquiry it was held that the Magistrate had acted improperly that he should not have proceeded with the enquiry and in case he entertained any doubt as to authenticity of the telegrams the proper course for him was to send a telegram to the Registrar of the High Court to ascertain the truth RATNESSARI PERSHAD NARAYAN SINGH v EMPRESS 2 C W N 493

S c ANANT RAM MARWARI v MANSOOR ROY

[2 C W N., 639

68 ———————— *Impropriety of applications for stay of proceedings on the pretence of moving the High Court for transfer*—Observations with regard to the impropriety of applications for the stay of proceedings on the ground of moving the High Court for transfer when the applicant has no such intention GUNAMONY SAPUI v QUEEN EMPRESS 3 C W N, 758

69 ———————— *Adoption by Sessions Judge of wrong procedure—Trial with jury instead of assessors—Rejection of confessional statement without enquiry under s 533 Criminal Procedure Code—Charge under Penal Code ss 395 396 and 412—Criminal Procedure Code 1882 ss 164 307—Procedure of High Court on reference under s 307*—Ten persons were committed to a Sessions Court charged with offences under the Penal Code ss 395 and 396 and some of them were also charged with offences under s 412 One of the accused had made a confessional statement before the Magistrate who recorded it but did not make on it a memorandum to the effect stated in Criminal Procedure Code s 164 and did not admit it in evidence for the reasons that the accused was produced from the custody of the police in which he had been detained for five days and there was a proposal on the part of the police to treat him as an approver It appeared that a perusal of the preliminary register would have shown that the accused were either guilty under s 396 or not guilty under s 395 at all The accused were tried by the Sessions Judge with a jury The confessional statement was not admitted in evidence The jury found the accused not guilty of dacoity but the Judge disagreeing with the verdict referred the case to the High Court under Criminal Procedure Code s 307 *Held* (1) that the procedure adopted by the Judge was wrong and that he should have tried the accused with the aid of assessors under Indian Penal Code s 396; (2) that the Judge should have enquired under Criminal Procedure Code s 533 whether the confessional statement had been duly made and (3) that under the circumstances the High Court should determine on the evidence on record after giving due weight to the opinions of the Judge and the jury whether the accused were guilty under s 395 QUEEN EMPRESS v VENGA VALAYAN

[I. L. R 22 Mad., 15

70 ———— Right to institute prosecution—*Convicted person*—There is no rule that a convicted person cannot institute criminal proceedings QUEEN v MADHUB CHUNDER GIRI

[21 W R., Cr 13

71 ———— Suit in Civil Court.—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court MADHUB KYBURTHO v KRISHNA SINGH D W R. Cr 22

CRIMINAL TRESPASS—*continued*

considerable time alleging a prescriptive right the mere fact of continuing to do so after a notice of prohibition is not criminal trespass IN THE MATTER OF THE PETITION OF SHISTIDHUR PARUI

[9 B L R, Ap, 19

SHISTEEDHUR PAROEE v INDROBHOOSUN CHUCKERBUTTY 18 W R 25

21 ———— *Infringement of exclusive right of fishery in public river*—The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of criminal trespass in the Penal Code EMPRESS v CHARU NAYIAH

[I L R 2 Calc 354

22 ———— *House trespass—Possession of property the subject of criminal trespass—Penal Code ss 441 442 and 445*—C a rate payer in a municipality who had filed a petition against an assessment which in his absence had been dismissed entered a room where a Committee of the Municipal Commissioners were seated hearing and deciding petitions in assessment matters ostensibly with the object of presenting a petition for the revision of his assessment The Chairman of the Committee ordered him to leave the room and on his refusal to do so he was turned out Outside the room in the verandah he addressed the crowd complaining that no justice was to be obtained from the Committee C was prosecuted on these facts at the instance of the Chairman of the Committee and convicted of house trespass under s 448 of the Penal Code *Held* that the conviction was wrong and that no offence had been committed The prosecution was bound to prove in order to support a conviction of a charge under s 441 or s 442 that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s 345 of the Code of Criminal Procedure and the complainant had failed to prove that the room was in his possession and had in fact shown that he was merely sitting in it with other persons at the invitation and with the consent of the person whoever he might be who had the immediate right to such possession *Held* further that even if the complainant could be held to be in possession of the room there was no evidence of any intent to commit an offence or to intimidate insult or annoy any person it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision the verbal insult on which the conviction was based having been uttered after C had left the room CHANDI PERSHAD v EVANS

[I. L. R. 22 Calc 123

23 ———— *Penal Code ss 441 456 457 and 509—Lurking house trespass by night—Intrusion on privacy—Intention—Charge Form of—Criminal Procedure Code (1882) ss 221 222 and 537*—A conviction for lurking house trespass by night under s 456 of the Penal Code is not bad for want of the specification of the intention in the charge but one under s 457 cannot be sustained without such specification In a charge

CRIMINAL TRESPASS—*continued*

under the former section though a guilty intention must be proved it is not necessary to prove which of the several guilty intentions the accused had; it will be enough if it is shown that the intention must have been one or other of those specified in s. 441 though it may not be certain which it was An accused person the landlord of a house in which he occupied the lower flat was found in the middle of the night in the room of the complainant one of his tenants upstairs in which the complainant and his wife were at the time sleeping Upon being detected the accused was subjected to very severe treatment but did not utter a word of protestation of innocence or make any show of remonstrance and when questioned said I have committed a fault pardon me He was arrested upon a charge under s 456 of the Penal Code the criminal intention alleged being that of committing theft The charge framed by the Magistrate did not specify any intention and the Magistrate came to the conclusion that the trespass was not committed by the accused who was a wealthy man with that intention He found however that the complainant had suppressed some important facts and that he was not in his wife s room when the accused entered it and relying on the decision in *Koilash Chandra Chakrabarty v Queen Empress I L R 16 Calc 657* he convicted the accused On appeal the Sessions Judge though finding that the Magistrate's views were against the evidence upheld the conviction without finding what specifically was the intention with which the entry was made In revision it was contended that the conviction was bad (1) because no guilty intention was set out in the charge; (2) because no such intention was proved by the evidence and (3) because no such intention was specifically found by the Sessions Judge *Held* that the first contention was not sustainable for the reasons above stated. Even if it had been necessary to specify the intention in the charge it would have to be shown under the provisions of s 537 of the Code of Criminal Procedure that the omission had occasioned a failure of justice and having regard to the nature of the charge and the line of defence adopted the accused had not in any way been prejudiced in his defence *Held* as regards the second contention that though it was not certain what the precise intention of the accused was in committing the trespass it was clear that it must have been with one or other of the intentions specified in s 441 of the Penal Code as judging from the time the place and manner in which the trespass was committed and the conduct of the accused when discovered it was impossible to suppose that the trespass could have been committed either unintentionally or with any innocent intention and that it must have been committed with the intention of committing some offence but that the accused was entitled to have it taken that it was with the least possible culpable intention namely an offence under s 509 of the Penal Code *Held* as regards the third contention that in exercising its powers under s 439 of the Code of Criminal Procedure it is open to the High Court to alter any finding and confirm a conviction and that if the evidence on the record in a case be sufficient to warrant a conviction the Court

CRIMINAL TRESPASS—*continued*

would not be justified in setting such conviction aside merely because the view taken of the evidence by the lower Court is not sustainable or some fact which ought to have been found by that Court is not found or found incorrectly BALMAKAND RAM v GHANSAMRAM I L R. 22 Calc, 391

24. ———— Penal Code s 443—*Disobedience of illegal order of Municipal Commissioners*—The accused were convicted of criminal trespass under s 443 of the Penal Code for driving *their carts across an open green in violation of* an order issued by the Municipal Commissioners *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order and that the breach of it was not criminally punishable ANONYMOUS 5 Mad. Ap 33

25 ———— Penal Code s 447—*Cultivating waste land in village*—The defendant was convicted under s 447 of the Penal Code for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating The High Court upheld the conviction ANONYMOUS 5 Mad. Ap 37

26 ———— Penal Code ss 441 and 456—*House breaking by night—Intent*—When a stranger uninvited and without any right to be there effects an entry in the middle of the night into the sleeping apartment of a woman a member of a respectable household and when an attempt is made to capture him uses great violence in his efforts to make good his escape a Court should presume that the entry was made with an intent such as is provided for by s 441 of the Penal Code An accused person in the middle of the night effected an entry into a house occupied by two widows members of a respectable family On an alarm being given and an attempt made to capture him he made use of great violence and effected his escape Upon these facts he was charged with offences under ss 456 and 323 of the Penal Code The defence set up was an *alibi* which was disbelieved by both the lower Courts Neither Court found specifically what was the intention with which the accused entered the house but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. *There was no evidence that he had been invited by her to go there The lower Courts convicted the accused under s 456. It was contended that as the prosecution had failed to prove that the entry was made with intent to commit any offence the conviction was* illegal. *Held* that under the circumstances of the case the Court ought to presume that the entry was effected with such intent as is provided for by s. 441 and that the conviction should be upheld IN THE MATTER OF THE PETITION OF KOILASH CHANDRA CHAKRABARTY KOILASH CHANDRA CHAKRABARTY v QUEEN EMPRESS I L R. 16 Calc. 657

27 ———— During the pendency of a civil suit certain persons on behalf of the plaintiff went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the defendant They went (some of them armed) without the permission of the defendant and in his absence and when the defendant's servant objected to their action they persisted in their trespass and endeavoured to prevent opposition by making false statements as to the authority under which they were acting *Held* that their actions amounted to criminal trespass GOLAB PANDEY v BODDAM [I L R 16 Calc 715

CRIMINAL TRESPASS—*concluded*

28 ———— Penal Code (*Act XLV of 1860*) *ss 441 456 and 509—House breaking by night—Intent—Intrusion upon privacy*—The accused in the middle of the night effected an entry into a room occupied by four women On an alarm being given and an attempt made to capture him he escaped He was charged with an offence under s 456 of the Penal Code The defence set up was disbelieved by both the lower Courts Neither Court found specifically what was the intention with which the accused entered the room but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women *There was no evidence that he had been invited by her to go there The lower Courts convicted the accused under s 456 It was contended that as the prosecution had failed to prove that the entry was made with intent to commit any offence the conviction was illegal Held that the facts proved were good evidence of an intent and of an intrusion on privacy within the meaning of s. 509 of the Penal Code* and that therefore the intent to commit an offence within the meaning of s 441 was made out *Balmakand Ram v Ghunsamram I L R 22 Calc 391* followed. PREMANUNDO SHAHA v PRIYADAUN CHUNG I L R. 22 Calc. 994

29 ———— Penal Code (Act XLV of 1860) s 448—*Intent*—Although a trespasser knows that his act if discovered will be likely to cause annoyance it does not follow that he does the act with that intent QUEEN EMPRESS v RAYAPAYACHI I L R 19 Mad. 240

30 ———— Penal Code (Act XLV of 1860) s 451—*House trespass with intent to commit adultery—Evidence*—To sustain a conviction under s 451 of the Penal Code for the offence of house trespass with intent to commit an offence the prospective offence being adultery it is necessary to show that there has been no consent or connivance on the part of the husband of the woman the intent to commit adultery with whom is charged against the accused. BRIJ BASI v QUEEN EMPRESS [I. L. R., 19 All. 74

CROPS

———— Assessment of price of—

See N W P RENT ACT s. 42 [I. L. R. 19 All. 68

———— Deposit of by order of Collector

See BENGAL TENANCY ACT ss 69 AND 70 [I L. R. 22 Calc., 483

CROPS—*continued*

——— gathered

See MADRAS REVENUE RECOVERY ACT s 11 I. L. R 17 Mad. 404

——— Misappropriation of Suit for damages for—

See LIMITATION ACT ART 36 [I. L R., 22 Calc, 877

——— Mortgage of—

See REGISTRATION ACT 1877 s. 17 [I. L. R. 10 All 20

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——— Right to—

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[3 Agra 188
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——— Seizure of—

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[3 B L. R. A. C 261
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[I L R 11 Mad 193
I L R 14 All 30

See LIMITATION ACT 1877 ART 48 (1871 ART 48) 4 W R. 76
[6 Bom A C 114
I L R 4 Calc., 665

See MADRAS HEREDITARY VILLAGE OFFICES ACT s 6
[I L R 23 Mad. 492

See POSSESSION ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION
[I. L R. 15 All 394

See SALE FOR ARREARS OF RENT—UNDER TENURES SALE OF
[I L R. 4 Calc 814

See SALE IN EXECUTION OF DECREE—PURCHASERS RIGHTS OF—EMBLEMENTS
[I L R 2 Bom. 670
I. L R 13 Mad 15

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CROPS
[I. L. R. 14 All 30
I. L R 21 Calc 430

CROPS—*concluded*

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY
[5 B L R 194
24 W R. 394
5 Bom A C 90

See STAMP ACT 1879 SCH. I ART 5
[I L. R. 13 Bom., 89

——— Suit for value of—

See BENGAL RENT ACT 1869 s 93
[I L R. 1 Calc 183

See CIVIL PROCEDURE CODE 1882 s 244—QUESTIONS IN EXECUTION OF DECREE I. L R, 4 Calc 625
[I L R 22 Calc. 501

See LIMITATION ACT 1877 ART 109
[I L. R., 4 Calc. 625

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—CONTRACT
[1 B. L. R., S N, 13

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See PRIVY COUNCIL, PRACTICE OF—CROSS APPEALS

——— Decree made in—

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[I. L R 19 All. 95
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——— Necessity of—

See PRIVY COUNCIL, PRACTICE OF—PRACTICE AS TO OBJECTIONS
[I. L. R., 23 Calc., 922

CROSS-APPEALS.

——— separately heard

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R 12 All. 578

CROSS-CASES TRIED TOGETHER

See CRIMINAL PROCEEDINGS
[I L. R. 20 Calc 537

CROSS CLAIM.

——— in summary suit.

See COMPENSATION—CIVIL CASES
[I. L. R. 18 Bom. 717

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See SET-OFF—CROSS DECREES
[I. L. R 5 All. 272
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CROSS DECREE.

See EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES 3 B L. R. Ap., 62

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See Cases under Witness—Civil Cases—Examination of Witnesses—Cross Examination

See Cases under Witness—Criminal Cases—Examination of Witnesses—Cross Examination

——— Right of and opportunity for—

See Commission—Criminal Cases [I. L. R., 19 Bom., 749

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——— Applicability of Act to—

See English Law [I L. R. 14 Bom 213

See Limitation Act 1877 s 26. [I. L. R. 14 Bom. 213

——— Prerogative right of—

See Appeal to Privy Council—Cases in which Appeal lies or not—Appealable Orders [I. L. R. 15 Bom., 155 L R., 18 I. A., 6

CROWN DEBTS

——— Judgment-debt in name of Secretary of State for India in Council—*Insolvent Act (11 & 12 Vic c. 21) s 62.*—A judgment-debt due to the Secretary of State for India in Council arising out of transactions at a public sale of opium held by the Secretary of State for India in Council is a debt in respect of Crown property and therefore a debt due to our Sovereign lady the Queen within the meaning of s. 62 of the Insolvent Act. In determining whether or no a debt falls under the denomination of a Crown debt the question is not in whose name the debt stands but whether the debt when recovered falls into the coffers of the State Principle in *Secretary of State for India in Council v Bombay Landing and Shipping Company 5 Bom O C 23* followed Judah v Secretary of State for India in Council I L R 12 Calc. 445

CRUELTY

See Criminal Procedure Codes s 488 [I L. R., 11 All. 480

See Divorce Act s 14

See Hindu Law—Contract—Husband and Wife I. L. R. 13 All. 126

See Hindu Law—Maintenance—Right to Maintenance—Wife [24 W R. 377 I. L R., 19 Calc. 84

See Maintenance Order of Criminal Court as to I. L. R., 11 All., 480

See Restitution of Conjugal Rights [11 Moore s I. A., 551 8 W R., P C., 3 I. L R. 1 Bom., 164 I. L. R., 5 Calc., 500

CRUELTY TO ANIMALS

See Prevention of Cruelty to Animals Act I L R 24 Calc 881 [1 C W N 642

CULPABLE HOMICIDE

See Charge to Jury—Summing up in Special Cases—Culpable Homicide [6 B L. R. Ap., 86 87 note 9 W R. Cr 72

See Criminal Procedure Codes s 376 (1872 s 288) I L R 1 Bom 639

See Hurt—Grievous Hurt [I L R. 18 Calc 49

See Cases under Murder

See Verdict of Jury—General Cases [1 W R. Cr 50 21 W R. Cr 1 I. L R 20 Bom. 215

——— Conviction for on charge of murder

See Appeal in Criminal Cases—Acquittals Appeals from [I L R., 2 Calc., 273

1. ——— Provocation—*Beating—Deliberation.*—A person who beats another brutally and *continuously so that death results is guilty of murder* or culpable homicide not amounting to murder according as there may or may not have been grave provocation. Queen v Tepra Fakeer [5 W R. Cr 78

2. ——— *Penal Code s 300* —Culpable homicide though committed under provocation will amount to murder unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions but that that feeling had an adequate cause Queen v Hari Giri [1 B L R. A. Cr 11 10 W R Cr., 26

3. ——— *Grave and sudden provocation—Murder* —Culpable homicide not amounting to murder is when a man kills another on being deprived of self control by reason of grave and sudden provocation But when the act is done *after the first excitement had passed away* and there was time to cool it is murder Queen v Yasin Sheikh [4 B. L R. A. Cr 8 12 W R., Cr., 68

4. ——— *Penal Code s 300* —The provocation contemplated by s. 300 of the Penal Code should be of a character to deprive the offender of his self-control In determining whether it was so it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. Empress v Khogayi [I. L R., 2 Mad. 122

5. ——— *Sudden provocation—Penal Code s 300 excep 1* —To enable a person to plead the extenuating circumstances provided for in s 300 Penal Code excep 1 the provocation and its effects must be sudden as well as grave and

CROPS—*continued*

——— gathered

See MADRAS REVENUE RECOVERY ACT s 11 I. L. R 17 Mad., 404

——— Misappropriation of Suit for damages for—

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[3 Agra 189
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[3 B. L. R. A. C 281
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[6 Bom A. C 114
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[I. L. R. 14 All 30
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CROPS—*concluded*

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY
[5 B. L. R. 194
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See CIVIL PROCEDURE CODE 1882 s 244—QUESTIONS IN EXECUTION OF DECREE I. L. R, 4 Calc 625
[I. L. R. 22 Calc 501

See LIMITATION ACT 1877 ART 109 [I. L. R 4 Calc. 625

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See PRIVY COUNCIL PRACTICE OF—CROSS APPEALS

——— Decree made in—

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[I. L. R 19 All 95
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——— separately heard

See RES JUDICATA—MATTERS IN ISSUE [I. L. R., 12 All 578

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——— in summary suit.

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See SET-OFF—CROSS DECREES
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CROSS-DECREE.

See EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES 3 B. L. R., Ap 62

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CULPABLE HOMICIDE—*continued*

house breaking and theft searched the tents of certain gipsies for the stolen property but discovered nothing After he had completed the search the gipsies gave him a certain sum of money which he accepted but at the same time not deeming it sufficient he demanded a further sum from them They refused to give any thing more on the ground that they were poor and had no more to give Thereupon he unlawfully ordered one of them to be bound and taken away On his subordinates proceeding to execute such order all the gipsies in the camp men women and children turned out some four or five of the men being armed with sticks and stones and advanced in a threatening manner towards the place where such gipsy was being bound and the head constable was standing Before any actual violence was used by the crowd of advancing gipsies the head constable fired with a gun at such crowd when it was about five paces from him and killed one of the gipsies and having done so ran away Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested and withdrawn himself and his subordinates or had he effected his escape *Held* that such head constable had not a right of private defence against the acts of such gipsies as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence and such head constable was guilty of culpable homicide amounting to murder EMPRESS OF INDIA *v* ABDUL HAKIM I L R 3 All. 253

17 ———— Killing outlaw while endeavouring to escape—*Penal Code s 300 excep 3* —The prisoners fearful of being punished if they allowed him to escape and thinking that they were acting lawfully in furtherance of a plan arranged for them by a police constable and the lumberdar of a village for the capture of an outlaw for whose arrest a reward had been offered and in pursuance thereof killed him while endeavouring to escape *Held* that the offence committed came under the third exception in s. 300 of the Penal Code and was culpable homicide not amounting to murder QUEEN *v* AMAN [5 N W, 130

18 ———— Unpremeditated assault—*Penal Code s 300 excep 4*—An unpremeditated assault ending in an affray in which death is caused committed in the heat of passion upon a sudden quarrel comes within excep. 4 of s 300 of the Penal Code It is immaterial which party offered the provocation or committed the first assault QUEEN *v* ZALIM RAI 1 W R Cr 33

19 ———— Inflicting injury not sufficient to cause death—*Want of intention to cause death—Penal Code ss 299 300*—Where the prisoner knocked his wife down put one knee on her chest and struck her two or three violent blows on the face with the closed fist producing extravasation of blood on the brain and she died in consequence either on the spot or very shortly afterwards,—*Held* that there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death the offence committed by the prisoner was not murder but culpable homicide not amounting to murder REG *v* GOVINDA [I L R 1 Bom. 342

20 ———— Grievous hurt—*Blow causing injury not intended*—An accused struck a woman carrying an infant in her arms violently over head and shoulders One of the blows fell on the child's head causing death *Held* that the accused was not guilty of culpable homicide not amounting to murder but had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt EMPRESS *v* SAHAB RAE

[I. L. R. 3 Calc 623 2 C L. R., 304

21 ———— *Death from violent attack*—Where death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session on a charge of culpable homicide not amounting to murder Conviction of grievous hurt in such a case is contrary to law IN THE MATTER OF GOPI NATH SHAHA 1 C L R. 141

22 ———— Consenting to act likely to cause death—*Murder—Penal Code s 300 excep 5*—Excep 5 to s. 300 refers to cases where a man consents to submit to the doing of some particular act either knowing that it will certainly cause death or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so even by causing the death of the person from whom the danger is to be anticipated *Per* BROUGHTON J—Excep 5 to s 300 is not applicable to the case of a premeditated fight but points to a different character such as suttee EMPRESS *v* ROHIMUDDIN

[I. L. R. 5 Calc 31 4 C L. R. 285

23 ———— Riot—*Unlawful assembly—Fight between two contending factions each armed with deadly weapons—Penal Code (Act XLV of 1860) s 300 excep 5*—Where death results in a fight between two bodies of men deliberately fighting together a greater proportion of the men composing both sides being armed with deadly weapons and it being further apparent from the evidence that the man slain was an adult and that no unfair advantage was taken by the one side or the other during the fight the offence committed is culpable homicide but does not amount to murder SAMSHERE KHAN *v* EMPRESS

[I. L. R. 8 Calc. 154 8 C L. R. 158

24. ———— *Penal Code s 300 cl 5 and ss 149 and 307—Murder Attempt to commit—Rioting armed with deadly weapons—Prearranged fight*—In a case in which it was found that all the accused were guilty of rioting armed with deadly weapons that the fight was premeditated and prearranged a regular pitched battle or trial of strength between the two parties concerned in the riot and that one of the accused in the course of the riot and in prosecution of the common object of the assembly killed or attempted to kill a man under such circumstances that his act

CULPABLE HOMICIDE—*continued*

amounted to an attempt to murder the question arose whether that act could be said to bear a less grave character by reason of excep 5 to s 300 of the Indian Penal Code *Per Curiam —Held* that upon such finding the case did not fall within the exception *Per* Pigot J (Petheram C J and Macpherson J concurring)—The 5th exception to s 300 should receive a strict and not a liberal construction; and in applying the exception it should be considered with reference to the act consented to or authorized and next with reference to the person or persons authorized and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply *Shamshere Khan v Empress I L R 6 Calc 154* and *Queen v Kukier Mather* unreported, dissented from so far as they decide that from such a finding as the above consent to take the risk of death is inferred *Per* O'Kinealy J—Before excep 5 can be applied it must be found that the person killed with a full knowledge of the facts determined to suffer death or take the risk of death; and that this determination continued up to and existed at the moment of his death *Queen v Kukier Mather* unreported observed on *Per* Ghose J— No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death or took the risk of death with his own consent it being a question of fact and not of law to be decided upon the circumstances of each case as it arises. *Shamshere Khan v Empress I L R. 6 Calc. 154* and *Queen v Kukier Mather* unreported observed on and the propositions of law laid down therein concurred with. Queen Empress v Nayamuddin

I. L R., 18 Calc. 484

25 ———— Subjecting person of full age to emasculation.—When a man of full age (i.e above 18 years) submits himself to emasculation performed neither by a skilful hand nor in the least dangerous way and dies from the injury the persons concerned in the act are guilty of culpable homicide not amounting to murder Queen v Baboolun Hijrah 5 W R., Cr., 7

26 ———— Knowledge of likelihood to cause death—*Pre-meditation* —Where a person snatches up a log of heavy wood and strikes another with it on a vital part with so much force and vindictiveness as to cause that other person's death almost on the spot the act must be held to have been done with the knowledge that it was likely to cause death but if done without pre-meditation in the heat of passion on a sudden quarrel the offence committed is culpable homicide not amounting to murder Queen v Rajoo Ghose 7 W R. Cr 108

27 ———— *Taking persons in old boat—Negligence—Penal Code s 299—* Certain persons whom the accused a ferryman was rowing across a river were drowned by the sinking of the boat which was an old one with holes in it over which planks had been nailed. *Held* that the prisoner could not be convicted of culpable homicide not amounting to murder unless it could be shown that he acted with the knowledge that he was likely by taking them in the boat to cause death within the terms of s 299 of the Penal Code Queen v Magenee Behara 11 W R Cr., 3

28 ———— The knowledge that an act is likely to cause death does not constitute culpable homicide amounting to murder It must be shown that the act was committed with the knowledge that it must in all probability cause death Queen v Girdharee Sing 6 N W, 28

29 ———— Act likely to cause death—*Penal Code ss 304 and 304 (a)—Assault on thief* —The prisoners assaulted a thief so severely that he died One hundred and forty one marks of separate blows were found on the body of the deceased and several of his ribs were broken. *Held* that s 304 (a) of the Penal Code was not applicable to the circumstances of the case and that taking the offence out of the category of murder it must still come under s 304 Queen v Man 5 N W 235

30 ———— *Causing death by branding a thief—Dangerous act* —Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death or such bodily injury as was likely to cause death is punishable under s. 304 of the Penal Code as culpable homicide not amounting to murder Queen v Khedun Misser 7 W R., Cr 54

31 ———— *Penal Code s 304 (a)—Administering milk to child in such quantity as to kill it—Rash and negligent act—Knowledge of consequences* —Where there was medical evidence to show that milk had been administered to a child in such quantities as to kill it but there was no evidence to show that the milk was administered by the orders of the mother or that she knew the quantity that was being administered —*Held* that there was not sufficient evidence to bring her within s 304 (a) of the Penal Code The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over fed or of the probable consequences of such over-feeding; such feeding was inconsistent with the terms of s 304 (a) which provides for the causing of death by any rash or negligent act not amounting to murder What a man does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simply rash and negligent act Queen v Pemkoer 5 N W 38

32 ————*Intention to cause injury likely to result in death—Causing death by rash act—Culpable rashness—Culpable negligence* —Prisoner killed his mother by beating and kicking her The Sessions Judge found that the death resulted from brutal beating and kicking but acquitted of culpable homicide because the violence was not such as the prisoner must have known to be likely to cause death. *Held* that this was no ground for acquitting of culpable homicide not amounting to murder; the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions

CULPABLE HOMICIDE—*continued*

Judge convicted the prisoner on the charge of causing death by a rash act Held that the section was wholly inapplicable Culpable rashness and culpable negligence distinguished. QUEEN v NIDAMARTI NAGABHUSHANAM 7 Mad. 119

33 ——————— *Penal Code ss 299 304 and 323—Voluntarily causing hurt—Spleen disease*—Where a person hurt another who was suffering from spleen disease intentionally but without the intention of causing death or causing such bodily injury as was likely to cause death or the knowledge that he was likely by his act to cause death and by his act caused the death of such other person —*Held* that he was not guilty of culpable homicide and properly convicted under s 323 of the Penal Code of voluntarily causing hurt EMPRESS OF INDIA v FOX I. L. R. 2 All. 523

34. ——————— *Penal Code ss 304 325—Voluntarily causing hurt—Causing death by negligence—Spleen disease*—*B* voluntarily caused hurt to *N* who was suffering from spleen disease knowing himself to be likely to cause grievous hurt but without the intention of causing death or causing such bodily injury as was likely to cause death or the knowledge that he was likely by his act to cause death, and caused grievous hurt to *N* from which *N* died. *Held* that *B* ought not to be convicted under s 304 (*a*) of the Penal Code of causing death by negligence but under s 325 of that Code of voluntarily causing grievous hurt EMPRESS v O BRIEN I. L. R. 2 All. 766

35 ——————— *Penal Code ss 304 (a) 323—Causing death by a rash or negligent act—Voluntarily causing hurt*—A person without the intention to cause death or to cause such bodily injury as was likely to cause death or the knowledge that he was likely by his act to cause death or the intention to cause grievous hurt or the knowledge that he was likely by his act to cause grievous hurt but with the intention of causing hurt caused the death of another person by throwing a piece of a brick at him which struck him in the region of the spleen and ruptured it the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act but the offence of voluntarily causing hurt EMPRESS OF INDIA v RANDHIR SINGH I. L. R. 3 All. 597

36 ——————— *Penal Code ss 299 300 302 304 (a) 325—Causing death by rash or negligent act—Grievous hurt*—Where a person struck another a blow which caused death without any intention of causing death or of causing such bodily injury as was likely to cause death or the knowledge that he was likely by such act to cause death but with the intention of causing grievous hurt —*Held* that the offence of which such person was guilty was not the offence of causing death by a rash act but the offence of voluntarily causing grievous hurt *Queen* v *Nidamarti Nagabhushanam* 7 *Mad* 119 *Queen* v *Pemkoer* 5 N W 38 *Queen* v *Man* 5 N W 235 *Empress* v *Ketabdi Mundul* I L R 4 *Calc* 764 *Empress* v *Fox* I L R 2 *All* 523 and *Empress* v *O Brien*, I L R 2 *All* 766 followed The offences of murder culpable homicide not amounting to murder and causing death by a rash or negligent act distinguished EMPRESS OF INDIA v IDU BEG I. L. R. 3 All. 776

37 ——————— *Penal Code s 304 (a)—Doing act with rashness and negligence*—Where an accused was charged with culpable homicide and the evidence showed that the deceased had an enlarged spleen and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased —*Held* that it was not sufficient in order to find the accused guilty of a rash act under s 304 (*a*) of the Penal Code that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district and also aware of the risk to life involved in striking a person afflicted with that disease EMPRESS v SAFATULLA [I. L. R. 4 Calc 815

38 ——————— *Penal Code s 304 (a)—Penal Code ss 336 337 and 338—Rashness—Negligence*—S 304 (*a*) of the Penal Code *does not apply to a case in which there has been the* voluntary commission of an offence against the person If a man intentionally commits such an offence and consequences beyond his immediate purpose result it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result and if such knowledge can be imputed the result is not to be attributed to mere rashness; if it cannot be imputed still the wilful offence does not take the character of rashness because its consequences have been unfortunate Acts, probably or possibly involving danger to others but which in themselves are not offences may be offences under s. 336 337 338, or 304 (*a*) if done without due care to guard against the dangerous consequences Acts which are offences in themselves must be judged with regard to the knowledge or means of knowledge of the offender and placed in their appropriate place in the class of offences of the same character EMPRESS v KETABDI MUNDUL [I. L. R. 4 Calc 764

39 ——————— *Culpable homicide not amounting to murder—Penal Code (Act XLV of 1860) s 304—Act done with the knowledge that death would be a probable result*—Where the prisoner by gripping and squeezing the testicles of deceased reduced them to a pulpy condition thereby causing an injury which resulted in death due to the shock so inflicted on the nervous system —*Held per* DAVIES J that the death was an unforeseen result for which prisoner could not be held liable and that she ought to be convicted under s 323 Penal Code *Held per* SUBRAMANIA AYYAR and BENSON JJ that death was a probable consequence of the prisoner's act and that she was guilty under s. 304 Penal Code of culpable homicide not amounting to murder QUEEN EMPRESS v KALIYANI [I. L. R., 19 Mad., 358

CUSTOM—*continued*

16 ———————— *Custom as to transferability of tenures* —In an enquiry as to whether tenures of a certain class are transferable according to local custom it is sufficient if there is credible evidence of the existence and antiquity of the custom and none to the contrary there is no necessity for the witnesses to fix any particular time from which such tenures became transferable JOY KISHEN MOOKERJEE v DOORGA NARAIN NAG [11 W R 349

17 ———————— *Pre emption—Proceedings in former suits* —The proceedings in two former suits where under similar circumstances though the exercise of the right was disputed on other grounds the right of pre emption was admitted to exist may be received in evidence in support of the custom MADHUB CHUNDER NATH BISWAS v TOMEE BEWAH 7 W R., 210

18 ———————— *Hagg i chaharum —Private sale—Sale in execution of decree* —Proof of a custom whereby the zamindar of a village is entitled to one fourth of the purchase money when a house in the village is sold privately is not proof of a similar custom in respect of sales in execution of decrees KALIAN DAS v BHAGIRATHI [I. L R, 6 All, 47

19 ———————— *Right to timber washed ashore—Wreck—Lords of manor* —Where a plaintiff sued for damages for value of timber carried away by Government after being washed on to his estate and to have his right declared as against Government to all timber that in the future may be washed on to his estate *Held* that it was not necessary for plaintiff to produce documentary evidence in support of the right or some decree or decision of competent authority establishing the custom Lords of manors are allowed to establish rights to wrecks etc by long continued and adverse assertion of and enjoyment under such claim and the plaintiff was entitled to have the question tried by the evidence he had adduced CHUTTUR LALL SINGH v GOVERNMENT 9 W R 97

20 ———————— *Observations on the use of books of history to prove local custom* —Observations on the use of books of history to prove local custom and on the position as heads of their caste by custom of the representatives of the ancient sovereigns of the West Coast VALLABHA v MADUSUDANAN I. L R 12 Mad. 495

21. ———————— *Local custom—Bom Reg IV of 1827 s 26* —By s 26 Regulation IV of 1827 (Bombay) the usage of the district in which a suit may arise takes precedence over the law of the defendant in the determination of civil suits By local custom in the Broach district wuqf land left as a religious endowment may be mortgaged although such practice is contrary to Mahomedan law ABAS ALI ZENUL ABADIN v GHULAM MUHAMMAD [1 Bom 36

22 ———————— *Proof of existence of custom—Information derived from deceased persons—Evidence Act 1872 s 32 sub s (5) ss 49 and 60* —A witness may state his opinion as to the existence of a family custom (in this case primogeniture) and give as the grounds thereof information derived from deceased persons But it must be independent opinion based on hearsay and not on mere repetition of hearsay See Evidence Act 1872 s 32 sub s (5) ss 49 and 60 Its weight depends on the character of the witness and of the deceased persons GARURUDHWAJA PARSHAD SINGH v SAPARANDHWAJA PARSHAD SINGH L. R., 27 I. A., 238

23 ———————— *Custom of inheritance to bhagdari tenures in the Broach district* —The custom in the Broach district of male first cousins succeeding to property held on the bhagdari tenure in preference to daughters or sisters upheld in a case in which the bhagdars were Mahomedans BAI KHEDU v DASU LALL 5 Bom. A. C., 123

24 ———————— *Bhagdari tenures in Broach—Inheritance—Special custom—Priority of nearest male relative to daughter or sister* —The plaintiff as heir of her father (a deceased Hindu bhagdar) sued the sons of sisters of her father's paternal uncle for possession of certain bhagdari lands situate in a village in the Broach collectorate The defendants pleaded that they were entitled to the property under a special custom regulating the succession to bhagdari lands in the collectorate of Broach under which custom on the death of a bhagdar whether Hindu or Mahomedan without male issue his nearest male relations (after the death of widow) whether sprung through male or female [illegible] tives of the deceased bhagdar succeed to his [illegible] dari lands to the exclusion of his daughter or [illegible] *Held* that the custom alleged was sufficiently [illegible] and that the defendants were entitled to [illegible] possession of the bhagdar lands in question. [illegible] *Curiam* —The custom alleged being if not un[illegible] at least general in the Broach collectorat[illegible] it [illegible] in the case of any particular village at a[illegible] evidence being given of its continuance in si[illegible] lar adjacent villages, if not in the partic[illegible] itself (though it would always be more satis[illegible] this could be done) be held still to survive [illegible] and until the opposite party proved the adop[illegible] some other custom or of the ordinary rules of in[illegible] ance in the particular village or failing such p[illegible] the general prevalence of such rules or such opp[illegible] custom in other similar adjacent villages *Quære*—Whether males sprung of male relatives of a deceas[illegible] bhagdar have priority over males sprung of fema[illegible] relatives of the same *Quære*—Whether a daughter or sister of a deceased bhagdar is wholly excluded, by the custom from the line of inheritance or would on failure of male relations succeed to the bhagdari lands PRANJIVAN DAYARAM v BAI REVA [I. L. R. 5 Bom. 482

25 ———————— *Wajib ul arz —Evidence of village custom* —A wajib ul arz is not a mere contract it is a record of rights made by a public servant and therefore without attestation or execution by the proprietors of the mouzah it is entitled to weight as evidence of village custom DABEE DUTT v FYAIT ALI 2 N W 395

CUSTOM—continued

26 ———————— *Cess Levy of—Wajib-ul-urz.*—*Held* that the mention of the cess in a wajib-ul urz is not conclusive proof of the custom or usage which gives the right to levy the cess against persons not parties to it. RAM CHURN *v.* ZAHOOR ALI KHAN 1 Agra 134 135

27 ———————— The wajib-ul urz binds co-parceners who have verified and attested it, and is so far evidence of custom between co parceners but is not a conclusive evidence of custom between co-parceners and their tenants who were no parties to it. PUCHOO *v.* MAHOMED TALA ASSUDOOLAH [2 Agra 217

28 ———————— *Record of cess by settlement officer*—The fact that a cess leviable in accordance with village custom has been recorded by a settlement officer is important evidence of the custom, but not conclusive proof of it. *Held* on the evidence in this case that the village custom set up was not established. LALA *v.* HIRA SINGH [I. L. R. 3 All. 40

29 ———————— *Manorial dues and cesses*—The plaintiffs zamindars sued for a declaration of their ancient rights as against all the tenants of a certain village to appropriate all trees of spontaneous growth and the fruits of other trees planted by the tenants; also to receive as manorial tribute a certain number of ploughs annually and a la... an offering of poppy seed and other farm produce sum... he occasion of the marriage of persons of the inher... *caste of tenants* with a further right to levy woul... tain proportion of the produce of the sugar varian... manufactories and fields in the village. The Mano... Courts having decreed the suit on vague and Hass... d parol evidence as to the existence of the said ...s—*Held* (*a*) that where a custom regarding ... l cesses is alleged the existence of the custom 0 ... y each cess should be tried as a separate *Notorie...* that parol evidence as to the existence of such *of a bin...* ...uld be tested by ascertaining the grounds breach of ...itness's opinion (*c*) that the best proof of *till hire...* ...s instances in which it has been acted on and defend... ...entary evidence that it has been enforced (*d*) occas... a custom to be good must be definite. LACH... the ... RAI *v.* AKBAR KHAN I. L. R. 1 All. 440 the ...

...30 ———————— *Pre emption—Wajib ul urz—Onus probandi.*—A wajib ul urz prepared and attested according to law, is *primâ facie* evidence of the existence of any custom of pre emption which it records such evidence being open to be rebutted by any one disputing such custom. IBRI SINGH *v.* GANGA I. L. R. 2 All. 876

But such a custom is not established by one instance. TOTA RAM *v.* MOHAN LAL 2 Agra, 120

31 ———————— *Pre emption—Wajib-ul urz.*—An unsigned wajib ul urz is not binding on the co sharers, and cannot originate a right of pre emption if no prior usage existed. To prove usage it is not necessary that documentary evidence should be adduced. JOYKISHORE SINGH *v.* THAKOOR DASS 3 Agra, 75

CUSTOM—continued

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33 ———————— *Suit for pre emption—Evidence—Decrees enforcing right.*—In a suit for pre-emption based on custom evidence of decrees passed in favour of such a custom in suits in which it was alleged and denied is admissible evidence to prove its existence. The most satisfactory evidence of an enforcement of a custom is a final decree based on the custom. *Gujju Lal v. Fatah Lal I L R 6 Calc 171* distinguished. *Koodoltoollah v. Mohinee Mohun Shaha 5 Rev Civ and Cr Rep 290 Sheo Churn Kandoo v. Goodur Burnwar 3 Agra 138* and *Lachman Rai v. Akbar Khan I L R 1 All 440* referred to. GURDAYAL MAL *v.* JHANDU MAL [I. L. R. 10 All. 585

34. ———————— *Suit by land holder for declaration of right to take land from occupancy tenant for cultivation of indigo—Wajib ul urz. Construction of*—The zamindars of a village sued an occupancy tenant for a declaration of their right to maintain a custom which was thus recorded in the wajib-ul urz:— When necessary one or two bighas out of the tenants lands are taken with their consent (ba khushi) for sowing indigo. Upon the basis of this *entry* they claimed to be entitled to take a portion of the occupancy holding at a certain period of the year for the purpose of cultivating indigo. *Held* by the Full Bench that the word *khushi* used in the wajib ul urz indicated that the land was *only to be* taken with the occupancy tenant's consent and the document created no right of the nature alleged namely to take the land despite the tenant. SHEOBARAN *v.* BHAIRO PRASAD I. L. R. 7 All. 880

35 ———————— *Pre-emption—Wajib ul-urz—Evidence of contract and custom—Act XIX of 1873 s 91—Beng Reg VII of 1822 s 9 cl (1)*—The wajib-ul urz of a village is a document of a public character prepared with all publicity and must be considered as *primâ facie* evidence of the existence of any custom which it records. Its record of the existence of a custom of pre-emption is sufficiently strong evidence to cast on those denying the custom the burden of proof; and in the same manner when it *records a contract* of pre emption between the shareholders there is a presumption that it is binding on the shareholders. Looking to the public character of the document and the way it is prepared and that all shareholders whether signing it or not must be presumed to have assented to its terms the inferences to be deduced from it cannot be disregarded except when they are rebutted by evidence of an opposite character. A suit to enforce the right

CUSTOM—*continued*

16 ———————— *Custom as to transferability of tenures* —In an enquiry as to whether tenures of a certain class are transferable according to local custom it is sufficient if there is credible evidence of the existence and antiquity of the custom and none to the contrary there is no necessity for the witnesses to fix any particular time from which such tenures became transferable JOY KISHEN MOOKERJEE *v* DOORGA NARAIN NAG [11 W R 349

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18 ———————— *Haqq i chaharum —Private sale—Sale in execution of decree* —Proof of a custom whereby the zamindar of a village is entitled to one-fourth of the purchase money when a house in the village is sold privately is not proof of a similar custom in respect of sales in execution of decrees KALIAN DAS *v* BHAGIRATHI [I. L R 6 All, 47

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CUSTOM—*continued*

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34 ———————— *Suit by land holder for declaration of right to take land from occupancy tenant for cultivation of indigo—Wajib-ul urz Construction of*—The zamindars of a village sued an occupancy tenant for a declaration of their right to maintain a custom which was thus recorded in the wajib ul urz — "When necessary one or two bighas out of the tenants' lands are taken with their consent (ba khushi) for sowing indigo." Upon the basis of this entry they claimed to be entitled to take a portion of the occupancy holding at a certain period of the year for the purpose of *cultivating indigo*. *Held by the Full Bench that the* word "khushi" used in the wajib ul urz indicated that the land was only to be taken with the occupancy tenant's consent and the document created no right of the nature alleged namely to take the land despite the tenant. SHEODARAN v BHAIRO PRASAD I. L. R, 7 All, 680

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CUSTOM—*continued*

of pre-emption which was based on contract and custom as evidenced by the wajib ul urz of a village was dismissed by the lower Courts on the ground that any contract which might be founded on the wajib ul urz was not binding on the vendor-defendant as that document did not bear his signature, and the lower Appellate Court attached no weight to the wajib ul urz as proof of the custom of pre-emption because it was drawn up when Regulation VII of 1822 was in force, and at that time there was no legal presumption of its accuracy The claim was dismissed on the ground that the plaintiff s evidence did not prove the existence of a custom of pre-emption in the village. *Held* that the lower Appellate Court had erred in dealing with the evidence, and that although this particular wajib-ul urz was made before Act XIX of 1873 came into force yet the weight which would attach to its entries both as proof of the contract as well of custom was very strong *Ieri Singh v Ganga I L R 2 All 876* referred to MUHAMMAD HASAN v MUNNA LAL I. L. R., 8 All., 434

36 ———— *Wajib ul urz—Mahomedan law*—It having been alleged that an estate by custom descended to a single heir in the male line the High Court concurring with the Court of first instance found that this custom had not been proved to prevail in the family On an appeal contesting this finding it was argued among other objections that the High Court had not given sufficient effect to an entry in the wajib ul urz of a zamindari village the principal one comprised in the family estate now in dispute the last owner of that estate who held all the shares in the village having caused an entry to be made to the effect that his eldest son should be his sole heir the others of the family being maintained. *Held* that though termed an entry in a wajib ul urz the document was not entitled to the name but was rather in the nature of a testamentary attempt to make a disposition contrary to the Mahomedan law of descent MOHAMMAD ISMAIL KHAN v FIDAYAT UN NISSA [I. L. R., 8 All., 516

37 ———— *Dhardhura—Alluvial land—Quære*—What is the extent of the applicability of the custom of dhardhura in regard to alluvial land overriding the provisions of Regulation XI of 1825 NASEER-OOD DEEN AHMED v OOMEEDER 3 Agra 1

38 ———— *Dhardhura Applicability of custom—Accretion.*—The custom of dhardhura applies to lands thrown up or formed by fluvial action either in one year or in the course of a number of years Whether it is equally applicable to chuckee formations or tracts of land severed by a sudden change in the course of a river and yet preserving their identity of site and surface after the severance, must be determined by proof of the extent of the custom. KATIYANEE v MAHOMED SHURFOOD DEEN 3 Agra, 189

39 ———— *Dhardhura.*—The custom of dhardhura is, when applied to lands gained otherwise than by gradual accretion, opposed to equity; and such a custom must be proved, not by the vague assertions of witnesses but by a sufficient enumeration of instances ISREE SINGH v SHURUF OODEEN 1 N W., 142 Ed. 1873, 224

40 ———— *Dhardhura—Beng Reg XI of 1825, ss 2 4 (ii)*—The question whether the custom of dhardhura applies to lands gained by gradual accretion only or also to lands which have been separated from a mouzah by a sudden change of stream must be determined in each case on the evidence for although the Court would be disposed to scrutinize with care evidence in regard to a custom which would have the effect of passing from one owner to another lands long held and enjoyed, and of which the character is in no way altered by river action, yet it cannot be said that such a custom can in no case be established and given effect to *Katiyanee v Mahomed Shurfoodeen 3 Agra, 189 Ieree Singh v Shurfoodeen 1 N W, 142* and *Rajendur Pertab Sahee v Lalgee Sahoo 20 W R 427*, referred to SIBT ALI v MUNIR-UD-DIN [I. L. R., 6 All., 479

41. ———— Validity of custom—*Power of some of mirasidars to bind co owners of village lands*—A custom that some only of the mirasidars of a village should bind the co-owners of the village lands is valid. ANANDAYYAN v DEVARAJAYYAN [2 Mad., 17

42. ———— *Usage of mangrole—Policy of insurance—Evidence of average loss—Certificate of mahajans*—An alleged usage that the mahajans' certificate is deemed to be conclusive evidence against the under writer without production of manifest and account sales, and that upon proof of the certificate alone and of the policy the owner is entitled to recover his average loss cannot be upheld such not being a reasonable usage RANSORDAS BHAGILAL v KESRISING MOHANLAL 1 Bom., 229

43. ———— *Unreasonable custom—Broker varying contract*—A custom which allows a broker to deviate from his instructions is unreasonable and the Courts of law will not enforce it ABLAPA NAIK NARSI KISHAWJI AND COMPANY [8 Bom., A. C., 19

44. ———— *Customary right of privacy—Right of building and to interfere with erection of building*—A customary right of privacy under certain conditions exists in India and in the North Western Provinces and is not unreasonable but merely an application of the maxims *sic utere tuo ut alienum non laedas* and *aedificare in tuo proprio solo non licet quod alteri noceat* In the case of a building for parda purposes newly erected without the acquiescence of the owner of an adjacent building site a custom preventing such owner from so building as to interfere with the privacy of the first new building would be unreasonable and consequently bad in law But if such adjacent owner, without protest or notice allowed his neighbour to erect and consequently to incur expenses in connection with a building for the use of parda-nashin women a custom preventing him from interfering with the privacy of such new building would not

CUSTOM—*continued*

India be unreasonable GOKAL PRASAD *v* RADHO I. L. R., 10 All., 358

45. ——————— *Customary right —Facts necessary to establish the existence of a customary right—Easement—Easement Act ss 4 and 18.*—The plaintiff sued for possession of a piece of land which, he alleged, formed part of the court yard of his kothi and for demolition of a chabutra thereon. The defendants denied the plaintiff's title and alleged that they always used the chabutra as a sitting place and that during the Moharram the tazias and alams were exhibited upon the chabutra, and a takht was placed upon it. The Court of first instance found that the defendants had a right to use the land in the manner claimed during the Moharram. The lower Appellate Court on the question of the defendant's right to use the said land in the manner claimed by them, found as follows:—That various mirasis, whose connection with each other is not established, have within a period of twenty years or so placed tazias upon land and sung there.' *Held* that this finding of fact did not necessarily in law lead to the conclusion that there was a local custom by virtue of which the easement now claimed by the defendants was acquired. Where a local custom excluding or limiting the general rule of law is set up a Court should not decide that it exists unless such Court is satisfied of its reasonableness, and its certainty as to extent and application and is further satisfied by the evidence that the enjoyment of the right was not by leave granted, or by stealth, or by force and that it had been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned KUAR SEN *v* MAMMAN I. L. R., 17 All., 87

Reversing on appeal under the Letters Patent MAMMAN *v* KUAR SEN I. L. R., 16 All., 178

46 ——————— *Usage imported as term of a contract—Practice on a particular estate—In order* that the practice on a particular estate may be imported as a term of the contract into a contract in respect of land in that estate, it must be shown that the practice was known to the person whom it is sought to bind by it and that he assented to its being a term of the contract; and when the person sought to be bound by the practice is an assignee for value of rights under that contract it must also be shown that he and all prior assignees (if any) for value knew that the practice was a term of the original contract MANA VIKRAMA *v* RAMA PATTER I. L. R., 20 Mad., 275

47 ——————— *Custom of burial —Local custom—Right claimed by a certain section of Mahomedans to bury their dead in a certain locality—Right of burial* —Where a certain section of the Mahomedan community had been for many years in the habit of burying their dead near a darga in plaintiff's land, and the plaintiff sued for an injunction restraining them from exercising this right in future —*Held* that the right of burial claimed by the defendants was not an easement but a customary right which being confined to a limited class of persons and a limited area of land was sufficiently certain and reasonable to be recognized as a valid local custom MOHIDIN *v* SHIVLINGAPPA

[I. L. R. 23 Bom., 666

CUTCHI MEMONS

See HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI MEMONS
[I. L. R. 9 Bom. 115
I. L. R. 10 Bom. 1

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS
[I. L. R. 14 Bom., 189

See MAHOMEDAN LAW—CUTCHI MEMONS
[I. L. R. 8 Bom. 452
I. L. R. 9 Bom. 115, 158

See PROBATE—POWER OF HIGH COURT TO GRANT AND FORM OF
[I. L. R., 6 Bom., 452

See WILL—VALIDITY OF WILL.
[I. L. R., 10 Bom., 1

CYPRES PERFORMANCE

See WILL—CONSTRUCTION 1 Mad., 429
[I. L. R. 1 Calc 303 L. R. 3 I. A., 32
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I. L. R. 13 Calc. 193